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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

SB2726

RELATING TO CONDOMINIUMS

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Commerce and Consumer Protection

Tuesday, February 6, 2024, 9:30 a.m.
Conference Room 229 & Via Videoconference

Chair Keohokalole and Members of the Committee:

Good morning, Chair Keohokalole and members of the Committee. My name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau (Bureau). Thank you for providing the opportunity to submit written **comments** on S.B. No. 2726, Relating to Condominiums.

The purpose of this measure is to:

- (1) Require the Bureau to study and submit a report on the approaches employed by California, Delaware, Florida, Massachusetts, Nevada, and other relevant jurisdictions regarding the following condominium subjects:
 - (A) A condominium ombudsman or similar position to specifically oversee condominiums;
 - (B) Required licenses for individuals involved in the management of condominiums;
 - (C) The availability of dedicated alternate dispute resolution or similar programs that are specifically for the prevention or resolution of

- condominium-related disputes and are separate from alternate dispute resolution programs available for other disputes;
- (D) Governmental regulation and enforcement of condominium operations and governance that are separate from an ombudsman;
 - (E) Requirements for owner education at the point of sale of a unit; and
 - (F) Requirements for owner access to condominium documents;
- (2) Require that, to the extent feasible, each subject shall include:
 - (A) Descriptive information detailing the approach of each jurisdiction;
 - (B) Identified strengths and weaknesses of each particular approach; and
 - (C) Identified best practices in the jurisdiction;
 - (3) Require the Bureau to submit its report to the Legislature no later than twenty days prior to the convening of the Regular Session of 2026;
 - (4) Appropriate an unspecified sum of moneys from the general fund for the Bureau to conduct the study;
 - (5) Authorize the Bureau to contract the services of a consultant with the funds appropriated; and
 - (6) Exempt the contracting of services under the measure from Chapter 103D, Hawaii Revised Statutes (the Hawaii Public Procurement Code).

The Bureau takes no position on this measure but submits the following comments for your consideration.

If adequate funding is provided for the contracting of services to perform the study, the services of a competent contractor are available, the scope of the measure is not amended, and the exemption from the Hawaii Public Procurement Code remains in the place, then the Bureau believes the project should be manageable, and the Bureau should be able to submit the required report to the Legislature by the measure's deadline. The foregoing is subject to the caveat that the Bureau's interim workload is not adversely impacted by too many additional responsibilities, such as conducting other studies, writing or finalizing other reports, drafting legislation, or any combination of these responsibilities for the Legislature or for other state agencies, task forces, or working groups that may be requested or required of the Bureau under other legislative measures.

The Bureau also notes that page 1, lines 2-4 of the measure refer to "the condominium property regime task force established pursuant to Act 289, Session Laws of Hawaii 2023." This appears to be a typographical error, as Act 189, Session Laws of Hawaii 2023, was the act that actually established the task force, and Act 289, Session Laws of Hawaii 2023, does not exist. The Bureau respectfully suggests correcting the reference to "Act 289" to read as "Act 189" when the measure is amended to make other substantive amendments.

Thank you again for your consideration.



STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
COMMERCE AND CONSUMER PROTECTION
February 6, 2024, 9:30 a.m.

SENATE BILL 2726
RELATING TO CONDOMINIUMS

Chair Keohokalole, Vice Chair Fukunaga, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2726. The State Procurement Office (SPO) understands the intent of the bill to require the Legislative Reference Bureau to conduct a study on how certain other states approach the following subjects as they relate to condominiums: an ombudsman, licenses for management, alternate dispute resolution, governmental regulation, owner education, and owner access to documents. However, the SPO opposes the exemption language on page 4, Section 5, lines 12-13 set forth below.

“The contracting of services under this Act shall be exempt from chapter 103D, Hawaii Revised Statutes.”

The SPO objects to the procurement exemption and testifies that contracting of services under this Act should be competitively procured.

Comments: Chapter 103D, Hawaii Revised Statutes, Hawaii Public Procurement Code (Code), is the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both Chapter 103D and 103F, HRS, conveys a sense of disproportionate equality in the law's application.

Exemptions to the Code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning, or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Recommendation:

There is no justification why the contracting for services cannot be competitively procured. Therefore, the SPO recommends revising Section 5, page 4, lines 12-14, of the bill, set forth below.

“The contracting of services under this Act shall ~~be exempt from~~ comply with chapter 103D, Hawaii Revised Statutes.”

Thank you.



