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## A BILL FOR AN ACT

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RELATING TO ASSOCIATION FEES.

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

1       SECTION 1. The legislature finds that section 514B-83,  
2       Hawaii Revised Statutes, requires developers of new condominium  
3       projects to issue a public report so that consumers understand  
4       what they are buying as well as their obligations. With the  
5       increase in the construction and sale of affordable housing  
6       projects, this requirement is increasingly important to protect  
7       consumers from unanticipated costs. The legislature further  
8       finds that there has been a recent trend in which new  
9       developments have implemented significant increase in  
10      maintenance fees -- as much as seventy per cent -- due to the  
11      failure of the developer to include reserve contributions  
12      calculated pursuant to Hawaii administrative rules, title 16,  
13      chapter 107.

14      The legislature additionally finds that it is important  
15      that consumers know what their financial obligations are when  
16      purchasing a home. The changes in this Act provide that the  
17      developer, in addition to estimating maintenance fees using the



1 accrual method of accounting, must also estimate the reserve  
2 contributions based on a reserve study in conformance with the  
3 Hawaii administrative rules. Furthermore, the condominium  
4 industry itself provides for a transitional reserve study, named  
5 Level IV by some trade associations, specifically for new  
6 developments.

7 Moreover, the legislature further finds that nationally, a  
8 cash flow plan for condominiums generally covers a thirty-year  
9 period whereas existing Hawaii law covers only twenty years.  
10 This difference allows reserve study preparers to eliminate  
11 large components in the study for ten years, which reduces  
12 current reserve contributions but ultimately results in large  
13 reserve contribution increases in future years. This Act  
14 changes Hawaii's requirement to thirty years to conform with  
15 national practices. This Act also provides fuller disclosure to  
16 consumers and results in a more accurate and even rate of  
17 reserve contributions.

18 SECTION 2. Section 514B-83, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) A developer's public report shall contain:



- 1           (1) The name and address of the project, and the name,  
2           address, telephone number, and electronic mail  
3           address, if any, of the developer or the developer's  
4           agent;
- 5           (2) A statement of the deadline, pursuant to section  
6           514B-89, for completion of construction or, in the  
7           case of a conversion, for the completion of any  
8           repairs required to comply with section 514B-5, and  
9           the remedies available to the purchaser, including but  
10          not limited to cancellation of the sales contract, if  
11          the completion of construction or repairs does not  
12          occur on or before the completion deadline;
- 13          (3) A breakdown of the annual maintenance fees, which  
14          shall include annual reserve contributions based on a  
15          reserve study, and the monthly estimated cost for each  
16          unit, certified to have been based on generally  
17          accepted accounting principles, and a statement  
18          regarding when a purchaser shall become obligated to  
19          start paying the fees pursuant to section 514B-41(b);
- 20          (4) A description of all warranties for the individual  
21          units and the common elements, including the date of



1 initiation and expiration of any such warranties, or a  
2 statement that no warranties exist;

3 (5) A summary of the permitted uses of the units and, if  
4 applicable, the number of units planned to be devoted  
5 to a particular use;

6 (6) A description of any development rights reserved to  
7 the developer or others;

8 (7) A declaration, subject to the penalties set forth in  
9 section 514B-69(b), that the project is in compliance  
10 with all county zoning and building ordinances and  
11 codes, chapter 205, including section 205-4.6 where  
12 applicable, and all other county permitting  
13 requirements applicable to the project, pursuant to  
14 sections 514B-5 and 514B-32(a)(13); and

15 (8) Any other facts, documents, or information that would  
16 have a material impact on the use or value of a unit  
17 or any appurtenant limited common elements or  
18 amenities of the project available for an owner's use,  
19 or that may be required by the commission."

20 SECTION 3. Section 514B-148, Hawaii Revised Statutes, is  
21 amended by amending subsection (h) to read as follows:



1       "(h) As used in this section:

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

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

13       "Emergency situation" means any extraordinary expenses:

14       (1) Required by an order of a court;

15       (2) Necessary to repair or maintain any part of the  
16 property for which the association is responsible  
17 where a threat to personal safety on the property is  
18 discovered;

19       (3) Necessary to repair any part of the property for which  
20 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."

18       SECTION 4. This Act does not affect rights and duties that  
19       matured, penalties that were incurred, and proceedings that were  
20       begun before its effective date.

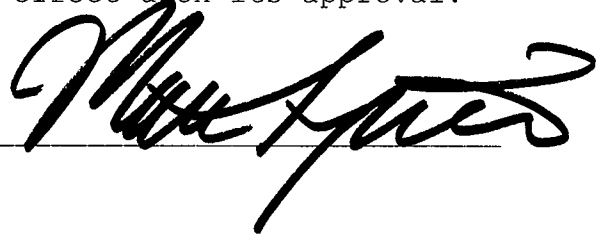


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1       SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 6. This Act shall take effect upon its approval.  
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INTRODUCED BY: \_\_\_\_\_



JAN 25 2022



# H.B. NO. 2282

**Report Title:**

Housing Costs; Condominium Association Fiscal Matters;  
Developer's Public Reports; Cash Flow Plan

**Description:**

Requires the breakdown of the annual maintenance fees in developer's public reports to include annual reserve contributions based on a reserve study. Redefines "cash flow plan" to mean a minimum thirty-year projection of a condominium association's future income and expense requirements to fund fully its replacement reserves requirements each year, except for emergencies.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

