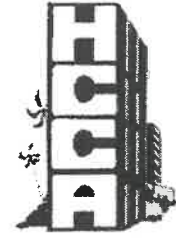


**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 13, 2023

Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice-Chair
Senate Committee on Commerce and Consumer Protection

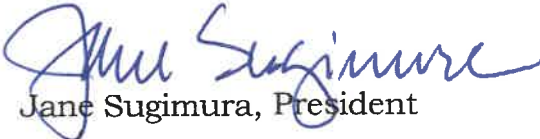
Re: Testimony in Support of
SB 855 RE Condominium Reserve Requirements (w/amendments)
Hearing: Thursday, February 16, 2023, 9:30 a.m., Conf. Rm. #229

Chair Keohokalole, Vice-Chair Fukunaga and Members of the Committee:

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

HCCA strongly supports the intent and purpose of SB 855 and believes that reserve requirements need to be clarified and expanded in order to ensure that high-rise condominium and co-op buildings will continue to remain structurally sound. HCCA agrees with the suggested revisions to this bill proposed by Richard Emery and asks that your committee adopt those revisions in an SD1 for this bill.

Thank you for the opportunity to testify on this matter.


Jane Sugimura, President

TESTIMONY
SB855
In Support with Amendments

February 11, 2023

Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

I support life safety requirements for condominiums. That being said, the proposed language without amendment will create significant problems for associations by immediately forcing major maintenance fee increases to fund life safety equipment. The problem can be mitigated by amendments.

By definition, a Reserve Study is a “budgeting tool”; it is not science. As an example, if a 100-unit project said it would install its sprinkler system in 10-years, reserve study calculations would be mandated by policy as follows:

Assume today’s cost estimate for a 100-unit project is approximately \$4 million (\$40,000/unit) that includes sprinklers in the unit itself, the common areas, and a dedicated pump room move water to the upper floors. So, the Board puts the life safety equipment in the reserve study as proposed. Under Reserve Study rules you would next project the future cost by inflation. At 2% annual inflation, the future installation cost is approximately \$4.8 million in 10 years. Divide \$4.8 million by 10 years, further divide by 12 months, and finally divide by 100 units and the additional amount that must be collected from each owner per month is \$400/unit. That \$400 amount is in addition to the current maintenance fees and reserve contributions. It is simply not realistic.

Obviously, this is not doable, particularly considering all of the other cost increases Hawaii condominiums are now facing. The current City & County Ordinance allows an association to opt out of sprinklers by a vote of the owners. I speculate that associations will rush to opt out of sprinklers for the above projected cost reasons which is exactly opposite of what we want to happen. The vote will set a precedent for the future, “we already voted on that.”

I work with Reserve Studies every day and strongly believe that an association’s annual budget must have full disclosure to its owners. Often important data is lost in large multi-page reports that are not easily understood by an owner’s untrained eye. My preference is to require a clear budget summary page that easily identifies the true status of the budget and reserves.

I suggest the below amendments to SB855 that in essence accomplishes several things:

1. Allows the Reserve Study to forecast a loan or special assessment for life safety equipment only. Current law prohibits a loan or special assessment in the reserve study. This will mathematically balance the sprinkler cost with how to pay for it; thus, mitigating an immediate requirement to raise the maintenance fees. It will clearly identify to Owners the future funding needs without forcing a major maintenance fee increase today.

2. Allows loans for safety and structural repairs without Owners' approval based on defined criteria.
3. Provides clear language on the definition of a reserve study preparer and the qualifications required.
4. Requires Boards to include in its annual budget a separate budget summary that identifies the status of the major issues in the reserve study.

SB855 is an opportunity to address life safety equipment and correct certain current deficiencies in HRS 514B.

s/s Richard Emery, RS-8

PROPOSED AMENDMENTS:

SECTION 1. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. Notwithstanding the foregoing, the board shall be authorized to borrow money solely to pay extraordinary expenses in an emergency situation described in section 514B-148 if an architect or engineer licensed in the state provides a written opinion that a substantial risk to persons or property exists or will imminently exist if the emergency situation is not addressed. The board shall promptly disclose to owners the amount and purpose of the money obtained pursuant to this authority. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

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

1. By amending subsection (a) to read:

"(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) [Information] 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. The reserve study can forecast a loan or special assessment to fund life safety components or installation.

(4) The total replacement reserves fund of the association as of the date of the budget;

(5) The estimated replacement reserves contributions 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[; provided further that the reserve study shall be reviewed or updated at least] not less than every three years. An independent reserve study preparer is defined as any organization, company, or individual with a reserve study certification from an industry organization. A Managing Agent with industry reserve study designations shall not be considered as having a conflict of interest;

(6) A general explanation of how the estimated replacement reserves 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 contributions over the thirty-year plan; and

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

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves[;] contributions; and

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

2. By amending subsection (h) to read:

"(h) As used in this section:

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

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

"Emergency situation" means a situation involving any extraordinary expenses:

(1) Required by an order of a court;

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

(3) Necessary to install fire safety equipment or installations to 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;

(4) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;

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

(6) Necessary for the association to obtain adequate insurance for the property that the association must insure.

