

JAN 23 2009

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Section 514A-83.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§514A-83.6 Associations of apartment owners; budgets and**
4 **reserves.** (a) The board of directors of each association of
5 apartment owners shall prepare and adopt an annual operating
6 budget and distribute it to the apartment owners. At a minimum,
7 the budget shall include the following:

8 (1) The estimated revenues and operating expenses of the
9 association;

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

12 (3) The total replacement reserves of the association as
13 of the date of the budget;

14 (4) The estimated replacement reserves the association
15 will require to maintain the property based on a
16 reserve study performed by the association;



- 1 (5) A general explanation of how the estimated replacement
2 reserves are computed;
- 3 (6) The amount the association must collect for the fiscal
4 year to fund the estimated replacement reserves; and
- 5 (7) Information as to whether the amount the association
6 must collect for the fiscal year to fund the estimated
7 replacement reserves was calculated using a per cent
8 funded or cash flow plan. The method or plan shall
9 not circumvent the estimated replacement reserves
10 amount determined by the reserve study pursuant to
11 paragraph (4).

12 (b) The association shall assess the apartment owners to
13 either fund a minimum of fifty per cent of the estimated
14 replacement reserves or fund one hundred per cent of the estimated
15 replacement reserves when using a cash flow plan; provided that a
16 new association created after January 1, 1993, need not collect
17 estimated replacement reserves until the fiscal year which begins
18 after the association's first annual meeting. For each fiscal
19 year, the association shall collect the amount assessed to fund
20 the estimated replacement for that fiscal year reserves, as
21 determined by the association's plan, except:



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

5 (2) The commission shall adopt rules to permit an
6 association to fund in increments, over three years,
7 estimated replacement reserves that have been
8 substantially depleted by an emergency.

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

14 (1) Adjustments for revenues which will be received and
15 expenditures which will be made before the beginning
16 of the fiscal year to which the budget relates; and

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



1 (d) No association or apartment owner, director, officer,
2 managing agent, or employee of an association who makes a good
3 faith effort to calculate the estimated replacement reserves for
4 an association shall be liable if the estimate subsequently proves
5 incorrect.

6 (e) The association may expend replacement reserves to
7 purchase, install, and operate equipment or improve or add to the
8 property under its control for emergency preparedness purposes.

9 [~~e~~] (f) The commission may request a copy of the annual
10 operating budget of the association of apartment owners as part of
11 the association's registration with the commission under section
12 514A-95.1.

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



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

- 6 (1) Any provisions relating to the repair and maintenance
7 of property;
- 8 (2) 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 (3) Any provisions relating to upgrading the common
13 elements, such as additions, improvements, and
14 alterations to the common elements.

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



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

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

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

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

14 "Emergency preparedness" means steps taken or improvements or
15 additions made to the property for the purpose of preparing in
16 advance to respond to a natural or man-made situation that affects
17 the normal operation of the property or the safety and security of
18 the residents. Emergency preparedness includes, but is not
19 limited to, physical alterations of the property to mitigate
20 damage or inconvenience due to adverse weather events, purchase
21 and installation of electrical generators, purchase and
22 installation of property-wide warning systems, purchase and



1 installation of communications systems, and training of residents
2 to respond to situations that threaten the safety and security of
3 the residents and property.

4 "Emergency situation" means any extraordinary expenses:

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



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

4 "Replacement reserves" means funds for the upkeep, repair, or
5 replacement of those parts of the property, including but not
6 limited to roofs, walls, decks, paving, and equipment, that the
7 association is obligated to maintain[-] and funds for emergency
8 preparedness purposes."

9 SECTION 2. Section 514B-148, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]§514B-148[+]~~ **Association fiscal matters; budgets and**
12 **reserves.** (a) The budget required under section 514B-144(a)
13 shall include at least the following:

- 14 (1) The estimated revenues and operating expenses of the
15 association;
- 16 (2) Information as to whether the budget has been prepared
17 on a cash or accrual basis;
- 18 (3) The total replacement reserves of the association as
19 of the date of the budget;
- 20 (4) The estimated replacement reserves the association
21 will require to maintain the property based on a
22 reserve study performed by the association;



1 (5) A general explanation of how the estimated replacement
2 reserves are computed;

3 (6) The amount the association must collect for the fiscal
4 year to fund the estimated replacement reserves; and

5 (7) Information as to whether the amount the association
6 must collect for the fiscal year to fund the estimated
7 replacement reserves was calculated using a per cent
8 funded or cash flow plan. The method or plan shall
9 not circumvent the estimated replacement reserves
10 amount determined by the reserve study pursuant to
11 paragraph (4).

