

ACT 199

S.B. NO. 855

A Bill for an Act Relating to Condominium Reserve Requirements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514B-148, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) through (d) to read:

“§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) ~~[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; provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation;
- ~~[(3)]~~ (4) The balance of the total replacement reserves fund of the association as of the date of the budget;
- ~~[(4)]~~ (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~~[-]; provided further that the reserve study shall be reviewed or updated at least~~ 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;
- ~~[(5)]~~ (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;
- ~~[(6)]~~ (7) The amount the association must collect for the fiscal year to fund the estimated replacement reserves~~[-]~~ assessments; and
- ~~[(7)]~~ (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 ~~[(4)-]~~ (5).
- (b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves assessments or fund one hundred per cent of the estimated replacement reserves assessments when using a cash flow plan; provided that a new association need not collect estimated replacement reserves assessments until the fiscal year ~~[which]~~ that begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement reserves assessments for that fiscal year ~~[reserves]~~, as determined by the association's plan.
- (c) The association shall compute the estimated replacement reserves assessments by a formula that is based on the estimated life and the estimated

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

- (1) Adjustments for revenues ~~[which]~~ that will be received and expenditures ~~[which]~~ that will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.
- (d) No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves assessments for an association shall be liable if the estimate subsequently proves incorrect.”

2. By amending subsection (f) to read:

“(f) The requirements of this section shall override any requirements in an association’s declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of replacement reserve requirements, assessment and funding of replacement reserves, and expenditures from replacement reserves with the exception of:

- (1) Any requirements in an association’s declaration, bylaws, or any other association documents ~~[which]~~ that require the association to collect more than fifty per cent of replacement reserve requirements; or
- (2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.”

3. 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 an emergency.

“Emergency situation” means 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 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;
- (4) 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
- (5) Necessary for the association to obtain adequate insurance for the property that the association must insure.

“Independent reserve study preparer” means any organization, company, or individual with a reserve study certification from an industry organization.

“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 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 2023.)