

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1647, RELATING TO CONDOMINIUMS.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Tuesday, January 30, 2024      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 329 & Videoconference

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Tina M. Tsuchiyama or Shari J. Wong, Deputy Attorneys General

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Chair Nakashima and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill requires a condominium association to deposit a minimum of at least ten percent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association, requires enforcement of said minimum deposit requirement, and allows unit owners to file complaints with the Real Estate Commission.

Even though the bill description states that the bill "[r]equires the Real Estate Commission to enforce the minimum deposit requirement[.]" the bill itself does not precisely reflect this. Page 2, line 8, of the bill provides that "(1) The department shall enforce the minimum deposit[.]" (emphasis added). While chapter 514B, Hawaii Revised Statutes ("HRS"), does not define the term "department", we believe that the term was intended to refer to the Real Estate Commission, which has powers to enforce chapter 514B, HRS.

Accordingly, we recommend amending the wording on page 2, line 8, as follows:

"(1) The [~~department~~] commission shall enforce the minimum deposit[.]"

Clarifying that the Real Estate Commission is responsible for enforcing the minimum deposit would avoid confusion.

Thank you for the opportunity to offer comments.

**HB-1647**

Submitted on: 1/26/2024 9:44:00 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Mike Golojuch, Sr.  | Individual          | Oppose                    | Written Testimony Only |

Comments:

Although our association supports the intent, we cannot support "at least ten per cent." Many associations have a hard time trying to increase maintenance fees to keep up with inflation and have adequate reserves. The language of ten per cent will let boards to decide to reduce the needed reserves to ten per cent. Therefore, we oppose HB1647. Please defer this bill.

Mike Golojuch, Sr., President, Palehua Townhouse Association

**House of Representatives  
The Thirty-Second Legislature  
Committee on Consumer Protection and Commerce  
Tuesday, January 30, 2024  
2:00 p.m.**

To: Representative Mark M. Nakashima, Chair  
Re: HB 1647, Relating to Condominiums

Aloha Chair Mark Nakashima, Vice-Chair Jackson Sayama, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii.

I also serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 AFL-CIO, HSTA, ILWU, UPW, HGEA, IAM, CAN, and other organizations' retirees.

And I am the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and served as an officer on three condominium associations' boards.

Mahalo for allowing me to submit comments regarding HB 1647.

Since the enactment of Act 62 (HB 2272 HD1 SD1 CD1) in 2022, many condominiums associations have wrestled with the concept of reserves, questioned the quality and effectiveness of their reserve studies, requested new or updates to reserve studies, and struggled to bolster their finances.

Last year, a class subsidized by the condominium-owner-funded Condominium Education Trust Fund focused on financing, including the budget and reserve studies.<sup>1</sup> One of the proposed instructors, an executive officer of a large management firm, served as a community association manager and completed the 2021 biennial registration for a condominium association<sup>2</sup> in the following manner (an excerpt of that actual registration is attached as Exhibit A):

8. Is the AOOU funding a minimum of fifty percent of the estimated replacement reserves OR funding one hundred percent of the estimated replacement reserves when using a cash flow plan?

Answer: Yes

If yes, what is the percent funded?

Answer: 20.0%

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<sup>1</sup>[https://www.caihawaii.org/ResourceCenter/Download/249/annualpassdiscountflyer\\_2023final?doc\\_id=3103669&print=1&view=1](https://www.caihawaii.org/ResourceCenter/Download/249/annualpassdiscountflyer_2023final?doc_id=3103669&print=1&view=1)

<sup>2</sup> [https://hawaii.gov/dcca\\_condo/reports/1968R.pdf](https://hawaii.gov/dcca_condo/reports/1968R.pdf)

While I appreciate the intent of HB 1647, legislators should demand that DCCA ensure that those who instruct association boards and owners through classes subsidized by the Condominium Education Trust Fund are competent.

Community association managers and board directors must have the knowledge necessary to manage, guide, and govern their condominium associations. Thus, I humbly ask your committee to schedule the following measures for hearings as they require the satisfaction of certain educational requirements by directors and managers, and address other recurring problems in the governance of condominium associations:

HB 1745, relating to homeowner associations;  
HB 2680, relating to condominium associations; and  
HB 2681, relating to housing.

