

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-1022.01 Brita Darling x2241

HOUSE BILL 22-1387

HOUSE SPONSORSHIP

Titone and Bradfield,

SENATE SPONSORSHIP

Fields and Priola,

House Committees
Transportation & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO ENSURE THAT A COMMON INTEREST**

102 **COMMUNITY HAS ADEQUATE RESERVE FUNDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires mandatory reserve studies for common interest communities that have major shared components, including common elements or property that the unit owners' association (association) is responsible for maintaining, repairing, or replacing.

The bill:

- Specifies the level of reserve study required and the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 27, 2022

- necessary components of the reserve study at each level;
- Requires the declarant to obtain reserve studies commencing with the development of the common interest community and to provide reserve studies to potential purchasers of units in the common interest community in the seller's disclosures; and
- Requires the declarant to provide a reserve study at the time the declarant turns the common interest community property over to the association, along with reserve funds recommended by the reserve study.

The bill defines "emergent life circumstances" and authorizes an association's executive board to obtain additional funding from unit owners to address dangerous conditions if the reserve funds are not sufficient to address the conditions.

The bill limits the investment of reserve funds in financial instruments that are not insured by a federal agency.

The bill takes effect July 1, 2024.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-103, **amend**
3 the introductory portion and (1); and **add** (1.5), (10.5), (15.5), (18.4),
4 (18.5), (18.6), (18.7), (19.3), (25.5), and (25.7) as follows:

5 **38-33.3-103. Definitions.** As used in the declaration and bylaws
6 of an association, unless specifically provided otherwise or unless the
7 context otherwise requires, and in this ~~article~~ ARTICLE 33.3:

8 (1) ~~"Affiliate of a declarant"~~ means any person who ~~controls, is~~
9 ~~controlled by, or is under common control with a declarant.~~ A person
10 ~~controls a declarant if the person: Is a general partner, officer, director, or~~
11 ~~employee of the declarant; directly or indirectly, or acting in concert with~~
12 ~~one or more other persons or through one or more subsidiaries, owns,~~
13 ~~controls, holds with power to vote, or holds proxies representing more~~
14 ~~than twenty percent of the voting interests of the declarant; controls in~~
15 ~~any manner the election of a majority of the directors of the declarant; or~~
16 ~~has contributed more than twenty percent of the capital of the declarant.~~

1 A person is controlled by a declarant if the declarant: Is a general partner,
2 officer, director, or employee of the person; directly or indirectly, or
3 acting in concert with one or more other persons or through one or more
4 subsidiaries, owns, controls, holds with power to vote, or holds proxies
5 representing more than twenty percent of the voting interests of the
6 person; controls in any manner the election of a majority of the directors
7 of the person; or has contributed more than twenty percent of the capital
8 of the person. Control does not exist if the powers described in this
9 subsection (1) are held solely as security for an obligation and are not
10 exercised "ADEQUATE RESERVE FUNDS" MEANS MONEY, IN EXCESS OF
11 ASSOCIATION OPERATING EXPENSES IN ANY FISCAL YEAR, SPECIFICALLY
12 DEDICATED FOR THE MAINTENANCE, REPAIR, OR REPLACEMENT OF
13 PROPERTY THAT THE ASSOCIATION MUST MAINTAIN, REPAIR, OR REPLACE
14 AND THAT HAS REACHED THE END OF ITS ESTIMATED USEFUL LIFE, BASED
15 ON THE MOST RECENT RESERVE STUDY, WITHOUT THE NEED FOR
16 BORROWING OR SPECIAL ASSESSMENTS.

17 (1.5) (a) "AFFILIATE OF A DECLARANT" MEANS ANY PERSON WHO
18 CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A
19 DECLARANT.

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

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

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

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

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

7 (A) IS A GENERAL PARTNER, OFFICER, DIRECTOR, OR EMPLOYEE OF
8 THE PERSON:

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

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

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

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

23 (15.5) "EMERGENT LIFE CIRCUMSTANCES" MEANS AN IMMEDIATE
24 DANGER TO THE STRUCTURAL INTEGRITY OF THE COMMON ELEMENTS THAT
25 IS LIKELY TO IMPACT THE LIFE, HEALTH, SAFETY, OR PROPERTY OF THE
26 UNIT OWNERS OR RESIDENTS.

