

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that “Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners’ declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power.” The use of the phrase “includes but is not limited to” is much too broad and the lack of any definition of “abuse of power” creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term “discrimination,” making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the “Association”) alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys’ fees and costs, but it is silent on the award of attorneys’ fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to “any person acting on behalf of an association or a unit owner” is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 8:34 AM
To: JUDtestimony
Cc: hugh@kipukacommunity.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Hugh Klipp	Association of Unit Owners Kipuka at Hoakalei	Oppose	No

Comments: SB 369, S.D. 1 - opposed This change would conflict with and complicate processes in existing provisions of 514b-157, 514b-161, 514b-162 and 514b-163. Hence this change does not seem to strengthen protections and processes already afforded under 514b or provide the changes to jurisdiction of District Courts to provide injunctive relief. Additionally, The word "Discriminate" should be deleted since it does not appear to define the conduct it is trying to prohibit. The definition of "Retaliation" does not describe the retaliatory or discriminatory conduct it intends to prohibit. This makes volunteer boards subject to conflicting demands from unit owners complaining about other unit owner's violations with the aggrieved owner then claiming retaliation. There are no provisions in this change for legal costs to associations and boards successfully defending against

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 6:45 AM
To: JUDtestimony
Cc: smumm@hkcamau.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Stuart Mumm	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee, I write as an individual, but I serve on the Honua Kai Board of Directors. I write to oppose SB 369. The bill is poorly drafted, as it lacks meaningful definitions. For example the meaning of "retaliation" and "discrimination" are not clearly defined. The bill, as proposed would encourage lawsuits against directors. Directors serve our association as volunteers, and perform a valuable function. Directors currently have a responsibility to act in the interest of the association, act in a reasonable manner, and to solicit and follow the advice of experts, both legal and financial. As a result, directors are safeguarded from lawsuits and personal responsibility if they fulfill their duties in this manner. However SB369 would tip the scales in this equation by making it possible to sue said director or managing agent in district court for "retaliation" or "abuse of power" which are not adequately defined. Thus this bill would have a chilling effect on those of us who serve our associations at the expense of our own time and costs. It would place our personal assets at risk, and thus make it very difficult to find qualified persons willing to serve as a director. I therefore urge you to defer action on this flawed bill. Sincerely, Stuart Mumm, MD (HKCA)

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 6:13 AM
To: JUDtestimony
Cc: sdscepe@yahoo.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Katherine Stringham	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

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I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that “Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners’ declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power.” The use of the phrase “includes but is not limited to” is much too broad and the lack of any definition of “abuse of power” creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term “discrimination,” making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the “Association”) alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys’ fees and costs, but it is silent on the award of attorneys’ fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to “any person acting on behalf of an association or a unit owner” is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 10:16 PM
To: JUDtestimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments: I am a condo owner and board member. I do not understand this bill. At times my association has been forced to have our attorney send cease and desist letters to owners/residents who have harassed and/or threatened employees and residents. How is that affected by this bill? Terms are very broad and not properly defined. Will more lawsuits result? Please defer this bill. Lynne Matusow

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Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I OPPOSE S.B. 369, S.D.1. Calling for the prevention of retaliation or discrimination is a sensible idea. That being said, SB 369, S.D.1 will not prevent retaliation or discrimination. It is not clear in its intent and could encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. Because its intent is not clear and the lack meaningful definitions, it will not likely achieve its intended purpose. The bill states that “Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners’ declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power.” The phrase “includes but is not limited to” is unclear and the lack of any definition of “abuse of power” creates uncertainty as to the meaning of the phrase. The bill offers no definition for the term “discrimination,” making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the “Association”) alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys’ fees and costs, but it is silent on the award of attorneys’ fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to “any person acting on behalf of an association or a unit owner” is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

Mary Freeman

808/689-5683

PAUL A. IRELAND KOFTINOW, ESQ.
733 Bishop Street, Ste 2301
Honolulu, Hawai'i 96813
pirelandkoftinow@alf-hawaii.com

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in **OPPOSITION** to S.B. 369 S.D. 1
Hearing Date: March 29, 2017, at 2:00 p.m., Conference Room 325
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Committee Members:

My name is Paul A. Ireland Koftinow, and I am an attorney who primarily represents condominium associations and planned community associations in Hawai'i. I am also a graduate of William S. Richardson School of Law, University of Hawai'i at Mānoa. I am respectfully providing my testimony in **OPPOSITION** to S.B. 369 S.D. 1. and ask that this measure be deferred.

