

JAN 28 2009

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that many condominium  
2 owners, especially those that are retired and on fixed incomes,  
3 are struggling with increases in their monthly maintenance fees.  
4 One source of these constant increases appears to be the  
5 estimated replacement reserves that are required to maintain the  
6 property based on a reserve study performed by the unit owners  
7 association.

8           The purpose of this Act is to require, at the request of at  
9 least ten per cent of the owners of a condominium or condominium  
10 property regime, an independent audit of any replacement reserve  
11 study prepared by a board of directors in the preparation of its  
12 annual budget.

13           SECTION 2. Section 514A-83.6, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "**§514A-83.6 Associations of apartment owners; budgets and**  
16 **reserves.** (a) The board of directors of each association of  
17 apartment owners shall prepare and adopt an annual operating



1 budget and distribute it to the apartment owners. At a minimum,  
2 the budget shall include the following:

- 3 (1) The estimated revenues and operating expenses of the  
4 association;
- 5 (2) Information as to whether the budget has been prepared  
6 on a cash or accrual basis;
- 7 (3) The total replacement reserves of the association as  
8 of the date of the budget;
- 9 (4) The estimated replacement reserves the association  
10 will require to maintain the property based on a  
11 reserve study performed by the association[+] along  
12 with a copy of the reserve study;
- 13 (5) A general explanation of how the estimated replacement  
14 reserves are computed;
- 15 (6) The amount the association must collect for the fiscal  
16 year to fund the estimated replacement reserves; and
- 17 (7) Information as to whether the amount the association  
18 must collect for the fiscal year to fund the estimated  
19 replacement reserves was calculated using a per cent  
20 funded or cash flow plan. The method or plan shall  
21 not circumvent the estimated replacement reserves



1 amount determined by the reserve study pursuant to  
2 paragraph (4).

3 (b) The association shall assess the apartment owners to  
4 either fund a minimum of fifty per cent of the estimated  
5 replacement reserves or fund one hundred per cent of the estimated  
6 replacement reserves when using a cash flow plan; provided that a  
7 new association created after January 1, 1993, need not collect  
8 estimated replacement reserves until the fiscal year ~~[which]~~ that  
9 begins after the association's first annual meeting. For each  
10 fiscal year, the association shall collect the amount assessed to  
11 fund the estimated replacement for that fiscal year reserves, as  
12 determined by the association's plan, except:

13 (1) The commission shall adopt rules to permit an existing  
14 association to fund its estimated replacement reserves  
15 in increments after January 1, 1993, and prior to  
16 January 1, 2000; and

17 (2) The commission shall adopt rules to permit an  
18 association to fund in increments, over three years,  
19 estimated replacement reserves that have been  
20 substantially depleted by an emergency.

21 (c) The association shall compute the estimated replacement  
22 reserves by a formula ~~[which]~~ that is based on the estimated life



1 and the estimated capital expenditure or major maintenance  
2 required for each part of the property. The estimated replacement  
3 reserves shall include:

4 (1) Adjustments for revenues [~~which~~] that will be received  
5 and expenditures [~~which~~] that will be made before the  
6 beginning of the fiscal year to which the budget  
7 relates; and

8 (2) Separate, designated reserves for each part of the  
9 property for which capital expenditures or major  
10 maintenance will exceed \$10,000. Parts of the  
11 property for which capital expenditures or major  
12 maintenance will not exceed \$10,000 may be aggregated  
13 in a single designated reserve.

14 (d) No association or apartment owner, director, officer,  
15 managing agent, or employee of an association who makes a good  
16 faith effort to calculate the estimated replacement reserves for  
17 an association shall be liable if the estimate subsequently proves  
18 incorrect.

19 (e) At the request of at least ten per cent of the apartment  
20 owners of an association of apartment owners, the board of  
21 directors shall engage an independent consultant to perform an  
22 audit of any reserve study incorporated into any annual budget.



1 If the audit discloses that there is a surplus or a projected  
2 surplus in the replacement reserve, the audit shall contain  
3 recommendations to equitably either refund to each apartment owner  
4 a pro rata share of the surplus or reduce future maintenance fees  
5 to reflect a gradual reduction of the surplus over a period of one  
6 year.

7       ~~[(e)]~~ (f) The commission may request a copy of the annual  
8 operating budget of the association of apartment owners as part of  
9 the association's registration with the commission under section  
10 514A-95.1.

11       ~~[(f)]~~ (g) A board may not exceed its total adopted annual  
12 operating budget by more than twenty per cent during the fiscal  
13 year to which the budget relates, except in emergency situations.  
14 Prior to the imposition or collection of an assessment under this  
15 paragraph, the board shall pass a resolution containing written  
16 findings as to the necessity of the extraordinary expense involved  
17 and why the expense was not or could not have been reasonably  
18 foreseen in the budgeting process, and the resolution shall be  
19 distributed to the members with the notice of assessment.