27 (18.4) "LEVEL I FULL RESERVE STUDY" MEANS A RESERVE STUDY

1 IN WHICH THE FOLLOWING FIVE RESERVE STUDY TASKS ARE PERFORMED
2 WITH RESPECT TO MAJOR SHARED COMPONENTS:

- 3 (a) A COMPONENT INVENTORY;
- 4 (b) A CONDITION ASSESSMENT OF COMPONENTS BASED UPON
5 ON-SITE VISUAL OBSERVATIONS;
- 6 (c) LIFE AND VALUATION ESTIMATES;
- 7 (d) AN EVALUATION OF RESERVE FUNDS; AND
- 8 (e) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

9 (18.5) "LEVEL II UPDATE" MEANS A RESERVE STUDY UPDATE IN
10 WHICH THE FOLLOWING FIVE RESERVE STUDY TASKS ARE PERFORMED WITH
11 RESPECT TO MAJOR SHARED COMPONENTS:

- 12 (a) A COMPONENT INVENTORY BASED ON THE LEVEL I FULL
13 RESERVE STUDY;
- 14 (b) A CONDITION ASSESSMENT OF COMPONENTS BASED UPON
15 ON-SITE VISUAL OBSERVATIONS;
- 16 (c) LIFE AND VALUATION ESTIMATES;
- 17 (d) AN EVALUATION OF RESERVE FUNDS; AND
- 18 (e) A PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS.

19 (18.6) "LEVEL III UPDATE" MEANS A RESERVE STUDY UPDATE WITH
20 NO ON-SITE VISUAL OBSERVATIONS IN WHICH THE FOLLOWING THREE
21 RESERVE STUDY TASKS ARE PERFORMED WITH RESPECT TO MAJOR SHARED
22 COMPONENTS:

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

26 (18.7) "LEVEL IV PRELIMINARY RESERVE STUDY" MEANS A
27 RESERVE STUDY PREPARED BEFORE CONSTRUCTION THAT IS GENERALLY

1 USED FOR BUDGET ESTIMATES. THE STUDY IS BASED ON DESIGN
2 DOCUMENTS, SUCH AS THE ARCHITECTURAL AND ENGINEERING PLANS,
3 AND MAY BE BASED ON PHASES AS EACH PHASE IS COMPLETED OR AS EACH
4 PHASE IS ANTICIPATED TO BE COMPLETED, BUT DOES NOT COMPEL OR
5 MANDATE THE COMPLETION OF ANY PARTICULAR IMPROVEMENT. THE
6 FOLLOWING THREE TASKS ARE PERFORMED WITH RESPECT TO MAJOR
7 SHARED COMPONENTS TO PREPARE THIS TYPE OF STUDY:

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

11 (19.3) "MAJOR SHARED COMPONENTS" MEANS ANY COMPONENT
12 OF A COMMON ELEMENT OR PROPERTY THAT THE ASSOCIATION IS
13 RESPONSIBLE FOR MAINTAINING, REPAIRING, OR REPLACING, OR
14 COMPONENTS THAT SERVE TWO OR MORE UNITS, WITH A CUMULATIVE
15 REPLACEMENT COST IN EXCESS OF THE LESSER OF THIRTY THOUSAND
16 DOLLARS OR ONE-HALF OF THE ASSOCIATION'S GROSS ANNUAL BUDGET,
17 EXCLUDING AMOUNTS BUDGETED FOR RESERVES FOR THAT YEAR.

18 (25.5) "RESERVE FUNDS" OR "RESERVES" MEANS ACTUAL OR
19 PROJECTED MONEY AT A PARTICULAR POINT IN TIME THAT THE
20 ASSOCIATION HAS IDENTIFIED FOR USE TO DEFRAY THE COSTS OF CURRENT
21 OR ANTICIPATED MAINTENANCE, REPAIR, OR REPLACEMENT OF MAJOR
22 SHARED COMPONENTS. RESERVE FUND CONTRIBUTIONS ARE IDENTIFIED IN
23 THE ASSOCIATION'S ANNUAL BUDGET ADOPTED PURSUANT TO SECTION
24 38-33.3-303 (4)(a), AND RESERVE FUNDS ARE HELD IN ONE OR MORE
25 SEPARATE FINANCIAL ACCOUNTS APART FROM THE ASSOCIATION'S
26 OPERATING FUNDS.

27 (25.7) "RESERVE STUDY" MEANS A BUDGET PLANNING TOOL THAT

1 IDENTIFIES MAJOR SHARED COMPONENTS; EVALUATES THE CURRENT
2 STATUS OF RESERVE FUNDS; AND PROVIDES A STABLE AND EQUITABLE
3 FUNDING PLAN FOR MAINTAINING ONE OR MORE RESERVE FUNDS. THE
4 RESERVE STUDY CONSISTS OF TWO PARTS: THE PHYSICAL ANALYSIS OF
5 MAJOR SHARED COMPONENTS AND THE FINANCIAL ANALYSIS OF THE
6 RESERVE FUNDS.

