



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

TO THE HOUSE COMMITTEE  
ON  
FINANCE

April 3, 2024, 2:15 p.m.

SENATE BILL 2726, SD2, HD1  
RELATING TO CONDOMINIUMS

Chair Yamashita, Vice Chair Kitagawa, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 2726, SD2, HD1. The State Procurement Office (SPO) understands the intent of the bill; however, we oppose the exemption language in Section 6, page 5, lines 7 to 8. The SPO objects to the procurement exemption and testifies that contracting of services under this Act should be competitively procured.

**Recommendation:** It is the SPO's understanding that based on the Legislative Reference Bureau's testimony, competition does exist for services to perform a study on condominium subjects as described in the bill. The intent of the Chapter 103D, Hawaii Revised Statutes (HRS), Hawaii Public Procurement Code, is to allow for open and fair competition to all that meet the qualifications and requirements.

The SPO recommends that the agency must comply with Chapter 103D, HRS, and that the language regarding the procurement exemption in Section 6, page 5, lines 7 to 8, is deleted as set forth below.

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

**Comments:** Chapter 103D, HRS, Hawaii Public Procurement Code, is the State's single source of public procurement policy to be applied ethically, 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, and refrain from any activity that would create the appearance of impropriety or conflicts of personal interest and the interests of the State or counties 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.

Thank you.

Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

Research 808-587-0666  
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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Written Comments

**SB2726, SD2, HD1**  
**RELATING TO CONDOMINIUMS**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the House Committee on Finance

Wednesday, April 3, 2024, 2:15 p.m.  
Conference Room 308 & Via Videoconference

Chair Yamashita and Members of the Committee:

Good afternoon, Chair Yamashita 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, S.D. 2, H.D. 1, 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 alternative dispute resolution or similar programs that are specifically for the prevention or resolution of condominium-related disputes and are separate from alternative 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 and the Condominium Property Regime Task Force 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;
- (6) Exempt the contracting of services under the measure from Chapter 103D, Hawaii Revised Statutes (the Hawaii Public Procurement Code); and
- (7) Extend the deadline for the Condominium Property Regime Task Force's final report and termination date to June 30, 2026.

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 study required of the Bureau 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.

Thank you again for your consideration.



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**The State Legislature  
The House Committee on Finance  
Wednesday, April 3, 2024  
Conference Room 308, 2:15 PM**

TO: The Honorable Kyle Yamashita, Chair  
FROM: Keali'i S. López, State Director  
RE: Support for S.B. 2726, SD2,HD1 Relating to Condominiums

Aloha Chair Yamashita 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, SD2, HD1 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 SB2726, SD2, HD1.**

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

April 1, 2024

Honorable Kyle T. Yamashita  
Honorable Lisa Kitagawa  
Committee on Finance  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 2726 SD2 HD1 SUPPORT**

Dear Chair Yamashita, Vice Chair Kitagawa and Committee Members:

SB 2726 SD2 HD1 should be passed because it reflects the unanimous recommendation of the Condominium Property Regime Task Force. It also enables the Task Force to continue in effect.

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.

Honorable Kyle T. Yamashita  
Honorable Lisa Kitagawa  
April 1, 2024  
Page 2 of 3

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

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 Clause<sup>1</sup> 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.

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<sup>1</sup> **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 Kyle T. Yamashita

Honorable Lisa Kitagawa

April 1, 2024

Page 3 of 3

The Community Associations Institute, therefore, respectfully requests that the Committee pass SB 2726 SD2 HD1.

CAI Legislative Action Committee, by

*Philip Nerney*

Its Chair



**SB-2726-HD-1**

Submitted on: 4/1/2024 4:33:20 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Mike Golojuch, Sr.  | Palehua Townhouse   | Support                   | Written Testimony<br>Only |

Comments:

Our association supports SB2726. Please pass this bill.

Mike Golojuch, Sr, President

**SB-2726-HD-1**

Submitted on: 4/1/2024 4:59:16 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Idor Harris         | Honolulu Tower AOA  | Support                   | Written Testimony Only |

Comments:

Honolulu Tower is a 396 unit condominium built in 1982, located at Beretania and Maunakea Streets. At its meeting on February 5, 2024, the Honolulu Tower Association of ApartmentOwners Board of Directors voted unanimously to support SB2726.

Every year there are a hodgepodge of bills which seek to make changes to Section 514B. Some contradict others. SB2726 would be a comprehensive study allowing the legislature to see how condos are managed in other states, what works and what does not.

Idor Harris

Resident Manage

**SB-2726-HD-1**

Submitted on: 4/1/2024 6:56:29 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b>     | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|-------------------------|---------------------------|---------------------------|
| Richard Emery       | Hawaii First Realty LLC | Support                   | Written Testimony<br>Only |

Comments:

SUPPORT.



LATE \*Testimony submitted late may not be considered by the Committee for decision making purposes.

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April 3, 2024

**The Honorable Kyle T. Yamashita, Chair**

House Committee on Finance

State Capitol, Conference Room 308 & Videoconference

**RE: Senate Bill 2726, SD2, HD1, Relating to Condominiums**

**HEARING: Wednesday, April 3, 2024, at 2:15 p.m.**

Aloha Chair Yamashita, Vice Chair Kitagawa, 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 Hawaii and its over 11,000 members. HAR **supports** Senate Bill 2726, SD2, HD1, which 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, alternative dispute resolution, governmental regulation, owner education, and owner access to documents. Extends the deadline for the final report and the cease date for the Condominium Property Regime Task Force to 6/30/2026. Appropriates funds. Effective 7/1/3000.

Conducting a study on how other States approach condominium regulation, including ombudsman services, owner access to documents, owner education, alternative dispute resolution, amongst other subjects, can help the State make informed decision on the regulation of condominiums.

Mahalo for the opportunity to testify on this measure.



**SB-2726-HD-1**

Submitted on: 4/1/2024 4:11:40 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

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

Comments:

I am an owner occupant of a high rise condominium in downtown Honolulu. 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.

Given the financial problems that the 1/3 of Hawaii residents who live in condos are facing regarding loss of insurance or major increases in coverage costs, it is imperative that we know what is happening nationwide and come up with a comprehensive, educated solution instead of hodgepodge ideas that may or may not work.

Please move SB2726, which I strongly support, forward.

**SB-2726-HD-1**

Submitted on: 4/1/2024 5:34:41 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Margaret Murchie    | Individual          | Support                   | Written Testimony Only |

Comments:

Thank you for your support and passage of SB 2726, which I strongly support.

We appreciate your consideration of appointing a new and independent ombudsman specifically for condo owners and Homeowner Associations as it is a particularly difficult and outdated system that desperately needs updating. I just wanted to make sure that you know how important it is to pass this bill. The oversight on HOA property management companies, especially the big ones over seeing the condominium buildings really need some improvement. My condominium in Waikiki has gone through five different companies (Hawaiiana, Hawaii First, Associa, Blue Sky and now Hawaiian Properties). Most of them are not accountable for errors There are some mandated forms that we are required to supply to potential buyers and they all have different procedures and they are not responsibly overseeing or delivering in a timely fashion. Most of the documents that they provide to us have inaccuracies. It is very important to homeowners especially now with all the changes in insurance, mandated, expensive building upgrades and litigious attorneys, some of whom are front and center spreading disinformation that you are relying on. We need responsible management companies and the biggest ones are often the worst offenders. We need a separate ombudsman and we shouldn't have to wait for another study. The current ombudsman said he can't handle it so if you would pass and support a separate office/dept that is funded without delay, and again, we really don't need any further studies. We need help now.

