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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM RESERVES.

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

1       SECTION 1. The legislature finds that existing law  
2 requires condominium owners to be entitled to disclosure of  
3 information about the replacement reserves maintained by an  
4 association in which they own a unit. Recent efforts to  
5 increase transparency and accuracy include Act 62, Session Laws  
6 of Hawaii 2022, which provides for periodic review of a reserve  
7 study by an independent reserve study preparer and lengthens the  
8 study period to thirty years, and Act 199, Session Laws of  
9 Hawaii 2023, which requires that a detailed budget summary be  
10 prepared to better inform owners of the financial condition of  
11 an association.

12       Despite these efforts to emphasize the importance of  
13 compliance with the disclosure requirements relating to  
14 association fiscal matters, further amendments are needed to  
15 explicitly state that the defense of good faith compliance shall  
16 be unavailable to any association whose board adopts a budget  
17 that omits the mandated budget summary. Moreover,



1 clarifications are needed concerning unit owners' standing to  
2 enforce compliance and that an association has the burden of  
3 proving compliance when violations are alleged.

4 Accordingly, the purpose of this Act is to:

- 5 (1) Require the detailed budget summary to contain all  
6 required information without referring the reader to  
7 other portions of the budget or reserve study;
- 8 (2) Exclude the good faith defense for an association  
9 whose board adopts a budget that omits the required  
10 detailed budget summary; and
- 11 (3) Clarify a unit owner's standing and the association's  
12 burden of proving substantial compliance.

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

15 1. By amending subsection (a) to read:

16 "(a) The budget required under section 514B-144(a) shall  
17 include a summary with at least the following details:

- 18 (1) The estimated revenues and operating expenses of the  
19 association;
- 20 (2) Disclosure as to whether the budget has been prepared  
21 on a cash or accrual basis;



1 (3) The estimated costs of fire safety equipment or  
2 installations that meet the requirements of a life  
3 safety evaluation required by the applicable county  
4 for any building located in a county with a population  
5 greater than five hundred thousand; provided that the  
6 reserve study may forecast a loan or special  
7 assessment to fund life safety components or  
8 installation;

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

11 (5) The estimated replacement reserves assessments that  
12 the association will require to maintain the property  
13 based on a reserve study performed by or on behalf of  
14 the association; provided that the reserve study, if  
15 not prepared by an independent reserve study preparer,  
16 shall be reviewed by an independent reserve study  
17 preparer ~~not~~ no less than every three years;  
18 provided further that a managing agent with industry  
19 reserve study designations shall not be considered as  
20 having a conflict of interest for purposes of this  
21 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, the 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 (5).

11 The summary shall contain all required information without  
12 referring the reader to other portions of the budget or reserve  
13 study."

14 2. By amending subsection (d) to read:

15 "(d) No association or unit owner, director, officer,  
16 managing agent, or employee of an association who makes a good  
17 faith effort to calculate the estimated replacement reserves  
18 assessments for an association shall be liable if the estimate  
19 subsequently proves incorrect[-]; provided that this subsection  
20 shall not apply to an association if its board adopts a budget  
21 that omits the summary required by subsection (a)."



1           3. By amending subsection (g) to read:

2           "(g) [~~Subject to the procedures of section 514B-157 and~~  
3 ~~any rules adopted by the commission, any~~] Any unit owner whose  
4 association board fails to substantially comply with this  
5 section [~~may~~] shall have standing to bring an action to enforce  
6 compliance by the board. In any [~~proceeding~~] action to enforce  
7 compliance, a board [~~that has not prepared an annual operating~~  
8 ~~budget and reserve study~~] shall have the burden of proving it  
9 has substantially complied with this section."

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

12          SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Condominiums; Budget Summaries; Condominium Associations; Boards of Directors; Compliance; Standing; Good Faith Defense; Burden of Proof

**Description:**

Requires a detailed budget summary to contain all required information without referring the reader to other portions of the budget or reserve study. Excludes the good faith defense for associations whose boards adopt a budget that omits the required detailed budget summary. Clarifies a unit owner's standing and the association's burden of proving substantial compliance. Effective 7/1/3000. (HD1)

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

