

**SB-921**

Submitted on: 3/25/2023 6:49:14 PM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jane Sugimura	Hawaii Council of Association of Apt. Owners	Support	Written Testimony Only

Comments:

HCCA supports the intnt and purpose of SB921 and urges passage of this bill.



**HOUSE COMMITTEE ON  
JUDICIARY & HAWAIIAN AFFAIRS  
State Capitol  
415 South Beretania Street  
2:00 pm**

March 29, 2023

Re: SB 921 (HSCR 1383) Relating to Limitations on Actions (Opposition)

Dear Chair Tarnas, Vice Chair Takayama and members of the Committee:

My name is Sarah Love, 2023 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

As the current President of BIA-Hawaii and a practicing Hawaii attorney, I am writing on behalf of BIA-Hawaii and our membership to express opposition to SB 921, which seeks to amend Hawaii Revised Statutes (“HRS”) § 514B-141 to provide that “notwithstanding section 657-8, no statute of repose shall affect the association’s right of action against a developer sooner than two years after the period of developer control terminates.” This amendment has the effect of tolling the statute of repose for claims against a developer for a period of two years after the period of developer control terminates. BIA-Hawaii strongly objects to this amendment for several reasons.

First, the proposed amendment would result in additional costs for development, including affordable housing that is in short supply within the State of Hawaii. If passed, the bill would expose developers to increased liability, resulting in increased insurance premiums and additional costs that would ultimately be passed on to the consumer. The high cost of housing is already a major issue in Hawaii, and the passage of this bill would only exacerbate the problem.

Second, the proposed amendment would have a chilling effect on development in Hawaii. If developers are exposed to longer periods of potential liability, they would be less likely to undertake new development projects. This would have a negative impact on the economy and lead to a decrease in affordable housing options for the people of Hawaii.

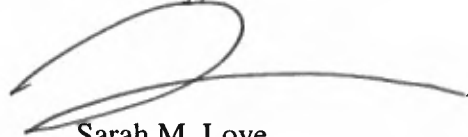
Third, the proposed amendment is potentially unconstitutional because it treats developers differently from other parties. The Hawaii Supreme Court has already held that two prior versions of the statute of repose, HRS § 657-8, violates equal protection when it protects some parties from liability but not others. Fujioka v. Kam, 55 Haw. 7, 10, 514 P.2d 568, 571 (1973); Shibuya v. Architects Haw., 65 Haw. 26, 35, 647 P.2d 276, 283 (1982). The proposed amendment would create unequal protection under the law, which is contrary to the principles of the U.S. and Hawaii Constitutions and the Hawaii Supreme Court's prior rulings. Developers would be exposed to a longer period of potential liability than other parties, which is inherently unfair.

Finally, the proposed amendment is unnecessary as the existing law already provides ample protection for homeowners' associations to take legal action against developers for any construction defects that arise after the development period ends. Moreover, there is no evidence to suggest that developers have utilized the developer control period to avoid liability based on the statute of repose. The statute of repose exists to set an outside date for liability, allowing developers to have a clear timeframe for when they will no longer be held liable for any potential claims. By tolling the statute of repose for two years after the developer control terminates, this amendment would effectively extend the liability period for developers, be contrary to the purpose of a statute of repose, and cause uncertainty for future development projects.

The state of Hawaii is in a dire housing crisis. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB).

In light of these concerns, we urge you to vote against SB 921. This bill would have a detrimental impact on development, housing affordability, and the economy of Hawaii. We appreciate the opportunity to express our opposition to SB 921.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah M. Love". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah M. Love

# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

HAWAII CHAPTER

March 29, 2023

Representative David Tarnas, Chair  
Representative Gregg Takayama, Vice Chair  
Members of the Committee on Judiciary and  
Hawaiian Affairs

RE: **SB 921,– RELATING TO LIMITATIONS OF ACTIONS**  
**Hearing date – March 29, 2023 at 2:00 p.m.**

Aloha Chair Tarnas, Vice Chair Takayama and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION** to **SB 921– RELATING TO LIMITATIONS OF ACTIONS**. NAIOP Hawaii is the Hawaii chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 921 seeks to amend Hawaii Revised Statutes ("HRS") § 514B-141 to provide that "notwithstanding section 657-8, no statute of repose shall affect the association's right of action against a developer sooner than two years after the period of developer control terminates." This amendment has the effect of tolling the statute of repose for claims against a developer for a period of two years after the period of developer control terminates. NAIOP Hawaii objects to this amendment for several reasons.

Primarily, the proposed amendment would result in additional costs for development across the State, including much needed affordable housing for Hawaii residents. The measure would increase a developers liability exposure, resulting in increased insurance premiums. In turn, this additional cost would be passed on to the consumer and increase the already high cost of living in Hawaii.

Moreover, the proposed amendment is unnecessary and contradicts the purpose of the statute of repose. First, Hawaii law currently provides protection for homeowners' associations to bring a claim against a developer for construction defects that arise after the developer control period ends. Second, the statute of response is defined as a "law that extinguishes a right of action after a specified period of time has elapsed, regardless of whether the cause of action has accrued." Therefore, the statute of repose is intended to set a definitive final date for liability, allowing developers to have a clear timeframe for

Representative David Tarnas, Chair  
Representative Gregg Takayama, Vice Chair  
Members of the Committee on Judiciary and  
Hawaiian Affairs  
March 29, 2023  
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when liability exposure for potential claims end. This measure would run contrary to the purposes of the statute of repose by extending the liability period for developers and creating uncertainty for any future projects.

Accordingly, NAIOP Hawaii **OPPOSES** this measure and respectfully asks that it be deferred. Thank you for the opportunity to testify on this measure.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Evan Oue". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Evan Oue  
NAIOP Hawaii

**SB-921**

Submitted on: 3/25/2023 11:12:30 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Emery	Individual	Support	Written Testimony Only

Comments:

This Bills corrects potential problems and protects associations.

**SB-921**

Submitted on: 3/28/2023 2:43:27 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mark R. Hagadone, Ph.D., FACFE	Individual	Support	Written Testimony Only

Comments:

Honorable Scott K. Saiki

Speaker, House of Representatives

This measure ensures that the statute of repose shall not affect an association's right of action against a developer sooner than two years after the period of developer control terminates. I am in favor of its passage and encourage the Committee to adopt it.

Sincerely,

Mark R. Hagadone

**SB-921**

Submitted on: 3/28/2023 11:41:21 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
R Laree McGuire	Individual	Support	Written Testimony Only

Comments:

Aloha,

Please accept my testimony in strong support of SB 921.

Mahalo for the opportunity to testify.

R. Laree McGuire.