One tiny example is: I am in escrow on a property and it's the third time I've asked for the mandated RR 105C to have errors corrected. Not little errors... stated that the property was leasehold and it's fee simple. Most questions were answered with a "NTMK" and I've sent them copies of the title and corrected them three times. They pretty much ignore or defend their mistakes and are guessing at owner occupancy, which can adversely affect a mortgage application.

We really need help here as we end up having to hire attorneys to review docs or we open ourselves up to a lawsuit for their mistakes in the disclosures we pay these companies to provide. The Real estate commission have their hands full with issues and we need timely advice.

One of the commissioners has consistently testified against this measure. I feel that he has a definite conflict of interest as has a hand in tweaking the regs in favor of the larger management companies, (One of whom he sold his smaller firm to) and refers litigious attorneys to HOA Boards, who are paying for and counting on for professional advice. There are several incidents

noted more than once of bad behavior towards boards and condo owners. See Civil Beat articles about the Dowsett Point project.

This same commissioner is also operating his own real estate company, Hawaii First, with agents from his residential Kahala home, which is a violation of the rules and he regularly testifies as "Hawaii First". In the past, we have had two appointed commissioners - one go to jail and another close up shop and flee the state. DCCA have their hands full and cannot handle the issues in a timely fashion. The real solution, and the only correct solution, is to have an independent Ombudsman's Office specifically for Condominium Associations and HOA's. HOA boards are volunteer and they need guidance and up to date professional advice. Thank you again for your consideration of this important issue. Please pass and take this opportunity to fund this, hopefully next year. No studies necessary. You have it all in front of you from others' previous testimony.

**House of Representatives  
Committee on Finance  
Wednesday, April 3, 2024  
2:15 p.m.**

To: Representative Kyle T. Yamashita, Chair  
Re: SB 2726 SD 2 HD 1, Relating to Condominiums

Aloha Chair Kyle Yamashita, Vice-Chair Lisa Kitagawa, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii’s oldest advocacy groups which has continuously served our State since 1972. I also serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 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 the opportunity to comment on **SB 2726 SD 2 HD 1**.

I was selected to participate on the Condominium Property Regime Task Force and attended all four meetings in 2023. It was my hope that the Task Force’s work would be impactful because the State’s focus on affordable housing<sup>1</sup> to attract and retain skilled workers who are essential to the health of our community, magnifies the importance of improving condominium association governance and enhancing community harmony through education.

But the CPR Task Force decision to delegate the Legislative Reference Bureau (LRB) 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, as were previous studies performed by the LRB<sup>2,3</sup> and the Real Estate Commission (REC).<sup>4</sup>

Many of Hawaii’s condominium owners are caught in a “perfect storm” of expenses spiraling beyond our control, the inability to finance needed improvements, and the reduction of coverage or loss of insurances.

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.

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<sup>1</sup> Pacific Resource Partnership, Winter 2023, “Hawaii Perspectives, Understanding the Mindset of Hawaii Residents,” [Brochure]

<sup>2</sup> [https://lrb.hawaii.gov/wp-content/uploads/1989\\_CondominiumGovernance.pdf](https://lrb.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf)

<sup>3</sup> [https://lrb.hawaii.gov/wp-content/uploads/1996\\_FightingBattlesInModernAmericanCastles.pdf](https://lrb.hawaii.gov/wp-content/uploads/1996_FightingBattlesInModernAmericanCastles.pdf)

<sup>4</sup> Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).



Without necessary improvements, the development of additional condominium housing will be ineffective because prospective purchasers, including those whom the government hopes to retain or attract, will be unable to afford escalating costs caused by the mismanagement and misgovernance of existing condominium associations.

The unchecked power of association boards and the vulnerability of association owners to abusive practices is substantiated by reports from the insurance industry that nationally, Hawaii has the most Directors-and-Officers-Insurance-claims (D&O claims) and among the highest-insurance-settlements,<sup>5,6</sup> despite Hawaii having only a small fraction of homeowners' associations of more populous states like Florida, California, and New York.

Rather than owners retaining attorneys as their only recourse in their disputes to assert or defend their own rights against their associations or boards, proposals for an Ombudsman's Office were initiated by Kokua Council (HB 2680 and HB 2681 in the House) so that justice is not limited to only those who can afford it.

Kokua Council's proposals provide alternatives to existing alternative dispute resolution (ADR) mechanisms and include provisions requiring the education and certification of directors and the individuals who serve as community association managers to address some of the sources of the significant problems challenging condo owners.

HB 2680 and HB 2681 were not scheduled for hearings, perhaps influenced by misinformation erroneously repeating that these ombudsman proposals attempt to circumvent Constitutional rights and prevent access to the Courts.

This misinformation is documented in the excerpts of testimonies opposing the companion measure to HB 2680, SB 3205,<sup>7</sup> especially the last quotation which is repeated in dozens of boilerplate opposition testimonies. (Please note that one of the following quotations came from the Chair of the CPR Task Force who has long opposed an ombudsman's office to aid homeowners.):

- *"The proposed Bill seems to take away constitutional rights of parties by denying any appeal. It is my understanding that the Hawaii Supreme Court has previously ruled that the relationship between an owner and the association is contractual in nature and cannot be impaired by legislation or the denial of the court system."*
- *"...SB 3205 is based on a faulty premise, embodies an approach that has been repeatedly rejected, and is constitutionally infirm...LRB data will be useful to facilitate the development of policy proposals that remain within constitutional limits."*

<sup>5</sup>ThinkTech "Condo Insider" program, "How Condo Disputes Can Increase Your Maintenance Fees," September 19, 2019

<sup>6</sup> <https://www.youtube.com/watch?v=8wOM10cgYS0&t=353s>

<sup>7</sup> [https://www.capitol.hawaii.gov/sessions/session2024/bills/SB3205\\_.PDF](https://www.capitol.hawaii.gov/sessions/session2024/bills/SB3205_.PDF)

- *“this bill is an extremely bad bill. It will mandate that associations participate in investigations and contested case hearings before an ombudsman, whose decisions are binding, with a limited right to a trial de novo. This bill will deprive condominiums with full access to the Hawaii courts and deprive them of due process. In all likelihood, some aspects of the bill are unconstitutional... Any denial of access to the Hawaii courts is likely unconstitutional.”*

However, misstatements and mischaracterizations, no matter how often they are repeated, cannot alter that **access to the Courts is upheld**, as proven by this excerpt from SB 3205 (pages 63 to 64 in the pdf version), companion to HB 2680:

“SECTION 19. Section 514B-163, Hawaii Revised Statutes, is amended to read as follows:

**"~~[§514B-163]~~ Trial de novo and appeal.** (a) The submission of any dispute to ~~[an arbitration under section 514B-162]~~ **the ombudsman's office shall in no way limit or abridge the right of any party to a trial de novo.**

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ~~[ten]~~ **sixty** days after service of the ~~[arbitration award]~~ **final decision by the ombudsman or the ombudsman's office** upon all parties and the trial de novo shall be filed in circuit court within ~~[thirty]~~ **ninety** days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.