12 (b) The association shall assess the unit owners to either
13 fund a minimum of fifty per cent of the estimated replacement
14 reserves or fund one hundred per cent of the estimated
15 replacement reserves when using a cash flow plan; provided that
16 a new association need not collect estimated replacement
17 reserves until the fiscal year which begins after the
18 association's first annual meeting. For each fiscal year, the
19 association shall collect the amount assessed to fund the
20 estimated replacement for that fiscal year reserves, as
21 determined by the association's plan.



1 (c) The association shall compute the estimated
2 replacement reserves by a formula that is based on the estimated
3 life and the estimated capital expenditure or major maintenance
4 required for each part of the property. The estimated
5 replacement reserves shall include:

6 (1) Adjustments for revenues which will be received and
7 expenditures which will be made before the beginning
8 of the fiscal year to which the budget relates; and

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

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

20 (e) The association may expend replacement reserves to
21 purchase, install, and operate equipment or improve or add to



1 the property under its control for emergency preparedness
2 purposes.
3 [~~e~~] (f) Except in emergency situations or with the
4 approval of a majority of the unit owners, a board may not
5 exceed its total adopted annual operating budget by more than
6 twenty per cent during the fiscal year to which the budget
7 relates. Before imposing or collecting an assessment under this
8 subsection that has not been approved by a majority of the unit
9 owners, the board shall adopt a resolution containing written
10 findings as to the necessity of the extraordinary expense
11 involved and why the expense was not or could not have been
12 reasonably foreseen in the budgeting process, and the resolution
13 shall be distributed to the members with the notice of
14 assessment.

15 [~~f~~] (g) The requirements of this section shall override
16 any requirements in an association's declaration, bylaws, or any
17 other association documents relating to preparation of budgets,
18 calculation of reserve requirements, assessment and funding of
19 reserves, and expenditures from reserves with the exception of:
20 (1) Any requirements in an association's declaration,
21 bylaws, or any other association documents which



1 require the association to collect more than fifty per
2 cent of reserve requirements; or

3 (2) Any provisions relating to upgrading the common
4 elements, such as additions, improvements, and
5 alterations to the common elements.

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

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

14 "Capital expenditure" means an expense that results from
15 the purchase or replacement of an asset whose life is greater
16 than one year, or the addition of an asset that extends the life
17 of an existing asset for a period greater than one year.

18 "Cash flow plan" means a minimum twenty-year projection of
19 an association's future income and expense requirements to fund
20 fully its replacement reserves requirements each year during
21 that twenty-year period, except in an emergency; provided that



1 it does not include a projection of special assessments or loans
2 during that twenty-year period, except in an emergency.

3 "Emergency preparedness" means steps taken or improvements or
4 additions made to the property for the purpose of preparing in
5 advance to respond to a natural or man-made situation that affects
6 the normal operation of the property or the safety and security of
7 the residents. Emergency preparedness includes, but is not
8 limited to, physical alterations of the property to mitigate
9 damage or inconvenience due to adverse weather events, purchase
10 and installation of electrical generators, purchase and
11 installation of property-wide warning systems, purchase and
12 installation of communications systems, and training of residents
13 to respond to situations that threaten the safety and security of
14 the residents and property.

15 "Emergency situation" means any extraordinary expenses:

- 16 (1) Required by an order of a court;
- 17 (2) Necessary to repair or maintain any part of the
18 property for which the association is responsible
19 where a threat to personal safety on the property is
20 discovered;
- 21 (3) Necessary to repair any part of the property for which
22 the association is responsible that could not have



1 been reasonably foreseen by the board in preparing and
2 distributing the annual operating budget;

3 (4) Necessary to respond to any legal or administrative
4 proceeding brought against the association that could
5 not have been reasonably foreseen by the board in
6 preparing and distributing the annual operating
7 budget; or

8 (5) Necessary for the association to obtain adequate
9 insurance for the property which the association must
10 insure.

