

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2025

Honorable Scot Z. Matayoshi
Honorable Cory M. Chun
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 70 SUPPORT**

Dear Chair Matayoshi, Vice Chair Chun and Committee Members:

CAI supports HB 70. HB 70 will protect consumers by excluding the defense of good faith for an association if its board adopts a budget that omits the required detailed budget summary. HB 70 also clarifies standing requirements and the burden of proving compliance.

CAI requests that the Committee consider an amendment to Hawaii Revised Statutes §514B-148(a) as well. CAI proposes the addition of a sentence after §514B-148(a)(8), to read:

The summary shall contain all required information, without referring the reader to other portions of the budget.

CAI requests that the Committee pass HB 70 with or without the suggested amendment.

CAI Legislative Action Committee, by



Its Chair

HAWAII FIRST REALTY LLC
4162 Kaimanahila Street
Honolulu, HI 96816
808-282-8051
richard.hawaiiirstrealty@gmail.com

January 29, 2025

Honorable Scot Z. Matayoshi
Honorable Cory M. Chun
Committee on Consumer Protection
415 South Beretania Street
Honolulu, HI 96813

HB70 Support with Amendment

Dear Committee,

My name is Richard Emery and a thirty-year condominium industry veteran. I am a CAI Reserve Specialist (RS), reviewed or performed hundreds of Hawaii condominium reserve studies, participated on CAI's national task force for reserve study public policy, and currently serve as an expert in numerous disputes or litigation related to condominium budget and reserve studies.

Let's remember that the national definition is of a reserve study – A budgeting tool not based on any professional review. It is simply a planning document to give an association a best chance to accumulate reserve funds as building components come due and need repair or replacement. The underlying data can change every year as components age.

I would be the first to admit that I have seen poor work product by some associations recognizing on the other hand many do a stellar job. That being said, a properly prepared reserve study is invaluable to an association. A reserve study can be hundreds of pages in length that the untrained eye will not understand its implications.

As the condominium industry is broad it becomes difficult to set a mandatory standard. In 2023 the legislature passed Act 199 that was signed into law mandating a budget summary that brings to the forefront the true status of the condominium's reserves. It is my belief that the industry itself will be forced to correct itself if the information is clearly disclosed. Unfortunately some associations look to an easy way to comply and use the summary to vaguely refer back to the original document. Disclosure is important.

The best solution is to force boards and managing agent to comply with the intent of Act 199 by taking away their good faith protection if they do not comply. Further the proposed

Bill needs to be amended to clarify that referral to another source document is not permitted.

I support CAI's recommendation to add a sentence after HRS 514B (a) (8) as follows:

"The summary shall contain all required information, without referring reader to other portions of the budget or reserve study."

I support HB 70.

Richard Emery, RS-8
Principal Broker

HB-70

Submitted on: 1/29/2025 1:16:30 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jon McKenna	Hawaiiana Management Company, Ltd.	Support	Written Testimony Only

Comments:

Support consistent with testimony submitted by CAI Legislative Action Committee Chair Nerney.

HB-70

Submitted on: 1/29/2025 1:42:56 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Comments	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I am providing comments on H.B. No. 70. I support the intent of H.B. No. 70 but am suggesting changes.

First, I oppose the proposed sentence in Section 2, subsection 1 of the measure (amending subsection (d)): “The defense of good faith shall be unavailable to an association whenever its board adopts a budget that omits the summary required by subsection (a).” This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with all of the requirements Section 514B-148(a). Section 514B-148(a) provides a comprehensive list of requirements for the summary:

§514B-148 Association fiscal matters; budgets and replacement reserves. (a) The budget required under section 514B-144(a) shall include a summary with at least the following details:

- (1) The estimated revenues and operating expenses of the association;
- (2) Disclosure as to whether the budget has been prepared on a cash or accrual basis;
- (3) The estimated costs of fire safety equipment or installations that meet the requirements of a life safety evaluation required by the applicable county for any building located in a county with a population greater than five hundred thousand; provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation;
- (4) The balance of the total replacement reserves fund of the association as of the date of the budget;

(5) The estimated replacement reserves assessments that the association will require to maintain the property based on a reserve study performed by or on behalf of the association; provided that the reserve study, if not prepared by an independent reserve study preparer, shall be reviewed by an independent reserve study preparer not less than every three years; provided further that a managing agent with industry reserve study designations shall not be considered as having a conflict of interest for purposes of this paragraph;

(6) A general explanation of how the estimated replacement reserves assessments are computed and detailing:

(A) The identity, qualifications, and potential conflicts of interest of the person or entity performing the reserve study, update, or any review thereof;

(B) Disclosure of any component of association property omitted from the reserve study and the basis for the omission;

(C) Planned increases in the estimated replacement reserve assessments over the thirty-year plan; and

(D) Whether the actual estimated replacement reserves assessments for the prior year as defined in the study was less than the assessments provided for in the reserve study, and, if so, by how much, and explaining the impact of the lesser assessments on future estimated replacement reserves assessments;

(7) The amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments; and

(8) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves assessments amount determined by the reserve study pursuant to paragraph (5).

Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

To avoid potential problems and litigation, the second sentence of subsection (d) should read: “The defense of good faith shall be unavailable to an association whenever its board adopts a budget that completely omits the summary required by subsection (a).”

Second, I oppose the proposed second sentence in Section 2, subsection 2 of the measure (amending subsection (g)): “The association shall have the burden of proving substantial compliance with this section in any such action.” This sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Mark McKellar

HB-70

Submitted on: 1/28/2025 4:46:51 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

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

Comments:

I support this bill.

HB-70

Submitted on: 1/29/2025 12:25:18 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elaine Panlilio	Individual	Support	Written Testimony Only

Comments:

I support HB 70.

HB-70

Submitted on: 1/29/2025 12:29:42 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

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

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Anne Anderson

HB-70

Submitted on: 1/29/2025 12:33:35 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Julie Wassel	Individual	Comments	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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Respectfully submitted,

Julie Wassel

HB-70

Submitted on: 1/29/2025 12:37:09 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

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

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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Respectfully submitted,
Paul A. Ireland Koftinow

HB-70

Submitted on: 1/29/2025 12:38:47 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

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

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Lance S. Fujisaki

HB-70

Submitted on: 1/29/2025 12:39:12 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

support

HB-70

Submitted on: 1/29/2025 12:55:45 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Comments	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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Respectfully submitted,
Joe Taylor

HB-70

Submitted on: 1/29/2025 1:07:16 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Primrose	Individual	Comments	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I am providing comments on H.B. No. 70. I support the intent of H.B. No. 70 but am suggesting changes.

First, I oppose the proposed sentence in Section 2, subsection 1 of the measure (amending subsection (d)): “The defense of good faith shall be unavailable to an association whenever its board adopts a budget that omits the summary required by subsection (a).” This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with all of the requirements Section 514B-148(a). Section 514B-148(a) provides a comprehensive list of requirements for the summary:

§514B-148 Association fiscal matters; budgets and replacement reserves. (a) The budget required under section 514B-144(a) shall include a summary with at least the following details:

- (1) The estimated revenues and operating expenses of the association;
- (2) Disclosure as to whether the budget has been prepared on a cash or accrual basis;
- (3) The estimated costs of fire safety equipment or installations that meet the requirements of a life safety evaluation required by the applicable county for any building located in a county with a population greater than five hundred thousand; provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation;
- (4) The balance of the total replacement reserves fund of the association as of the date of the budget;

(5) The estimated replacement reserves assessments that the association will require to maintain the property based on a reserve study performed by or on behalf of the association; provided that the reserve study, if not prepared by an independent reserve study preparer, shall be reviewed by an independent reserve study preparer not less than every three years; provided further that a managing agent with industry reserve study designations shall not be considered as having a conflict of interest for purposes of this paragraph;

(6) A general explanation of how the estimated replacement reserves assessments are computed and detailing:

(A) The identity, qualifications, and potential conflicts of interest of the person or entity performing the reserve study, update, or any review thereof;

(B) Disclosure of any component of association property omitted from the reserve study and the basis for the omission;

(C) Planned increases in the estimated replacement reserve assessments over the thirty-year plan; and

(D) Whether the actual estimated replacement reserves assessments for the prior year as defined in the study was less than the assessments provided for in the reserve study, and, if so, by how much, and explaining the impact of the lesser assessments on future estimated replacement reserves assessments;

(7) The amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments; and

(8) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves assessments amount determined by the reserve study pursuant to paragraph (5).

Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

To avoid potential problems and litigation, the second sentence of subsection (d) should read: “The defense of good faith shall be unavailable to an association whenever its board adopts a budget that completely omits the summary required by subsection (a).”

Second, I oppose the proposed second sentence in Section 2, subsection 2 of the measure (amending subsection (g)): “The association shall have the burden of proving substantial compliance with this section in any such action.” This sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Primrose K. Leong-Nakamoto

HB-70

Submitted on: 1/29/2025 1:12:28 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Targgart	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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Respectfully submitted,

Michael Targgart

HB-70

Submitted on: 1/29/2025 1:23:36 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Support	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Laurie Sokach AMS, PCAM

Community Association Manager, 27 years

TESTIMONY IN SUPPORT OF HB70

For: The Committee on Consumer Protection & Commerce (CPC)

DATE: Thursday, January 30, 2025

TIME: 2:00 PM

PLACE: VIA VIDEOCONFERENCE

Conference Room 329

State Capitol

415 South Beretania Street

From: Gregory Misakian, as an individual.

Aloha Chair Matayoshi, Vice Chair Chun, and members of the Committee,

My name is Gregory Misakian and I have been advocating for the rights of condominium owners in Hawaii since 2021, when I realized how much misconduct and corruption there is within many condominium associations throughout Hawaii, in addition to misconduct and corruption within numerous large management companies that manage and oversee condominium associations.

