

JAN 22 2021

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 the coronavirus
2 disease 2019 (COVID-19) pandemic has made it a challenge for
3 condominium associations to conduct their required annual
4 meetings. Additionally, as a result of the economic hardships
5 facing many in the State, condominium associations may have used
6 up their replacement reserves for operating expenses due to the
7 challenge in collecting assessments. Accordingly, the purpose
8 of this Act is to:

9 (1) Repeal the provision within section 514B-121, Hawaii
10 Revised Statutes, relating to electronic voting
11 devices;

12 (2) Specify that, condominium association meetings may be
13 conducted by means of Internet, teleconference, or
14 other electronic transmission technology;

15 (3) Establish that, except as otherwise specifically
16 provided by the declaration or bylaws, any action that
17 may be taken at any annual, regular, or special



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1 meeting of members may be taken without a meeting by
2 approval by ballot; and

3 (4) Authorize boards to, in the event of an emergency that
4 adversely impacts the association's revenue, without
5 notice or approval of unit owners, use the
6 association's replacement reserves or borrow money for
7 operating expenses, and may grant the lender the right
8 to assess and collect monthly or special assessments
9 from the unit owners, and to enforce the payment of
10 assessments or other sums by statutory lien and
11 foreclosure proceedings.

12 SECTION 2. Section 514B-106, Hawaii Revised Statutes, is
13 amended by amending subsection (f) to read as follows:

14 "(f) At any regular or special meeting of the association,
15 any member of the board may be removed and successors shall be
16 elected for the remainder of the term to fill the vacancies thus
17 created. The removal and replacement shall be by a vote of a
18 majority of the unit owners and, otherwise, in accordance with
19 all applicable requirements and procedures in the bylaws for the
20 removal and replacement of directors and, if removal and



1 replacement is to occur at a special meeting, section
2 ~~[514B-121(e)]~~ 514B-121(b)."

3 SECTION 3. Section 514B-110, Hawaii Revised Statutes, is
4 amended by amending subsection (e) to read as follows:

5 "(e) Election of the new board in accordance with an
6 amendment adopted pursuant to this section shall be held at the
7 next regular meeting of the association or at a meeting called
8 in accordance with section ~~[514B-121(e)]~~ 514B-121(b) for this
9 purpose."

10 SECTION 4. Section 514B-121, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§514B-121 Association meetings.** (a) A meeting of the
13 association shall be held at least once each year.

14 ~~[(b) Notwithstanding any other provision of this chapter~~
15 ~~or the declaration or bylaws of a condominium to the contrary,~~
16 ~~at any association meeting the board may direct the use of an~~
17 ~~electronic voting device regardless of whether a secret ballot~~
18 ~~is used or required. Such use shall be subject to the~~
19 ~~following:~~



- ~~(1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet;~~
- ~~(2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:~~
- ~~(A) The reference number of the electronic voting device;~~
 - ~~(B) Each common interest voted; and~~
 - ~~(C) The vote that was tabulated;~~
- ~~(3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and~~
- ~~(4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting device.~~



1 ~~(e)~~] (b) Special meetings of the association may be called
2 by the president, a majority of the board, or by a petition to
3 the secretary or managing agent signed by not less than twenty-
4 five per cent of the unit owners as shown in the association's
5 record of ownership; provided that if the secretary or managing
6 agent fails to send out the notices for the special meeting
7 within fourteen days of receipt of the petition, the petitioners
8 shall have the authority to set the time, date, and place for
9 the special meeting and to send out the notices and proxies for
10 the special meeting at the association's expense in accordance
11 with the requirements of the bylaws and of this part; provided
12 further that a special meeting based upon a petition to the
13 secretary or managing agent shall be set no later than sixty
14 days from receipt of the petition.

15 ~~[(d)]~~ (c) Not less than fourteen days in advance of any
16 meeting, the secretary or other officer specified in the bylaws
17 shall cause notice to be:

18 (1) Hand-delivered;

19 (2) Sent prepaid by United States mail to the mailing
20 address of each unit or to any other mailing address
21 designated in writing by the unit owner; or



1 (3) At the option of the unit owner, expressed in writing,
2 by electronic mail to the electronic mailing address
3 designated in writing by the unit owner.

