

An Act

VETO

HOUSE BILL 22-1387

BY REPRESENTATIVE(S) Titone and Bradfield, Bennett, Hooton, Jodeh, Lontine, Michaelson Jenet, Ricks, Sirota, Valdez A., Exum, Kipp, Lindsay, McCluskie, Snyder;
also SENATOR(S) Fields and Priola, Bridges, Gonzales, Jaquez Lewis, Lee, Moreno.

CONCERNING MEASURES TO ENSURE THAT A COMMON INTEREST COMMUNITY HAS ADEQUATE RESERVE FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 38-33.3-103, **amend** the introductory portion and (1); and **add** (1.5), (10.5), (15.5), (18.4), (18.5), (18.6), (18.7), (19.3), (25.5), and (25.7) as follows:

38-33.3-103. Definitions. As used in the declaration and bylaws of an association, unless specifically provided otherwise or unless the context otherwise requires, and in this **article** ARTICLE 33.3:

(1) ~~"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: Is a general partner, officer, director, or~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant: Is a general partner, officer, director, or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised~~

"ADEQUATE RESERVE FUNDS" MEANS MONEY, IN EXCESS OF ASSOCIATION OPERATING EXPENSES IN ANY FISCAL YEAR, SPECIFICALLY DEDICATED FOR THE MAINTENANCE, REPAIR, OR REPLACEMENT OF PROPERTY THAT THE ASSOCIATION MUST MAINTAIN, REPAIR, OR REPLACE AND THAT HAS REACHED THE END OF ITS ESTIMATED USEFUL LIFE, BASED ON THE MOST RECENT RESERVE STUDY, WITHOUT THE NEED FOR BORROWING OR SPECIAL ASSESSMENTS.

(1.5) (a) "AFFILIATE OF A DECLARANT" MEANS ANY PERSON WHO CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A DECLARANT.

(b) (I) A PERSON CONTROLS A DECLARANT IF THE PERSON:

(A) IS A GENERAL PARTNER, OFFICER, DIRECTOR, OR EMPLOYEE OF THE DECLARANT;

(B) DIRECTLY OR INDIRECTLY, OR ACTING IN CONCERT WITH ONE OR MORE OTHER PERSONS OR THROUGH ONE OR MORE SUBSIDIARIES, OWNS, CONTROLS, HOLDS WITH POWER TO VOTE, OR HOLDS PROXIES REPRESENTING MORE THAN TWENTY PERCENT OF THE VOTING INTERESTS OF THE DECLARANT;

(C) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OF THE DECLARANT; OR

(D) HAS CONTRIBUTED MORE THAN TWENTY PERCENT OF THE CAPITAL OF THE DECLARANT.

(II) A PERSON IS CONTROLLED BY A DECLARANT IF THE DECLARANT:

(A) IS A GENERAL PARTNER, OFFICER, DIRECTOR, OR EMPLOYEE OF THE PERSON;

(B) DIRECTLY OR INDIRECTLY, OR ACTING IN CONCERT WITH ONE OR MORE OTHER PERSONS OR THROUGH ONE OR MORE SUBSIDIARIES, OWNS, CONTROLS, HOLDS WITH POWER TO VOTE, OR HOLDS PROXIES REPRESENTING MORE THAN TWENTY PERCENT OF THE VOTING INTERESTS OF THE PERSON;

(C) CONTROLS IN ANY MANNER THE ELECTION OF A MAJORITY OF THE DIRECTORS OF THE PERSON; OR

(D) HAS CONTRIBUTED MORE THAN TWENTY PERCENT OF THE CAPITAL OF THE PERSON.

(c) CONTROL DOES NOT EXIST IF THE POWERS DESCRIBED IN THIS SUBSECTION (1.5) ARE HELD SOLELY AS SECURITY FOR AN OBLIGATION AND ARE NOT EXERCISED.

(10.5) "CUMULATIVE REPLACEMENT COSTS" MEANS THE TOTAL REPLACEMENT COST FOR ALL MAJOR SHARED COMPONENTS.

(15.5) "EMERGENT LIFE CIRCUMSTANCES" MEANS AN IMMEDIATE DANGER TO THE STRUCTURAL INTEGRITY OF THE COMMON ELEMENTS THAT IS LIKELY TO IMPACT THE LIFE, HEALTH, SAFETY, OR PROPERTY OF THE UNIT OWNERS OR RESIDENTS.