20       ~~[(g)]~~ (h) The requirements of this section shall override  
21 any requirements in an association's declaration, bylaws, or any  
22 other association documents relating to preparation of budgets,



1 calculation of reserve requirements, assessment and funding of  
2 reserves, with the exception of:

3 (1) Any provisions relating to the repair and maintenance  
4 of property;

5 (2) Any requirements in an association's declaration,  
6 bylaws, or any other association documents [~~which~~]  
7 that require the association to collect more than  
8 fifty per cent of reserve requirements; or

9 (3) Any provisions relating to upgrading the common  
10 elements, such as additions, improvements, and  
11 alterations to the common elements.

12 [~~(h)~~] (i) Subject to the procedures of section 514A-94 and  
13 any rules adopted by the commission, any apartment owner whose  
14 association board fails to comply with this section may enforce  
15 compliance by the board. In any proceeding to enforce compliance,  
16 a board [~~which~~] that has not prepared an annual operating budget  
17 and reserve study shall have the burden of proving it has complied  
18 with this section.

19 [~~(i)~~] (j) The commission may adopt rules to implement this  
20 section.

21 [~~(j)~~] (k) As used in this section:



1 "Capital expenditure" means an expense that results from the  
2 purchase or replacement of an asset whose life is greater than one  
3 year, or the addition of an asset that extends the life of an  
4 existing asset for a period greater than one year.

5 "Cash flow plan" means a minimum twenty-year projection of an  
6 association's future income and expense requirements to fund fully  
7 its replacement reserves requirements each year during that  
8 twenty-year period, except in an emergency; provided that it shall  
9 not include a projection of special assessments or loans during  
10 that twenty-year period, except in an emergency.

11 "Emergency situation" means any extraordinary expenses:

- 12 (1) Required by an order of a court;
- 13 (2) Necessary to repair or maintain any part of the  
14 property for which the association is responsible  
15 where a threat to personal safety on the property is  
16 discovered;
- 17 (3) Necessary to repair any part of the property for which  
18 the association is responsible that could not have  
19 been reasonably foreseen by the board in preparing and  
20 distributing the annual operating budget;
- 21 (4) Necessary to respond to any legal or administrative  
22 proceeding brought against the association that could



1 not have been reasonably foreseen by the board in  
2 preparing and distributing the annual operating  
3 budget; or

4 (5) Necessary for the association to obtain adequate  
5 insurance for the property [~~which~~] that the  
6 association must insure.

7 "Major maintenance" means an expenditure for maintenance or  
8 repair that will result in extending the life of an asset for a  
9 period greater than one year.

10 "Replacement reserves" means funds for the upkeep, repair, or  
11 replacement of those parts of the property, including but not  
12 limited to roofs, walls, decks, paving, and equipment, that the  
13 association is obligated to maintain."

14 SECTION 3. Section 514B-148, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[+] §514B-148 [+] Association fiscal matters; budgets and  
17 reserves. (a) The budget required under section 514B-144(a)  
18 shall include at least the following:

19 (1) The estimated revenues and operating expenses of the  
20 association;

21 (2) Information as to whether the budget has been prepared  
22 on a cash or accrual basis;





- 1           (3) The total replacement reserves of the association as  
2           of the date of the budget;
- 3           (4) The estimated replacement reserves the association  
4           will require to maintain the property based on a  
5           reserve study performed by the association[+], along  
6           with a copy of the reserve study;
- 7           (5) A general explanation of how the estimated replacement  
8           reserves are computed;
- 9           (6) The amount the association must collect for the fiscal  
10          year to fund the estimated replacement reserves; and
- 11          (7) Information as to whether the amount the association  
12          must collect for the fiscal year to fund the estimated  
13          replacement reserves was calculated using a per cent  
14          funded or cash flow plan. The method or plan shall  
15          not circumvent the estimated replacement reserves  
16          amount determined by the reserve study pursuant to  
17          paragraph (4).
- 18          (b) The association shall assess the unit owners to either  
19          fund a minimum of fifty per cent of the estimated replacement  
20          reserves or fund one hundred per cent of the estimated  
21          replacement reserves when using a cash flow plan; provided that  
22          a new association need not collect estimated replacement



1 reserves until the fiscal year [~~which~~] that begins after the  
2 association's first annual meeting. For each fiscal year, the  
3 association shall collect the amount assessed to fund the  
4 estimated replacement for that fiscal year reserves, as  
5 determined by the association's plan.

6 (c) The association shall compute the estimated  
7 replacement reserves by a formula that is based on the estimated  
8 life and the estimated capital expenditure or major maintenance  
9 required for each part of the property. The estimated  
10 replacement reserves shall include:

11 (1) Adjustments for revenues [~~which~~] that will be received  
12 and expenditures [~~which~~] that will be made before the  
13 beginning of the fiscal year to which the budget  
14 relates; and

15 (2) Separate, designated reserves for each part of the  
16 property for which capital expenditures or major  
17 maintenance will exceed \$10,000. Parts of the  
18 property for which capital expenditures or major  
19 maintenance will not exceed \$10,000 may be aggregated  
20 in a single designated reserve.