1. The Word “Discriminate” Should be Deleted.

The word “discriminate” in this measure seems misplaced. Generally speaking, “discrimination” might refer to an “intellectual faculty of noting differences and similarities.” See **DISCRIMINATION**, Black’s Law Dictionary (10th ed. 2014). Also, most people might think of “discrimination” as denying or allowing privileges to a certain class of persons “because of race, age, sex, nationality, religion, or disability.” Id. See also, HRS § 378-2(a) (which identifies discriminatory practices based on protected classes and specific conduct).¹ However, this measure

¹ HRS § 378-2(a) provides, in relevant part:

- (a) It shall be an unlawful discriminatory practice:
 - (1) Because of race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

does not describe any discriminatory practice which is supposed to be prohibited. Also, this measure does not include any finding or explanation why a group should or should not be noted or treated differently. As a result, the word “discriminate” is arguably broad and vague because it is unclear what a discriminatory practice is under this measure. Also, since this measure does not identify any discriminatory practices which it might be intended to prohibit, there seems to be no apparent urgency in passing this measure at this time. This measure should therefore not pass, as more time will be needed to identify discriminatory practices and to allow further public comment regarding the same. Alternatively, I respectfully suggest the word “discriminate” be deleted from this measure if your Committee does pass it.

2. The Definition of “Retaliation” is Overly Broad and Ambiguous.

The definition of “retaliation” under this measure is overly broad and it is not clear what specific conduct this measure is intended to prohibit. This measure provides that “Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners’ declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power.” The phrase “includes but is not limited to” is overly broad and the lack of any definition of “abuse of power” will create uncertainty as to how that phrase should be interpreted. Also, there are many lawful and reasonable actions which might not be expressly “supported” by an association’s declaration, bylaws, house rules, or “applicable state statute.” For example, a complainant (who could be a unit owner, board member, or association employee) might allege that retaliation has occurred because:

- A resident manager has called the police because the complainant (a unit owner) is disturbing other unit owners or engaging in criminal conduct.
- A resident manager requests that the complainant (a unit owner) stop making harassing phone calls and limit all communications to writing.
- A board decides to demote or fire the complainant (an association employee) for failing to follow procedure.

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, that expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;

In each of the above examples, it is arguable that a party's action might not be expressly "supported" by the Association's governing documents or "applicable law." In some instances, the conduct might be protected speech. In other cases, it might be something that is reasonable and justifiable.

Ideally, a well-crafted bill which prohibits retaliation or discrimination should clearly describe the retaliatory or discriminatory conduct which it is intended to prohibit, and it would thereby be more effective in preventing such conduct. In other instances, the Legislature has identified specific conduct that is retaliatory. *See, e.g.*, HRS § 521-74 (prohibiting retaliatory eviction). Also, as noted in previous testimony, the preamble of this measure does not describe any "findings of widespread retaliation." (John A. Morris, Esq., written testimony re S.B. 369 dated January 31, 2017.) As such, your Committee should find that further fact finding is necessary to address what specific conduct needs to be prohibited and defer this bill. It should also be deferred because the definition of retaliation is inadequate.

3. Associations, Board Members, Managing Agents, Resident Managers, Apartment Owners, and Any Other Persons Acting on Behalf of an Association Should Be Protected From Unsubstantiated Retaliation Lawsuits.

This measure will not sufficiently protect parties when an allegation of retaliation is unsubstantiated. Instead, it will encourage unsubstantiated lawsuits for retaliation. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but *this measure is silent on the award of attorneys' fees and costs when the defendant is the prevailing party*. This will cause both parties to incur more attorneys' fees and costs in arguing over the issue of whether a defendant, who has prevailed, is entitled to an award of attorneys' fees and costs. Also, your Committee should note that the testimony on this measure has generally disfavored costly litigation. This measure should be deferred to examine the interests at stake. Alternatively, if your Committee passes this measure, it should state that if an action is brought in district court, "the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs."

4. This Measure is Not Necessary to Strengthen Protections Already Afforded to Parties Who Report Violations of Governing Documents or Chapter 514A or 514B.