~~[(c) The award of arbitration shall not be made known to the trier of fact at a trial de novo.~~

~~(d)~~ **(c)** In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax ~~[such]~~ **the** fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity."

An Ombudsman's Office as proposed by Kokua Council can address long overdue improvements to condominium governance. The proposed legislation would create a self-funded office with no financial burden to taxpayers to review condominium owners' complaints concerning violations of condominium laws and the association's governing documents by the association's board of directors, officers, agents, and owners.

Although only a few states have condo or HOA ombudsman offices, the lack of offices belies the need. The states of California, Georgia, and Washington have recently had measures drafted to address this need.

In Connecticut, Attorney General Richard Blumenthal pressed for a condo ombudsman<sup>8</sup>:

"Blumenthal said his office has received hundreds of grievances from condo owners over the past year involving disputes with condo associations.

"A condominium ombudsman would provide help to outmatched, overwhelmed unit owners who are fighting for their basic rights under our condominium laws," Blumenthal said. "Many of the complaints received by my office concern failures by association boards of directors to follow basic governance principles such as adopting an annual budget with notice to the unit owners, holding fair elections for the board of directors, providing key financial information about the association, and fairly imposing association fines."

"Blumenthal is urging creation of a self-funded state commission to be paid for by a \$4 per unit annual assessment on condominium associations in the state."

However, as we condo and HOA advocates have noted, the association trade industry has a disproportionate influence on legislation. Please see the attached article obtained from this site, <https://nevadacurrent.com/2023/10/30/hoa-regulators-captive-to-deep-pockets-of-developers-property-management-industry-say-critics/>.

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

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.

Mahalo for the opportunity to submit these comments.

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<sup>8</sup> <https://www.hartfordbusiness.com/article/blumenthal-presses-for-condo-ombudsman>

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



GOVERNMENT

HOUSING

LEGISLATURE

# HOA regulators captive to deep pockets of developers, property management industry, say critics

BY: **DANA GENTRY** - OCTOBER 30, 2023 5:18 AM



📷 Most homeowners are oblivious to the goings on in their HOAs and the complex laws that govern them. (Photo: Ronda Churchill/Nevada Current)

The state agency charged with regulating homeowners' associations is a smokescreen, designed to do the bidding of the multi-million dollar industry it oversees, at the expense of homeowners subject to HOA control, according to critics.

More than half a million Nevadans live in properties subject to homeowners' associations. Wielding powers generally reserved for government tribunals, HOAs can assess fines, deny property rights, and even foreclose.

But with the exception of seeking occasional architectural reviews, most homeowners are oblivious to the goings on in their HOAs and the complex laws that govern them.

“No one reads the CCRs,” Ken Richardson, a former staff member of the state’s HOA Ombudsman’s office, says of the Covenants, Conditions and Restrictions that govern homeowners in HOAs.

“It’s apathy,” says Centennial Hills homeowner Sam Covelli, who admits he ignored his HOA for years. “That seems to be common. People don’t have time to go to these meetings, and there’s really something wrong on the regulatory side.”

Covelli, a retired state corrections officer, has been around long enough to remember how state regulators turned a blind eye to a [scandal](#) involving control of local HOAs. An FBI investigation resulted in the largest political corruption case in Southern Nevada history – marked by the pre-trial suicides of four defendants and multiple convictions of co-conspirators – HOA officers, attorneys, and retired police.

Covelli and others contend little has changed, and that industry insiders are embedded in the regulatory landscape. He says a task force [created](#) by the 2019 Legislature was prematurely killed for fear it would lead to exposure of the system’s flaws.

The task force, the brainchild of former Sen. Joyce Woodhouse, met twice in 2020 and was disbanded. It has not met in more than three years. Minutes from its second and final meeting in September 2020 have never been posted, presumably for lack of a subsequent meeting where they could be approved.

Woodhouse declined to comment.

“It was like, ‘well, we’re kind of done for now,’ and that was it,” recalls Richardson, a member of the task force during its brief existence. “I thought when the task force was created that it would be more of an ongoing body, organized to review and recommend the enactment of legislation or regulations that would be helpful to homeowners in HOAs. I did expect that it would be much more involved than it actually turned out to be.”

A spokeswoman for the Nevada Real Estate Division (NRED) says the legislation creating the task force was permissive. It allowed but did not require the director of the state’s Business and Industry Division to establish a task force and meet when needed.

“Ultimately, the pandemic led the Real Estate Division to prioritize it’s (sic) work after returning to in-person operations due to staffing shortages, reduced budgets, backlogs, etc.,” spokeswoman Teri Williams said via email. She says subsequent bills involving HOAs have been “vetted during the legislative process,” and cites “a lot of legislator engagement related to HOA issues and ongoing discussions.”

Nevada’s legislature meets every two years for 120 days, and is often hard-pressed to complete its business. Complex issues, such as HOA laws, are sometimes given short shrift.

“It is in the nature of a gubernatorial transition and a short legislative session that there is just not the time to do that kind of deep dive now, but we can come back next session with ideas on how we can better enforce these,” then-Business and Industry Director Michael Brown told lawmakers in 2019 of the proposed task force’s function.

“These are very complex issues. And they take some time to study and sort out,” observes Ferguston. “And of course, they’re written in legalese that often is subject to interpretation. Therefore, you need to ask, what does this actually mean? So I think the task force could be beneficial in that way.”

Covelli, a Las Vegas homeowner, points to a 2023 [bill](#) that increased the fine for filing a “false or vexatious complaint” from \$1,000 to \$10,000 – an amount critics say is designed to deter complaints. It also allows an HOA to ban a homeowner from serving on its board for up to 10 years for filing a vexatious, defamatory, or false complaint with the state.

“It would have had such a chilling effect on homeowners that are already on the short end of the stick in this whole process,” says Covelli.

The bill [would have allowed](#) HOAs to use community funds to recover compensatory damages, attorneys fees, and costs from a person who takes “retaliatory action” against a board, as determined by NRED. The provision was eliminated from the final version, which was signed into law by Gov. Joe Lombardo.

Williams, the state’s Real Estate Division spokeswoman, notes the division has “conducted regulation workshops during which stakeholders are brought to the table to address pertinent issues.”

NRED's website indicates the division held one workshop in 2020, none in 2021, three in 2022 and none this year.

### **'The appointments probably could have been broadened'**

Southern Highlands homeowner Mike Kosor, a vehement critic of the state's regulatory scheme, says the workshops are a ruse designed to further the goals of a cadre of community association management companies and attorneys, and generally result in anti-homeowner regulations, such as a 2022 workshop-prompted change that prohibits HOA board members from acting without the consent of the board.

"What is the definition of 'act'? If I want to hold a town hall meeting for my constituents, I have to get approval from the board before I can do so or it's a fiduciary violation," says Kosor. "It's silencing the minority."

Kosor has long been at odds with Southern Highland's developer Garry Goett over Goett's refusal to turn over the board to homeowners. Goett sued Kosor for defamation over comments Kosor made in materials disseminated to homeowners. Kosor filed a countersuit alleging Goett was trying to chill his right to free speech.