As many as 1/3 of the population of Hawaii lives in condominiums, including many legislators and their friends and families. It has been shown with evidence to support, including many news stories and a great deal of testimony, that condominium owners are being subjected to abusive and predatory practices, often at the direction of the condominium association's President and Board, with management company agents and association attorneys being willful participants.

Simply said, no matter how many Acts that are enACTed, many Directors on condominium association boards simply don't care and do whatever they want, which often includes not ACTing like adults, and ACTions that are contrary to the governing documents and State laws. To break it down further for our esteemed

legislators ... they ACT like children, but even this analogy is flawed because children ACTually ACT better.

In another life before Hawaii, I did some ACTing work on an Investigation Discovery show called "I (Almost) Got Away with It." In Hawaii that show would have to be renamed to "I (Almost Always) Got Away with It" when speaking of misconduct and corruption at condominium associations.

While the ACT analogy and pun might seem funny, there is nothing funny about how badly many condominium associations are being managed, and the misconduct and corruption that exists.

While I support HB70 and its intentions, owners still have the burden to go to court for enforcement, which can be very costly. The only real solution to address serious issues within condominium associations and their proper management, is to have enforcement of the laws that you enACT. (And yes, it's hard to let this go once I started the theme).

Please support **HB890** and **SB1265** (companion bill) for an **Ombudsman's Office for Condominium Associations**.

HB890 - RELATING TO CONDOMINIUM ASSOCIATIONS. (Ombudsman)

SB1265 - RELATING TO CONDOMINIUM ASSOCIATIONS. (Ombudsman)

And also:

HB1209 - RELATING TO CONDOMINIUM ASSOCIATIONS. (Attorneys' Fees)

HB1311 - RELATING TO CONDOMINIUM PROXY VOTING.

HB1312 - RELATING TO ASSOCIATION MANAGERS.

HB1313 - RELATING TO BOARD MEMBERS.

HB1315 - RELATING TO PARLIAMENTARIANS.

I respectfully ask that all of these very important and well thought out condominium consumer protection bills be scheduled urgently for hearings.

For those who don't know me, I currently serve as the 1st Vice President of the Kokua Council and was President for most of 2024. The Kokua Council advocates for our kupuna and lesser advantaged. I also serve on the Waikiki Neighborhood Board, where we have advocated for better consumer protections for condominium owners in a resolution adopted in 2023 (also adopted by other Neighborhood Boards).

The people of Hawaii are counting on you to ACT, and I respectfully ask all on the committee and all legislators to please support HB70 and the other bills listed.

Mahalo,

Gregory Misakian

HB-70

Submitted on: 1/29/2025 1:55:20 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Comments	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I OPPOSE H.B. No. 106 for the reasons set forth below.

H.B. No. 106 adds a new provision on fines and appeals from fines. It establishes procedures to be followed by associations and time periods for action. While procedures and time periods serve a good purpose, this provision may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. A provision needs to be added addressing how those conflicts are to be resolved.

The new HRS Section 514B-____(d) provides that a unit owner or tenant aggrieved by the decision of the board on an appeal from a fine may file an appeal in the small claims division of the district court in which the condominium is located. While the small claims court may decide legal issues related to fines, it is not a function of the small claims court to preside over appeals of fines.

1. bill provides that if a fine is not enforceable or collectible, the association may not charge the owner or tenant for any attorneys' fees incurred by the association related to the fine. This is vague and ambiguous and may be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside for technical reasons. Furthermore, a board may be less

inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

The proposed changes to HRS Section 514B-146 are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification. For example, the new subsection (g) states that if any amount paid by a unit owner is found to be unsubstantiated, the unit owner shall be entitled to a refund. However, it is not clear who makes the determination that an amount paid is "unsubstantiated." Presumably, this determination should be made by a court of competent jurisdiction and if so, this should be stated. It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by the association because it is conceivable that the association will need to record a lien during that time period to preserve the priority of its lien.

Finally, HRS Section 514B-146 requires owners to pay common expense assessments before disputing those amounts, but allows owners to dispute all other assessments prior to payment. This can place significant financial burdens on associations where the amounts at issue have been paid by the Association to third parties, such as payment of submetered utilities. The right to dispute charges prior to payment should be limited to charges for which the association has not advance funds, such as fines, late fees, or interest.

For the foregoing reasons, I respectfully OPPOSE H.B. No. 106 and urge your Committee to defer this measure. Alternatively, if it is to be passed by the Committee, I urge the Committee to amend the bill to address the issues discussed above.

Respectfully submitted,

Carol Walker

LATE

HB-70

Submitted on: 1/29/2025 9:53:42 PM

Testimony for CPC on 1/30/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Walker	Individual	Support	Written Testimony Only

Comments:

I support this bill.