

HB-2243

Submitted on: 2/2/2022 2:04:16 AM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lourdes Scheibert	Condo Owner	Support	Yes

Comments:

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the Committee,

I would like to thank Speaker Scott Saiki for introducing this measure in my behalf at the late hour. Time was short and I wasn't able to campaign for a Senate bill companion.

I am Lourdes Scheibert, a director of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community. I am also a participant of Hui 'Oia'i'o. I support HB2243.

HB2243 my verbiage taken from the existing City and County Building codes: Chapter 34 Existing Structures [EB] Section 3401 General. 3401.1 Scope. *The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures.* This building code includes 3401.2 Maintenance. (Chapter 34 Existing Structures [EB] Section 3401 is adopted by all counties.)

The first part of 514B for the condominium developer shall comply with the same City & County Building Codes and Fire Safety Codes (Reference attach 514B-5). After final inspections, the building is then turned over to the Association and its Board of Directors.

The second part of 514B pertains to governing of the Association thru its Board of Directors and likely under the advisement of a paid property management company/or designated agents. HB2243 clarifies the fiduciary duty of the board and the designated agent to maintain, "preserve and protect" the structural integrity of the building by abiding by the building & fire codes. HB2243 strengthens 514B-137 Upkeep of Condominium that includes the owners and the board of directors. Buidling permits are required for alterations.

International Building Code 3401 in **its-self** is the county law for all building structures thus the Association's board of directors and designated agents shall comply with the jurisdiction's safety codes and permitting.

Thank-you

Reference: International Building Code 3401.1 Scope. The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures. Buildings

and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing buildings and structures. LINK <http://www.abc-wiki.com/section-3401/>

514B-5 Conformance with county land use laws. Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located,

TESTIMONY OF ALISON UEOKA

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Thursday, February 3, 2022
2:00 p.m.

HB 2243

Chair Johanson, Vice Chair Kitagawa, and members of the Committee on Consumer Protection & Commerce, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council support efforts to encourage the prompt maintenance and repair of condominium buildings in Hawaii. Many condominiums have been built in the 1970's and 1980's and now require major repairs to keep the buildings operational. These changes are often structural as we live in an island state surrounded by salt water. Pipes in buildings do not last forever and many have exceeded their lifespan but have not been replaced. Compounded by interior sprinkler requirements or the equally or more expensive fire life safety requirements, many in condominiums are not keeping up with the necessary repairs and maintenance because of cost.

Continued losses in this area mostly due to water losses from failed pipes in buildings have caused the market for condo building insurance to stagnate and insurers are reluctant to enter the market. The way condo associations operate and how decisions are made is a flawed system that relies upon the very owners who must pay for these repairs and maintenance to make the decision to increase every owner's costs. Many

times, Boards are unable to increase their maintenance fees to an appropriate level because they cannot get the requisite number of votes. Even then, Boards are and have been thrown out by a new Board who refuses to approve increases to maintenance fees even though they may be sorely needed. Most buildings here are in need of repair or replacement and are not on schedule. The process in which to make these big decisions, get estimates, have the Board or membership vote on financing and then to get the project started takes years. In the meantime, losses continue as components in the buildings fail.

The property insurance market is changing worldwide as we are experiencing the adverse impact of climate change. In addition, aging properties and properties that are not hardened against increasing weather events will have to pay more to insure themselves. Increasing losses impact reinsurers who provide insurance for insurance companies. Reinsurers provide worldwide coverage for insurers and a hardening market directly impacts what insurers must charge for their products.

We hope that measures such as these encourage those who own units in condominiums to make the appropriate investment to maintain their units.

Thank you for the opportunity to testify.

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

I respectfully OPPOSE H.B. 2243. Although this measure is intended to promote safety on condominium projects, it will not make condominium projects safer, but it will expose condominium associations to potential claims for violations of HRS Section 514B-137(c). Persons who are injured on condominium projects will argue that the associations are negligent per se for not making the projects safe or sanitary. This will result in higher insurance premiums or increases in assessments to unit owners pay for claims.

A. “Safe and Sanitary Conditions”

The first sentence creates a statutory duty to maintain “buildings and structures, and parts thereof,” in a safe and sanitary condition.

