

Lourdes Scheibert
Royal Court Condominium
920 Ward Ave #6D
Honolulu, Hawaii. 96814

February 25, 2023

Committee on Commerce and Consumer Protection
Chair Senator Jarrett Keohokalole, Vice Chair Carol Fukunaga

I support SB593:

514B- Upkeep of condominium; conformance with county ordinances and codes. The association shall maintain and operate the property to ensure conformance will all laws, ordinances, rules, including applicable county permitting requirements and building and fire codes, adopted by the county in which the property is located, including any supplemental rules adopted by the county.

BILL SB593 is in alignment with [§514B-5] Conformance with county land use laws for the Developer of a condominium building. The Developer upon completion shall pass final inspection by the City & County Building Department. When completed the developer is issued a certificate of occupancy by the City & County. Then the building is turned over to the board of directors representing the Association (AOAO)

I recommend, the Real Estate Commission include in its education (CETF) program, the supplemental rule as described:

Adopted by the County: Subsection 3401.2 - Maintenance Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the **building official** shall have the authority to require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing buildings and structures. ¹

¹International Building Code Section 3401

I believe, owner's designated agent covers the assignment of daily duty to the property management company to advise the resident manager in the maintenance of the building. In many cases, the resident manager depends on the expertise and knowledge of the on-site property manager to perform their daily duties and comply with 514B Condominium Law, City & County building requirements/codes, the Declaration, By-laws and House Rules. However, it is the board's duty to work jointly with the on-site property manager and the employee resident manager. The volunteer board director is not required to educate themselves, in turn, the directors are also dependent on the expertise of the on-site property manager to advise them of all laws applicable to maintaining the building.

An example of a Notice of Violation² issued to Lourdes Scheibert. I filed a complaint with DPP of my unit's ceiling rain water leak. The violation cited included the AOA President and the Agent Hawaiiana Management Co. The code violation cited Chapter 16 Section 3401.2 Maintenance. The originating leak was located at the exterior wall joint between 2 units above my ceiling. The board's responsibility was to repair the common area exterior wall to stop the leak. After 5 years of grief, the repair was completed and final inspection by DPP. The board paid for the repair.

There are 2 types of management methods:

1) The board is authorized to designate duties to the property management company inclusive of daily maintenance and advising the resident manager.

This management method lacks organization. All too often, I've been told the on-site property manager works for the board president. Many times decisions are pre-determined before it comes to the board as a whole, thereby, excluding minority directors who are not given the opportunity to debate issues. I believe this type of management contributes to deferred maintenance and performs sub-standard repair work to just patch until it fails again. This keeps the maintenance fees artificially low. In the maintenance industry it is called "Run to Failure" then repair. This is evident by past & recent large assessments of multi million dollar cost to repair progressive damages to the building's infrastructure and its components.

2) The board remains in control of the repair & maintenance of the building and adopts a standing committee. A standing committee is a permanent panel adopted in the Declaration. Can be named as a "Physical Plant Committee." Physical plant means all or any part of a building or facility. This committee works directly with the

² C & C of Honolulu, Notice of Violation #2013/NOV-010037

on-site property manager and the resident manager. The committee reports to the Board of Directors for final decision making. The panel coordinates the Reserves and the projects funded for the next year. All are on the same page to the scheduling of the projects. The property management company acts on advisory status that guides the board in all applicable laws and the Associations project documents or when appropriate advise to secure expert opinion & the “business judgement rule.”

The board of directors shall be responsible for the operation of the property, as defined by section 514B-3. Pass SB593 for clarity in assigning responsibility to the board of directors and their fiduciary duty to the upkeep of the condominium building’s infrastructure, common area and limited common area.

Last, additionally, both the Association and owners are subject to SB593 should it pass includes:

3401.3 Compliance with other codes. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, addition and changes of occupancy in the International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and ICC Electrical Code.

Thank-you,
Lourdes Scheibert
Condominium Owner

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International Building Code Section 3401

International Building Code 3401.1

Scope. The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures.

Exception: Existing bleachers, grandstands and folding and telescopic seating shall comply with ICC 300-02.