(18.4) "LEVEL I FULL RESERVE STUDY" MEANS A RESERVE STUDY IN WHICH THE FOLLOWING FIVE RESERVE STUDY TASKS ARE PERFORMED WITH RESPECT TO MAJOR SHARED COMPONENTS:

(a) A COMPONENT INVENTORY;

(b) A CONDITION ASSESSMENT OF COMPONENTS BASED UPON ON-SITE VISUAL OBSERVATIONS;

- (c) LIFE AND VALUATION ESTIMATES;
- (d) AN EVALUATION OF RESERVE FUNDS; AND
- (e) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

(18.5) "LEVEL II UPDATE" MEANS A RESERVE STUDY UPDATE IN WHICH THE FOLLOWING FIVE RESERVE STUDY TASKS ARE PERFORMED WITH RESPECT TO MAJOR SHARED COMPONENTS:

(a) A COMPONENT INVENTORY BASED ON THE LEVEL I FULL RESERVE STUDY;

(b) A CONDITION ASSESSMENT OF COMPONENTS BASED UPON ON-SITE VISUAL OBSERVATIONS;

- (c) LIFE AND VALUATION ESTIMATES;
- (d) AN EVALUATION OF RESERVE FUNDS; AND
- (e) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

(18.6) "LEVEL III UPDATE" MEANS A RESERVE STUDY UPDATE WITH NO ON-SITE VISUAL OBSERVATIONS IN WHICH THE FOLLOWING THREE RESERVE STUDY TASKS ARE PERFORMED WITH RESPECT TO MAJOR SHARED COMPONENTS:

- (a) LIFE AND VALUATION ESTIMATES;
- (b) AN EVALUATION OF RESERVE FUNDS; AND
- (c) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

(18.7) "LEVEL IV PRELIMINARY RESERVE STUDY" MEANS A RESERVE STUDY PREPARED BEFORE CONSTRUCTION THAT IS GENERALLY USED FOR BUDGET ESTIMATES. THE STUDY IS BASED ON DESIGN DOCUMENTS, SUCH AS THE ARCHITECTURAL AND ENGINEERING PLANS, AND MAY BE BASED ON PHASES AS EACH PHASE IS COMPLETED OR AS EACH PHASE IS ANTICIPATED TO BE COMPLETED, BUT DOES NOT COMPEL OR MANDATE THE COMPLETION OF ANY PARTICULAR IMPROVEMENT. THE FOLLOWING THREE TASKS ARE

PERFORMED WITH RESPECT TO MAJOR SHARED COMPONENTS TO PREPARE THIS TYPE OF STUDY:

- (a) A COMPONENT INVENTORY;
- (b) LIFE AND VALUATION ESTIMATES; AND
- (c) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

(19.3) "MAJOR SHARED COMPONENTS" MEANS ANY COMPONENT OF A COMMON ELEMENT OR PROPERTY THAT THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING, REPAIRING, OR REPLACING, OR COMPONENTS THAT SERVE TWO OR MORE UNITS, WITH A CUMULATIVE REPLACEMENT COST IN EXCESS OF THE LESSER OF THIRTY THOUSAND DOLLARS OR ONE-HALF OF THE ASSOCIATION'S GROSS ANNUAL BUDGET, EXCLUDING AMOUNTS BUDGETED FOR RESERVES FOR THAT YEAR.

(25.5) "RESERVE FUNDS" OR "RESERVES" MEANS ACTUAL OR PROJECTED MONEY AT A PARTICULAR POINT IN TIME THAT THE ASSOCIATION HAS IDENTIFIED FOR USE TO DEFRAY THE COSTS OF CURRENT OR ANTICIPATED MAINTENANCE, REPAIR, OR REPLACEMENT OF MAJOR SHARED COMPONENTS. RESERVE FUND CONTRIBUTIONS ARE IDENTIFIED IN THE ASSOCIATION'S ANNUAL BUDGET ADOPTED PURSUANT TO SECTION 38-33.3-303 (4)(a), AND RESERVE FUNDS ARE HELD IN ONE OR MORE SEPARATE FINANCIAL ACCOUNTS APART FROM THE ASSOCIATION'S OPERATING FUNDS.

(25.7) "RESERVE STUDY" MEANS A BUDGET PLANNING TOOL THAT IDENTIFIES MAJOR SHARED COMPONENTS; EVALUATES THE CURRENT STATUS OF RESERVE FUNDS; AND PROVIDES A STABLE AND EQUITABLE FUNDING PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS. THE RESERVE STUDY CONSISTS OF TWO PARTS: THE PHYSICAL ANALYSIS OF MAJOR SHARED COMPONENTS AND THE FINANCIAL ANALYSIS OF THE RESERVE FUNDS.

SECTION 2. In Colorado Revised Statutes, 38-33.3-117, **amend** (1.9) as follows:

38-33.3-117. Applicability to preexisting common interest communities. (1.9) Notwithstanding any other provision of law, ~~section 38-33.3-303.5 applies to~~ FOR all common interest communities created

within this state on, before, or after July 1, 1992:

(a) SECTION 38-33.3-303.5 APPLIES with respect to events and circumstances occurring on or after September 1, 2017.