In actions seeking injunctions to enforce governing documents, whether brought by an owner or an association, there is a well-established body of case law where parties seek injunctive relief to enjoin violations of governing documents. Defendants in such actions may raise various defenses to show why injunctive relief should not be imposed. Additionally, with respect to conduct a party might perceive as "retaliation," there are already effective legal protections which

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair
Members of the Committee
March 27, 2017
Page 4

1) prevent harassment, 2) provide courts with authority to impose sanctions against parties who allege frivolous claims or defenses, 3) provide that board members owe the association a fiduciary duty, and 4) provide for recovery of attorneys' fees and costs in actions to enforce an association's governing documents. See, e.g., HRS § 711-1106, Hawai'i Rules of Civil Procedure Rule 11, Hawai'i District Court Rules of Civil Procedure Rule 11, and HRS §§ 514B-106 and 514B-157. Based on my experience, the available protections are well-suited to address concerns related to retaliation.

5. District Courts Have Limited Jurisdiction.

Lastly and significantly, district courts do not have general jurisdiction to award injunctions except in certain instances provided for by statute. See Fuller v. Pac. Med. Collections, Inc., 78 Hawai'i 213, 220, 891 P.2d 300, 307 (Ct. App. 1995) (Generally, district court not having equity jurisdiction does not have jurisdiction to order injunctive relief in civil cases); see also HRS §§ 603-21.7(a)(3), 604-5, and 604-10.5. As such, this measure conflicts with the existing jurisdictional limits regarding district courts, to the extent that it allows parties to bring actions for injunctive relief in district courts without granting district courts the power to award injunctive relief. Therefore, since this measure does not address the jurisdictional limits of district courts, this measure should be deferred.

Thank you for this opportunity to provide written testimony.

Sincerely,



Paul A. Ireland Koftinow

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 7:55 PM
To: JUDtestimony
Cc: bradhair8888@gmail.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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Lisbeth Lofvenholm

469 Ena Road, Apt 2511

Honolulu, HI 96815

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 5:25 PM
To: JUDtestimony
Cc: aanderson@alf-hawaii.com
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SB369

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	Yes

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. This bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. The reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against professionals retained by associations.

This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill. Sincerely, Anne Anderson

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 27, 2017 8:40 AM
To: JUDtestimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for SB369 on Mar 29, 2017 14:00PM*

SB369

Submitted on: 3/27/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 26, 2017 7:11 PM
To: JUDtestimony
Cc: richard.emery@associa.us
Subject: *Submitted testimony for SB369 on Mar 29, 2017 14:00PM*

SB369

Submitted on: 3/26/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 25, 2017 2:21 PM
To: JUDtestimony
Cc: launahele@yahoo.com
Subject: *Submitted testimony for SB369 on Mar 29, 2017 14:00PM*

SB369

Submitted on: 3/25/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Benton	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 24, 2017 5:19 PM
To: JUDtestimony
Cc: Ken_Conklin@yahoo.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/24/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kenneth R. Conklin, Ph.D.	Individual	Support	No

Comments: I strongly support this bill because I see the need for it in my own condo association. But please don't wait until 2050 to make it effective -- that's too long to wait.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 7:25 AM
To: JUDtestimony
Cc: bonnielau1668@gmail.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bonnie Lau	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: As a newly elected board member, I STRONGLY OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This

language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill. Thank you.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 10:54 AM
To: JUDtestimony
Cc: twoditts@hawaiiantel.net
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James Dittmar	Individual	Oppose	Yes

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: My name is James Dittmar and I am a condominium board member. I strongly OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit

owner” is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 11:59 AM
To: JUDtestimony
Cc: mickibob@hawaiiantel.net
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Micki Stash	The Punahala	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I am a condominium owner and member of the Board of Directors of my Association and I hereby respectfully oppose S.B. 369 S.D. 1. This bill, although having good intentions, may well do more harm than good. The wording as drafted could encourage owners to sue associations and their board members, managing agents, and resident managers whenever they become unhappy with a decision made by the Association. It could well encourage many frivolous law suits and further discourage owners from participating as board members. There are already other legal protections in place to prevent harassment, provide courts with authority to impose sanctions against parties who allege frivolous claims or defenses, provide that board members owe the association a fiduciary duty, and provide for recovery of attorneys' fees and costs in actions to enforce an association's governing documents. This bill simply muddies the waters and may cause more problems than it would solve. Therefore, I strongly urge the Committee to defer action on this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 11:45 AM
To: JUDtestimony
Cc: jterashima@gmail.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joyce Baker	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this bill.