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

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

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

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

SB-855

Submitted on: 2/14/2023 9:02:03 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
R Laree McGuire	Individual	Support	In Person

Comments:

Aloha,

I support with the amendments suggested in testimony submitted by David Levy for CAI/LAC Hawaii Chapter.

Respectfully submitted,

Laree McGuire

SB-855

Submitted on: 2/11/2023 6:16:21 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Palehua Townhouse Association supports the intent of SB855.

Mike Golojuch, Sr., President

February 14, 2023

Senator Jarrell Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee Members
Committee on Commerce and Consumer Protection

RE: SB855 - Support with Amendments

Hearing Date: February 16, 2023 at 9:30 a.m., Conference Room 229

Aloha Chair Keohokalole, Vice Chair Fukunaga and Committee
Members:

Thank you for the opportunity to submit testimony. I am a member of the Community Associations Institute (CAI) Legislative Action Committee (LAC) Hawaii Chapter. CAI LAC supports SB855 with amendments.

The CAI LAC recognizes the importance of fire life safety components, and all components for that matter that related to life safety. However, adding the installation of a fire sprinkler system into a reserve study with the current mandated timeframe will create a financial burden on homeowners. I am the owner of Vertical Hawaii Home Inspections and Reserve Studies, LLC and am Vice President of Operations at Touchstone Properties, Ltd. I have been performing reserve studies and been a condominium managing agent in Hawaii for 13 years.

A community association Board of Directors has statutory obligations to create an annual operating budget and at a minimum update the association's reserve study annually. These two documents determine the amount of maintenance fees homeowners must pay to maintain the association property. The associations that are obligated to comply with the current fire life safety regulations were built in the 1960s and 1970s. These buildings are aged, and costly infrastructure components currently need replacement to provide basic life necessities and life safety such as water/sewer, guard railing systems, and window systems. These infrastructure replacements cost associations millions of dollars and as a result have forced community associations to drastically increase maintenance fees.

One of the most common comments I hear from homeowners is that they live on a fixed incomes and cannot afford the increased maintenance fees. According to *The Elderly Population in Hawaii: Current Living*

Circumstances and Housing Options published in December 2021 by the Research and Economic Analysis Division of the Department of Business, Economic Development and Tourism "...nearly 80% of the elderly population in Hawaii do not work anymore and often live on a fixed and reduced income after their retirement." The current reserve law does not allow for future bank loans. Requiring community associations to include the installation of a fire sprinkler system in its reserve study without a future loan option will exacerbate the financial burden on our kupuna.

CAI LAC supports the proposed amendments as submitted by Richard Emery on February 11, 2023. The proposed amendments are provided here:

PROPOSED AMENDMENTS:

SECTION 1. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. Notwithstanding the foregoing, the board shall be authorized to borrow money solely to pay extraordinary expenses in an emergency situation described in section 514B-148 if an architect or engineer licensed in the state provides a written opinion that a substantial risk to persons or property exists or will imminently exist if the emergency situation is not addressed. The board shall promptly disclose to owners the amount and purpose of the money obtained pursuant to this authority. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

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(5) The estimated replacement reserves contributions 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[; provided further that the reserve study shall be reviewed or updated at least] not less than every three years. An independent reserve study preparer is defined as any organization, company, or individual with a reserve study certification from an industry organization. A Managing Agent with industry reserve study designations shall not be considered as having a conflict of interest;

(6) A general explanation of how the estimated replacement reserves 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 contributions over the thirty-year plan; and

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

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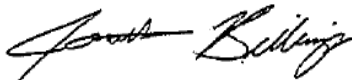
"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain."

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

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

The CAI LAC supports SB855 with the proposed amendments provided above. Thank you for your time and consideration.

Very truly yours,



Jonathan Billings
CAI Hawaii LAC Member

SB-855

Submitted on: 2/15/2023 8:37:57 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
David H Levy	Testifying for Community Associations Institute (CAI)	Support	Written Testimony Only

Comments:

Placing fire safety equipment in the reserve study insures, ultimately, the funding of this important common area element. Consideration needs to be given to the amount of time that an association has to fund this important element while balancing the financial capability of owners to absorb the potentially significant increase in monthly assessments that this will entail. One possible formula might be a maximum of 25% of the current monthly assessment, to be exceeded only if the required funding could not be completed within 10 years - or something similar.

SB-855

Submitted on: 2/10/2023 11:39:25 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

I support this measure.

SB-855

Submitted on: 2/14/2023 9:49:37 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

support

SB-855

Submitted on: 2/15/2023 9:16:38 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nancy Masuda	Individual	Support	Written Testimony Only

Comments:

I strongly support the passage of SB 855.