I also humbly ask your committee to reconsider proposals requiring licensure of those individuals who serve condominium associations as community managers for the protection of condominium owners and residents.

Mahalo for the opportunity to testify.

## EXHIBIT A

An excerpt from 2021 biennial registration of a Honolulu condominium.  
The entire registration may be accessed via [https://hawaii.gov/dcca\\_condo/reports/1968R.pdf](https://hawaii.gov/dcca_condo/reports/1968R.pdf)

### 8. Reserves:

(see [Instructions \(instructions.html\)](#))

8. Is the AOUC funding a minimum of fifty percent of the estimated replacement reserves OR funding one hundred percent of the estimated replacement reserves when using a cash flow plan?

Yes

If yes, what is the percent funded?

20.0%

January 30, 2024

**The Honorable Mark Nakashima, Chair**  
House Committee on Consumer Protection & Commerce  
State Capitol, Conference Room 329 & Videoconference

**RE: House Bill 1647, Relating to Condominiums**

**HEARING: Tuesday, January 30, 2024, at 2:00 p.m.**

Aloha Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR provides **comments** on House Bill 1647, which requires boards of directors of condominium associations to deposit at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association. Requires the Real Estate Commission to enforce the minimum deposit requirement and allows unit owners to file complaints with the Commission. Holds board members who fail to comply with the minimum deposit requirement personally liable and subject to a fine.

Maintaining adequate reserves in condominium associations is important. However, holding board members who fail to comply with the minimum deposit requirement personally liable and subject to fines may discourage condominium owners from volunteering to serve on their respective Boards.

Mahalo for the opportunity to provide comments on this measure.

**Testimony of the Hawai'i Real Estate Commission**

**Before the  
House Committee on Consumer Protection & Commerce  
Tuesday, January 30, 2024  
2:00 p.m.  
Conference Room 329 and Videoconference**

**On the following measure:  
H.B. 1647, RELATING TO CONDOMINIUMS**

Chair Nakashima and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission offers comments on this bill.

The purposes of this bill are to: (1) require boards of directors of condominium associations to deposit at least ten percent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association; (2) require the Commission to enforce the minimum deposit requirement and allows unit owners to file complaints with the Commission; and (3) hold board members who fail to comply with the minimum deposit requirement personally liable and subject to a fine.

The Commission appreciates the intent to encourage associations to maintain adequate reserves; however, the Commission believes this bill contains inconsistencies that may result in unintended consequences. This bill requires board members to deposit ten percent of all revenues for each fiscal year into the total replacement reserves fund. While the intent of the bill appears to be concerned with under-funded associations, it is unclear if associations that are fully funded on their reserves are also intended to comply with the minimum deposit requirement.

This bill also expands the Commission's enforcement powers for violations of the minimum deposit requirement. For the Committee's information, sections 26-9(h), and 26-9(m), HRS, require the Commission to delegate its authority to receive, investigate, and prosecute complaints to the Department of Commerce and Consumer Affairs and its enforcement officer, the Regulated Industries Complaints Office (RICO).

Condominium board members are volunteers and are not licensed or regulated by the Commission or RICO. When the Legislature recodified the condominium law in 2006, it

maintained the original basic tenet of the condominium law as one of self-enforcement of the laws and rules by the owners, with limited government involvement. This public policy is reflected throughout the condominium law in sections 514B-65, 66 and 68, HRS. In this bill, page 2, lines 12-15, hold board members personally liable for failing to comply with the minimum deposit requirement, which raises the issue of government action against voluntary board members duly elected by owners. The Commission has consistently heard that finding volunteer members to serve on an association's board is difficult, and the Commission believes this requirement of holding board members personally liable would discourage owners from serving on their condominium association board.

The Commission respectfully suggests consideration be given to the efforts of the Condominium Property Regime Task Force (CPM Task Force) established by Act 189, SLH 2023. The CPM Task Force has asked the Legislative Reference Bureau (LRB) to conduct a study on how other jurisdictions handle similar issues through currently introduced HB1814 and SB2726. The scope of the LRB study specifically includes how other states approach governmental regulation and enforcement of condominium operations and governance. Along with LRB's study, the CPM Task Force will submit a final report of its findings and recommendations, including any proposed legislation, prior to the 2025 legislative session.

Thank you for the opportunity to testify on this bill.