International Building Code 3401.2

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

International Building Code 3401.3

Compliance with other codes. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and ICC Electrical Code.



DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET * HONOLULU, HAWAII 96813
 Fax: (808) 768-4400

450

Notice of Violation

Violation No.: 2013/NOV-01-037 (EX)

Date: January 14, 2013

Owner(s)

Scheibert, Lourdes
 920 Ward Ave #6D
 Honolulu, HI 96814

AOAO Royal Court Inc.
 c/o President Chris Takeno
 920 Ward Ave Suite 5F
 Honolulu, Hawaii 96814

Contractor(s)

Tenant/Violator

Architect/Plan Maker

Lessee

Agent

Engineer

Hawaiian Management Co.
 Attn: Lillian McCarthy
 711 Kapiolani Blvd Suite 700
 Honolulu, Hawaii 96813

TMK: 2-1-044:033 920 WARD AVE Honolulu / Downtown 96813

Specific Address of Violation: 920 Ward Ave Unit 6D

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

Codes and/or Ordinance(s)
 and Section(s)

Violation(s)

ROH 1990, as amended, Chapter 16
 Section 3401.2

There is a 18- story apartment building with water damage to the ceiling and wall of unit 6D indicting water leakage from above.

Please repair the water leak and damage to the wall and ceiling area.

You are hereby ordered to obtain permit(s) and/or correct violation by April 14, 2013.

Restore the area immediately and complete all work within 90 days from the date of this notice.

Please call the undersigned after the corrections have been made.

You are reminded that if no action is taken within the specified time:

1. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations; and/or
2. This matter may be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action.

Special
 Instructions:

This Notice of Violation supersedes NOV 2012/NOV-11-057

Inspector:

Vaughn Victor

Phone: 768-8158

for the Director Department of Planning and Permitting

Testimony In Support of SB593

Submitted for: Commerce and Consumer Protection (CCP) Committee Hearing, scheduled to be heard on Tuesday, 2/28/23 at 9:45 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

I support SB593.

At my association there have been numerous projects and work done without required permits, and numerous violations of ordinances, regulations and/or codes. The building has not been maintained properly for many years, and this negligence by the Board and Management Companies has resulted in numerous notices of violations by the Department of Planning and Permitting (DPP) and other agencies.

I support SB593, but think an amendment regarding enforcement or referral to the proper enforcement agency would help to strengthen the measure.

I ask the Committee to please pass SB593.

Mahalo,

Gregory Misakian

2nd Vice President, Kokua Council
Board Member, Waikiki Neighborhood Board



WAIKIKI NEIGHBORHOOD BOARD NO. 9

/o NEIGHBORHOOD COMMISSION • 925 DILLINGHAM BLVD. SUITE 160 • HONOLULU, HAWAII, 96817
PHONE (808) 768-3710 • FAX (808) 768-3711 • INTERNET: <http://www.honolulu.gov>

Date: February 26, 2023

At the February 14, 2023 Regular Meeting of the Waikiki Neighborhood Board the board supported the concept of Senate Bill 593.

The Waikiki Community is heavily housed in Condominiums and each owner and board of director must be assured that all laws, ordinances and rules applying to a condominium association of owners are complied with.

Mahalo for your concern,

Robert Finley

Robert Finley
Chair

The Senate
Committee on Commerce and Consumer Protection
Tuesday, February 28, 2023
9:45 a.m.

To: Chair Jarrett Keohokalole
Re: SB 593, Relating to Condominiums

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

I am Lila Mower, the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations throughout Hawaii and served as an officer on three condominium associations' boards.

Hui Oia'i'o supports Senate Bill 593 which requires condominium associations to comply with existing laws, ordinances, and rules.

On its surface, it appears that the measure is commonsensical and therefore unnecessary.

However, in the real world of condo associations under HRS 514B in which there are few enforcement provisions, legal rules are frequently ignored and circumvented.

Other important rules for condo associations exist beyond HRS 514B, however many directors and owners are uninformed and ignorant of those relevant rules.

