

JAN 17 2025

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# A BILL FOR AN ACT

RELATING TO HOMEOWNER ASSOCIATIONS.

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

1           SECTION 1. The legislature finds that associations for  
2 condominium unit owners' and members of planned communities  
3 often have reserve account amounts that are far below the  
4 required funds to adequately fund necessary repair and  
5 maintenance. A reserve study is a comprehensive analysis of a  
6 association's assets, taking into account the expected lifespan,  
7 current financial health, and replacement costs of the assets.  
8 The legislature further finds that underfunded reserve funds can  
9 lead to unsafe buildings that cause injury, illness, and  
10 possibly death. Fully funded reserves ensure that the  
11 association can handle future expenses smoothly.

12           The legislature also finds that fully funded reserves  
13 protect unit owners and members from sudden large special  
14 assessments or increased dues when major repairs or replacements  
15 are required, such as roof replacements, road repaving, or pool  
16 repairs. By law, other states require associations to maintain  
17 a minimum level of reserves and perform regular reserve studies.



## S.B. NO. 793

1           If a association has less than fully funded reserves, it  
2 may face challenges in covering costs, leading to potential  
3 financial stress for both the association and its unit owners or  
4 members.

5           The purpose of this Act is to require all existing unit  
6 owners' associations and planned community associations to have  
7 fully funded reserve accounts.

8           SECTION 2. Chapter 421J, Hawaii Revised Statutes, is  
9 amended by adding two new sections to be appropriately  
10 designated and to read as follows:

11           "§421J-       Monthly damages and repairs report. No later  
12 than the first day of each month, each association shall issue a  
13 monthly damages and repairs report to members. The monthly  
14 damages and repairs report shall:

15           (1) Briefly describe any damages or repairs for which the  
16 association is liable and the estimated cost to make  
17 the necessary repairs; provided that any damage or  
18 repair that has been outstanding for less than thirty  
19 days may be excluded from the monthly damages and  
20 repairs report; and



1        (2) Be provided to the members in the same manner as  
2        written notice of meetings under 421J-3.5(a).

3        **§421J-B Association fiscal matters; budgets and**  
4 **replacement reserves.**    (a) The budget of the association shall  
5 include a summary with at least the following details:

6        (1) The estimated revenues and operating expenses of the  
7        association;

8        (2) Disclosure as to whether the budget has been prepared  
9        on a cash or accrual basis;

10       (3) The balance of the total replacement reserves fund of  
11       the association as of the date of the budget;

12       (4) The estimated replacement reserves assessments that  
13       the association will require to maintain the property  
14       based on a reserve study performed by or on behalf of  
15       the association; provided that a new reserve study  
16       shall be prepared by an independent reserve study  
17       preparer not less than every three years; provided  
18       further that a managing agent with industry reserve  
19       study designations shall not be considered as having a  
20       conflict of interest for purposes of this paragraph;



- 1        (6) A general explanation of how the estimated replacement  
2        reserves assessments are computed and detailing:
- 3        (A) The identity, qualifications, and potential  
4        conflicts of interest of the person or entity  
5        performing the reserve study, update, or any  
6        review thereof;
- 7        (B) Disclosure of any component of association  
8        property omitted from the reserve study and the  
9        basis for the omission;
- 10       (C) Planned increases in the estimated replacement  
11       reserve assessments over the thirty-year plan;  
12       and
- 13       (D) Whether the actual estimated replacement reserves  
14       assessments for the prior year as defined in the  
15       study was less than the assessments provided for  
16       in the reserve study, and, if so, by how much,  
17       and explaining the impact of the lesser  
18       assessments on future estimated replacement  
19       reserves assessments;



1       (7) The amount the association must collect for the fiscal  
2       year to fund the estimated replacement reserves  
3       assessments; and

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

11      (b) The association shall assess the members to fund one  
12      hundred per cent of the estimated replacement reserves  
13      assessments; provided that a new association need not collect  
14      estimated replacement reserves assessments until the fiscal year  
15      that begins after the association's first annual meeting. For  
16      each fiscal year, the association shall collect the amount  
17      assessed to fund the estimated replacement reserves assessments  
18      for that fiscal year, as determined by the association's plan.