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The State Legislature
The Senate Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
Conference Room 229, 9:30 AM

TO: The Honorable Jarrett Keohokalole, Chair
FROM: Keali'i S. López, State Director
RE: Support for S.B. 2726, Relating to Condominiums

Aloha Chair Keohokalole and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social impact organization that advocates for individuals age 50 and older. We have a membership of nearly 38 million nationwide and nearly 140,000 in Hawai'i. We advocate at the state and federal level for the issues that matter most to older adults and their families. **AARP supports SB2726 which requires the Legislative Reference Bureau to conduct a study as recommended by the condominium property regime task force established pursuant to Act 189, Session Laws of Hawaii 2023.**

As a member of the condominium property regime task force, I heard from various stakeholders, including several residents, industry professionals and the Department of Commerce and Consumer Affairs. The task forces also received extensive comments, testimony and materials representing diverse perspectives. It is clear the current condominium dispute resolution process and regulatory regime have not effectively address long standing concerns of residents. The study requested of the Legislative Reference Bureau will provide the task force with critical data and best practices.

AARP believes it is important to protect the informed ability of residents to participate meaningfully and affect decision-making in common interest developments (CIDs). Additionally, we believe Hawai'i should have procedures to help ensure residents' rights and protect their home equity during disputes with condominium boards or management. Providing the task force with critical best practices from other jurisdictions will increase the task force's ability to recommend meaningful changes.

Therefore, AARP stands in **strong support of SB2725.**

SB-2726

Submitted on: 2/3/2024 4:04:00 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Hawaii First Realty LLC	Support	In Person

Comments:

The Task Force is a good faith effort to examine condominium management by all the stakeholders. It should be completed. I recognize that one group's sole purpose is to exaggerate the problem with the hopes of creating an ombudsman office.

Data does not support their allegations, but certainly an objective review is a positive step forward to address issues. Simple expanding RICO's authority may be more effective (and cost effective) on selected issues.

Let the LRB do its work.



P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2024

Honorable Jarrett Keohokalole
Honorable Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 2726 SUPPORT**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

SB 2726 should be passed because it reflects the unanimous recommendation of the Condominium Property Regime Task Force.

Per Act 189 (2023), the Task Force was tasked to:

(1) Examine and evaluate issues regarding condominium property regimes governed by chapter 514B, Hawaii Revised Statutes, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;

(2) Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of condominium property regimes; and

(3) Develop any legislation necessary to effectuate the purposes of this subsection.

The need for objective data became evident during Task Force meetings, which I chaired.

Study of prescribed subjects by the Legislative Reference Bureau ("LRB") will provide data to enable the Committee to thereafter consider legislation on an informed and objective basis. The Committee is respectfully requested to await that data before legislating on any subject within the scope of Act 189 tasking.

Views differ about the condominium form of ownership. The significant point, though, is that the condominium form of ownership is an established fact.

Honorable Jarrett Keohokalole
Honorable Carol Fukunaga
February 3, 2024
Page 2 of 3

The Supreme Court of Hawaii stated, in Harrison v. Casa De Emdeko, Incorporated, 418 P.3d 559, 567 (Haw. 2018), that:

Generally, the declaration and bylaws of a condominium serve as a contract between the condominium owners and the association, establishing the rules governing the condominium. See Association of Apartment Owners of Maalaea Kai, Inc. v. Stillson, 108 Hawai'i 2, 9, 116 P.3d 644, 651 (2005) (citing Bradford Square Condo. Ass'n v. Miller, 258 Ga.App. 240, 245, 573 S.E.2d 405, 409 (2002) ("The condominium instruments, including the bylaws and the sales agreement, are a contract that governs the legal rights between the [a]ssociation and unit owners.")).

Existing condominiums are subject to contracts that provide for self-governance. LRB data will be useful to facilitate the development of policy proposals that remain within constitutional limits.

Constitutional limits on legislating about condominiums came into focus in Galima v. AOA of Palm Court, Case 1:16-cv-00023-LEK-RT Document 282 Filed 04/10/20, when a judge of the United States District Court for the District of Hawaii held that: "Act 282 [2019] cannot be enforced because it violates Plaintiffs' constitutional rights under the Contracts Clause¹ of the United States Constitution." The Contracts Clause, the right to trial by jury, and, perhaps, other constitutional provision may limit the scope of potential legislation.

¹ **Article I Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.**

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. (Emphasis added)

Honorable Jarrett Keohokalole
Honorable Carol Fukunaga
February 3, 2024
Page 3 of 3

The Community Associations Institute, therefore, respectfully requests that the Committee pass SB 2726.