The Nevada Supreme Court [agreed](#) with Kosor. Justice Kris Pickering wrote that Kosor's statements were intended to "drive civic engagement" among his neighbors.

The Southern Highlands Community Association employs and shares an address with Goett's Olympia Management Services. The five-member HOA board is controlled by three developer-appointed members, a balance of power that would shift to homeowners if Goett relinquished control. Southern Highland's development agreement calls for the developer to transfer control to homeowners after selling 75% of the community's properties, a threshold Kosor contends has been reached.

In 2015, lawmakers increased the previous threshold for transferring control from 75%, the national standard, to 90%, prolonging developer control, sometimes at the expense of homeowners.

The increased threshold is one of several issues Kosor says could be addressed by the task force, if it existed.

“The Task Force process holds value if the discussion results in a conclusion, as the Legislature intended,” says Kosor, who says the expectation was the task force would hear concerns, and determine whether to recommend legislative action, regulatory change, more education, or embrace the status quo.

Kosor has spent hundreds of thousands of dollars on legal battles he says could have been avoided by effective regulation.

“The task force’s role was to get the stakeholders together and discuss potential changes to the laws and regulations,” says Kosor. “For instance, the statute is unclear as to whether HOAs are required to seek competitive bids, and that’s never been addressed.”

But NRED administrator Sharath Chandra, who declined to be interviewed for this story, said in response to written questions the task force “was not meant to represent the State’s HOA members.”

The law specifies the task force have a member from the Real Estate Division, the Ombudsman’s office, the Attorney General’s office, and the HOA industry, to be appointed by the director of Business and Industry, who serves as chair.

“The appointments probably could have been broadened to include homeowners who maybe don’t have quite the same perspective, but nevertheless, have something to contribute to the issues that they face in their own communities,” says Ferguson, who served as a training officer for the HOA Ombudsman.

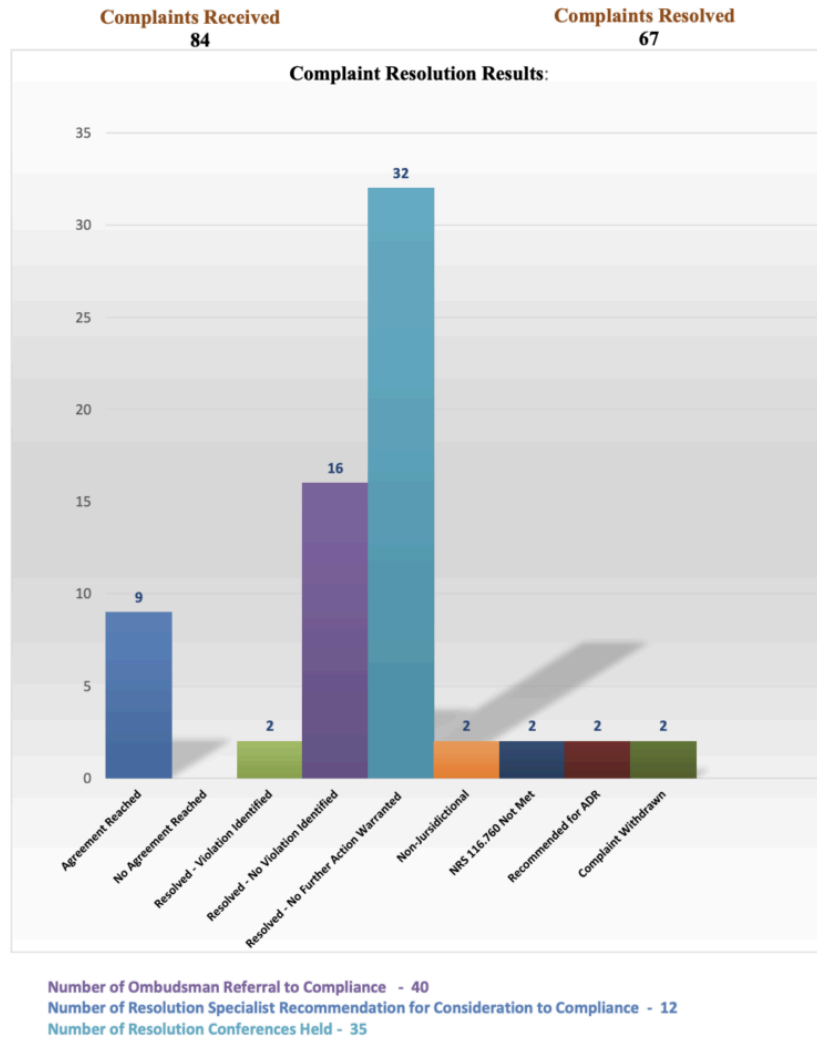
Chandra notes the division’s seven-member HOA commission, which is appointed by the governor, meets regularly, and “acts in an advisory capacity to the Division, adopts regulations, and conducts disciplinary hearings.” Four members are industry representatives, including a lawyer, accountant and developer. Three members must own property governed by HOAs.

Kosor notes the Attorney General’s office serves not only as prosecutor before the commission, but also provides its legal advice.

“Why would I want to take any complaint before the Commission under that scheme?” asks Kosor, adding the complaint process involves a maze of red tape, and the majority of complaints are dismissed for lack of evidence, with no direction from NRED on what’s missing. The division provides no option for appeal other than legal action.



The state's report for fiscal year



(Graph from Nevada Real Estate Division Ombudsman Report)

2022/2023 through April of this year says of 84 complaints received about HOAs, NRED identified violations in two cases, making them eligible for a determination from the state's HOA commission.

Kosor says the task force, by holding regular meetings, and inviting participation from homeowners, could have pre-empted complaints, and prevented homeowners from having no recourse but to sue their HOAs.

NRED administrator Chandra declined to say whether he has suggested that Business and Industry Director Terry Reynolds reconvene the task force.

“While the task force is currently dormant, engagement regarding HOA matters continue to be addressed,” says Williams, the division’s spokeswoman. “The director and the division retain the authority to reconstitute the task force at any time.”



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**DANA GENTRY**  

Dana Gentry is a native Las Vegas and award-winning investigative journalist. She is a graduate of Bishop Gorman High School and holds a Bachelor's degree in Communications from the University of Nevada, Las Vegas.

**MORE FROM AUTHOR**

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## RELATED NEWS



**Bill designed to chill homeowner criticism of HOAs,...**

BY **DANA GENTRY**

April 11, 2023



**Some states protect Section 8 renters, but...**

BY **ROBBIE SEQUEIRA**

July 28, 2023

## POLICY, POLITICS AND COMMENTARY

**DEMOCRACY TOOLKIT**



**SB-2726-HD-1**

Submitted on: 4/2/2024 8:50:25 AM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Jessica Herzog      | Individual          | Support                   | Written Testimony Only |

Comments:

Esteemed Legislators,

As a Hawaiian homeowner and voice for many, I urge you to consider the transformative potential of Senate Bill 2726 (SB2726 HD1). This legislation represents a crucial opportunity to address the longstanding injustices in our condominium governance system, marred by unfair laws and practices that favor a select few over the average owner. Our community's essence and aloha spirit are compromised by a system prioritizing profit over people, leaving many grappling with unjust fees, opaque processes, and a lack of dispute resolution.