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Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

My name is Pamela J. Schell. I am an attorney who represents condominium owners' and community associations and I OPPOSE S.B. 369, S.D.1. The prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is too broad and "abuse of power" is not defined, which creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination if they are unhappy with a decision of the Association. It also could encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent, which seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations. Finally, this measure provides that owners, board members, and association employees may bring civil actions in district court and obtain awards of injunctive relief. District courts do not have general jurisdiction to award injunctions, except in certain instances provided by statute. A change in the jurisdiction of the district courts should be made by amending HRS Chapter 604, not by amending HRS Chapters 514A or 514B. For the reasons stated herein, I strongly urge the Committee to defer action on this defective bill.

March 28, 2017

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I am insurance agent specializing in insurance for condominium associations in Hawaii. I am also a past president of the Community Association Institute – Hawaii Chapter.

I OPPOSE SB 369, SD1. For the reasons outlined below, this bill would inevitably create a crisis in the Directors' and Officers liability insurance market in our state as existing companies would either pull out of the state or raise premiums to unsustainable levels

The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous.

Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against professionals retained by associations. This, in turn, may make it difficult for associations to find professionals who are willing to perform services for associations.

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Thank you.

João Santos

2669 Haili Road

Honolulu, HI 96813

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

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Submitted by Chandra R.N. Kanemaru

3054 Ala Poha Place, Honolulu, Hawaii 96818

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:54 PM
To: JUDtestimony
Cc: miketnmaxc@msn.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Targgart	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:53 PM
To: JUDtestimony
Cc: jtoa@hawaii.rr.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Toalson	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 1:51 PM
To: JUDtestimony
Cc: office@makahavalleytowers.org
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna L. Miranda	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: 28 March 2017

I offer a rational and recommendation for the Committee to defer action on S.B. 369, S.D.1

My Name is Philip Blackman, phil@aloha.net. I am a long time participant in the environment of condominium ownership and management; I have from multiple perspectives opportunities to observe the conflicts pursued by those brought into relationships with Associations and related parties.

I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea, but the Bill's poorly defined wording surly will generate unintended consequences as it offers fuel for encouraging conflicts over mediation, compromise, and transparency.

That the Bill has progressed to this hearing stage is evidence of issues needing to be addressed. But please exercise caution and prudent deferral. The Bill's narrow focus is not placed clearly in the larger "blueprint" of interested parties' behavior in the daily operation of condominiums and Associations. Case studies of a plethora of incidents perhaps best summarized by the word "corruption" arise seemingly out of the normal pursuit of individual goals that vary so drastically in a building of multiple owners! The blueprint is a currently absent tool to understand "the elephant in the room, not just its ear, tail, or leg"! Take time to do understand the multiple perspectives and motivations of the parties before offering a sweeping set of new "state sanctioned weapons" to make for bloodier conflicts drawing in other parties seeking to profit by conflict. Language of the Bill appears to encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts.

There is a State mandated requirement for Condominium Associations to hire qualified and government sanctioned professional management companies. These companies not only train, monitor, and support the board of directors, but are rightfully expected to generate data, reports, and transmittals offering all owners a truthful view of the building and procedures in the building. **The language of any Bill ought to make clear the fiduciary and professional obligations of these companies. This IS the first line of defense!**

Thank you for consideration. Mahalo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 2:05 PM
To: JUDtestimony
Cc: lfujisaki@alf-hawaii.com
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lance S. Fujisaki	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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March 28, 2017

Lourdes Scheibert
Royal Court Condominium
920 Ward Ave
Honolulu, Hawaii 96814

Hearing Date: Testimony, Wednesday, March 29, 2017
Time: 2:00pm
Place: Conference Room 325

Committee on Judiciary
House of Representatives, the 29th Legislature
Regular Session of 2017

RE: Testimony Opposing SB369, SD1

Prohibits associations of apartment owners, boards of directors, managing agents, resident managers, and condominium owners from retaliating or discriminating against a condominium owner, board member, or association employee who files a complaint; acts in furtherance of a complaint, report, or investigation of an alleged violation of the State's condominium laws or a condominium's governing documents; or exercises or attempts to exercise any right as a condominium owner. Effective 07/01/2050. (SD1)

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee,

I am a condominium owner who wrote in support of SB369, January 29, 2017. I have since then changed my support to oppose SB369, SD1 because of the amendments added to include everyone. I can see that pointing fingers at each other and different perspective of what the meaning of retaliation and/or discrimination can be a big mess. This will not solve the cause of what started the argument.