In 2021, the collapse of Champlain Towers South in Florida exposed the tragic consequences of the arbitrary application and enforcement of regulations regarding building construction and maintenance, information disclosure and transparency, professional management, and financial planning.

In Hawaii, similar concerns exist, and construction, renovation, and remodeling are often done without permits and without licensed contractors, putting vulnerable occupants and neighbors at risk. Associations are known to allow unpermitted, uninsured, and unbonded work by unlicensed vendors, to reduce costs, but put their residents at potential risk and liability.

Inclusion of the proposed measure into HRS 514B notifies owners, directors, and management, and encourages compliance with existing laws, ordinances, and rules that have enforcement provisions to protect the safety and health of association owners and occupants.

SB-593

Submitted on: 2/24/2023 5:05:14 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this common sense bill. Mahalo.

SB-593

Submitted on: 2/25/2023 11:27:49 AM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Individual	Comments	Written Testimony Only

Comments:

It is unnecessary. Associations already must comply with all laws and Ordinances.

SB-593

Submitted on: 2/26/2023 9:08:02 AM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I support this Bill. Associations should follow the law.

SB-593

Submitted on: 2/26/2023 10:44:42 AM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Support	Written Testimony Only

Comments:

Aloha: I SUPPORT this Bill, as, it is a 'no-brained'. People of middle to lower income cannot afford a 'detached' home in Hawaii anymore, so, they buy what they can afford which is usually a condominium. Uh, I was in one for nearly three and a half decades, a long time. Multiple (mis)management companies. During the span of time there, inflection was **128%** but my monthly fees skyrocketed **650%**. Hard to believe, but, instead of the complex being properly maintained, it actually went 'downhill'. Oh, the 7 buildings in the **454 unit** complex were painted **3** times, the parking lot resurfaces **once**, while the grass was kept cut. Fees went from **\$180** a month to **\$1,050**. It would have been cheaper to buy a house. **Why?** Simple answer. Contracted property management companies are focused on their own profits, not necessarily maintaining the properties they parasite off of. Passage of this Bill means an owner who wishes to can take the company to Civil Court. That possibility will benefit lawyers.

Dale Head. [dale.head@aol.com]

LATE

SB-593

Submitted on: 2/27/2023 1:32:21 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 593.

I am sorry for the late testimony, but I did not learn of this bill until after the deadline for testimony had passed.

This bill provides that condominium associations shall maintain and operate the property to ensure conformance with all laws, ordinances, and rules, including applicable county permitting requirements and building and fire codes, adopted by the county in which the property is located, including any supplemental rules adopted by the county. I oppose S.B. 593 for the following reasons.

This bill is unnecessary. If a law, ordinance, or rule applies to a condominium association, then the association must comply with the law, ordinance, or rule regardless of the adoption of this bill.

Second, the reference to “all laws, ordinance, and rules” without any specificity is vague, ambiguous, and overly broad. The adoption of a law of this nature is certain to lead to disputes and lawsuits. If the legislature has a specific concern, that specific concern should be addressed.

Third, the reference to “ensure conformance with” will impose an impossible standard for associations. Condominium projects, particularly high-rise structures, are composed of many different mechanical, structural and architectural components and systems. Many condominium projects were constructed decades ago. Many systems are hidden from view because they are concealed behind walls, embedded in concrete, or located in inaccessible areas. No one, including board members, design professionals, and contractors, can “ensure” that every component and system conforms with all laws, ordinances, and rules. Board members are volunteers who are usually not familiar with laws, ordinances, and rules, such as building, fire, plumbing, electrical and other codes. Board members must rely upon experts. However, when design professionals inspect condominium projects, their opinions are nearly always subject to numerous exceptions and disclaimers. The Legislature should not adopt laws that establish a standard of care that is impossible to meet.

Fourth, due to the frequency in which building codes change, most projects probably do not conform with the most current building codes, and a multi-decade old project probably violates numerous building codes. S.B. 593 does not clearly explain the effect of grandfathered codes. However, grandfathering creates additional burdens. For older projects, for example, those constructed in the 1960s, 1970s or 1980s, it may be extremely time consuming, if not impossible, to research every law, ordinance and rule applicable to the project that was in effect 40, 50 or 60 years ago.