21 (d) No association or unit owner, director, officer,  
22 managing agent, or employee of an association who makes a good



1 faith effort to calculate the estimated replacement reserves for  
2 an association shall be liable if the estimate subsequently  
3 proves incorrect.

4 (e) At the request of at least ten per cent of the unit  
5 owners in an association, the board of directors shall engage an  
6 independent consultant to perform an audit of any reserve study  
7 incorporated into any annual budget. If the audit discloses  
8 that there is a surplus or a projected surplus in the  
9 replacement reserve, the audit shall contain recommendations to  
10 equitably either refund to each unit owner a pro rata share of  
11 the surplus or reduce future maintenance fees to reflect a  
12 gradual reduction of the surplus over a period of one year.

13 ~~[-(e)]~~ (f) Except in emergency situations or with the  
14 approval of a majority of the unit owners, a board may not  
15 exceed its total adopted annual operating budget by more than  
16 twenty per cent during the fiscal year to which the budget  
17 relates. Before imposing or collecting an assessment under this  
18 subsection that has not been approved by a majority of the unit  
19 owners, the board shall adopt a resolution containing written  
20 findings as to the necessity of the extraordinary expense  
21 involved and why the expense was not or could not have been  
22 reasonably foreseen in the budgeting process, and the resolution



1 shall be distributed to the members with the notice of  
2 assessment.

3 ~~[(f)]~~ (g) The requirements of this section shall override  
4 any requirements in an association's declaration, bylaws, or any  
5 other association documents relating to preparation of budgets,  
6 calculation of reserve requirements, assessment and funding of  
7 reserves, and expenditures from reserves with the exception of:

8 (1) Any requirements in an association's declaration,  
9 bylaws, or any other association documents which  
10 require the association to collect more than fifty per  
11 cent of reserve requirements; or

12 (2) Any provisions relating to upgrading the common  
13 elements, such as additions, improvements, and  
14 alterations to the common elements.

15 ~~[(g)]~~ (h) Subject to the procedures of section 514B-157  
16 and any rules adopted by the commission, any unit owner whose  
17 association board fails to comply with this section may enforce  
18 compliance by the board. In any proceeding to enforce  
19 compliance, a board that has not prepared an annual operating  
20 budget and reserve study shall have the burden of proving it has  
21 complied with this section.

22 ~~[(h)]~~ (i) As used in this section:



1 "Capital expenditure" means an expense that results from  
2 the purchase or replacement of an asset whose life is greater  
3 than one year, or the addition of an asset that extends the life  
4 of an existing asset for a period greater than one year.

5 "Cash flow plan" means a minimum twenty-year projection of  
6 an association's future income and expense requirements to fund  
7 fully its replacement reserves requirements each year during  
8 that twenty-year period, except in an emergency; provided that  
9 it does not include a projection of special assessments or loans  
10 during that twenty-year period, except in an emergency.

11 "Emergency situation" means any extraordinary expenses:

- 12 (1) Required by an order of a court;
- 13 (2) Necessary to repair or maintain any part of the  
14 property for which the association is responsible  
15 where a threat to personal safety on the property is  
16 discovered;
- 17 (3) Necessary to repair any part of the property for which  
18 the association is responsible that could not have  
19 been reasonably foreseen by the board in preparing and  
20 distributing the annual operating budget;
- 21 (4) Necessary to respond to any legal or administrative  
22 proceeding brought against the association that could



1 not have been reasonably foreseen by the board in  
2 preparing and distributing the annual operating  
3 budget; or

4 (5) Necessary for the association to obtain adequate  
5 insurance for the property [~~which~~] that the  
6 association must insure.

7 "Major maintenance" means an expenditure for maintenance or  
8 repair that will result in extending the life of an asset for a  
9 period greater than one year.

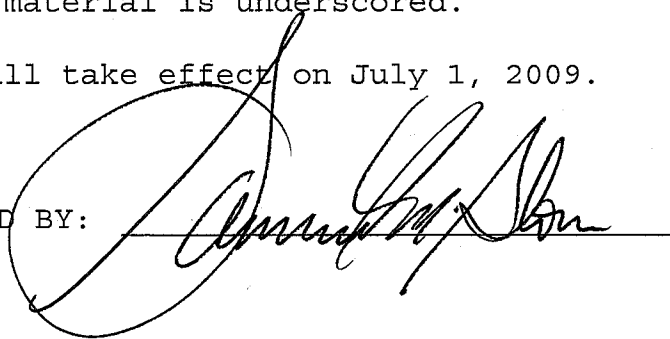
10 "Replacement reserves" means funds for the upkeep, repair,  
11 or replacement of those parts of the property, including but not  
12 limited to roofs, walls, decks, paving, and equipment, that the  
13 association is obligated to maintain."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2009.

17

INTRODUCED BY:



**Report Title:**

Condominiums; Replacement Reserve Study

**Description:**

Upon request of 10% or more owners, requires board of directors of associations of apartment owners to have independent audit of replacement reserve study and if audit reveals a surplus or future surplus, requires Board to either refund surplus pro rata or reduce future maintenance fee to reflect reduction in the surplus.