1. Imposing a broad duty to maintain buildings and structures in a safe condition is not an effective way to prevent a tragedy, like Champlain Towers. The language in the first sentence is so broad and vague that it will not accomplish its goal. Rather, it may be used to impose strict liability upon associations for any unsafe or unsanitary condition on condominium projects. For example, under common law, if water leaks on a lobby floor, a building operator may be responsible for the condition only if it has constructive notice of the condition. Harris v. State of Hawaii, 1 Haw. App. 554 (1981). This Bill may override common law and allow claimants to bring actions against condominium association for violating HRS Section 514B-137(c), regardless of whether the association had constructive notice of the conditions. If this were to happen, this would be tantamount to imposing strict liability on associations for conditions on the premises.

2. It is not clear what “sanitary condition” means. “Sanitary” usually refers to hygiene and health. Associations cannot guarantee sanitary conditions. Condominium projects are used by hundreds of people in a single day. Associations can do their best to keep the common elements clean by periodic cleaning, but they cannot guarantee sanitation at all times. The Bill may impose strict liability on associations if conditions are not sanitary, which is impossible to accomplish.

3. The words, “and parts thereof,” means that units owned by unit owners will be subject to the “safe and sanitary condition” standard. Associations cannot guarantee

that units, which are under the exclusive control of unit owners, are maintained in a “safe and sanitary condition.”

4. Because the Bill also applies to the interior spaces of units, this means that unit owners will also have a statutory duty to maintain their units in a safe and sanitary condition.

5. Although most condominium governing documents require associations to operate, upkeep and maintain the common elements, there are no requirements that the associations maintain common elements in a safe or sanitary condition. The reason is that “safe” and “sanitary” are subjective standards and such verbiage will do little to advance the safety and health of occupants, but will expose associations to liability.

B. “Devices and Safeguards”

The second sentence requires that all “devices and safeguards as required by the applicable county building code shall be maintained in conformance with the code.” The Bill does not clarify what is contemplated by devices and safeguards, but in any event, this is an area that should be regulated by the counties.

C. Responsibility for Maintenance

The governing documents of condominium projects define who is responsible for maintaining buildings and structures. In some cases, unit owners may be responsible for maintenance of structures. For example, owners of detached condominium units may be required to maintain the buildings and structures. There are many other examples of projects where buildings and structures are not maintained by an association or the “association’s designated agency.” This Bill may create immense problems in the administration and operation of condominium projects that have different methods of maintenance and operation.

D. Reinspections

The fourth sentence of the proposed text is not necessary. This sentence states that “appropriate county building official[s] shall have the authority to require a building or structure to be reinspected.” It is within the authority of counties to reinspect buildings. However, before doing so, the counties will have to determine the parameters for the reinspections, adjust budgets so that there are adequate funds to conduct the reinspections, hire inspectors to conduct the inspections, etc. It should be left to the

counties to determine whether to conduct reinspections and the counties already have the authority to do so.

In summary, this is a harmful bill for condominium associations and their members. This bill should be deferred.

For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

Grant Oka

President, Kipuka at Hoakalei AOOU

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

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counties to determine whether to conduct reinspections and the counties already have the authority to do so.

In summary, this is a harmful bill for condominium associations and their members. This bill should be deferred.

For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)
Property Manager
Nakamoto Realty, LLC

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

I respectfully OPPOSE H.B. 2243. Although this measure is intended to promote safety on condominium projects, it will not make condominium projects safer, but it will expose condominium associations to potential claims for violations of HRS Section 514B-137(c). Persons who are injured on condominium projects will argue that the associations are negligent per se for not making the projects safe or sanitary. This will result in higher insurance premiums or increases in assessments to unit owners pay for claims.

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2. It is not clear what “sanitary condition” means. “Sanitary” usually refers to hygiene and health. Associations cannot guarantee sanitary conditions. Condominium projects are used by hundreds of people in a single day. Associations can do their best to keep the common elements clean by periodic cleaning, but they cannot guarantee sanitation at all times. The Bill may impose strict liability on associations if conditions are not sanitary, which is impossible to accomplish.

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5. Although most condominium governing documents require associations to operate, upkeep and maintain the common elements, there are no requirements that the associations maintain common elements in a safe or sanitary condition. The reason is that “safe” and “sanitary” are subjective standards and such verbiage will do little to advance the safety and health of occupants, but will expose associations to liability.

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The second sentence requires that all “devices and safeguards as required by the applicable county building code shall be maintained in conformance with the code.” The Bill does not clarify what is contemplated by devices and safeguards, but in any event, this is an area that should be regulated by the counties.

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D. Reinspections

The fourth sentence of the proposed text is not necessary. This sentence states that “appropriate county building official[s] shall have the authority to require a building or structure to be reinspected.” It is within the authority of counties to reinspect buildings. However, before doing so, the counties will have to determine the parameters for the reinspections, adjust budgets so that there are adequate funds to conduct the reinspections, hire inspectors to conduct the inspections, etc. It should be left to the

counties to determine whether to conduct reinspections and the counties already have the authority to do so.

In summary, this is a harmful bill for condominium associations and their members. This bill should be deferred.

For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

Marilyn Joyce Oka

Kekuilani Villas AOA

HB-2243

Submitted on: 2/2/2022 1:55:49 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dante Carpenter	Country Club Village, Phase 2, AOA (469 Units)	Oppose	No

Comments:

Rep. Johanson, Chair; Rep. Kitagawa, V-C; and Committee Members of CPN:

I respectfully oppose HB 2243. While intended to promote safety on Condo projects, it will expose condo associations to potential claims for violations of HRS Section 514B-137(c). Persons injured on condo projects will argue the association(s) are negligent for not making the projects safe or sanitary. This results in higher insurance premiums or increases in assessments to unit owners pay for claims. *Safe & Sanitary Conditions* implies a statutory duty to maintain "building and structures and parts, thereof," in a safe condition.

1. Imposing a broad duty to maintain bldgs. and structures in a safe condition is not an effective way to prevent a tragedy, like Champlain Towers. The language in the first sentence is too broad and and vague that it will not accomplish its goal. In fact, it may be used to impose strict liability upon associations for any unsafe or unsanitary condition on condo projects. Under common law, if watr leaks on a lobby floor, a bldg. operator may be responsible for the condition only if it has constructive notice of the condition. See *Harris v. State of Hawaii*, 1 Haw. App. 554 (1981). This Bill may override common law and allow claimants to bring actions against a condo association for violating HRS Section 514B-137(c), regardless of whether the association had constuctive notice of the conditions. If this wee to happen, it would be tantamount to imposing strict liability on associations for conditions on the premises.

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3. The second sentence requires that all "devices and safeguards as required by the applicable county building code shall be maintained in conformance with the code." The Bill does not clarify what is contemplated by devices and safeguards - however, this is an area that should be regulated by the counties.

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structures. Example, owners of detached condo units may be required to maintain buildings and structures. There are many other examples of projects where buildings and structures are not maintained by an association or its "designated agency." This Bill may create immense problems in the admin. and operation of condo projects that have different methods of maintenance and operation.

Other areas of concern are apparent throughout this Bill! Therefore, I respectfully oppose HB 2243 and urge the CPN Committee to Fie this measure!

Respectfully Submitted,

Dante Carpenter, V-P, CCV2, AOA

HCCA
Hawaii Council of Community
Associations
www.hawaiicouncil.com

LATE

January 31, 2022

Representative Aaron Johanson, Chair
Representative Lisa Kitagawa, Vice-Chair
House Committee on Consumer Protection and Commerce

Re: HB2243 Relating to Condominiums. Testimony in Support/with Comments
Thursday, February 3, 2022 at 2 p.m.

Chair Johanson, Vice-Chair Kitagawa and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCCA).

HCCA supports the intent and purpose of the bill to ensure the structural integrity of residential buildings and asks that this bill be passed out with the amendments proposed by CAI.

Thank you for allowing me to testify on this bill.


Jane Sugimura
President

House of Representatives
Committee on Consumer Protection and Commerce
Thursday, February 3, 2022
2:00 p.m.

To: Chair Aaron Ling Johanson
Re: HB2243, Relating to Condominiums

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

I am also the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations in Hawaii.

I **support HB2243** but lean towards measure, HB1784. I also suggest that Legislators look at a proposed measure in Florida's legislature, SB1702, which can be accessed by this link <https://www.flsenate.gov/Session/Bill/2022/1702/BillText/Filed/HTML>.

HB-2243

Submitted on: 2/1/2022 5:53:33 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Support	No

Comments:

Very sensible bill. Condo owners who object to this are inviting a replay of Florida's Surfside condominium collapse for their own community.

Please pass this out.

HB-2243

Submitted on: 2/1/2022 10:04:20 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Marcia Kimura	Individual	Support	No

Comments:

How will the studies and inspection findings be followed through on to make certain they are implemented?

HB-2243

Submitted on: 2/2/2022 11:39:02 AM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jeff Sadino	Individual	Support	No

Comments:

I Support this Bill.

HB-2243

Submitted on: 2/2/2022 12:12:17 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Laura Bearden	Individual	Oppose	No

Comments:

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Respectfully submitted,

Laura Bearden

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For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Anne Anderson', written in a cursive style.