Fifth, the vague, ambiguous, and overly broad nature of the bill may lead to unintended consequences. For example, an association might be acting in good faith, but later find that its actions violated some technical aspect of a law. In that instance, a disgruntled owner may argue that the board breached the provisions of this new statutory section. Furthermore, the statement that associations shall maintain and operate the property to “ensure conformance with all laws, ordinances, and regulations” could potentially be construed as to impose upon associations a duty to ensure that all activities on the property, including private activities of owners over which they have no control, conform with all laws, ordinance, and regulations.

While this bill may be well intended, it will not serve a good purpose. It will create far more harm than good. For the reasons stated above, I urge the Committee to permanently DEFER S.B. 593.

Respectfully submitted,

Anne Anderson

LATE

SB-593

Submitted on: 2/27/2023 1:43:30 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Testifying for Lakeview Sands	Oppose	Written Testimony Only

Comments:

I OPPOSE SB593. I am sorry for the late testimony, but I did not learn of this bill until after the deadline for testimony had passed.

This bill provides that condominium associations shall maintain and operate the property to ensure conformance with all laws, ordinances, and rules, including applicable county permitting requirements and building and fire codes, adopted by the county in which the property is located, including any supplemental rules adopted by the county.

I oppose SB593 for the following reasons:

- (1) It's unnecessary. If a law, ordinance, or rule applies to a condominium association, then the association must comply with the law, ordinance, or rule regardless of the adoption of this bill.
- (2) The reference to "all laws, ordinance, and rules" without any specificity is vague, ambiguous, and overly broad. The adoption of a law of this nature is certain to lead to disputes and lawsuits. If the legislature has a specific concern, that specific concern should be addressed.
- (3) The reference to "ensure conformance with" will impose an impossible standard for associations. Condominium projects, particularly high-rise structures, are composed of many different mechanical, structural and architectural components and systems. Many condominium projects were constructed decades ago. Many systems are hidden from view because they are concealed behind walls, embedded in concrete, or located in inaccessible areas. No one, including board members, design professionals, and contractors, can "ensure" that every component and system conforms with all laws, ordinances, and rules. Board members are volunteers who are usually not familiar with laws, ordinances, and rules, such as building, fire, plumbing, electrical and other codes. Board members must rely upon experts. However, when design professionals inspect condominium projects, their opinions are nearly always subject to numerous exceptions and disclaimers. The Legislature should not adopt laws that establish a standard of care that is impossible to meet.
- (4) Due to the frequency in which building codes change, most projects probably do not conform with the most current building codes, and a multi-decade old project probably violates numerous building codes. SB593 does not clearly explain the effect of grandfathered codes. However, grandfathering creates additional burdens. For older projects, for example, those constructed in

the 1960s, 1970s or 1980s, it may be extremely time consuming, if not impossible, to research every law, ordinance and rule applicable to the project that was in effect 40, 50 or 60 years ago.

(5) The vague, ambiguous, and overly broad nature of the bill may lead to unintended consequences. For example, an association might be acting in good faith, but later find that its actions violated some technical aspect of a law. In that instance, a disgruntled owner may argue that the board breached the provisions of this new statutory section. Furthermore, the statement that associations shall maintain and operate the property to “ensure conformance with all laws, ordinances, and regulations” could potentially be construed as to impose upon associations a duty to ensure that all activities on the property, including private activities of owners over which they have no control, conform with all laws, ordinance, and regulations.

In conclusion, while this bill may be well intended, it will not serve a good purpose. It will create far more harm than good. Please permanently DEFER SB593.

Mahalo,

Rachel Glanstein

LATE

SB-593

Submitted on: 2/27/2023 1:50:34 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 593.

I am sorry for the late testimony, but I did not learn of this bill until after the deadline for testimony had passed.

This bill provides that condominium associations shall maintain and operate the property to ensure conformance with all laws, ordinances, and rules, including applicable county permitting requirements and building and fire codes, adopted by the county in which the property is located, including any supplemental rules adopted by the county. I oppose S.B. 593 for the following reasons.