CAI Legislative Action Committee, by

A handwritten signature in black ink, appearing to read "Philip Nemej". The signature is written in a cursive style with a long, vertical tail stroke extending downwards from the end of the name.

Its Chair

SB-2726

Submitted on: 2/3/2024 9:15:41 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Our association supports SB2726. Please pass this bill.

Mike Golojuch, Sr., President

Committee on Commerce & Consumer Protection

Tuesday, February 6, 2024 @ 9:30 AM

SB 2726: Task Force

My name is Jeff Sadino, I am a condo owner in Makiki, and I **STRONGLY SUPPORT** this Bill.

The improvement of governance is a journey, not a destination. For too long, we have been standing still on this journey. This incredibly important Bill will get us restarted to learn about the many, many problems that exist in condo governance and the solutions to those problems.

Many members of the Legislature, industry, and community have invested a tremendous amount of time to get this Bill introduced and it would be extremely contrary to all those peoples' wishes to not pass this Bill.

REQUEST 1

In addition to the 5 States selected for study, I would request the following State to be added:

- 1) Hawaii

It seems like it would be helpful to know the current status of these subjects in Hawai'i in order to deepen our understanding of the comparisons that we will be making to other States.

REQUEST 2

In addition to the 6 subjects this Bill identifies for study, I would request the following subjects also be added:

- 1) Debt Collection Practices
- 2) Election Integrity

Many people have suffered wildly disproportionate debt collection expenses. It is not unusual for the AOA to charge an owner more in debt collection expenses (sometimes 10x) than the original amount of the debt.

Election integrity is a perennial issue that offers some very simple fixes. Elections are the most fundamental principle in condo governance. If the elections are not ran correctly, the entire system of condo governance crumbles.

REQUEST 3

Page 3, lines 12 – 14 state that this report will be delivered prior to the 2026 session. I understand that this report will take time, but I request that an interim report be provided prior to the 2025 session. The Condominium Task Force met 4 times in 4 months. I think the Task Force would benefit by having some feedback from the Legislative Reference Bureau available to them during their meetings in 2024 and 2025.

Thank you for the opportunity to testify,

Jeff Sadino

SB-2726

Submitted on: 2/3/2024 10:22:39 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale Head	Individual	Support	In Person

Comments:

Regarding SB2726 - Requires the Legislative Reference Bureau to conduct a study on how certain other states approach the following subjects as they relate to condominiums: an ombudsman, licenses for management, alternate dispute resolution, governmental regulation, owner education, and owner access to documents. Appropriates moneys. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

Aloha CPN Chair Jarrett Keohokalole and Vice Chair Carol Fukunaga

I SUPPORT this Bill as it would be useful to know what is going on in other states so as not be 'reinventing the wheel', again and again.

Respectfully, Dale Arthur Head

Testimony for SB2726

COMMENTS ONLY

Submitted for: Commerce and Consumer Protection (CPN) Committee Hearing, scheduled for Tuesday, February 6, 2024 at 9:30 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and members of the committee,

My name is Gregory Misakian, and I currently serve on three Boards in Hawaii:

- 1) Kokua Council, 2nd Vice President
- 2) Waikiki Neighborhood Board, Sub-District 2 Vice Chair
- 3) Keoni Ana AOA, Director

The Kokua Council proposed four measures last year for better consumer protections for condominium owners, which were introduced as six bills (two with companion bills). I, along with Kokua Council President Lila Mower, drafted two of them which became HB178 and HB1501. Ms. Mower drafted the others (HB176, HB1297, SB1201, and SB1202). This year Ms. Mower and I drafted and proposed numerous additional measures which were introduced as SB3204, SB3205, and SB3206 (and companion bills HB2701, HB2680, and HB2681).

The Waikiki Neighborhood Board, along with Ala Moana-Kakaako, McCully-Moilili, and Makiki-Tantalus Neighborhood Boards, that have significant numbers of condominium associations in their communities, have adopted resolutions to support better consumer protection measures for condominium owners.

The Keoni Ana AOA, my condominium association where I am a frequent target for calling out misconduct by Board members and others, has the support of many owners who want to see better consumer protection measures.

The Public is concerned, engaged, and has been providing statements and testimonies to support the need for better laws and proper accountability and enforcement for bad acts by association Board members, management companies and their agents,

attorneys, and others overseeing condominium associations and HOAs. I am a witness to this at many meetings I attend, and many discussions I have had one-on-one with concerned homeowners.

