

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 22-1022.01 Brita Darling x2241

HOUSE BILL 22-1387

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HOUSE SPONSORSHIP

Titone and Bradfield,

SENATE SPONSORSHIP

Fields and Priola,

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House Committees

Transportation & Local Government

Senate Committees

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A BILL FOR AN ACT

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

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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.

- 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;

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

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;

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

21 (10.5) "CUMULATIVE REPLACEMENT COSTS" MEANS THE TOTAL  
22 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 DEFRAID 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, 38-33.3-201, **add** (3)  
8 as follows:

9 **38-33.3-201. Creation of common interest communities -**  
10 **requirement for declarant reserve study.** (3) BEFORE CONVEYING ANY  
11 UNIT TO AN OWNER OTHER THAN THE DECLARANT OR AN AFFILIATE OF A  
12 DECLARANT AND THROUGHOUT THE PERIOD OF DECLARANT CONTROL, THE  
13 DECLARANT SHALL OBTAIN A LEVEL IV PRELIMINARY RESERVE STUDY AND  
14 SHALL UPDATE THE RESERVE STUDY WITH LEVEL II UPDATES OR LEVEL III  
15 UPDATES AT LEAST EVERY FIVE YEARS. EACH RESERVE STUDY AND  
16 UPDATE DESCRIBED IN THIS SUBSECTION (3) AND THE ASSOCIATION'S  
17 BUDGET SHALL BE PROVIDED BY THE DECLARANT OR AN AFFILIATE OF THE  
18 DECLARANT TO POTENTIAL PURCHASERS OF A UNIT IN THE COMMON  
19 INTEREST COMMUNITY IN THE SELLER'S DISCLOSURES.

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

22 **38-33.3-209.5. Responsible governance policies - due process**  
23 **for imposition of fines - procedure for collection of delinquent**  
24 **accounts - definition.** (1) To promote responsible governance,  
25 associations shall:

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

1 (IX) When the association has a reserve study prepared for the  
2 ~~portions of the community maintained, repaired, replaced, and improved~~  
3 ~~by the association; whether there is a funding plan for any work~~  
4 ~~recommended by the reserve study and, if so, the projected sources of~~  
5 ~~funding for the work; and whether the reserve study is based on a physical~~  
6 ~~analysis and financial analysis. For the purposes of this subparagraph~~  
7 ~~(IX), an internally conducted reserve study shall be sufficient MAJOR~~  
8 ~~SHARED COMPONENTS AS REQUIRED PURSUANT TO SECTION 38-33.3-307.5.~~

9 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-303, **amend**  
10 (9)(c), (9)(l), and (9)(m); and **add** (9)(n) as follows:

11 **38-33.3-303. Executive board members and officers - powers**  
12 **and duties - reserve funds - reserve study - audit.** (9) Within sixty  
13 days after the unit owners other than the declarant elect a majority of the  
14 members of the executive board, the declarant shall deliver to the  
15 association all property of the unit owners and of the association held by  
16 or controlled by the declarant, including without limitation the following  
17 items:

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

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

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



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

8 SECTION 5. In Colorado Revised Statutes, **add** 38-33.3-307.5  
9 as follows:

10 **38-33.3-307.5. Reserve study requirements - updates - funding**  
11 **plan - emergent life circumstances.** (1) AT LEAST EVERY THIRTY YEARS,  
12 AN ASSOCIATION WITH MAJOR SHARED COMPONENTS SHALL OBTAIN A  
13 LEVEL I FULL RESERVE STUDY FOR THE MAINTENANCE, REPAIR, AND  
14 REPLACEMENT OF THE MAJOR SHARED COMPONENTS. THE RESERVE STUDY  
15 SHALL BE REPLACED BY A LEVEL I FULL RESERVE STUDY OR UPDATED BY  
16 A LEVEL II UPDATE OR LEVEL III UPDATE AT LEAST EVERY FIVE YEARS.  
17 THE ASSOCIATION MAY SPECIFY A SHORTER INTERVAL FOR REPLACEMENT  
18 OR UPDATE IN ACCORDANCE WITH THE POLICY ADOPTED PURSUANT TO  
19 SECTION 38-33.3-209.5 (1)(b)(IX).

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

24 (3) THE ASSOCIATION'S BUDGET PREPARED PURSUANT TO SECTION  
25 38-33.3-303 (4) MUST INCLUDE AT LEAST THE FOLLOWING:

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

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

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

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

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

10 (f) THE AMOUNT THE ASSOCIATION WILL NEED TO COLLECT FOR  
11 THE FISCAL YEAR TO FUND ESTIMATED RESERVE FUNDS PURSUANT TO THE  
12 MOST RECENT RESERVE STUDY OR UPDATE AND THE ESTIMATED  
13 CONTRIBUTION TO THE RESERVE FUNDS IN THE BUDGETED FISCAL YEAR;  
14 AND

15 (g) NOTIFICATION BY THE EXECUTIVE BOARD TO THE UNIT OWNERS  
16 OF THE METHOD BY WHICH ADDITIONAL FUNDING WILL BE OBTAINED IF  
17 THE EXECUTIVE BOARD IS NOT FULLY FUNDING THE RESERVE FUNDS WITH  
18 COMMON EXPENSE ASSESSMENTS.

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

22 (5) THE FUNDING PLAN EMPLOYED BY AN ASSOCIATION TO  
23 REQUIRE CONTRIBUTIONS TO RESERVE FUNDS MAY USE ANY OF THE  
24 FUNDING SOURCES PERMITTED BY THE DECLARATION AND THIS ARTICLE  
25 33.3, SO LONG AS FUNDING RESULTS IN ADEQUATE RESERVE FUNDS.

26 (6) NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE 33.3 OR  
27 THE ASSOCIATION'S GOVERNING DOCUMENTS, THE EXECUTIVE BOARD MAY

1 AMEND THE ASSOCIATION'S ANNUAL BUDGET OR IMPOSE SPECIAL  
2 ASSESSMENTS IF NECESSARY TO FUND GOVERNMENT-IMPOSED  
3 REQUIREMENTS OR TO ADDRESS EMERGENT LIFE CIRCUMSTANCES.

4 (7) IN RELIANCE UPON THE ADVICE OF QUALIFIED PROFESSIONAL  
5 INVESTMENT ADVISORS, AN ASSOCIATION MAY INVEST NOT MORE THAN  
6 TWENTY-FIVE PERCENT OF THE ASSOCIATION'S RESERVE FUNDS IN  
7 CONSERVATIVE INSTRUMENTS, INCLUDING EQUITIES AND MUTUAL FUNDS,  
8 THAT ARE NOT INSURED BY A FEDERAL AGENCY. THE EXECUTIVE BOARD'S  
9 DECISION IS SUBJECT TO THE STANDARDS SET FORTH IN SECTION  
10 7-128-401.

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

16 **SECTION 6. Act subject to petition - effective date.** This act  
17 takes effect July 1, 2024; except that, if a referendum petition is filed  
18 pursuant to section 1 (3) of article V of the state constitution against this  
19 act or an item, section, or part of this act within the ninety-day period  
20 after final adjournment of the general assembly, then the act, item,  
21 section, or part will not take effect unless approved by the people at the  
22 general election to be held in November 2022 and, in such case, will take  
23 effect July 1, 2024.