First, this bill is unnecessary. If a law, ordinance, or rule applies to a condominium association, then the association must comply with the law, ordinance, or rule regardless of the adoption of this bill.

Second, the reference to “all laws, ordinance, and rules” without any specificity is vague, ambiguous, and overly broad. The adoption of a law of this nature is certain to lead to disputes and lawsuits. If the legislature has a specific concern, that specific concern should be addressed.

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Fourth, due to the frequency in which building codes change, most projects probably do not conform with the most current building codes, and a multi-decade old project probably violates numerous building codes. S.B. 593 does not clearly explain the effect of grandfathered codes. However, grandfathering creates additional burdens. For older projects, for example, those constructed in the 1960s, 1970s or 1980s, it may be extremely time consuming, if not impossible, to research every law, ordinance and rule applicable to the project that was in effect 40, 50 or 60 years ago.

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While this bill may be well intended, it will not serve a good purpose. It will create far more harm than good. For the reasons stated above, I urge the Committee to permanently DEFER S.B. 593.

Respectfully submitted,

Paul A. Ireland Koftinow

LATE

SB-593

Submitted on: 2/27/2023 1:48:34 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 593.

I am sorry for the late testimony, but I did not learn of this bill until after the deadline for testimony had passed.

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Respectfully submitted,

Lance Fujisaki

LATE

SB-593

Submitted on: 2/27/2023 1:50:54 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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1. this bill may be well intended, it will not serve a good purpose. It will create far more harm than good. For the reasons stated above, I urge the Committee to permanently DEFER S.B. 593.

Respectfully submitted,

Mary Freeman

Ewa Beach

LATE

SB-593

Submitted on: 2/27/2023 2:01:50 PM

Testimony for CPN on 2/28/2023 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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First, this bill is unnecessary. If a law, ordinance, or rule applies to a condominium association, then the association must comply with the law, ordinance, or rule regardless of the adoption of this bill.

Second, the reference to “all laws, ordinance, and rules” without any specificity is vague, ambiguous, and overly broad. The adoption of a law of this nature is certain to lead to disputes and lawsuits. If the legislature has a specific concern, that specific concern should be addressed.

Third, the reference to “ensure conformance with” will impose an impossible standard for associations. Condominium projects, particularly high-rise structures, are composed of many different mechanical, structural and architectural components and systems. Many condominium projects were constructed decades ago. Many systems are hidden from view because they are concealed behind walls, embedded in concrete, or located in inaccessible areas. No one, including board members, design professionals, and contractors, can “ensure” that every component and system conforms with all laws, ordinances, and rules. Board members are volunteers who are usually not familiar with laws, ordinances, and rules, such as building, fire, plumbing, electrical and other codes. Board members must rely upon experts. However, when design professionals inspect condominium projects, their opinions are nearly always subject to numerous exceptions and disclaimers. The Legislature should not adopt laws that establish a standard of care that is impossible to meet.

Fourth, due to the frequency in which building codes change, most projects probably do not conform with the most current building codes, and a multi-decade old project probably violates numerous building codes. S.B. 593 does not clearly explain the effect of grandfathered codes. However, grandfathering creates additional burdens. For older projects, for example, those constructed in the 1960s, 1970s or 1980s, it may be extremely time consuming, if not impossible, to research every law, ordinance and rule applicable to the project that was in effect 40, 50, or 60 years ago.

Fifth, the vague, ambiguous, and overly broad nature of the bill may lead to unintended consequences. For example, an association might be acting in good faith, but later find that its actions violated some technical aspect of a law. In that instance, a disgruntled owner may argue that the board breached the provisions of this new statutory section. Furthermore, the statement that associations shall maintain and operate the property to “ensure conformance with all laws, ordinances, and regulations” could potentially be construed as to impose upon associations a duty to ensure that all activities on the property, including private activities of owners over which they have no control, conform with all laws, ordinance, and regulations.

While this bill may be well intended, it will not serve a good purpose. It will create far more harm than good. For the reasons stated above, I urge the Committee to permanently DEFER S.B. 593.

Respectfully submitted,

Laura Bearden