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

14 "Replacement reserves" means funds for the upkeep, repair,
15 or replacement of those parts of the property, including but not
16 limited to roofs, walls, decks, paving, and equipment, that the
17 association is obligated to maintain[-] and funds for emergency
18 preparedness purposes."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21



S.B. NO. 193

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Erzanna Chun Oakland

Yves Chou

Carrie Zukerman

David Y. Lee

Will Eyo

Robertson
Mike Hubbard

Jim



Report Title:

Condominium Replacement Reserves; Emergency Preparedness

Description:

Authorizes the use of condominium replacement reserve funds for emergency preparedness purposes.



**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Tuesday, February 24, 2009
8:30 a.m.**

TESTIMONY ON SENATE BILL NO. 193 - RELATING TO CONDOMINIUMS.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is William S. Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. Thank you for the opportunity to present testimony on Senate Bill No. 193, Relating to Condominiums. The Commission supports the intent of Senate Bill No. 193 and provides the following comments.

Senate Bill No. 193 authorizes the use of condominium replacement reserve funds for emergency preparedness purposes, provides for a definition of "emergency preparedness", and specifically provides that an association may expend replacement reserves to purchase, install, and operate equipment or improve or add to the property under its control for "emergency preparedness" purposes.

While the Commission believes in the importance of emergency preparedness, it also believes that the proposed amendment to use replacement reserves for "emergency preparedness" purposes as defined in the bill does not fit squarely within the original intent of the reserve law and the related Commission rules. Reserves include planned and

budgeted savings for the replacement, maintenance, upkeep, and repair of physical components of the condominium project over a twenty year period.

Conference Committee Report No. 23 for House Bill No. 666, H.D. 1, S.D. 1, C.D. 1, Act 132 (Session Laws of Hawaii 1991) stated the purpose and reported the surrounding circumstances for the (reserve) bill ". . . is to improve the financial solvency and planning of apartment owners' associations by requiring these entities to prepare budgets and establish reserves for future expenses. Your Committee finds that the failure to establish adequate reserves can impose considerable hardship on the unit owners in the form of large and unexpected special assessments. In many instances there is no accumulation of reserves for a number of years, and then units are sold leaving the successors with an obligation to pay for the lack of reserves."

Although emergency preparedness is good public policy, the use of reserve funds without limitations for emergency preparedness purposes as defined in Senate Bill No. 193 may significantly impact the many aging condominiums and the amount of reserve funds required to make the necessary planned and budgeted replacements, repairs, upkeep, and past due maintenance.

Thank you for the opportunity to present testimony.



SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION,
REGARDING SENATE BILL 193

Hearing Date : Tuesday, February 24, 2009
Time : 8:30 a.m.
Place : Conference Room 229

Chair Baker and Committee Members,

The Community Associations Institute Hawaii Chapter Legislative Action Committee ("CAI") has concerns about Senate Bill 193. Certainly, the purpose of the bill, allowing associations to prepare for emergencies, is worthwhile. Nevertheless, Hawaii's reserves law requires associations to collect reserves only for expenses they KNOW will eventually be required for the project. In other words, the law does not require an association to collect reserves for things that may happen -- such as hurricanes or power outages -- but things that will happen, such as repairs to the elevator, repaving the parking lot, and repainting the building.

On that basis, if the board spends the reserves required by law on emergency preparedness, that will only undermine the preparedness of the association for big-ticket items that are bound to become due in the future. When that occurs, if the association has spent all this money on emergency preparedness, there will be no money for other expenses and the owners will have to be assessed or take out large loans for the reserve items.

In summary, while the purpose of the bill is worthwhile, the consequences of allowing reserves to be spent on emergency preparedness could be serious for the members of each association.

Thank you for this opportunity to testify.

Very truly yours,

John A. Morris
Hawaii Legislative Action Committee
of the Community Associations Institute

JAM:alt



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

February 21, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF SB 193 RE CONDOMINIUMS
Hearing: Tuesday, Feb. 24, 2009, 8:30 a.m. Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO supports this bill in that it allows condominiums to use their reserves to purchase, install or add to equipment to their property for emergency preparedness purposes.

Thank you for the opportunity to testify.

Jane Sugimura
President