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
community  
ASSOCIATIONS INSTITUTE

January 29, 2024

Rep. Mark M. Nakashima, Chair  
Rep. Jackson D. Sayama, Vice Chair  
Committee Members  
Committee on Consumer Protection & Commerce

RE: HB1647 - Support w/Amendments

Aloha Chair Nakashima, Vice Chair Sayama and Committee Members:

Thank you for the opportunity to submit testimony. I am a member of the Community Associations Institute (CAI) Legislative Action Committee (LAC) Hawaii Chapter.

The CAI Hawaii LAC supports the principle of HB1647, but CAI Hawaii does not support the proposed revisions found in section 1(b) and section 2(g) as presented.

CAI Hawaii LAC recommends the proposed revision found in the first sentence of section 1(b) to read as follows: The association shall establish the estimated replacement reserve assessment based on a current reserve study for each fiscal year.

CAI Hawaii LAC also recommends deleting in its entirety the proposed revisions to Section 2(g) related to enforcement and fining. Board Members oftentimes need to make difficult decisions based on current circumstances.

All associations are not equal. Associations differ in size, number of amenities, number of units, complexity of various systems, etc. As such predetermining a contribution amount in the law will likely have an adverse impact on reserve funding since most associations require more than 10% of revenues to be contributed to the reserve fund. Based on my experience, an annual reserve contribution of 10% of all revenues will not provide adequate funding and could result in underfunding the reserve fund.



A reserve study is a very useful budgeting tool. A reserve study is a budgeting tool to estimate the annual reserve contribution amount based on anticipated capital expenditures. It is important to understand that associations utilize zero based budgets, and as such the amount of money collected is meant to cover 100% of operational expenditures and reserve contributions. Zero based budgets do not plan for a surplus of cash.

It is common that the cost and usage of electricity, water, sewer, etc. are more than anticipated. It is very likely that reserve funds will be utilized to cover these costs in lieu of making a reserve contribution. As such, the enforcement provisions as proposed in section 2(g) will penalize Board members who decide to pay electricity or water instead of a reserve contribution.

Board members should not be held personally liable for not meeting the budgeted annual reserve contribution simply because operating budgets and reserve studies are only estimates. Reality is oftentimes different. Indeed, Board members need to perform due diligence with the budgeting and reserve study process, but holding Board members personally liable and assessing fines is not the course of action required at this time.

CAI Hawaii LAC recommends the proposed revision found in the first sentence of section 1(b) to read as follows: The association shall establish the estimated replacement reserve assessment based on a current reserve study for each fiscal year.

CAI Hawaii LAC also recommends deleting in its entirety the proposed revisions to Section 2(g) related to enforcement and fining.

Thank you for your time and attention. Your service is appreciated.

Sincerely,

*Jonathan Billings*  
Jonathan Billings  
CAI LAC Treasurer



Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. *See*, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Leschon S. McLean

Vice President of The Central Ala Moana AOA

**HB-1647**

Submitted on: 1/29/2024 11:22:50 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization                    | Testifier Position | Testify                |
|---------------|---------------------------------|--------------------|------------------------|
| Scott Milburn | Nohonani AOA board of directors | Oppose             | Written Testimony Only |

Comments:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

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compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors' and officers' liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

**HB-1647**

Submitted on: 1/29/2024 11:30:14 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization                    | Testifier Position | Testify                |
|---------------|---------------------------------|--------------------|------------------------|
| Sandra Jamora | Villages of Kapolei Association | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

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3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the

“good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Sandra Jamora

Shaw Webmail

lpjschmidt@shaw.ca

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**submission**

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**From :** l s <lpjschmidt@shaw.ca>

Mon, Jan 29, 2024 01:12 PM

**Subject :** submission**To :** lpjschmidt <lpjschmidt@shaw.ca>

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. *See*, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**



**HB-1647**

Submitted on: 1/29/2024 11:53:01 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By         | Organization       | Testifier Position | Testify                |
|----------------------|--------------------|--------------------|------------------------|
| Leland Eugene Backus | Honokowai East AOA | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

1. AS A VOLUNTEER BOARD MEMBER, A LAW THAT MAKES DEDICATED VOLUNTEER BOARD MEMBERS PERSONALLY LIABLE AND SUBJECTED TO FINES FOR NOT VOTING FOR RESERVE INCREASES WILL ABOLISH AND RENDER INEFFECTIVE ANY VOLUNTEER BOARDS FOR CONDOMINIUMS, WHICH ARE THE VAST MAJORITY OF SUCH GOVERNING BOARDS.

