

JAN 23 2025

A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATION'S OPERATING BUDGET.

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

1 SECTION 1. The legislature finds that, due to issues in
2 the global insurance industry and recent increases in
3 catastrophic weather events around the world, there have been
4 unprecedented insurance premium rate increases for condominium
5 associations. These significant increases have left condominium
6 associations without a means to fund the premiums without
7 placing an unbearable and unforeseen financial burden on
8 Hawaii's condominium unit owners.

9 The purpose of this Act is to allow associations to
10 authorize an association's board to borrow or reallocate funds
11 from its replacement reserve funds to pay for association
12 operating expenses.

13 SECTION 2. Section 514B-105, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§514B-105 Association; limitations on powers. (a) The
16 declaration and bylaws shall not impose limitations on the power
17 of the association to deal with the developer that are more

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1 restrictive than the limitations imposed on the power of the
2 association to deal with other persons.

3 (b) Unless otherwise permitted by the declaration, bylaws,
4 or this chapter, an association may adopt rules and regulations
5 that affect the use of or behavior in units that may be used for
6 residential purposes only to:

7 (1) Prevent any use of a unit that violates the
8 declaration or bylaws;

9 (2) Regulate any behavior in or occupancy of a unit that
10 violates the declaration or bylaws or unreasonably
11 interferes with the use and enjoyment of other units
12 or the common elements by other unit owners; or

13 (3) Restrict the leasing of residential units to the
14 extent those rules are reasonably designed to meet
15 underwriting requirements of institutional lenders who
16 regularly lend money secured by first mortgages on
17 units in condominiums or regularly purchase those
18 mortgages.

19 Otherwise, the association shall not regulate any use of or
20 behavior in units by means of the rules and regulations.

21 (c) Any payments made by or on behalf of a unit owner
22 shall first be applied to outstanding common expenses that are

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1 assessed to all unit owners in proportion to the common interest
2 appurtenant to their respective units, including commercial
3 property assessed financing assessment expenses incurred for
4 improvements financed pursuant to section 196-64.5. Only after
5 the outstanding common expenses have been paid in full may the
6 payments be applied to other charges owed to the association,
7 including assessed charges to the unit such as ground lease
8 rent, utility sub-metering, storage lockers, parking stalls,
9 boat slips, insurance deductibles, and cable. After these
10 charges are paid, other charges, including unpaid late fees,
11 legal fees, fines, and interest, may be assessed in accordance
12 with an application of payment policy adopted by the board;
13 provided that if a unit owner has designated that any payment is
14 for a specific charge that is not a common expense as described
15 in this subsection, the payment may be applied in accordance
16 with the unit owner's designation even if common expenses remain
17 outstanding.

18 (d) No unit owner who requests legal or other information
19 from the association, the board, the managing agent, or their
20 employees or agents, shall be charged for the reasonable cost of
21 providing the information unless the association notifies the
22 unit owner that it intends to charge the unit owner for the

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1 reasonable cost. The association shall notify the unit owner in
2 writing at least ten days prior to incurring the reasonable cost
3 of providing the information, except that no prior notice shall
4 be required to assess the reasonable cost of providing
5 information on delinquent assessments or in connection with
6 proceedings to enforce the law or the association's governing
7 documents.

8 After being notified of the reasonable cost of providing
9 the information, the unit owner may withdraw the request, in
10 writing. A unit owner who withdraws a request for information
11 shall not be charged for the reasonable cost of providing the
12 information.

13 (e) Subject to any approval requirements and spending
14 limits contained in the declaration or bylaws, the association
15 may authorize the board to borrow money for the repair,
16 replacement, maintenance, operation, or administration of the
17 common elements and personal property of the project, or the
18 making of any additions, alterations, and improvements thereto;
19 provided that written notice of the purpose and use of the funds
20 is first sent to all unit owners and owners representing fifty
21 per cent of the common interest vote or give written consent to
22 the borrowing. In connection with the borrowing, including non-

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1 commercial property assessed financing, the board may grant to
2 the lender the right to assess and collect monthly or special
3 assessments from the unit owners and to enforce the payment of
4 the assessments or other sums by statutory lien and foreclosure
5 proceedings. The cost of the borrowing, including, without
6 limitation, all principal, interest, commitment fees, and other
7 expenses payable with respect to the borrowing or the
8 enforcement of the obligations under the borrowing, shall be a
9 common expense of the project. For purposes of this section,
10 the financing of insurance premiums by the association within
11 the policy period shall not be deemed a loan and no lease shall
12 be deemed a loan if it provides that at the end of the lease the
13 association may purchase the leased equipment for its fair
14 market value.