In most cases, the cause is over a repair of an apartment. Why is it taking so long to get it repaired and who is responsible for payment?

I sat on both sides of the association, I know how it feels to be bullied as an owner and as a director. However, after listening to another view, I agree, that as the bill is written it's difficult to measure retaliation and/or discrimination. This bill needs more input.

Thank-you,

Lourdes Scheibert
Condominium Owner

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair
House
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in **OPPOSITION TO S.B 369 S.D. 1**
Hearing Date: March 29, 2017, at 2:00 p.m., Conference Room 329
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

I **OPPOSE** S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill.

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Ann E. Collins



225 Queen Street
Honolulu, Hi. 96813

March 29, 2017

LATE

To:

Chair Scott Y. Nishimoto
Vice Chair Joy A. San Buenaventura
House Committee on Judiciary

From: Daven Ruggles

Subject: Support of Senate Bill 369, Relating to Condominiums

My name is Daven Ruggles, I am a student attending Kalaheo High School in Kailua. I strongly support SB 369, which prohibits associations of apartment owners, boards of directors, managing agents, resident managers, and condominium owners from retaliating or discriminating against a condominium owner, board member, or association employee who files a complaint.

The first amendment of the United States Constitution Prohibits Congress from making any law prohibiting the petitioning for a governmental redress of grievances. Thus, the government should follow this guideline in administering both private and federal affairs. If a apartment owner or otherwise owner of a condominium or similar institution discriminates against people, this may lead to them unable to find housing, and lead to poverty. Poverty should not be inflicted on any of the nation's citizens. Yet, according to Shirley Franklin, the Former Mayor of Atlanta, "Every 29 seconds another child is born into poverty, costing our country some \$500 billion per year." This is something that should not occur, especially in the state of Hawai'i.

According to findlaw.com, Hawaii's civil right's authority stems from the Hawaii Civil Rights Commission which, "works to eliminate cases of discrimination." Thus to be in support of its own institutions, this law must be enacted, to support the Hawaiian ethos that has been established throughout the state. Because the Commission allows one to file discrimination claims, it would be wise to eliminate this cause for discrimination in the first place

I sincerely hope you will be in agreement to support Senate Bill 369. Thank you for your time and consideration.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 28, 2017 5:03 PM
To: JUDtestimony
Cc: latchley@frontiernet.net
Subject: Submitted testimony for SB369 on Mar 29, 2017 14:00PM

SB369

Submitted on: 3/28/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lonnie Atchley	Individual	Oppose	No

Comments: Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee: I OPPOSE S.B. 369, S.D.1. Generally, the prevention of retaliation or discrimination is not a bad idea. However, SB 369, S.D.1 will do more harm than good. It is poorly drafted, will encourage frivolous lawsuits, and amends the wrong statute pertaining to the jurisdiction of the district courts. For the reasons set forth below, I urge the committee to defer action on this bill. The intent of this bill is to prevent retaliation and discrimination against owners, board members, and association employees. However, because it is poorly drafted and lacks meaningful definitions, it will not likely achieve its intended purpose. The bill provides that "Retaliation includes but is not limited to: (1) Taking any action that is not supported by the association of apartment owners' declaration, bylaws, or house rules, applicable state statute, or (2) An abuse of power." The use of the phrase "includes but is not limited to" is much too broad and the lack of any definition of "abuse of power" creates uncertainty as to how that phrase should be interpreted. Additionally, the bill offers no definition for the term "discrimination," making it even more vague and ambiguous. Adopting a bill of this nature, which is lacking in meaningful definitions, will likely encourage owners to sue condominium associations, boards of directors, board members, managing agents, and resident managers (collectively, the "Association") alleging retaliation and/or discrimination every time they are unhappy with a decision of the Association. It may also encourage more lawsuits against owners. This measure provides that a unit owner, board member, or association employee may bring a civil action in district court and if they prevail, they may obtain an award of attorneys' fees and costs, but it is silent on the award of attorneys' fees and costs when the defendant is the prevailing party. It should state that if an action is brought in district court, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs. Furthermore, the bill prevents a condominium association, its board, and managing agent, or any person acting on behalf of an association from retaliating or discriminating against an owner, but it does not prevent an owner from retaliating or discriminating against the association, board of directors, or managing agent. This seems fundamentally unfair and one-sided. Additionally, the reference to "any person acting on behalf of an association or a unit owner" is too broad. This language may result in frivolous suits being filed against

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