2. IN THESE DIFFICULT ECONOMIC TIMES WHEN MANY OWNERS ARE SUFFERING FROM THE EFFECTS OF THE AUGUST 2023 FIRES, IMPOSING MANDATORY ARBITRARY RESERVE FUND INCREASES WILL BE DEVASTATING TO MANY WHO OWN CONDOMINIUMS ON THE ISLANDS.

3. CONDOMINIUM BOARDS HISTORICALLY RELY UPON RESERVE STUDY SPECIALISTS AND LOOK TO THEIR EXPERTISE IN ADOPTING RESERVE POLICIES.

4. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. See Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

5. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an

association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
2. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

LELAND EUGENE BACKUS

PRESIDENT

HONOKOWAI EAST AOA

4. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the

legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

5. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
2. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

LELAND EUGENE BACKUS

PRESIDENT

HONOKOWAI EAST AOA

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. *See*, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors

personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

*David Martin*  
*Secretary, Board of Directors of*  
*The Greenview Condominium*





January 29, 2023

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Richard Chiodini, President  
Ali'i Lani Condominium Association  
Kailua-Kona, HI





**HB-1647**

Submitted on: 1/29/2024 1:29:51 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b>                            | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|--|---------------------------|---------------------------|
| Michael Damato      | Leinani Apartments HOA<br>Board Vice President | Oppose                    | Written Testimony<br>Only |

Comments:

Being a board member for my condominium complex (30 Units), this bill is not acceptable. Board members are volunteers so this bill will kill all interest someone may have in helping. How can they be personally liable ? Also, Is the state willing and able to monitor EVERY HOA Board in the state and control fines upon people? I support ZERO in this bill. Thank you !!Leinani Apartments 3750 L Honoapiilani Rd Lahaina, Hi 96761

**HB-1647**

Submitted on: 1/29/2024 1:37:01 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b>                            | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|--|---------------------------|---------------------------|
| Wallace J Carvalho  | AOAO,DIRECTOR,<br>HOLIDAY MANOR<br>CONDOMINIUM | Oppose                    | Written Testimony<br>Only |

Comments:

As a Board President for an AOA, I'm providing written testimony voting against HB1647. While serving on a condominium Board for the last 30 years, I've found it extremely difficult, year by year to persuade owners to serve within a Board for fear of being held personally liable for actions taken by Directors voting in good faith. HB1647 will surely create further owners from becoming Directors on Boards. I further oppose Section 2, subsection (3) which stipulates "Each member of a Board that is found to have failed to deposit the minimum ten per cent into the total replacement reserves fund shall be held personally liable and subject to a fine of \$????". I find this section disturbing and incomplete as to no dollar amount of the fine is stated.

**HB-1647**

Submitted on: 1/29/2024 1:39:09 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization                | Testifier Position | Testify                   |
|--------------|-----------------------------|--------------------|---------------------------|
| Cecily Ching | AOAO Alohalani<br>Tropicana | Oppose             | Written Testimony<br>Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section [16-107-66](#) of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
1. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all

revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
  
1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Cecily Ching

AOAO Alohalani Tropicana

**HB-1647**

Submitted on: 1/29/2024 1:55:25 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization                 | Testifier Position | Testify                   |
|---------------|------------------------------|--------------------|---------------------------|
| Michael Hanly | Ali'i Lani Townhomes<br>AOAO | Oppose             | Written Testimony<br>Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

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4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Michael Hanly

Board member, Ali'i Lani Townhomes AOA

75-6081 Ali'i Drive #K-103

Kailua-Kona, HI 96740

**LATE**

**HB-1647**

Submitted on: 1/30/2024 9:15:38 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization                                   | Testifier Position | Testify                   |
|--------------|--|--------------------|---------------------------|
| Francis Chan | Mililani Mauka Nohona II<br>Board of Directors | Oppose             | Written Testimony<br>Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
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revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
  
1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,  
Francis Chan



**HB-1647**

Submitted on: 1/27/2024 2:09:41 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip Nerney       | Individual          | Comments                  | Written Testimony<br>Only |

Comments:

Legislation to make the true cost of condominium ownership apparent in marketing and through the life cycle of the condominium is appropriate. The approach reflected in HB 1647, however, discounts the role of the reserve study and is punitive. Consideration should be given to the view of reserve experts in potentially amending HB 1647 to practically effectuate its intent.