15 (f) For financing assessments imposed upon the project
16 under a commercial property assessed financing program pursuant
17 to section 196-64.5 and due from the association, the cost of
18 the commercial property assessed financing, including all
19 principal, interest, commitment fees, servicing fees, and other
20 expenses payable with respect to this borrowing or the
21 enforcement of the obligations under the borrowing, shall be a
22 common expense of the project and the unit owners' proportionate

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1 share of the financing assessment shall be collected in the same
2 manner as common expenses. The written consent of at least
3 fifty per cent of all unit owners to finance qualifying
4 improvements with commercial property assessed financing shall
5 include an acknowledgement that the annual financing assessment
6 required to fund debt service on the commercial property
7 assessed financing shall be included as part of the
8 association's adopted revised budget.

9 (g) Subject to any spending limits contained in the
10 declaration or bylaws, the association may authorize the board
11 to borrow or reallocate funds from the replacement reserves fund
12 to pay for association-wide operating expenses to the extent
13 that the reserve fund maintains a minimum of fifty per cent of
14 the required estimated replacement reserves as detailed in the
15 reserve study conducted pursuant to section 514B-148(a)(5) and
16 (b), provided that written notice of the purpose and proposed
17 use of the funds is sent to all unit owners, and owners
18 representing a minimum of fifty per cent of the common interest,
19 consent to the borrowing:

20 (1) No consent by the ownership shall be given unless the
21 written notice by the association to borrow or
22 reallocate funds from the replacement reserves fund

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1 includes a schedule for how and when the funds will be
2 restored over a maximum of one year and includes
3 statements regarding the necessity of using the
4 replacement reserves for other than their designated
5 purpose, the necessity of the expense involved, and
6 why the expense was not or could not have been
7 reasonably foreseen in the budgeting process. A
8 proposal to borrow or reallocate replacement reserves
9 funds that are in excess of one hundred per cent of
10 the estimated replacement reserves shall not require a
11 schedule for restoration of borrowed or reallocated
12 funds;

13 (2) An association shall not borrow or reallocate
14 replacement reserves funds that are reserved for
15 repair and maintenance projects occurring within one
16 year of the borrowing date; and

17 (3) An association shall not borrow or reallocate
18 replacement reserves funds for operating expenses that
19 primarily benefit the board of directors, its
20 officers, or their families. Violating this section
21 constitutes a violation of fiduciary duty."

22 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY: *Wm. M.*

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BY REQUEST

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Report Title:

Condominium Associations; Reserve Funds

Description:

Permits condominium associations to borrow from or reallocate their reserve funds provided the loan is repaid within one year. Effective upon approval.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO CONDOMINIUM ASSOCIATION'S OPERATING BUDGET.

PURPOSE: To clarify the ability of a condominium association to borrow or reallocate from its replacement reserves fund to be used toward operating expenses, if repayment of the amount borrowed from its reserves is repaid within one year from the date of borrowing.

MEANS: Amend section 514B-105, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Due to issues in the global insurance industry and recent increases in catastrophic weather events around the world, there have been unprecedented insurance premium rate increases for condominium associations. These significant increases have left condominium associations without a means to fund them, placing an unbearable and unforeseen financial burden on Hawaii's condominium unit owners to cover these last-minute costs.

This bill will allow a condominium association to borrow and subsequently repay from its reserve fund account, to assist in paying for operating expenses within the condominium association's budget.

Impact on the public: Currently, the sudden unexpected increases in association insurance premium costs have grown significantly and reached a critical stage for condominium associations, boards, and unit owners. The proposed amendments would provide a short-term solution for associations to reallocate available resources within the condominium's budget alleviating current condominium living expenses.

Impact on the department and other agencies:

None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-105.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.