SB2726 HD1 is a beacon of hope, offering a path to reform through the extension of the Condominium Property Regime Task Force and a comprehensive study for equitable practices. It's a step towards rebuilding our condominium governance on principles of fairness, transparency, and accountability. This bill is not just about legislative change; it's a call for justice, dignity, and peace for homeowners who've suffered under oppressive policies.

Supporting SB2726 HD1 means standing with Hawaiian homeowners against oppression, affirming a commitment to rectify past wrongs, and ensuring our laws reflect fairness and aloha. It's about protecting homeowners from exploitation and ensuring every homeowner can live with dignity and security.

I appeal to you to pass this bill, uniting for a future where Hawaiian homeowners' rights and well-being are safeguarded. Thank you for considering this heartfelt plea for change.

Mahalo,

Jessica Herzog  
AOAO Makaha Surfside

**SB-2726-HD-1**

Submitted on: 4/2/2024 11:24:12 AM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Jeff Sadino         | Individual          | Support                   | Written Testimony Only |

Comments:

I support this measure. There are about 350,000 people who live in condominiums. Hawaii also has the highest rate of successful lawsuits against Boards behaving badly than any other State in the country (on an "absolute" basis, not even adjusted for population). Serious reform of condominium living in Hawaii is not only needed, but long overdue. The money spent on this Bill will be the best money we have ever spent by far.

Jeff Sadino



## Testimony in Support of SB2726 SD2 HD1

**Submitted for:** Finance Committee Hearing, scheduled for Wednesday, April 3, 2024 at 2:15 PM.

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee,

My name is Gregory Misakian, and I currently serve as 1st Vice President of the Kokua Council, Sub-District 2 Vice Chair of the Waikiki Neighborhood Board, and a Director on my condominium association's Board.

**The Kokua Council**, one of the oldest elder advocacy organizations in Hawaii, proposed four measures last year for better consumer protections for condominium owners, which were introduced as six bills (two which I co-authored, HB178 and HB1501). This year, Lila Mower (President of Kokua Council) 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 public 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 testimonies (some of which I am including in my testimony here).

An Ombudsman’s Office to address condominium association disputes and to enforce HRS 514B statutes is needed now, not in 2026 (when the LRB report would be issued) or beyond. The public and the Governor expected the Condominium Property Regime (CPR) Task Force would do something, and not just meet a few times, waste time, then quickly try to meet their required report deadline by throwing their responsibilities over the wall to another Government branch (with a financial cost yet to be determined).

## What was Done

Act 189, signed into law by the Governor last year, gave hope that once and for all our legislators were taking notice. Sadly, the two Task Forces that were established were stacked with the worst possible Committee members, with the exception of one or two. It elicits that well-worn phrase, “are you kidding me.” And having the two Task Forces Chaired by attorneys who oppose better consumer protection measures and who regularly sue condominium owners, is not only unconscionable, it is outrageous.

Nominating and appointing those who openly and regularly “oppose” better condominium related consumer protection measures is a clear disregard for the public’s best interest. It is also an insult to the intelligence of the public as a whole (as if it won’t be noticed). Some may be fearful to speak out, since this seems to be the “island way,” but I am not. You simply need to read (and watch) the abundant

opposition testimony from these Committee members (attorneys and DCCA staff) to see the “documented” evidence of their opposition. Some also openly show disdain for condominium owners in written statements and public comments that they make.

|                           |
|---------------------------|
| <b>What is Not Needed</b> |
|---------------------------|

Our legislators need to be aware of the misinformation campaign, collusion, and conflict of interest, by many in opposition of better consumer protections for condominium owners.

Here are just some who oppose often and with disregard to the concerns and the facts, and some with conflict of interests that should disqualify testimony.

**Richard Emery** - Current Real Estate Commissioner & Vice President Hawaii Affairs, Associa.

**Richard Ekimoto** - Attorney & CAI lobbyist, who sues condominium owners.

**Philip Nerney** - Condominium Property Regime Task Force Chair, CAI Member and Spokesperson, and Attorney who sues condominium owners often.

**Mark McKellar** - Attorney who sues condominium owners often in foreclosure cases.

**Steve Glanstein** - Parliamentarian (should be “unbiased” per his Code of Professional Responsibility).

**Rachel Glanstein** - Parliamentarian (should be “unbiased” per her Code of Professional Responsibility).

**Anne Anderson** - Attorney

**Paul A. Ireland Koftinow** - Attorney representing condominium associations.

**Laurie Sokach** - Management Company Representative

**Numerous Association Board Presidents and Directors** who want to retain their power and will do anything to do so, even providing our legislators with false information and a false narrative.

Many in this group are using **boilerplate cut and paste testimony** with misinformation, very strong language, derogatory comments towards the opposing side in favor of better laws, and without any regard for “individual” opinions. This form of testimony in my opinion is outrageous and should not be allowed, should be

clear and obvious to our legislators, and at a minimum should not be considered in decision making.

What is also not needed is for the Legislature to continue to let certain people misinform openly, which I had to sit and watch on 2/22/24, as I participated in the Finance Committee hearing regarding HB1814 HD1, scheduled at 10:00 AM. The Committee chose to ask questions of Mr. Philip Nerney, who again provided “his” opinion and not facts, and “misinformed” the Committee numerous times. One glaring comment he made was that a Condominium Ombudsman would have the final say (i.e., there was no other judicial path in the courts to resolve an issue, if a party or both parties did not accept the Ombudsman’s Office findings). This is not only false, but Mr. Nerney has been informed of this numerous times, and on the record. Mr. Nerney also trivialized condominium owners’ concerns, what the issues really are, and used language that was disrespectful to condominium owners throughout Hawaii. In my opinion and the opinion of many others, he has no place on a Task Force meant to help condominium owners. Our legislators on Committees who are giving him the floor to spread more misinformation, are enabling this, and if not stopped are endorsing this. Some are also receiving campaign contributions from him, which is not only concerning, but I believe should be investigated based on what I am reporting.

**Here is a snapshot of some campaign contributions:**

| Candidate            | Contributor | Contributor    |            |          |            |                        |            |
|----------------------|-------------|----------------|------------|----------|------------|------------------------|------------|
| Name                 | Type        | Name           | Date       | Amount   | Aggregate  | Employer               | Occupation |
| Kidani, Michelle     | Individual  | Nerney, Philip | 12/22/2023 | \$250.00 | \$250.00   |                        |            |
| McKelvey, Angus      | Individual  | Nerney, Philip | 08/23/2023 | \$250.00 | \$250.00   |                        | Attorney   |
| Keohokalole, Jarrett | Individual  | Nerney, Philip | 07/25/2023 | \$250.00 | \$250.00   |                        |            |
| Bissen, Richard      | Individual  | Nerney, Philip | 08/17/2022 | \$750.00 | \$1,000.00 | Philip S. Nerney, LLLC | Attorney   |