(b) SECTION 38-33.3-307.5 APPLIES WITH RESPECT TO EVENTS AND CIRCUMSTANCES OCCURRING ON OR AFTER JULY 1, 2024.

SECTION 3. In Colorado Revised Statutes, 38-33.3-201, **add** (3) as follows:

38-33.3-201. Creation of common interest communities - requirement for declarant reserve study. (3) BEFORE CONVEYING ANY UNIT TO AN OWNER OTHER THAN THE DECLARANT OR AN AFFILIATE OF A DECLARANT AND THROUGHOUT THE PERIOD OF DECLARANT CONTROL, THE DECLARANT SHALL OBTAIN A LEVEL IV PRELIMINARY RESERVE STUDY AND SHALL UPDATE THE RESERVE STUDY WITH LEVEL II UPDATES OR LEVEL III UPDATES AT LEAST EVERY FIVE YEARS. EACH RESERVE STUDY AND UPDATE DESCRIBED IN THIS SUBSECTION (3) AND THE ASSOCIATION'S BUDGET SHALL BE PROVIDED BY THE DECLARANT OR AN AFFILIATE OF THE DECLARANT TO POTENTIAL PURCHASERS OF A UNIT IN THE COMMON INTEREST COMMUNITY IN THE SELLER'S DISCLOSURES.

SECTION 4. In Colorado Revised Statutes, 38-33.3-209.5, **amend** (1)(b)(IX) as follows:

38-33.3-209.5. Responsible governance policies - due process for imposition of fines - procedure for collection of delinquent accounts - definition. (1) To promote responsible governance, associations shall:

(b) Adopt policies, procedures, and rules and regulations concerning:

(IX) ~~When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subparagraph (IX), an internally conducted reserve study shall be sufficient~~ MAJOR SHARED COMPONENTS AS

REQUIRED PURSUANT TO SECTION 38-33.3-307.5.

SECTION 5. In Colorado Revised Statutes, 38-33.3-303, **amend** (9)(c), (9)(l), and (9)(m); and **add** (9)(n) as follows:

38-33.3-303. Executive board members and officers - powers and duties - reserve funds - reserve study - audit. (9) Within sixty days after the unit owners other than the declarant elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including without limitation the following items:

(c) The association funds or control thereof, INCLUDING ALL RESERVE FUNDS RECOMMENDED BY THE RESERVE STUDY PREPARED PURSUANT TO SUBSECTION (9)(n) OF THIS SECTION;

(l) Any service contract in which the association is a contracting party or in which the association or the unit owners have any obligation to pay a fee to the persons performing the services; ~~and~~

(m) For large planned communities, copies of all recorded deeds and all recorded and unrecorded leases evidencing ownership or leasehold rights of the large planned community unit owners' association in all common elements within the large planned community; AND

(n) THE RESULTS OF A LEVEL I FULL RESERVE STUDY PERFORMED WITHIN SIXTY DAYS BEFORE THE UNIT OWNERS OTHER THAN THE DECLARANT ELECT A MAJORITY OF THE MEMBERS OF THE EXECUTIVE BOARD. THE DECLARANT IS SOLELY RESPONSIBLE FOR ALL EXPENSES IN CONNECTION WITH THE LEVEL I FULL RESERVE STUDY PERFORMED IN ACCORDANCE WITH THIS SUBSECTION (9)(n). THE EXPENSE OF THE LEVEL I FULL RESERVE STUDY SHALL NOT BE CHARGED TO THE ASSOCIATION.

SECTION 6. In Colorado Revised Statutes, **add** 38-33.3-307.5 as follows:

38-33.3-307.5. Reserve study requirements - updates - funding plan - emergent life circumstances. (1) AT LEAST EVERY THIRTY YEARS, AN ASSOCIATION WITH MAJOR SHARED COMPONENTS SHALL OBTAIN A LEVEL

I FULL RESERVE STUDY FOR THE MAINTENANCE, REPAIR, AND REPLACEMENT OF THE MAJOR SHARED COMPONENTS. THE RESERVE STUDY SHALL BE REPLACED BY A LEVEL I FULL RESERVE STUDY OR UPDATED BY A LEVEL II UPDATE OR LEVEL III UPDATE AT LEAST EVERY FIVE YEARS. THE ASSOCIATION MAY SPECIFY A SHORTER INTERVAL FOR REPLACEMENT OR UPDATE IN ACCORDANCE WITH THE POLICY ADOPTED PURSUANT TO SECTION 38-33.3-209.5 (1)(b)(IX).

(2) THE RESERVE STUDY AND UPDATES REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST INCLUDE THE TASKS PERFORMED WITH RESPECT TO MAJOR SHARED COMPONENTS AS REQUIRED IN A LEVEL I FULL RESERVE STUDY, LEVEL II UPDATE, OR LEVEL III UPDATE.