19      (c) The association shall compute the estimated  
20      replacement reserves assessments by a formula that is based on  
21      the estimated life and the estimated capital expenditure or



1 major maintenance required for each part of the property. The  
2 estimated replacement reserves assessments shall include:

3 (1) Adjustments for revenues that will be received and  
4 expenditures that will be made before the beginning of  
5 the fiscal year to which the budget relates; and

6 (2) Separate, designated reserves for each part of the  
7 property for which capital expenditures or major  
8 maintenance will exceed \$10,000. Parts of the  
9 property for which capital expenditures or major  
10 maintenance will not exceed \$10,000 may be aggregated  
11 in a single designated reserve.

12 (d) No association or member, director, officer, managing  
13 agent, or employee of an association who makes a good faith  
14 effort to calculate the estimated replacement reserves  
15 assessments for an association shall be liable if the estimate  
16 subsequently proves incorrect.

17 (e) Except in emergency situations or with the approval of  
18 a majority of the members, a board may not exceed its total  
19 adopted annual operating budget by more than twenty per cent  
20 during the fiscal year to which the budget relates. Before  
21 imposing or collecting an assessment under this subsection that



1 has not been approved by a majority of the members, the board  
2 shall adopt a resolution containing written findings as to the  
3 necessity of the extraordinary expense involved and why the  
4 expense was not or could not have been reasonably foreseen in  
5 the budgeting process, and the resolution shall be distributed  
6 to the members with the notice of assessment.

7 (f) Expenditure of replacement reserves shall:

8 (1) Be limited to costs necessary to maintain the property  
9 based on the most recent reserve study;

10 (2) Require the signatures of the following four  
11 individuals: the president, vice-president,  
12 treasurer, and secretary; provided that if the bylaws  
13 do not specify a vice-president, then an officer of  
14 the association who is not the president, treasurer,  
15 or secretary may sign as the fourth individual; and

16 (3) Be reported to the members in the same manner as  
17 written notice of meetings under 421J-3.5(a).

18 (g) The requirements of this section shall override any  
19 requirements in an association's declaration, bylaws, or any  
20 other association documents relating to preparation of budgets,  
21 calculation of replacement reserve requirements, assessment and



1 funding of replacement reserves, and expenditures from  
2 replacement reserves except for provisions relating to upgrading  
3 the common elements, such as additions, improvements, and  
4 alterations to the common elements.

5 (h) Subject to the procedures of section 431J-10 and any  
6 rules adopted by the real estate commission, any member whose  
7 association board fails to comply with this section may enforce  
8 compliance by the board. In any proceeding to enforce  
9 compliance, a board that has not prepared an annual operating  
10 budget and reserve study shall have the burden of proving it has  
11 complied with this section.

12 (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 thirty-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 thirty-year period, except in an emergency; provided that



1 it does not include a projection of special assessments or loans  
2 during that thirty-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 that the association must  
20 insure.



1       "Independent reserve study preparer" means any  
2 organization, company, or individual with a reserve study  
3 certification from an industry organization.

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

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

11       SECTION 3. Section 514B-137, Hawaii Revised Statutes, is  
12 amended to read as follows:

13       "**§514B-137 Upkeep of condominium.** (a) Except to the  
14 extent provided by the declaration or bylaws, the association is  
15 responsible for the operation of the property, and each unit  
16 owner is responsible for maintenance, repair, and replacement of  
17 the owner's unit. Each unit owner shall afford to the  
18 association and the other unit owners, and to employees,  
19 independent contractors, or agents of the association or other  
20 unit owners, during reasonable hours, access through the owner's  
21 unit reasonably necessary for those purposes. Unless entry is



1 made pursuant to subsection (b), if damage is inflicted on the  
2 common elements or on any unit through which access is taken,  
3 the unit owner responsible for the damage, or the association,  
4 if it is responsible, is liable for the prompt repair thereof;  
5 provided that the association shall not be responsible to pay  
6 the costs of removing or replacing any finished surfaces or  
7 other barriers that impede its ability to maintain and repair  
8 the common elements.

9 (b) The association shall have the irrevocable right, to  
10 be exercised by the board, to have access to each unit at any  
11 time as may be necessary for making emergency repairs to prevent  
12 damage to the common elements or to another unit or units.

13 (c) No later than the first day of each month, each  
14 association shall issue a monthly damages and repairs report to  
15 unit owners. The monthly damages and repairs report shall:

16 (1) Briefly describe any damages or repairs for which the  
17 association is liable and the estimated cost to make  
18 the necessary repairs; provided that any damage or  
19 repair that has been outstanding for less than thirty  
20 days may be excluded from the monthly damages and  
21 repairs report;



- 1        (2) Be provided to each unit owner by electronic mail; and
- 2        (3) Be posted in the same locations as notices of board
- 3        meetings under section 514B-125(e)."

4        SECTION 4. Section 514B-148, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "**§514B-148 Association fiscal matters; budgets and**  
7 **replacement reserves.** (a) The budget required under section  
8 514B-144(a) shall include a summary with at least the following  
9 details:

- 10        (1) The estimated revenues and operating expenses of the  
11                association;
- 12        (2) Disclosure as to whether the budget has been prepared  
13                on a cash or accrual basis;
- 14        (3) The estimated costs of fire safety equipment or  
15                installations that meet the requirements of a life  
16                safety evaluation required by the applicable county  
17                for any building located in a county with a population  
18                greater than five hundred thousand; provided that the  
19                reserve study may forecast a loan or special  
20                assessment to fund life safety components or  
21                installation;



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

3 (5) The estimated replacement reserves assessments that  
4 the association will require to maintain the property  
5 based on a reserve study performed by or on behalf of  
6 the association; provided that ~~[the]~~ a new reserve  
7 study~~[, if not]~~ shall be prepared by an independent  
8 reserve study preparer~~[, shall be reviewed by an~~  
9 ~~independent reserve study preparer]~~ not less than  
10 every three years; provided further that a managing  
11 agent with industry reserve study designations shall  
12 not be considered as having a conflict of interest for  
13 purposes of this paragraph;

14 (6) A general explanation of how the estimated replacement  
15 reserves assessments are computed and detailing:

16 (A) The identity, qualifications, and potential  
17 conflicts of interest of the person or entity  
18 performing the reserve study, update, or any  
19 review thereof;



- 1 (B) Disclosure of any component of association  
2 property omitted from the reserve study and the  
3 basis for the omission;
- 4 (C) Planned increases in the estimated replacement  
5 reserve assessments over the thirty-year plan;  
6 and
- 7 (D) Whether the actual estimated replacement reserves  
8 assessments for the prior year as defined in the  
9 study was less than the assessments provided for  
10 in the reserve study, and, if so, by how much,  
11 and explaining the impact of the lesser  
12 assessments on future estimated replacement  
13 reserves assessments;
- 14 (7) The amount the association must collect for the fiscal  
15 year to fund the estimated replacement reserves  
16 assessments; and
- 17 (8) Information as to whether the amount the association  
18 must collect for the fiscal year to fund the estimated  
19 replacement reserves assessments was calculated using  
20 a per cent funded or cash flow plan. The method or  
21 plan shall not circumvent the estimated replacement



1 reserves assessments amount determined by the reserve  
2 study pursuant to paragraph (5).