**HAWAII FIRST REALTY LLC  
RB-19713  
4167 Kaimamahila Street  
Honolulu, HI 96816**

January 28, 2024

**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Rep. Mark M. Nakashima, Chair

Rep. Jackson D. Sayama, Vice Chair

**Opposition to HB 1647**

Dear Chair Nakashima and Committee Members,

My name is Richard Emery with a 30-year history of condominium and reserve issues. I hold the CAI Reserve Specialist designation, served on the National Task Force for Reserve Funding Public Policy, and am often retained to review reserve studies and serve as an expert in court proceedings.

By national reserve study definition, a reserve study is a budgeting tool and simply estimates of future costs that is amended each year as a part of the annual budget process. The study is not science nor supported by design professional opinions or contractor bids. A reserve study serves a useful and valuable purpose when evaluated properly.

I would remind the committee that in 2022 the legislature amended the law to require developers to perform a reserve study whereas in the past they would use 10% of maintenance fees in their Public Report. In those cases, and when the condominium association was formed, Boards routinely found it necessary to raise maintenance fees as the estimated 10% was insufficient, in some cases as much as 70%. The only methods to properly gauge reserve study requirements by a properly prepared reserve study.

What is clearly known is the 10% contribution is arbitrary and inaccurate as actual reserve study practice reflects required reserve contributions to be much higher. If this Bill were to become law, it would provide a false sense of security to an association that a 10% contribution is adequate when actual practice reflects that it is not. Only the reserve study itself can define appropriate funding.

The Bill further goes on to suggest that the Real Estate Commission be the enforcement agency when in fact they lack the nexus to the industry to enforce contributions.

The proposal that volunteer board members be personally liable and be subject to fines will only result in the mass resignation of board members.

In 2023, the Legislature passed Act 199 requiring mandatory budget disclosures that has already increased the attention of associations to meeting reserve requirements.

I strongly oppose HB1647 for the reasons stated. I support continued emphasis on associations to fund its reserves, but this is the wrong approach. I had hoped to attend this hearing in person and testify but due to a prior commitment cannot attend.

Sincerely,

Richard Emery, RB-17147, RS-8

**HB-1647**

Submitted on: 1/28/2024 3:52:46 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Oppose                    | Written Testimony<br>Only |

Comments:

I am an owner occupant of a high rise condominium in Honolulu. The language of this bill is very confusing. I have consulted with several condo owners who are familiar with budgets, reserve funds, etc. They too are confused by the verbiage. Therefore I urge you to defer this bill because it needs clarification and is based on the unsupported assumption that associations are not doing enough to maintain their buildings.

We are required to do a reserve study every three years. My condo does. We also show on our monthly statements what portion of maintenance fees, in dollars, is going to reserves and what portion is going to operating expenses.

Please defer this bill.

**HB-1647**

Submitted on: 1/28/2024 8:51:03 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Jeff Sadino  | Individual   | Comments           | Written Testimony Only |

Comments:

Committee on Consumer Protection & Commerce

**HB 1647**

**Tuesday, January 30, 2024 @ 2:00 PM**

My name is Jeff Sadino, I am a condo owner in Makiki, and I am providing **COMMENTS** for this Bill.

I support the intention of this Bill, but I don't understand the approach it is taking to achieve its goal. Perhaps I am just ignorant of the verbiage and technical details of condo budgeting?

Primarily, this Bill requires the association to

“deposit at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.”

It seems like the “estimated replacement reserve assessments” should be enough to fund the projected costs of long-term maintenance. I don't understand why this Bill is putting additional parameters on “all revenues” when it seems much more straightforward and direct to just put requirements on the existing “estimated reserve assessments.” If the goal is to make sure that the reserve assessments are properly funded, then target the Bill towards the reserve assessments. Requiring that 10% of all revenues be deposited into the reserve fund seems like a very round-about way to solve the problem that is trying to be solved. But maybe I just don't understand this topic enough to provide value on it.