| Candidate<br>Name    | Contributor<br>Type | Contributor<br>Name | Date       | Amount     | Aggregate  | Employer                                  | Occupation |
|----------------------|---------------------|---------------------|------------|------------|------------|---|------------|
| Luke, Sylvia         | Individual          | Nerney,<br>Philip   | 07/08/2022 | \$2,000.00 | \$4,000.00 | Law Offices<br>of Philip<br>Nerney        | Attorney   |
| Bissen,<br>Richard   | Individual          | Nerney,<br>Philip   | 07/07/2022 | \$250.00   | \$250.00   | Philip S.<br>Nerney, LLLC                 | Attorney   |
| Takenouchi,<br>Jenna | Individual          | Nerney,<br>Philip   | 06/03/2022 | \$1,000.00 | \$1,000.00 | Law Offices<br>of Philip S.<br>Nerney LLC | Attorney   |
| Luke, Sylvia         | Individual          | Nerney,<br>Philip   | 12/08/2021 | \$2,000.00 | \$2,000.00 | Law Offices<br>of Philip<br>Nerney        | Attorney   |
| Rhoads, Karl         | Individual          | Nerney,<br>Philip   | 07/29/2021 | \$1,000.00 | \$1,000.00 | Law Offices<br>of Philip<br>Nerney, LLC   | Attorney   |
| Takumi, Roy          | Individual          | Nerney,<br>Philip   | 03/25/2020 | \$150.00   | \$650.00   |   |            |
| Cullen, Ty           | Individual          | NERNEY,<br>PHILIP   | 11/05/2019 | \$250.00   | \$400.00   |   |            |
| Rhoads, Karl         | Individual          | Nerney,<br>Philip   | 09/18/2019 | \$2,000.00 | \$2,350.00 | Law Offices<br>of Philip<br>Nerney, LLC   | Attorney   |
| Luke, Sylvia         | Individual          | Nerney,<br>Philip   | 05/07/2019 | \$250.00   | \$500.00   | Law Offices<br>of Philip<br>Nerney        | Attorney   |
| Yamane,<br>Ryan      | Individual          | Nerney,<br>Philip   | 04/25/2019 | \$150.00   | \$150.00   |   |            |
| Cullen, Ty           | Individual          | NERNEY,<br>PHILIP   | 04/24/2019 | \$150.00   | \$150.00   |   |            |
| Takumi, Roy          | Individual          | Nerney,<br>Philip   | 04/16/2019 | \$500.00   | \$500.00   |   |            |
| Luke, Sylvia         | Individual          | Nerney,<br>Philip   | 01/11/2019 | \$250.00   | \$250.00   | Law Offices<br>of Philip<br>Nerney        | Attorney   |

| Candidate<br>Name            | Contributor<br>Type | Contributor<br>Name | Date       | Amount     | Aggregate  | Employer                                | Occupation |
|------------------------------|---------------------|---------------------|------------|------------|------------|---|------------|
| Rhoads, Karl                 | Individual          | Nerney,<br>Philip   | 01/11/2019 | \$175.00   | \$350.00   | Law Offices<br>of Philip<br>Nerney, LLC | Attorney   |
| Green, Josh                  | Individual          | Nerney,<br>Philip   | 07/12/2018 | \$500.00   | \$500.00   |   |            |
| Fukunaga,<br>Carol           | Individual          | Nerney,<br>Philip   | 06/13/2018 | \$500.00   | \$700.00   |   |            |
| Yamane,<br>Ryan              | Individual          | Nerney,<br>Philip   | 04/27/2018 | \$150.00   | \$150.00   |   |            |
| Cullen, Ty                   | Individual          | NERNEY,<br>PHILIP   | 04/16/2018 | \$150.00   | \$150.00   |   |            |
| Luke, Sylvia                 | Individual          | Nerney,<br>Philip   | 04/12/2018 | \$250.00   | \$250.00   | Law Offices<br>of Philip<br>Nerney      | Attorney   |
| Kidani,<br>Michelle          | Individual          | Nerney,<br>Philip   | 02/13/2018 | \$150.00   | \$450.00   |   |            |
| Rhoads, Karl                 | Individual          | Nerney,<br>Philip   | 11/08/2017 | \$175.00   | \$175.00   | Law Offices<br>of Philip<br>Nerney, LLC | Attorney   |
| Fukunaga,<br>Carol           | Individual          | Nerney,<br>Philip   | 09/15/2017 | \$200.00   | \$200.00   |   |            |
| Keith-<br>Agaran,<br>Gilbert | Individual          | NERNEY,<br>PHILIP   | 01/31/2017 | \$250.00   | \$250.00   | LAW OFFICES<br>OF PHILIP<br>NERNEY      | ATTORNEY   |
| Rhoads, Karl                 | Individual          | Nerney,<br>Philip   | 09/26/2016 | \$1,000.00 | \$2,150.00 | Law Offices<br>of Philip<br>Nerney, LLC | Attorney   |
| Rhoads, Karl                 | Individual          | Nerney,<br>Philip   | 07/02/2016 | \$1,000.00 | \$1,150.00 | Law Offices<br>of Philip<br>Nerney, LLC | Attorney   |
| Yamane,<br>Ryan              | Individual          | Nerney,<br>Philip   | 04/04/2016 | \$50.00    | \$150.00   |   |            |

| Candidate<br>Name            | Contributor<br>Type | Contributor<br>Name                             | Date       | Amount   | Aggregate | Employer                                | Occupation |
|------------------------------|---------------------|---|------------|----------|-----------|---|------------|
| Luke, Sylvia                 | Individual          | Nerney,<br>Philip                               | 03/29/2016 | \$250.00 | \$500.00  | Law Offices<br>of Philip<br>Nerney      | Attorney   |
| Kidani,<br>Michelle          | Individual          | Nerney,<br>Philip                               | 02/24/2016 | \$150.00 | \$300.00  |   |            |
| Rhoads, Karl                 | Individual          | Nerney,<br>Philip                               | 01/20/2016 | \$150.00 | \$150.00  | Law Offices<br>of Philip<br>Nerney, LLC | Attorney   |
| Keith-<br>Agaran,<br>Gilbert | Individual          | NERNEY,<br>PHILIP                               | 01/15/2016 | \$150.00 | \$300.00  | LAW OFFICES<br>OF PHILIP<br>NERNEY      | ATTORNEY   |
| Luke, Sylvia                 | Individual          | Nerney,<br>Philip                               | 11/03/2015 | \$100.00 | \$250.00  | Law Offices<br>of Philip<br>Nerney      | Attorney   |
| Luke, Sylvia                 | Individual          | Nerney,<br>Philip                               | 03/20/2015 | \$150.00 | \$150.00  | Law Offices<br>of Philip<br>Nerney      | Attorney   |
| Kidani,<br>Michelle          | Individual          | Nerney,<br>Philip                               | 02/20/2015 | \$150.00 | \$150.00  |   |            |
| Keith-<br>Agaran,<br>Gilbert | Individual          | NERNEY,<br>PHILIP                               | 01/08/2015 | \$150.00 | \$150.00  | LAW OFFICES<br>OF PHILIP<br>NERNEY      | ATTORNEY   |
| Luke, Sylvia                 | Individual          | Nerney,<br>Philip                               | 06/20/2014 | \$150.00 | \$200.00  | Law Offices<br>of Philip<br>Nerney      | Attorney   |
| Rhoads, Karl                 | Other<br>Entity     | Law<br>Offices of<br>Philip S<br>Nerney<br>LLLC | 05/05/2014 | \$150.00 | \$150.00  |   |            |
| Kidani,<br>Michelle          | Individual          | Nerney,<br>Philip                               | 12/18/2013 | \$500.00 | \$650.00  |   |            |