What is Needed

There is a lot of support to show the need for better laws, but the support that is needed to get anything accomplished begins with you. And each of you literally hold the future of over 1/3 of the population of Hawaii in your hands. You can choose to help the residents of Hawaii, or do nothing and let the insanity continue. And when I use the word “insanity,” it is not to embellish or grandstand, you simply need to read and watch the news, read and listen to the testimonies each year, and hopefully have taken the time to read and watch testimonies from the Condominium Property Regime Task Force, where I have participated and provided testimony.

News Headlines

Here are just a few Civil Beat headlines from 2023 and 2024, to further highlight how bad things are:

Slam The Brake On Runaway Legal Fees Charged By Condo Boards, January 26, 2024

Turkish Coffee Or Universal Khaki? Another Honolulu Condo Dispute Goes to Court, January 24, 2024

It Started With A Messy Front Porch. Now This Elderly Woman’s Condo Association May Take Her Home, January 16, 2024

This Waianae Condo Development Has Lost Hundreds Of Thousands Of Dollars To Embezzlement, October 10, 2023

Prominent Honolulu Condo Directors Pay \$600,000 To Settle Retaliation Claim, July 13, 2023

Hawaii Property Management Giant Under Scrutiny - Records Indicate that Associa Hawaii has been operating with an inactive license. April 6, 2023

Violations of the Laws Our Legislature Enacts

My testimony and others are compelling, and at my association the misconduct and abuse of power is extreme and pervasive, and retaliation is regularly the result of my and others raising concerns. And, as I have previously testified at last year's Condominium Property Regime Task Force meetings, my condominium association is currently being led by a public official, who is a Corporation Counsel attorney for the City and County of Honolulu. Someone who should be upholding the laws of the State of Hawaii, is regularly violating them, most recently locking out my ability to unmute myself and speak at recent Keoni Ana AOA Board meetings via Zoom, a violation of Hawaii Revised Statute 514B-125, section (d).

SB2726

(Good intentions, but too little, too late, and other reports are available.)

While I support SB2726 and its intentions, the urgency, severity, and frequency of issues impacting condominium owners throughout Hawaii warrants a more urgent and substantive response from our legislators, **and actions that will take effect in 2024.**

There is no more time to sit around waiting for reports that will only tell us what we already know (and previous reports have told us). The issues and concerns have gotten worse, more prevalent, and with impunity.

I advise all to read "An Issues Paper for the Hawaii Real Estate Commission," authored by Gregory K. Tanaka, Dated January 1991. The title/subject is, "Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives." I will forward to the Chair of CPC to share with the committee members. Even back in 1991 it was clear that an Ombudsman was someone that could address the issues and concerns and be cost effective for everyone (reducing court cases and litigation). There are many other reports, and I am happy to forward more to you.

Hawaii needs better laws for condominium owners and the time to act is now, the time for reports was years ago. I urge you all to please listen to the Gregorys ... Gregory Tanaka, and Gregory Misakian.

I know this is the **Year of the Dragon**, but let it also be the **Year of the Ombudsman**.

And don't forget ... it's the **Year of the Elections**, and your constituents are watching.

Mahalo,

Gregory Misakian

RE: Testimony Submission for February 6, 2024
In support of SB 2726

Dear Committee on Consumer Protection & Commerce,

1. Thank you for your service. This is in support of SB 2726 and please support my initiated [HI SB2128 | 2024 | Regular Session | LegiScan](#) that would require condominium homeowner associations to include in their bylaws an option for a unit owner to opt-out of a condominium. Establishes a procedure for a unit owner of a condominium, planned community associations; cooperative housing corporation to **opt-out of their respective private community.**
2. Please protect condominium homeowners against HOA issues that may include financial statements where management has elected to omit substantially all of the disclosures required by the generally accepted principles as issued by the U.S. Financial Accounting Standards, misappropriation of funds, state law prohibiting wrongful foreclosure, unfair or deceptive acts or practices, violations of the federal fair debt collection practices act, inaccurate records, access to Association records, HRS 514B, and HRS 467-14 violations, proper receipts and invoice keeping, health and safety to avoid danger to life or property, common element and limited common element repairs, transparency issues with Board of Directors and owners, violation of governing documents, breach of contract on performance obligation, breach of fiduciary duty, proper calculation of reserves, proper compliance enforcement actions, and equal treatment.
3. I request an email response from the Committee on Consumer Protection & Commerce to provide documentation and referral to all appropriate agencies for HOA and its agent's investigation for retroactive remedies pursuant to federal, state, and statutory laws.