Thank you for the opportunity to testify,

Jeff Sadino

**HB-1647**

Submitted on: 1/29/2024 8:11:51 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization | Testifier Position | Testify                |
|---------------|--------------|--------------------|------------------------|
| Anne Anderson | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
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2. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held

personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

3. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

M. Anne Anderson



**HB-1647**

Submitted on: 1/29/2024 8:14:04 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By             | Organization | Testifier Position | Testify                |
|--------------------------|--------------|--------------------|------------------------|
| Paul A. Ireland Koftinow | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

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3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Paul A. Ireland Koftinow

**HB-1647**

Submitted on: 1/29/2024 9:25:53 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By       | Organization | Testifier Position | Testify                |
|--------------------|--------------|--------------------|------------------------|
| Christina Marumoto | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
1. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all

revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
  
1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Christina Marumoto

**HB-1647**

Submitted on: 1/29/2024 9:27:04 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By      | Organization | Testifier Position | Testify                |
|-------------------|--------------|--------------------|------------------------|
| Lance S. Fujisaki | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

I OPPOSE H.B. 1647. This measure requires condominium associations to deposit "at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association." It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the "total replacement reserve fund" is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall "further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan." The word "either" previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to "either fund." It is not clear what those two funds are. (The term "fund" is used in the Hawai'i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. See Section 16-107-66 of the Hawai'i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on "anticipated revenues" or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The "ten percent of all revenues" is an "arbitrary" figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund "shall be held personally liable" and subject to a fine of an unspecified amount. This is at odds with the "good faith" protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-

149(f). The fines and claims that may be asserted against board members may not be covered by directors' and officers' liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, I respectfully urge the committee to defer this bill.

Respectfully submitted,  
Lance Fujisaki

January 29, 2024

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure as it is ambiguous and does not appear to clearly define or acknowledge the real world situations or types of funding related to association reserve fund management. It uses arbitrary figures that do not consider what an association is actually doing related to reserve funding. It does not appear to consider the difficulty in getting and retaining board members and could put them at risk for liability and fines for circumstances that are beyond their control. More specifically:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
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3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. *See*, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully,

  
Walter C Bell

**HB-1647**

Submitted on: 1/29/2024 11:40:11 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| mary freeman | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).



3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

**Respectfully,**

Mary S. Freeman

Ewa Beach

**HB-1647**

Submitted on: 1/29/2024 11:43:54 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization | Testifier Position | Testify                |
|---------------|--------------|--------------------|------------------------|
| John Van Spyk | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

John Van Spyk

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

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4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Laurie Sokach AMS, PCAM  
Community Association Manager

**HB-1647**

Submitted on: 1/29/2024 11:47:30 AM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Carol Walker        | Individual          | Oppose                    | Written Testimony<br>Only |

Comments:

I oppose HB 1647. What owner wants to be on a board where they may be held personally liable for an unintended error? And owners are not going to vote on an assessment if their reserves are receiving adequate contributions.

Carol Walker

January 29, 2024

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

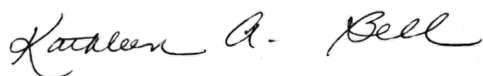
**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure as it is ambiguous and does not appear to clearly define or acknowledge the real world situations or types of funding related to association reserve fund management. It uses arbitrary figures that do not consider what an association is actually doing related to reserve funding. It does not appear to consider the difficulty in getting and retaining board members and could put them at risk for liability and fines for circumstances that are beyond their control. More specifically:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. *See*, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully,



Kathleen A Bell

**HB-1647**

Submitted on: 1/29/2024 12:57:35 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Mary R. Begier      | Individual          | Oppose                    | Written Testimony Only |

Comments:

Good Morning, As a condominium owner since 1977 both as an owner occupant and an investor and a licensed real estate broker I understand the importance of well funded reserve accounts. There needs to be a quality plan and people who pay attention to that plan so the funds collected are earmarked correctly. BUT making a person serving as a volunteer on an association board of directors personally liable is taking the importance a bit too far.

It is challenging and difficult to recruit people to serve on anything volunteer anymore let alone a board of directors for condo management. The passage of this bill will create a crisis of resignations like you have never seen. Please encourage the REC condo division to use the \$2/unit they collect every year to establish education programs to meet this goal. DO NOT punish the well intended that are already serving. Please hold this measure now!