| Candidate Name        | Contributor Type | Contributor Name                    | Date       | Amount   | Aggregate | Employer                     | Occupation |
|-----------------------|------------------|-------------------------------------|------------|----------|-----------|------------------------------|------------|
| Kidani, Michelle      | Individual       | Nerney, Philip                      | 03/12/2013 | \$50.00  | \$150.00  |                              |            |
| Kidani, Michelle      | Individual       | Nerney, Philip                      | 08/22/2012 | \$25.00  | \$225.00  |                              |            |
| Abercrombie, Neil     | Other Entity     | Law Offices of Philip S Nerney LLLC | 06/26/2012 | \$300.00 | \$300.00  |                              |            |
| Kidani, Michelle      | Individual       | Nerney, Philip                      | 03/01/2012 | \$100.00 | \$200.00  |                              |            |
| Abercrombie, Neil     | Individual       | Nerney, Philip                      | 08/29/2011 | \$300.00 | \$300.00  |                              |            |
| Pacarro, Franklin Jr. | Individual       | Nerney, Philip                      | 03/26/2010 | \$250.00 | \$250.00  |                              |            |
| Luke, Sylvia          | Individual       | Nerney, Philip                      | 04/17/2009 | \$250.00 | \$250.00  | Law Offices of Philip Nerney | Attorney   |
| Luke, Sylvia          | Individual       | Nerney, Philip                      | 04/18/2008 | \$100.00 | \$200.00  | Law Offices of Philip Nerney | Attorney   |

## 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*

These headlines are not outliers of the issues happening every day, but are just the ones getting reported. Sadly, there are many more that you never hear about or read about, as homeowners, including many kupuna, are often afraid to fight back and speak out. They unfortunately have nowhere to turn, as you have not provided them with the proper State Office to assist them and ensure there are resolutions without repercussions from unethical Boards, Management Companies, and their representative attorneys (i.e., retaliation, harassment, unwarranted fines and assessments, improper legal actions, and foreclosures).

## 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 & HB1814 – Re. the Condominium Property Regime Task Force (Act 189)**  
(Good intentions, but too little, too late, and other reports are available.)

While I support SB2726 and HB1814 and their 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 have forwarded a copy to the Chair, Vice Chair, and members of the Committee, prior to the submission of my testimony. 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.

It was clear Hawaii needed an Ombudsman in 1991, and it's clear Hawaii needs one now. Hawaii also 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 Gregorlys ... Gregory Tanaka, and Gregory Misakian.

The residents of Hawaii simply want a place to go to get "enforcement," of the very laws our legislators introduce, debate, and enact (within Hawaii Revised Statutes 514B and other statutes). The residents of Hawaii also want to be treated fairly, and not extorted for money by predatory Board members, predatory attorneys, and others.

**Excerpts From Testimony I Submitted to the Condominium Property Regime Task Force (Act 189, 2023), for the Nov. 30<sup>th</sup> and Dec. 14<sup>th</sup>, 2023 Task Force meetings.**

**Testimony In Support of:**

- 1) **Condominium Owner's Rights.**
- 2) **The need for a State Ombudsman's Office** to address owner complaints of misconduct and malfeasance by condominium Association Board members, Management Companies and their agents, Site Managers, Resident Managers, General Managers, Attorneys, and others. And to address complaints owners have regarding the Department of Commerce and Consumer Affairs, the Regulated Complaints Industry Office, and others who engage in any improper acts or actions, fail to take complaints, or fail to address concerns or administer proper investigations with fair and equitable resolutions. And to require proper enforcement actions and accountability for misconduct by Board members, Management Companies and their Agents, and others.
- 3) **The need for HRS 514B reforms**, including in the areas of voting rights, Board member qualifications, education and training, Community Manager licensing and/or certification, and numerous other areas identified via the Task Force and past legislative testimony for condominium related bills (and future testimony).
- 4) **The need for a two-sided communication flow of "accurate" information to condominium owners**, and not a one-sided viewpoint tainted with conflict of

interest (i.e., with all of the messaging coming from the condominium trade industry and attorneys who represent Management Companies and Association Boards).

**As I previously stated in my October 27<sup>th</sup> testimony:**

**I am dealing with serious misconduct at my condominium association, and the number of issues and concerns and the abuse of power is literally overwhelming.**

I summarized some of the issues and concerns in my previous testimony, but there are many more, and recently the abuse of power and misconduct from our Board President has gotten much worse. Below are just some of the things that happened at the most recent Keoni Ana AOA Board meeting on November 20, 2023.

- 1) The meeting notice/agenda was never sent to owners via TownSQ/Email, so many owners who do not live in the building were not aware of the Board meeting. Our Board President posted a TownSQ notice at 5:20 PM, just 25 minutes prior to the meeting, and with the wrong start time (6:00 PM noticed, vs, 5:45 PM when the Owner's Forum began). Our Board President has chosen to not properly notice Board meetings, and is disenfranchising the owners from participating in the meetings and in the Owner's Forum.
- 2) The Board President, Daniel Jacob (an attorney and public employee who works for the City and County of Honolulu, Corporation Counsel), took control of the Zoom meeting by locking the option to "unmute." When the first item on the agenda came up, I could not unmute myself to speak and raise an objection to adopt the agenda (as I wanted to motion to add items to the agenda). I also raised my hand and was not recognized. This is a serious abuse of power and is unlawful, and is also retaliation in violation of HRS 514B-191. When I was finally able to speak to give my Treasurers report and raised concerns about what was done, and ask Mr. Jacob to stop muting me, he ignored my concerns, was argumentative, and said he can do whatever he wants. He continued to mute me numerous times when I was speaking or trying to speak during the meeting. He also did this in Executive Session. To highlight just one example and reason why a State Ombudsman is needed, this is it. This is a violation of



HRS 514B-125 (seen further below, with the section highlighted). And to address this one issue alone, do I have to file for a mediation, and then litigate this in court? And how long does the Task Force think this issue might take to resolve? And at what cost financially?

- 3) The meeting agenda was not followed (the Board President skipped agenda items without stating he was doing so, and numerous agenda items were not discussed).
- 4) The Board Packet for the meeting was missing a great deal of information needed for decision making and voting. It was missing previous meeting minutes (regular board meeting and the executive session). Also missing were bids and proposals needed for decision making. In one example no bids/proposals were included for a structural engineering firm and only one proposal was verbally mentioned for a vote. I requested that the vote not be taken, as the Board had no written proposal to review, in addition to not having multiple bids/proposals (and it was verbally stated there was a second one). Our Board President still motioned for a vote and the Board majority approved the engineering firm. I am aware of other misconduct related to this and concerns of kickbacks and other improper actions.
- 5) I motioned for a Budget Committee to be formed (something I had been trying to get the Board to act on since the late summer with no success). I received no 2<sup>nd</sup> from any other Board member. The Board was already non-compliant to our governing documents regarding the budget, and Associa Hawaii had misinformed the owners regarding the Board meeting to discuss the budget (via a USPS mailing they sent). Later in the meeting our Board President motioned to form a Budget Committee (the very thing I motioned for with no 2<sup>nd</sup>). He included names of Board members and said owners could also be part of the Committee. I, the Treasurer of the Association, was excluded from the Committee. The level of retaliation I have received, both as an owner and now as a Board member, is something that no homeowner should ever have to experience.