Respectfully submitted,

Ms. Morrison

**The Senate
The Thirty-Second Legislature
Committee on Commerce and Consumer Protection
Tuesday, February 6, 2024
9:30 a.m.**

To: Senator Jarrett Keohokalole, Chair
Re: SB 2726, Relating to Condominiums

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

Mahalo for allowing me to submit comments regarding **SB 2726**.

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

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

I was selected to participate on the Condominium Property Regime Task Force and attended all four meetings in 2023. Throughout, I was disappointed in the lack of urgency and care, especially when we read and heard from condominium owners who had been through condominium-related disputes or attempted to participate in ADR. Their testimonies were dismissed by some as "not evidence."

It was my hope that the Task Force's work would be impactful because the State government's focus to build more "affordable homes" implies more development of this higher-density, comparatively-lower-cost housing model, the condominium. The State's housing goals magnify the importance of improving condominium association governance and enhancing community harmony through education.

The CPR Task Force decision to delegate the Legislative Reference Bureau to "study and submit a report on the approaches employed by certain other states...no later than twenty days prior to the convening of the regular session of 2026," only defers action, shelving urgently needed improvements, and replaces them with studies, that even when completed, may be unheeded.

For years, I referenced still-relevant studies by the Legislative Reference Bureau (LRB) in 1989¹ and 1996² and the Real Estate Commission (REC) in 1991³ which examined recurring problems with Board Directors' failure to fulfill responsibilities that often resulted in internal strife. In the

¹ https://lrb.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf

² https://lrb.hawaii.gov/wp-content/uploads/1996_FightingBattlesInModernAmericanCastles.pdf

³ Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

decades since these studies, it appears that not much has improved in condo governance, including the understanding of duties and responsibilities of owners and directors.

These studies also confirmed that access to information, including open communication and education, need improvement, yet these deficiencies still exist despite improved ease, speed, delivery costs, and ubiquity of technological enhancements to communication.

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to dispute resolution, however, owners' experiences contradict that assertion. The cost of mediation and arbitration, even when subsidized, is beyond the means of many condo owners already burdened with increased insurance costs, increased maintenance fees, special assessments, and increased property taxes.

Owners who can afford the \$375 fee to participate in mediation complain of the escalating thousands needed to proceed against a platoon of association attorneys representing the association and/or board. Associations have the combined financial resources of all their members, including insurance coverage that protects board members from personal liability, and the ability to raise additional funds through assessments from owners, unlike owners who are limited to their own assets.

Owners also allege that the costs of arbitration can be as costly as litigation, thus CETF subsidized ADR fails its intention.

Given that a home is, for most people, the most significant asset they have, protecting the value of that asset and mitigating and resolving disputes over that asset is an important policy goal, one that has *not* been served well by current CETF-subsidized ADR.

Hawaii's condominium owners urgently need relief from expenses rising beyond our control, and rather than looking at merely relieving the symptoms (e.g., rising insurance premiums), robust efforts to address the problems that cause these symptoms should be made.

This legislative session, two measures were introduced on behalf of Kokua Council, SB 3205 (companion, HB 2680) and SB 3206 (companion, HB 2681), that provide alternatives to existing ADR mechanisms and include provisions requiring the education and certification of directors and the individuals who serve as community association managers.

An Ombudsman's Office as proposed by Kokua Council in SB 3205 and SB 3206 can address long overdue improvements to condominium governance that include:

- AN INVESTIGATION OF AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM THAT WILL:
 - Not use taxpayer general funds;
 - Not inhibit the ability of an association to govern the community;
 - Not create more government bureaucracy or entity but build upon that which already exists;