M. Anne Anderson

HB-2243

Submitted on: 2/2/2022 12:21:34 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

I respectfully OPPOSE H.B. 2243. Although this measure is intended to promote safety on condominium projects, it will not make condominium projects safer, but it will expose condominium associations to potential claims for violations of HRS Section 514B-137(c). Persons who are injured on condominium projects will argue that the associations are negligent per se for not making the projects safe or sanitary. This will result in higher insurance premiums or increases in assessments to unit owners pay for claims.

A. “Safe and Sanitary Conditions”

The first sentence creates a statutory duty to maintain “buildings and structures, and parts thereof,” in a safe and sanitary condition.

1. Imposing a broad duty to maintain buildings and structures in a safe condition is not an effective way to prevent a tragedy, like Champlain Towers. The language in the first sentence is so broad and vague that it will not accomplish its goal. Rather, it may be used to impose strict liability upon associations for any unsafe or unsanitary condition on condominium projects. For example, under common law, if water leaks on a lobby floor, a building operator may be responsible for the condition only if it has constructive notice of the condition. *Harris v. State of Hawaii*, 1 Haw. App. 554 (1981). This Bill may override common law and allow claimants to bring actions against condominium association for violating HRS Section 514B-137(c), regardless of whether the association had constructive notice of the conditions. If this were to happen, this would be tantamount to imposing strict liability on associations for conditions on the premises.

2. It is not clear what “sanitary condition” means. “Sanitary” usually refers to hygiene and health. Associations cannot guarantee sanitary conditions. Condominium projects are used by hundreds of people in a single day. Associations can do their best to keep the common elements clean by periodic cleaning, but they cannot guarantee sanitation at all times. The Bill may impose strict liability on associations if conditions are not sanitary, which is impossible to accomplish.

3. The words, “and parts thereof,” means that units owned by unit owners will be subject to the “safe and sanitary condition” standard. Associations cannot guarantee that units, which are under the exclusive control of unit owners, are maintained in a “safe and sanitary condition.”

4. Because the Bill also applies to the interior spaces of units, this means that unit owners will also have a statutory duty to maintain their units in a safe and sanitary condition.

5. Although most condominium governing documents require associations to operate, upkeep and maintain the common elements, there are no requirements that the associations maintain common elements in a safe or sanitary condition. The reason is that “safe” and “sanitary” are subjective standards and such verbiage will do little to advance the safety and health of occupants, but will expose associations to liability.

B. “Devices and Safeguards”

The second sentence requires that all “devices and safeguards as required by the applicable county building code shall be maintained in conformance with the code.” The Bill does not clarify what is contemplated by devices and safeguards, but in any event, this is an area that should be regulated by the counties.

C. Responsibility for Maintenance

The governing documents of condominium projects define who is responsible for maintaining buildings and structures. In some cases, unit owners may be responsible for maintenance of structures. For example, owners of detached condominium units may be required to maintain the buildings and structures. There are many other examples of projects where buildings and structures are not maintained by an association or the “association’s designated agency.” This Bill may create immense problems in the administration and operation of condominium projects that have different methods of maintenance and operation.

D. Reinspections

The fourth sentence of the proposed text is not necessary. This sentence states that “appropriate county building official[s] shall have the authority to require a building or structure to be reinspected.” It is within the authority of counties to reinspect buildings. However, before doing so, the counties will have to determine the parameters for the reinspections, adjust budgets so that there are adequate funds to conduct the reinspections, hire inspectors to conduct the inspections, etc. It should be left to the counties to determine whether to conduct reinspections and the counties already have the authority to do so.

In summary, this is a harmful bill for condominium associations and their members. This bill should be deferred.

For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

Paul Ireland Kofinow

HB-2243

Submitted on: 2/2/2022 12:27:45 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lance S. Fujisaki	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

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In summary, this is a harmful bill for condominium associations and their members. This bill should be deferred.

For the foregoing reasons, I respectfully OPPOSE H.B. 2243 and strongly urge your Committee not to pass this measure.

Respectfully submitted,

Lance Fujisaki

HB-2243

Submitted on: 2/2/2022 12:43:08 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
mary freeman	Individual	Oppose	No

Comments:

I oppose this bill. It will not make condominiums safer but will instead subject the associations to higher insurance costs due to claims that all potential risks were not adressed.

Respectfully,

Mary Freeman

Ewa Beach

HB-2243

Submitted on: 2/2/2022 1:22:09 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
R Laree McGuire	Individual	Support	No

Comments:

Support with amendments. Mahalo.