7 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-117, **amend**
8 (1.9) as follows:

9 **38-33.3-117. Applicability to preexisting common interest**
10 **communities.** (1.9) Notwithstanding any other provision of law, **section**
11 **38-33.3-303.5 applies to** **FOR** all common interest communities created
12 within this state on, before, or after July 1, 1992:

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

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

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

19 **38-33.3-201. Creation of common interest communities -**
20 **requirement for declarant reserve study.** (3) BEFORE CONVEYING ANY
21 UNIT TO AN OWNER OTHER THAN THE DECLARANT OR AN AFFILIATE OF A
22 DECLARANT AND THROUGHOUT THE PERIOD OF DECLARANT CONTROL, THE
23 DECLARANT SHALL OBTAIN A LEVEL IV PRELIMINARY RESERVE STUDY AND
24 SHALL UPDATE THE RESERVE STUDY WITH LEVEL II UPDATES OR LEVEL III
25 UPDATES AT LEAST EVERY FIVE YEARS. EACH RESERVE STUDY AND
26 UPDATE DESCRIBED IN THIS SUBSECTION (3) AND THE ASSOCIATION'S
27 BUDGET SHALL BE PROVIDED BY THE DECLARANT OR AN AFFILIATE OF THE

1 DECLARANT TO POTENTIAL PURCHASERS OF A UNIT IN THE COMMON
2 INTEREST COMMUNITY IN THE SELLER'S DISCLOSURES.

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

5 **38-33.3-209.5. Responsible governance policies - due process**
6 **for imposition of fines - procedure for collection of delinquent**
7 **accounts - definition.** (1) To promote responsible governance,
8 associations shall:

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

11 (IX) When the association has a reserve study prepared for the
12 portions of the community maintained, repaired, replaced, and improved
13 by the association; whether there is a funding plan for any work
14 recommended by the reserve study and, if so, the projected sources of
15 funding for the work; and whether the reserve study is based on a physical
16 analysis and financial analysis. For the purposes of this subparagraph
17 (IX), an internally conducted reserve study shall be sufficient MAJOR
18 SHARED COMPONENTS AS REQUIRED PURSUANT TO SECTION 38-33.3-307.5.

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

21 **38-33.3-303. Executive board members and officers - powers**
22 **and duties - reserve funds - reserve study - audit.** (9) Within sixty
23 days after the unit owners other than the declarant elect a majority of the
24 members of the executive board, the declarant shall deliver to the
25 association all property of the unit owners and of the association held by
26 or controlled by the declarant, including without limitation the following
27 items:

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

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

1 OR UPDATE IN ACCORDANCE WITH THE POLICY ADOPTED PURSUANT TO
2 SECTION 38-33.3-209.5 (1)(b)(IX).

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

7 (3) THE ASSOCIATION'S BUDGET PREPARED PURSUANT TO SECTION
8 38-33.3-303 (4) MUST INCLUDE AT LEAST THE FOLLOWING:

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

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

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

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

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

20 (f) THE AMOUNT THE ASSOCIATION WILL NEED TO COLLECT FOR
21 THE FISCAL YEAR TO FUND ESTIMATED RESERVE FUNDS PURSUANT TO THE
22 MOST RECENT RESERVE STUDY OR UPDATE AND THE ESTIMATED
23 CONTRIBUTION TO THE RESERVE FUNDS IN THE BUDGETED FISCAL YEAR;

24 AND

25 (g) NOTIFICATION BY THE EXECUTIVE BOARD TO THE UNIT OWNERS
26 OF THE METHOD BY WHICH ADDITIONAL FUNDING WILL BE OBTAINED IF
27 THE EXECUTIVE BOARD IS NOT FULLY FUNDING THE RESERVE FUNDS WITH

1 COMMON EXPENSE ASSESSMENTS.

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

5 (5) THE FUNDING PLAN EMPLOYED BY AN ASSOCIATION TO
6 REQUIRE CONTRIBUTIONS TO RESERVE FUNDS MAY USE ANY OF THE
7 FUNDING SOURCES PERMITTED BY THE DECLARATION AND THIS ARTICLE
8 33.3, SO LONG AS FUNDING RESULTS IN ADEQUATE RESERVE FUNDS.

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

14 (7) IN RELIANCE UPON THE ADVICE OF QUALIFIED PROFESSIONAL
15 INVESTMENT ADVISORS, AN ASSOCIATION MAY INVEST NOT MORE THAN
16 TWENTY-FIVE PERCENT OF THE ASSOCIATION'S RESERVE FUNDS IN
17 CONSERVATIVE INSTRUMENTS, INCLUDING EQUITIES AND MUTUAL FUNDS,
18 THAT ARE NOT INSURED BY A FEDERAL AGENCY. THE EXECUTIVE BOARD'S
19 DECISION IS SUBJECT TO THE STANDARDS SET FORTH IN SECTION
20 7-128-401.

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

26 **SECTION 7. Act subject to petition - effective date.** This act
27 takes effect July 1, 2024; except that, if a referendum petition is filed

1 pursuant to section 1 (3) of article V of the state constitution against this
2 act or an item, section, or part of this act within the ninety-day period
3 after final adjournment of the general assembly, then the act, item,
4 section, or part will not take effect unless approved by the people at the
5 general election to be held in November 2022 and, in such case, will take
6 effect July 1, 2024.