## **§514B-125 Board meetings.**

(d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. **Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting.** A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear

**Excerpts From ThinkTech Hawaii, Condo Insider, where condominium owners are not invited to express their concerns and opinions.**

There is numerous misinformation and one-sided discussions seen at the many ThinkTech Hawaii Condo Insider videos hosted by those from the condominium trade industry. Some of the most glaring and concerning statements were at the Condo Insider episode dated August 21, 2023, titled “New Act 189 Re Condos and HOAs,” which was hosted by Ms. Jane Sugimura, who is an attorney seen at the Hawaii State Bar Association website as Yuriko J. Sugimura.

**At timestamp 19:28,** Ms. Sugimura misstates Colonel Mark Brown’s case as settling before going to trial, which was not true, as this case settled during trial.

**At timestamp 21:39,** Ms. Sugimura quotes how many mediations there were in a period that was reported by the Real Estate Commission, and states 50% were mediated to some resolution (even though they are confidential, and you can never know if they were truly resolved or successful). What she reported also does not agree with data I have seen.

**At timestamp 22:20,** Ms. Sugimura makes a glaring and concerning statement, that the cases that didn’t settle at mediation didn’t go forward to litigation because the owners didn’t have good cases. As she could never know the details about the mediations or the cases, she could never make this statement. From the many discussions I have had with owners who have concerns and attempted to mediate or did mediate, many could not afford to go forward with litigation, or were concerned

with the risks, including the lengthy process, and possibly having to pay the other sides attorney costs if they don't win their cases.

**At timestamp 23:03**, Ms. Sugimura says:

*“But the good thing that came out of that is, the ones that didn't complete the mediation didn't go any further, so it ended, and I think that's what everybody wants.”*

My first thought was, “did she just say that on the record.” I think the gravity of this statement is clear.

She further elaborates, providing more of her “opinion” with no facts and the opposite of what is generally known (with evidence to support).

She also goes on to directly contradict herself regarding mediations ending without lawsuits and saying there aren't many lawsuits, then goes on to say how the judges are scolding her, and there are so many condominium lawsuits.

**Continuing from timestamp 25:20, at timestamp 25:33, Ms. Sugimura says the most glaring and concerning statements,** *“The judges, let me tell you, the judges get, don't like the cases, they, they hate both sides, don't think you're going to get a sympathetic judge. The minute the judge finds out it's a condo dispute, I mean, I don't know what happens, the horns go up. All of a sudden, they want to rush you off to mediation or arbitration, but anyway, they want you off their docket, they don't want you in their court room, because they think the disputes are stupid and petty. And they don't understand why you have to take up public time and money, to, to have some third party resolve your dispute, you know, for you.”*

If what Ms. Sugimura states is true, that “the Judges want you off their docket” and “the Judges think the disputes are stupid and petty,” then we have a Judiciary problem, if it's not true, we have an attorney problem. Either way we have a problem, and Ms. Sugimura's public statements and misinformation, which are made often, whether in ThinkTech Hawaii Condo Insider videos for the condo trade industry, or in public testimony at the legislature, are of serious concern.

## Self-Governed (A term loosely and incorrectly applied.)

Saying something over and over that is not true will not simply make it true, but this has been the case and continues to be the case with many, including our legislators (who continue to use the term self-governed to define condominium associations). When State legislators enact laws that apply to condominium associations, the “Self” just became the “State” (i.e., State-Governed). But in reality, it’s a bit of both and is more of a Hybrid-Governed society ... until it’s not and devolves into a Board/Abuse of Power-Governed society, which seems to be the case more and more across Hawaii, and at my condominium association, the Keoni Ana AOA.

## Conflict of Interest

To highlight how serious my concerns are, I attended the Hawaii Buildings, Facilities & Property Management Expo on 3/7/24, and attended a seminar presented by Mr. Richard Emery, who is currently on the Real Estate Commission (see below).

**THUR. MARCH 7, 2024**

**T1 FREE:**

**THE CHANGING LANDSCAPE OF HAWAII’S CONDO LAWS.**

The future of Hawaii’s Condos will cost owners more grief and money. Learn how recently enacted Bills and others proposed in the 2024 Legislature will drastically effect your Condo living and budget.

**THUR. March 7th • 8 am to 8:50 am • Hawaii Suite 1**

**SPEAKER:**

**Richard Emery**

Vice President, Hawaii Affairs

Associa

I sat and watched Mr. Emery make numerous incorrect statements, and then go on to make disparaging and untrue statements and comments regarding legislative bills I co-authored. I spoke at the end of the seminar to correct one of Mr. Emery’s false statements, and asked him to please stop spreading false information regarding Ombudsman Bills.

I am aware that our legislators speak often with Mr. Emery and I've openly stated and will state it again here, that Mr. Emery has a conflict of interest and should not be allowed to be on the Real Estate Commission while working for Associa. He has also showed up at an attorney only mediation meeting where Associa's bad acts were part of the mediation, which opens up many other concerns regarding mediation (as he is not an attorney). He claims to also be a mediator and an "expert" witness, but from my observations the information he is providing is not all factual, and much of it is his opinion and not in the best interest of consumers or condominium owners. Bias and mediations are not meant to live in harmony, and fairness will never be the outcome.

|                              |
|------------------------------|
| <b>Request for Amendment</b> |
|------------------------------|

The real solution, and the only correct solution, is to have an independent **Ombudsman's Office specifically for Condominium Associations and HOA's**, and our legislators have chosen to once again not listen to the public. I respectfully ask again that you please amend SB2726 SD2 HD1, to ensure that any report from the LRB is completed by November 1<sup>st</sup>, 2024, so the public and our legislators have time to prepare much needed draft legislation in 2025. We cannot wait two more years for a report that the Task Force should have prepared via Act 189.

Mahalo,

Gregory Misakian

**SB-2726-HD-1**

Submitted on: 4/2/2024 1:08:37 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Miri Yi             | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha Honorable Legislators and Committee Members,

Thank you for the opportunity to submit testimony in **strong support** of this bill.

We need further actions in mitigating the absolutely egregious, unlawful and horrendous behaviors/actions by AOAOs, property management companies, contractors, vendors, parliamentarians, site managers, and others, against condominium owners.

Please pass this bill, and any other bills that would provide support and direly needed assistance to condominium owners. We need help now.

Thank you very much.

Very Sincerely,  
Miri Yi

**SB-2726-HD-1**

Submitted on: 4/2/2024 2:38:20 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Barbara J. Service  | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha Chair Yamashita, Vice Chair Kitagawa and committee

For years, condo owners (including me) have tried to get some relief through the legislative process. In this case, although I believe some of the points in SB2726 have been explored already, it is VERY important to keep condominium issues on our legislature's plate.

Thank you for opportunity to provide testimony.

Barbara J. Service MSW

Child Welfare Services (ret.)

Kupuna Advocate

**SB-2726-HD-1**

Submitted on: 4/2/2024 5:42:08 PM

Testimony for FIN on 4/3/2024 2:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| B.A. McClintock     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Please support this important bill. Mahalo.