(3) THE ASSOCIATION'S BUDGET PREPARED PURSUANT TO SECTION 38-33.3-303 (4) MUST INCLUDE AT LEAST THE FOLLOWING:

(a) THE ESTIMATED REVENUES AND OPERATING EXPENSES OF THE ASSOCIATION;

(b) INFORMATION AS TO WHETHER THE BUDGET HAS BEEN PREPARED ON A CASH OR TAX BASIS OF ACCOUNTING;

(c) THE TOTAL RESERVE FUNDS OF THE ASSOCIATION AS OF THE DATE OF THE PREPARATION OF THE BUDGET;

(d) THE ESTIMATED RESERVE FUNDS THE ASSOCIATION WILL REQUIRE FOR MAJOR SHARED COMPONENTS IN THE CURRENT BUDGETED FISCAL YEAR BASED ON THE MOST RECENT RESERVE STUDY OR RESERVE STUDY UPDATE;

(e) A GENERAL EXPLANATION OF HOW THE ESTIMATED RESERVE FUNDS ARE COMPUTED;

(f) THE AMOUNT THE ASSOCIATION ANTICIPATES THAT THE ASSOCIATION WILL NEED TO COLLECT IN THE CURRENT BUDGETED FISCAL YEAR TO FUND FUTURE ESTIMATED RESERVED FUNDS PURSUANT TO THE MOST RECENT RESERVE STUDY OR UPDATE AND THE ESTIMATED CONTRIBUTION TO THE RESERVE FUNDS IN THE BUDGETED FISCAL YEAR; AND

(g) NOTIFICATION BY THE EXECUTIVE BOARD TO THE UNIT OWNERS OF THE METHOD BY WHICH ADDITIONAL FUNDING MAY BE OBTAINED IF THE

EXECUTIVE BOARD IS NOT FULLY FUNDING THE RESERVE FUNDS WITH COMMON EXPENSE ASSESSMENTS.

(4) RESERVE EXPENDITURES MADE IN ACCORDANCE WITH A RESERVE STUDY OR UPDATE OR TO ADDRESS EMERGENT LIFE CIRCUMSTANCES ARE NOT SUBJECT TO VETO BY THE UNIT OWNERS.

(5) THE FUNDING PLAN EMPLOYED BY AN ASSOCIATION TO REQUIRE CONTRIBUTIONS TO RESERVE FUNDS MAY USE ANY OF THE FUNDING SOURCES PERMITTED BY THE DECLARATION AND THIS ARTICLE 33.3, SO LONG AS FUNDING RESULTS IN ADEQUATE RESERVE FUNDS.

(6) NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE 33.3 OR THE ASSOCIATION'S GOVERNING DOCUMENTS, THE EXECUTIVE BOARD MAY AMEND THE ASSOCIATION'S ANNUAL BUDGET OR IMPOSE SPECIAL ASSESSMENTS IF NECESSARY TO FUND GOVERNMENT-IMPOSED REQUIREMENTS OR TO ADDRESS EMERGENT LIFE CIRCUMSTANCES.

(7) IN RELIANCE UPON THE ADVICE OF QUALIFIED PROFESSIONAL INVESTMENT ADVISORS, AN ASSOCIATION MAY INVEST NOT MORE THAN TWENTY-FIVE PERCENT OF THE ASSOCIATION'S RESERVE FUNDS IN CONSERVATIVE INSTRUMENTS, INCLUDING EQUITIES AND MUTUAL FUNDS, THAT ARE NOT INSURED BY A FEDERAL AGENCY. THE EXECUTIVE BOARD'S DECISION IS SUBJECT TO THE STANDARDS SET FORTH IN SECTION 7-128-401.

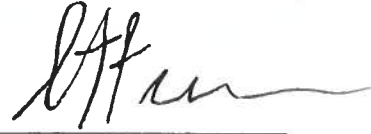
(8) IF DESIRED BY THE EXECUTIVE BOARD, A RESERVE STUDY MAY INCLUDE THE ANTICIPATED COSTS OF ENGINEERING INSPECTIONS, LEGAL COMPLIANCE, CAPITAL IMPROVEMENTS, TECHNOLOGICAL IMPROVEMENTS, ANTICIPATED CORRECTIVE REPAIR COSTS, OR OTHER ANTICIPATED EXPENDITURES NOT FUNDED BY THE ANNUAL OPERATING BUDGET.

SECTION 7. Act subject to petition - effective date. This act takes effect July 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will

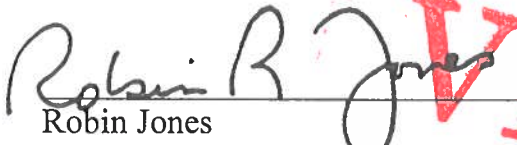
not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect July 1, 2024.



Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Steve Fenberg
PRESIDENT OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

VETO

DISAPPROVED AND VETOED May 27, 2022 at 2:30pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO