

ACT 189

H.B. NO. 3960

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that Act 132, Session Laws of Hawaii 1991 was enacted to ensure that condominium associations properly fund their maintenance replacement reserves so that owners will not be charged high unexpected fees for maintenance and repairs of condominium structures, grounds, and other common elements.

Though the purpose of Act 132 is valid and necessary, the legislature has found that some condominiums are facing possible escalation of maintenance fees from twenty-five per cent to one hundred per cent in the next year to get a “head start” on meeting the requirements of Act 132, even though Act 132 has an effective date of January 1, 1993. In delaying the effective date of Act 132, the legislature intended to provide time to assess the law and any problems thereunder prior to its effective date to avoid causing undue burdens upon condominium owners. The legislature finds that certain amendments to Act 132 are warranted to more effectively carry out the intent of the Act.

SECTION 2. Act 132, Session Laws of Hawaii 1991, is amended by amending Section 1 to read as follows:

“SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Associations of apartment owners; budgets and reserves.**

(a) The board of directors of each association of apartment owners shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total [cash] replacement reserves of the association as of the date of the budget;
- (4) The estimated [cash] 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 [cash] replacement reserves are computed; and
- (6) The amount the association must collect for the fiscal year to fund the estimated [cash] replacement reserves.

(b) The association shall assess the apartment owners to fund a minimum of fifty per cent of the estimated [cash] replacement reserves; provided that a new association created after [the effective date of this Act] January 1, 1993 need not collect estimated [cash] replacement reserves until the fiscal year which begins after the association’s first annual meeting. For each fiscal year the association

shall collect a minimum of fifty per cent of the full amount required to fund the estimated [cash] replacement<sup>1</sup> for that fiscal year reserves<sup>2</sup> except:

- (1) The commission shall adopt rules to permit an existing association to fund its estimated [cash] replacement reserves in increments [during the first five years] after [the effective date of this Act;] January 1, 1993 and prior to January 1, 2000; and
- (2) The commission shall adopt rules to permit an association to fund in increments, over [two] three years, estimated [cash] replacement reserves which have been substantially depleted by an emergency.
- (c) The association shall compute the estimated [cash] replacement<sup>2</sup> reserves by a formula which is based on the estimated life and the estimated [replacement cost] capital expenditure or major maintenance [expense of] required for each part of the property. The estimated [cash] replacement reserves shall include:

- (1) Adjustments for revenues which will be received and expenditures which 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 apartment owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated [cash] replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.

(e) The commission may request a copy of the annual operating budget of the association of apartment owners as part of the association's registration with the commission under section 514A-95.1.

(f) A board may not exceed its total adopted annual operating budget by more than twenty per cent [in a] during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(g) 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 reserve requirements, assessment and funding of reserves, with the exception of:

- (1) Any provisions relating to the repair and maintenance of property;
- (2) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty per cent of reserve requirements; or
- (3) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(h) Subject to the procedures of section 514A-94 and any rules adopted by the commission, any apartment owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board which has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

[(g)] (i) The commission may adopt rules to implement this section.

[(h)] (j) As used in this section:

“Capital expenditure” means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

“Emergency situation” means any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense 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; [or]
- (3) An extraordinary expense 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;<sup>3</sup> or
- (4) An extraordinary expense 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.

“Major maintenance” means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

“[Cash] 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, which the association is obligated to maintain.”

SECTION 2.<sup>3</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3.<sup>3</sup> This Act shall take effect on January 1, 1993.

(Approved June 12, 1992.)

#### Notes

1. Prior to amendment “reserves” appeared here.
2. Should be underscored.
3. So in original.