Thank you for the opportunity to testify against HB 1647. With Aloha, Mary Begier



**HB-1647**

Submitted on: 1/29/2024 1:05:44 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By     | Organization | Testifier Position | Testify                |
|------------------|--------------|--------------------|------------------------|
| Matthieu Dubarry | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
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4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

**HB-1647**

Submitted on: 1/29/2024 1:08:55 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By     | Organization | Testifier Position | Testify                |
|------------------|--------------|--------------------|------------------------|
| CAROLYN GUERRERO | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
1. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all

revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
  
1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Carolyn Guerrero

**HB-1647**

Submitted on: 1/29/2024 1:10:22 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Julia Chosy  | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Julia Chosy

**HB-1647**

Submitted on: 1/29/2024 1:26:04 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Kyra Bronson | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse. PLEASE NOTE - I currently serve on the board of directors for a well-funded condo association. We do what we should and put funds into our reserves as required. However, if this bill passes, I will no longer be comfortable serving my community in this capacity.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Kyra Bronson



**HB-1647**

Submitted on: 1/29/2024 1:30:20 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Dean Louie   | Individual   | Oppose             | Written Testimony Only |

Comments:

**January 29, 2024**

**Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:**

**I OPPOSE H.B. 1647. This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.**

**I oppose this measure because:**

**1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. See Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.**

**2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten**

percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, I respectfully urge the committee to defer this bill.

Respectfully submitted,

Dean Louie (signed)

Kehalani Gardens Board Member/ Owner

646 Meakanu Lane 1804

Wailuku HI 96793

**HB-1647**

Submitted on: 1/29/2024 1:32:44 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>       |
|---------------------|---------------------|---------------------------|----------------------|
| Greg Misakian       | Individual          | Comments                  | Remotely Via<br>Zoom |

Comments:

I support the intent of this bill, but I would like further information to better understand how this would play out.

Factors to Consider:

- 1) Some associations only have small numbers of condominiums and others have many.
- 2) Maintenance fees vary greatly and operating budgets may be handcuffed due to deferred maintenance.

**HB-1647**

Submitted on: 1/29/2024 1:45:18 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| J. David Beutel     | Individual          | Oppose                    | Written Testimony Only |

Comments:

Aloha honorable members of the House Committee on Consumer Protection & Commerce,

I write in opposition to HB1647. As a member of a condo board, I know that it is very difficult to find fellow owners who are willing to volunteer their time and reputation to serve on the board, for no compensation. HB1647 would change HRS 514B-148 such that "each member of a board that is found to have failed to deposit the minimum ten per cent into the total replacement reserves fund shall be held personally liable and subject to a fine...". That would make it even more difficult, if not impossible, to get enough owners to serve on the board. Furthermore, boards hire a professional condo management company to handle the finances. Board members do not personally desposit money into the replacement reserves fund. The management company would need to propose a budget that includes the required amounts. Even if the board rejects that budget, individual board members should not be held personally liable for the actions, or failure to act, of the board as a whole, or of the management company, which may act against an individual board member's wishes or knowledge.

However, I am supportive of requiring a minimum of ten per cent of all revenues to be deposited into the total replacement reserves fund. Having such a minimum is wise for the long term, because short-term needs tend to receive the priority. But, I don't understand the proposed language of HR1647, "except for estimated replacement reserve assessments". Does that mean that the ten per cent is in addition to the minimum already required by the law, or that the minimum would be the larger of either what is already required by the law, or the new ten per cent minimum? "The association shall further assess the unit owners to attain in either fund a minimum of fifty per cent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan; ..." is confusing. The "attain in either fund" sounds like there are two funds (with HB1647 changing "fund" from a verb to a noun), and the new verb would be "attain". How many replacement reserves funds would be required by the new law? Please make this language clear and easy for board members to understand.