- Not deny an owner or the association the right to a court or other legal action in problem resolution;
 - Not interfere or attempt to invalidate or circumvent any local, State, or Federal laws and/or regulations;
 - Enforce existing State common interest community association laws and rules immediately;
 - Allow owners to pursue their rights under the law that they would otherwise not do so because of costs;
 - Not result in material increases in owner assessments or any measurable increase in operating costs on associations, owners, or association management companies;
 - Have the authority to invoke penalties on parties including the removal of an association Board member(s), suspend the association's authority to impose fines, liens or pursue foreclosures, and other penalties as deemed appropriate;
 - Reduce the millions of dollars spent in legal costs between disputing owners and associations; and
 - Ease the burden upon Courts to litigate minor violations of association laws and rules.
- An investigation of the success or failure of subsidized mediation and arbitration under HRS 514B, including:
 - Whether parties who participated without legal representation were familiarized by the mediation centers or mediators with the mediation process;
 - Whether parties were apprised of any conflict of interest before the mediator was selected and before the mediation was initiated;
 - The various causes of these disputes including whether they were based on violations of HRS 514B (e.g., common expense assessments, enforcement of access to records, retaliation), HRS 414D (e.g., directors' duties, conflict of interest, etc.), the association's governing documents (e.g., fees, fines, and penalties; allocation of expenses; limitations of authority; House Rules violations), or other violations (e.g., theft, embezzlement, fraud, intentional damage); and
 - If those violations were resolved or terminated pre-ADR, when submitted to ADR, or through ADR.
- An investigation of subsidized cases that included participation by legal counsel or representation for just one party, for both parties, or none, and
 - The proportion or number of cases settled as a result of mediation if legal counsel or representation were involved, and if no legal counsel or representation occurred;
 - The proportion or number of cases brought by owners and of those,
 - how many included legal counsel or representation for these owners, and
 - how many cases were mediated to an agreement through subsidized ADR;
 - The proportion or number of cases brought by the association (or its board), and of those,
 - how many included legal counsel for the association or board, and of those,
 - how many were mediated to an agreement through subsidized ADR;
 - Whether attorneys' fees and late fees exceeded the value of the original penalty fine or amounts owed;

- If the association's management company was included in the dispute, examine whether
 - the association paid for the management company's legal fees, and
 - the dispute was mediated to an agreement.
- An investigation whether the following statute was enforced, and if so, how often:

HRS514B-146(g) The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.

- An investigation whether retaliation, intimidation, harassment, and/or discrimination were alleged, and whether these acts were the results of other disagreements or challenges (e.g., House Rules violations, contest between election candidates).
- An investigation of the lack of enforcement or the unequal enforcement of HRS 514B, HRS 414D, the governing documents, or other laws and rules and if they were significant components of the dispute.
- LEGAL FEES. While the legal industry appears to believe that disputes and challenges may be handled through attorneys and the Court system, owners do not have that same confidence. It takes courage to challenge authority, even if that authority is the party that violated laws or associations rules. Fewer are bold enough to go pro se when the opposition is armed with attorneys. And even when the condo owner prevails, there is still the chance that his/her legal fees may not be recoverable.
 - Examine the effect of litigation upon association insurance costs, particularly Directors and Officers Insurance;
 - Examine the proportion of legal fees and costs associated with dispute resolution to the amount awarded;
 - Examine the proportion of legal fees and costs associated with foreclosures with the delinquent common expense assessment amount;
 - Examine the legality of association attorneys or associations levying individual owners with non-commonly assessed legal fees although the assessed owners did not request or demand legal advice from that attorney or otherwise caused legal fees to be charged. Examples of legal fees charged to individual owners for services requested by a party other than the owners are: legal fees caused by an association or its directors that demand that the owner "cease and desist" for unstated or unsubstantiated violations, fees caused by an association or its directors that serve to silence or intimidate dissenting owners; and
 - Examine whether detailed legal billing is provided to owners upon request.
- FINES AND FEES. Examine the possibility of reforming fines and fees so that they do not disproportionately burden vulnerable residents and set off a cycle of inescapable

consequences (e.g., they may rely on debt mechanisms such as loans or credit cards which can cause a worsened credit rating that can impair their employment opportunities that can affect their income which causes increased economic distress, etc.);

- investigate the use and efficacy of repayment programs; and
 - investigate if owners and residents were apprised of their right to request a repayment program.
- EDUCATION. The education of owners and directors can reduce the burden of condo-related disputes which has the positive consequence of mitigating rising association insurance costs. Measures were introduced last session that included provisions that directors should provide certification to assure that they have read their governing documents and other documents pertinent to the governance of their associations and that they are prepared for the managerial, financial, and legal responsibilities necessary to properly govern. States like Florida require that Board Directors must be certified to demonstrate their knowledge of their governing documents and other documents essential to good governance and they offer many **free** classes which are convenient in time and location for owners and directors alike:

<https://www.campbellpropertymanagement.com/education/upcoming-events/tag/board-certifications>

<https://www.youtube.com/watch?v=3vTLrIZ-cog>

<https://www.youtube.com/watch?v=ElnVX52gGcE>

<https://www.youtube.com/watch?v=Yq38BcRsMrA>

<https://www.citybiz.co/article/334469/free-virtual-condo-and-hoa-board-certification-course-with-eisinger-law-partners/>