3 (b) The association shall assess the unit owners to  
4 ~~[either fund a minimum of fifty]~~ fund one hundred per cent of  
5 the estimated replacement reserves assessments ~~[or fund one~~  
6 ~~hundred per cent of the estimated replacement reserves~~  
7 ~~assessments when using a cash flow plan]~~; provided that a new  
8 association need not collect estimated replacement reserves  
9 assessments until the fiscal year that begins after the  
10 association's first annual meeting. For each fiscal year, the  
11 association shall collect the amount assessed to fund the  
12 estimated replacement reserves assessments for that fiscal year,  
13 as determined by the association's plan.

14 (c) The association shall compute the estimated  
15 replacement reserves assessments by a formula that is based on  
16 the estimated life and the estimated capital expenditure or  
17 major maintenance required for each part of the property. The  
18 estimated replacement reserves assessments shall include:

19 (1) Adjustments for revenues that will be received and  
20 expenditures that will be made before the beginning of  
21 the fiscal year to which the budget relates; and



1           (2) Separate, designated reserves for each part of the  
2           property for which capital expenditures or major  
3           maintenance will exceed \$10,000. Parts of the  
4           property for which capital expenditures or major  
5           maintenance will not exceed \$10,000 may be aggregated  
6           in a single designated reserve.

7           (d) No association or unit owner, director, officer,  
8           managing agent, or employee of an association who makes a good  
9           faith effort to calculate the estimated replacement reserves  
10          assessments for an association shall be liable if the estimate  
11          subsequently proves incorrect.

12          (e) Except in emergency situations or with the approval of  
13          a majority of the unit owners, a board may not exceed its total  
14          adopted annual operating budget by more than twenty per cent  
15          during the fiscal year to which the budget relates. Before  
16          imposing or collecting an assessment under this subsection that  
17          has not been approved by a majority of the unit owners, the  
18          board shall adopt a resolution containing written findings as to  
19          the necessity of the extraordinary expense involved and why the  
20          expense was not or could not have been reasonably foreseen in



1 the budgeting process, and the resolution shall be distributed  
2 to the members with the notice of assessment.

3 (f) Expenditure of replacement reserves shall:

4 (1) Be limited to costs necessary to maintain the property  
5 based on the most recent reserve study;

6 (2) Require the signatures of the following four  
7 individuals: the president, vice-president,  
8 treasurer, and secretary; provided that if the bylaws  
9 do not specify a vice-president, then an officer of  
10 the association who is not the president, treasurer,  
11 or secretary may sign as the fourth individual; and

12 (3) Be reported to the unit owners in the same manner as  
13 514B-137(c).

14 (g) 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 replacement reserve requirements, assessment and  
18 funding of replacement reserves, and expenditures from  
19 replacement reserves [~~with the exception of:~~

20 ~~(1) Any requirements in an association's declaration,~~  
21 ~~bylaws, or any other association documents that~~



1           ~~require the association to collect more than fifty per~~  
2           ~~cent of replacement reserve requirements; or~~  
3           (2) Any] except for provisions relating to upgrading the  
4           common elements, such as additions, improvements, and  
5           alterations to the common elements.

6           [~~(g)~~] (h) Subject to the procedures of section 514B-157  
7           and any 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)~~] (i) As used in this section:

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

18          "Cash flow plan" means a minimum thirty-year projection of  
19          an association's future income and expense requirements to fund  
20          fully its replacement reserves requirements each year during  
21          that thirty-year period, except in an emergency; provided that



1 it does not include a projection of special assessments or loans  
2 during that thirty-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 that the association must  
20 insure.



1 "Independent reserve study preparer" means any  
2 organization, company, or individual with a reserve study  
3 certification from an industry organization.

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

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

11 SECTION 5. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon its approval.

14

INTRODUCED BY:





# S.B. NO. 793

**Report Title:**

Condominiums; Unit Owners' Associations; Homeowners' Associations; Planned Community Associations

**Description:**

Requires condominiums and planned community associations to issue monthly damage and repair reports, have a reserve study done every 3 years, have a fully funded reserve, and only spend reserve funds to maintain the property.

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