4 The notice of any meeting must state the date, time, and place
5 of the meeting and the items on the agenda, including the
6 general nature and rationale of any proposed amendment to the
7 declaration or bylaws, and any proposal to remove a member of
8 the board; provided that this subsection shall not preclude any
9 unit owner from proposing an amendment to the declaration or
10 bylaws or to remove a member of the board at any annual
11 association meeting.

12 ~~[(e)]~~ (d) All association meetings shall be conducted in
13 accordance with the most recent edition of Robert's Rules of
14 Order Newly Revised. ~~[If so provided]~~ Notwithstanding any
15 provision to the contrary in the declaration or bylaws, meetings
16 may be conducted by ~~[any means that allow participation by all~~
17 ~~unit owners in any deliberation or discussion.]~~ means of
18 Internet, teleconference, or other electronic transmission
19 technology that complies with section 414D-101(g).

20 ~~[(f)]~~ (e) All association meetings shall be held at the
21 address of the condominium or elsewhere within the State as



1 determined by the board; provided that in the event of a natural
2 disaster, such as a hurricane, an association meeting may be
3 held outside the State.

4 (f) Except as otherwise specifically restricted by the
5 declaration or bylaws, any action that may be taken at any
6 annual, regular, or special meeting of members may be taken
7 without a meeting by approval by ballot as provided in section
8 414D-104.5."

9 SECTION 5. 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;



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

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

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

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

(b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the



1 association shall collect the amount assessed to fund the
2 estimated replacement for that fiscal year reserves, as
3 determined by the association's plan.

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

9 (1) Adjustments for revenues which will be received and
10 expenditures which will be made before the beginning
11 of the fiscal year to which the budget relates; and

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

18 (d) No association or unit owner, director, officer,
19 managing agent, or employee of an association who makes a good
20 faith effort to calculate the estimated replacement reserves for



1 an association shall be liable if the estimate subsequently
2 proves incorrect.

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

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

19 (1) Any requirements in an association's declaration,
20 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) Subject to the procedures of section 514B-157 and any
7 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) In the event of a state of emergency declared by the
14 governor or mayor pursuant to chapter 127A, or a pandemic
15 declared by the World Health Organization, that adversely
16 impacts the association's revenue or operating expenses, the
17 board may, without notice or the approval of unit owners, use
18 the association's replacement reserves or borrow money for
19 operating expenses. An association shall have three fiscal
20 years to reestablish the association's replacement reserves to
21 the required minimum amount calculated pursuant to subsection



1 (b) when the use of the replacement reserves under this
2 subsection reduces the reserves to less than the required
3 minimum amount. In connection with the borrowing of any funds,
4 the board may grant the lender the right to assess and collect
5 monthly or special assessments from the unit owners and to
6 enforce the payment of assessments or other sums by statutory
7 lien and foreclosure proceedings. The cost of the loan,
8 including, without limitation, all principal, interest,
9 commitment fees, and other expenses payable with respect to the
10 borrowing or enforcement of the obligations under the terms of
11 any loan, shall be a common expense of the project.

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

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

17 "Cash flow plan" means a minimum twenty-year projection of
18 an association's future income and expense requirements to fund
19 fully its replacement reserves requirements each year during
20 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 situation" means any extraordinary expenses:

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

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

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

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

18 (5) Necessary for the association to obtain adequate
19 insurance for the property which the association must
20 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,
5 or 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."

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 2021.

11
INTRODUCED BY:

Rossly H Baker
By Request



S.B. NO. 235

Report Title:

Condominiums; Meetings; State of Emergency; Budget; Replacement Reserves

Description:

Repeals the provision relating to electronic voting devices. Clarifies that, notwithstanding any provision to the contrary in the declaration or bylaws, association meetings may be conducted by means of Internet, teleconference, or other electronic transmission technology that complies with Hawaii's Nonprofit Corporations Act. Provides that, except as otherwise specifically restricted by the declaration or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting by approval by ballot as provided in Hawaii's Nonprofit Corporations Act. In the event of an emergency or pandemic that adversely impacts the association's revenue, authorizes board to, without notice or approval of unit owners, use the association's replacement reserves or borrow money for operating expenses, and may grant the lender the right to assess and collect monthly or special assessments from the unit owners, and to enforce the payment of assessments or other sums by statutory lien and foreclosure proceedings.

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