- The DCCA should produce such classes without the added expense of a third-party vendor. This belief is supported by the Real Estate Branch's Free Condorama series⁴ which has been more successful in reaching owners than the classes conducted by that vendor, while presenting the same or similar speakers and topics without the vendor's exorbitant class fees and inconveniently scheduled midweek, midday classes.
 - Examine existing educational programs through the DCCA's use of the owner-funded Condominium Education Trust Fund (CETF) whether they require additional funds from attendees, are open to the public, are scheduled at convenient time, day, and location for the public, and are unbiased and apolitical.
 - Examine existing for-fee educational programs subsidized through the DCCA CETF and, of the attendees, quantify how many were industry-related (e.g., employees of management companies, association attorneys, parliamentarians, and other vendors), association board members, owners who are not directors, and the public. Also quantify which of the attendees' fees were waived, paid by their employers, paid by their associations, and paid by the attendees themselves.
 - Also quantify attendance relative to class topic(s) to ascertain interest or necessity.

⁴ <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>

- Investigate the dependence of DCCA on parties with conflicts of interest to provide the education that is mandated by HRS 514B;
 - Currently, education is voluntary for owners, directors, and management. Examine whether mandating education should be implemented. Because a director’s position is voluntary, examine if the education of directors can be required, evidenced by qualified certification, and enforced by the possible revocation of that certification if the director fails education or fails certain ethical standards.
 - Currently, education is voluntary for those who participate in the management of condominium associations, therefore, examine the mandating of education of those involved in the management of associations, coupled with mandating licensure of those involved in management, not as real estate licensees, but in line with Community Associations Institute that “opposes the licensing of community association managers as real estate brokers, agents or property managers”⁵ and “prefers the licensure of individual community association manager practitioners as opposed to licensure of management companies.”⁶ Licensure will assure greater compliance with applicable laws and rules, and violations of those laws and rules are enforceable with suspension or revocation of that license.
- ACCESS TO INFORMATION. Associations operate as self-governing entities. Democratic representative self-governance is predicated on its members’ access to information and the accountability that transparency encourages. This demands an investigation regarding the accessibility of important association governing documents and other documents relevant to associations’ physical and fiscal health,
 - including whether the enforcement provisions regarding document access/delivery are adequate to ensure that those who control access and delivery feel compelled to provide those documents;
 - including the cost of those documents, especially those charged for “electronic” documents;
 - including the ease or difficulty of accessibility or other hurdles that may impact some parties unfairly;
 - whether the requirement for an affidavit is necessary for owners to have access to documents (vis a vis, prospective buyers, their lenders, and their insurers are not required to complete affidavits to examine those documents);
 - whether eight “free” hours of examination per association is adequate;
 - if an online platform such as that used by eCourt Kokua can be utilized to maximize access, lower costs (\$3 per electronic document), handle data, and maintain timeliness;
 - or if an alternative is the expansion of the State’s registration of condominium associations to provide a central online publicly accessible registry of information and documentation (similar to Miami-Dade, Florida’s Code of Ordinances Chapter sections 17D-3 and 17D-4, and with enforcement provisions similar to Chapter 17D-5⁷).

⁵ <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Community-Association-Manager-Licensing-Policy.aspx>

⁶ <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Community-Association-Manager-Licensing-Policy.aspx>

⁷ https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH17DRECOAS_S17D-1SHTIAP

- DISTRIBUTION AND DISSEMINATION OF INFORMATION
 - An investigation into the efficacy of DCCA's dependence on management companies to disseminate information about classes and online education;
 - An investigation into whether owners' email addresses should be provided to other owners under HRS 514B-154.5.
- CLEAN ELECTIONS: Delve into the election process to eliminate opportunities for fraud and electoral misconduct, including that election facilitators (usually management) have provided incumbent directors access to email addresses unavailable to other candidates or owners and control association communication, have notified incumbent directors as to proxy assignments, and other unfair election practices.
- Then, there was a comment from a reader of Civil Beat who responded to the article, "Condo Task Force Facing Deadline May Punt to State Auditor Instead,"⁸

"Another area that should be examined is performance requirements for the management companies hired by associations such as response time to owner queries, promptness and accuracy of payments to vendors and contractors and minimum qualifications for community managers. The management companies need to have increased accountability through routine oversight by a government agency. Board members are not usually qualified to do this and the companies themselves are less than forthcoming. The CPA audits that are required annually do not capture this level of operational and management performance."