Yours truly,

J. David Beutel

**HB-1647**

Submitted on: 1/29/2024 1:47:42 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Jean Bacon   | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit "at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association." It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the "total replacement reserve fund" is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall "further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan." The word "either" previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to "either fund." It is not clear what those two funds are. (The term "fund" is used in the Hawai'i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai'i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on "anticipated revenues" or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The "ten percent of all revenues" is an "arbitrary" figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund "shall be held personally liable" and subject to a fine of an unspecified amount. This is at odds with the "good faith" protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors' and officers' liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
2. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

David and Jean Bacon

**HB-1647**

Submitted on: 1/29/2024 1:51:12 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By   | Organization | Testifier Position | Testify                |
|----------------|--------------|--------------------|------------------------|
| Erin Tamashiro | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. See Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
1. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all

revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
  
1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Erin M. Tamashiro



**HB-1647**

Submitted on: 1/29/2024 2:02:27 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify                |
|--------------|--------------|--------------------|------------------------|
| Kyle Brandt  | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

1. measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

1. measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Kyle Brandt

January 29, 2024

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) already establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section [16-107-66](#) of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. [HRS Section 414D-149(f)]. The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse, and penalize owners who are willing to serve on the board to help their community.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,  
Stephanie Yamamoto

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.
4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Matthew Respicio

**HB-1647**

Submitted on: 1/29/2024 2:53:31 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By  | Organization | Testifier Position | Testify                |
|---------------|--------------|--------------------|------------------------|
| Rhonda Scholz | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.

2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.

4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Rhonda Scholz

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
2. The “ten percent of all revenues” is an “arbitrary” figure. The ten percent is not tied to projected capital expenditures nor is it tied to the level of funding already maintained by an association. It will require associations to contribute an arbitrary ten percent of all revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).
3. The measure provides that each member of the board that is found to have failed to deposit the minimum ten percent into the total replacement reserves fund “shall be held personally liable” and subject to a fine of an unspecified amount. This is at odds with the “good faith” protection afforded by HRS Section 514B-148(d). It is also at odds with the business judgment rule and general concept that directors who serve without compensation will not be held liable for their actions except in instances of gross negligence. See, for example, HRS Section 414D-149(f). The fines and claims that may be asserted against board members may not be covered by directors’ and officers’ liability insurance. Many owners are reluctant to serve on the boards of their associations. This measure will only make things worse.



4. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Very Respectfully submitted,

David L. Ikeda

**LATE**

**HB-1647**

Submitted on: 1/29/2024 7:45:50 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By   | Organization | Testifier Position | Testify                |
|----------------|--------------|--------------------|------------------------|
| Vince Costanzo | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

1. HRS Section 514B-148(b) establishes the minimum levels of reserves that associations must maintain. Setting a requirement that associations deposit ten percent of all revenues in the “total replacement reserve fund” is ambiguous. For example, following this new sentence, the bill amends HRS Section 514B-148(b) to state that the association shall “further assess the unit owners to attain in either fund a minimum of fifty percent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan.” The word “either” previously referred to the two types of funding (e.g., 50% funding or 100% based on a cash flow plan). As revised, it refers to “either fund.” It is not clear what those two funds are. (The term “fund” is used in the Hawai‘i Administrative Rules to refer to the amounts allocated for specific assets included in replacement reserves. *See* Section 16-107-66 of the Hawai‘i Administrative Rules.) Additionally, it is not clear whether this means that an association must include the 10% in its budget based on “anticipated revenues” or whether the association must deduct 10% of all revenues when received during the year. If the legislature wishes to increase the minimum level of funding for reserves, it should amend HRS Section 514B-148(b) to state a higher level rather than adopting an ambiguous law.
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revenues even if their reserves are at levels far in excess of those required by HRS Section 514B-148(b).

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1. This measure does not take into account emergency situations which may result in cash shortfalls that could not have been foreseen. It could hold directors personally liable and subject to fines even when the circumstances are beyond their control.

For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

Vincent Louis Costanzo

**LATE**

**HB-1647**

Submitted on: 1/29/2024 10:48:17 PM

Testimony for CPC on 1/30/2024 2:00:00 PM

| Submitted By     | Organization | Testifier Position | Testify                |
|------------------|--------------|--------------------|------------------------|
| Chandra Kanemaru | Individual   | Oppose             | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

**I OPPOSE H.B. 1647.** This measure requires condominium associations to deposit “at least ten per cent of all revenues for each fiscal year, except for estimated replacement reserve assessments, into the total replacement reserves fund of the association.” It also imposes personal liability upon board members and makes them subject to a fine of an unspecified amount if they fail to deposit the minimum ten percent of revenues into the total replacement reserve fund.

I oppose this measure because:

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For these reasons, **I respectfully urge the committee to defer this bill.**

Respectfully submitted,

**Chandra R. Kanemaru**

**Country Club Village 2, Board Director**