The list of needed improvements in condominium association governance is incomplete but an Ombudsman's Office, as proposed by SB 3205 and SB 3206, should have the capacity and desire to address it.

"Hawaii was the first state to enact a statute for the creation of horizontal property regimes."⁹

We should not be among the last to improve condominium association governance while waiting for studies that will only replicate the findings of previous LRB and REC studies.

Instead, **Hawaii should be the first in the nation to create livable and fair condominium statutes.**

Mahalo for the opportunity to submit these comments.

⁸ <https://www.civilbeat.org/2023/12/condo-task-force-facing-deadline-may-punt-to-state-auditor-instead/>

⁹ *State Savings and Loan Ass'n v. Kauaian Development Co., Inc.*, 50 Haw. 540, 546 n. 8, 445 P.2d 109, 115 n. 8 (1968)

SB-2726

Submitted on: 2/4/2024 1:21:57 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Support	Written Testimony Only

Comments:

For the reasons stated in my opposition to SB3205, I support SB2726.

SB-2726

Submitted on: 2/4/2024 1:54:43 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Ayson	Individual	Support	Written Testimony Only

Comments:

I support this bill. It reflects the unanimous recommendation fo the Condominium Property Regime Task Force.

SB-2726

Submitted on: 2/4/2024 7:13:59 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sharon Heritage	Individual	Support	Written Testimony Only

Comments:

Yes, would be good information to acquire.

SB-2726

Submitted on: 2/4/2024 8:06:12 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Aaron Cavagnolo	Individual	Support	Written Testimony Only

Comments:

Aloha e Representatives,

I am writing to express my strong support for Bill SB2726, which calls for a comprehensive study by the Legislative Reference Bureau on how certain states approach critical aspects of condominium regulations. As a concerned resident and owner in a condominium complex, I have personally experienced the challenges and frustrations arising from the lack of effective regulations and oversight in our current system.

Our condominium laws and enforcement mechanisms are in dire need of reform, as exemplified by the ongoing disputes within our AOA Diamond Head Surf Condominium. The issues we face, including communication breakdowns, structural damage, flooding, and mold-related health concerns, highlight the urgent need for a systematic examination of the current regulatory landscape.

The provisions outlined in Bill SB2726, such as studying the role of an ombudsman, licensing for management, alternate dispute resolution, governmental regulation, owner education, and owner access to documents, address crucial areas that require attention. By appropriating funds for this study, the bill recognizes the importance of investing in a thorough understanding of how other states have successfully tackled these challenges.

The current state of affairs has resulted in owners being bullied by AOA boards, property management companies, and their legal representatives. The escalating legal costs, driven by unscrupulous practices, only serve to exacerbate the already high cost of housing. Bill SB2726 takes a significant step towards rectifying these issues by seeking to streamline regulations, enhance transparency, and promote fairness in condominium governance.

I would like to draw attention to my personal experiences with our AOA Diamond Head Surf Condominium Board of Directors. We are dealing with complex and troubling disputes that are not adequately addressed by existing regulations. This includes instances of retaliation, selective enforcement, and a lack of responsiveness that have resulted in severe hardships for our family, ranging from compromised safety to financial burdens.

The proposed study mandated by Bill SB2726 would provide invaluable insights into how other states have successfully addressed similar challenges. It is my firm belief that by learning from

best practices, Hawaii can implement reforms that protect the rights of condominium owners, enhance governance structures, and create a fair and efficient dispute resolution process.

I urge you to support Bill SB2726 and advocate for its passage, recognizing the potential positive impact it could have on the lives of condominium owners statewide. By addressing the root causes of the issues we face in our condominium community, this bill can contribute to creating a more just, transparent, and accountable condominium governance system in Hawaii.

Thank you for your attention to this matter and your commitment to improving the quality of life for condominium owners in our state.

Mahalo,

Aaron Cavagnolo

SB-2726

Submitted on: 2/5/2024 8:37:10 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

This bill makes sense. It will give us information on how other states regulate condominiums and foresight into areas we might want to change in 514B and other condo laws here. We can learn what works and why, what doesn't work and why. This is what we should be doing instead of looking at making proxies illegal, instead of setting up an ombudsman's office (SB3205) where the ombudsman would be judge, jury and executioner, and the office would really kill condos, and at some of the other bills you have considered today where I have sent in opposition testimony.

Please move SB2726, which I strongly support, forward.