
A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. Chapter 421J, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§421J-A Cumulative voting for directors. (a) If the
5 articles of incorporation, declaration, or bylaws provide for
6 cumulative voting by members, members may so vote, by
7 multiplying the number of votes the members are entitled to cast
8 by the number of positions for whom they are entitled to vote,
9 and cast the product for a single candidate or distribute the
10 product among two or more candidates. The candidates receiving
11 the highest number of votes under this section, up to the total
12 number of positions to be filled, shall be deemed elected, and
13 shall be given the longest term.

14 (b) Unless otherwise provided in the articles of
15 incorporation, declaration, or bylaws, cumulative voting shall
16 not be permitted.



1 (c) A director elected by cumulative voting may be removed
2 by the members with or without cause if the requirements of
3 section 421J-B are met.

4 §421J-B Removal of directors elected by members or
5 directors. (a) The members may remove one or more directors
6 elected by cumulative voting by the members with or without
7 cause unless otherwise provided in the articles of
8 incorporation, declaration, or bylaws. If the removal is
9 successful, the replacement director or directors shall be
10 elected for the remainder of the removed director's or
11 directors' term or terms in accordance with all applicable
12 requirements and procedures in the articles of incorporation,
13 declaration, or bylaws, and this chapter. If a replacement
14 director is not elected at the meeting at which the removal
15 occurred, notwithstanding any provision to the contrary in the
16 articles of incorporation, declaration, or bylaws, the board may
17 fill vacancies to serve until the next annual or duly noticed
18 special association meeting.

19 (b) If a director is elected by a class, chapter, or other
20 organizational unit, or by region or other geographic grouping,



1 the director may be removed only by the members of that class,
2 chapter, unit, or grouping.

3 (c) Except as provided in subsection (j), a director may
4 be removed under subsection (a) or (b) only if the number of
5 votes cast to remove the director would be sufficient to elect
6 the director at a meeting to elect directors.

7 (d) If cumulative voting is authorized at the meeting, the
8 director shall not be removed if the number of votes, or if the
9 director was elected by a class, chapter, unit, or grouping of
10 members, the number of votes of that class, chapter, unit, or
11 grouping, sufficient to elect the director under cumulative
12 voting is voted against the director's removal.

13 (e) A director elected by members may be removed by the
14 members at any regular or special meeting; provided that:

15 (1) The member delivers to the secretary of the
16 association or managing agent a petition for removal
17 of one or more directors, signed by members
18 representing at least one hundred units or members who
19 own at least twenty-five per cent of the total number
20 of units in the planned community, whichever is less,
21 and containing the printed name, identification of the



1 unit, and address of the signing members and dates of
2 their signatures; and

3 (2) The petition is so delivered within seven days after
4 the posting of a notice of intent to distribute
5 proxies that include the election of directors in
6 accordance with section 421J-4(e) or within seven days
7 after the posting of a notice of the meeting under
8 section 421J-3.5(e).

9 (f) If a timely petition is delivered to the secretary of
10 the association or managing agent, the secretary or managing
11 agent shall include the proposed removal in the notice of the
12 meeting.

13 (g) In computing whether a director is protected from
14 removal under subsections (b) through (d), it should be assumed
15 that the votes against removal are cast in an election for the
16 number of directors to the class to which the director to be
17 removed belonged at the meeting at which the removal is
18 proposed.

19 (h) An entire board of directors may be removed under
20 subsections (a) through (c).



1 (i) If, at the beginning of a director's term on the
2 board, the articles of incorporation, declaration, or bylaws
3 provide that the director may be removed for missing a specified
4 number of board meetings, the board may remove the director for
5 failing to attend the specified number of meetings. The
6 director may be removed only if a majority of the directors then
7 in office vote for the removal."

8 SECTION 2. Section 414D-114, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§414D-114 Cumulative voting for directors. (a) If the
11 articles or bylaws provide for cumulative voting by members,
12 members may so vote, by multiplying the number of votes the
13 members are entitled to cast by the number of directors for whom
14 they are entitled to vote, and cast the product for a single
15 candidate or distribute the product among two or more
16 candidates.

17 (b) Unless otherwise provided in the articles or bylaws,
18 cumulative voting shall not be permitted. If authorized in the
19 articles or bylaws, cumulative voting may be permitted; provided
20 that:



1 (1) The meeting notice or statement accompanying the
2 notice states that cumulative voting shall take place;

3 (2) A member gives notice of the member's intent to
4 cumulatively vote not less than forty-eight hours
5 before the meeting or such longer period as may be
6 required by the articles or bylaws; and

7 (3) If one member gives notice of intent to cumulatively
8 vote, all other members participating in the election
9 may cumulate their votes without giving further
10 notice.

11 (c) A director elected by cumulative voting may be removed
12 by the members without cause if the requirements of section
13 414D-138 are met unless the votes cast against removal or not
14 consenting in writing to the removal would be sufficient to
15 elect the director if voted cumulatively at an election at which
16 the same total number of votes were cast and the entire number
17 of directors authorized at the time of the director's most
18 recent election were then being elected; provided that if the
19 action is taken by ballot, all members entitled to vote had
20 voted.



1 (d) Members may not cumulatively vote if the directors and
2 members are identical.

3 (e) This section shall not apply to any planned community
4 association governed by chapter 421J."

5 SECTION 3. Section 414D-138, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§414D-138[+] Removal of directors elected by members
8 or directors. (a) The members may remove one or more directors
9 elected by them without cause unless otherwise provided in the
10 articles or bylaws.

11 (b) If a director is elected by a class, chapter, or other
12 organizational unit, or by region or other geographic grouping,
13 the director may be removed only by the members of that class,
14 chapter, unit, or grouping.

15 (c) Except as provided in subsection (i), a director may
16 be removed under subsection (a) or (b) only if the number of
17 votes cast to remove the director would be sufficient to elect
18 the director at a meeting to elect directors.

19 (d) If cumulative voting is authorized, a director may not
20 be removed if the number of votes, or if the director was
21 elected by a class, chapter, unit, or grouping of members, the



1 number of votes of that class, chapter, unit, or grouping,
2 sufficient to elect the director under cumulative voting is
3 voted against the director's removal.

4 (e) A director elected by members may be removed by the
5 members only at a meeting called for the purpose of removing the
6 director and the meeting notice must state that the purpose, or
7 one of the purposes, of the meeting is removal of the director.

8 (f) In computing whether a director is protected from
9 removal under subsections (b) to (d), it should be assumed that
10 the votes against removal are cast in an election for the number
11 of directors of the class to which the director to be removed
12 belonged on the date of that director's election.

13 (g) An entire board of directors may be removed under
14 subsections (a) to (e).

15 (h) A director elected by the board may be removed without
16 cause by the vote of two-thirds of the directors then in office
17 or such greater number as is set forth in the articles or
18 bylaws; provided that a director elected by the board to fill
19 the vacancy of a director elected by the members may be removed
20 without cause by the members, but not the board.



1 (i) If, at the beginning of a director's term on the
2 board, the articles or bylaws provide that the director may be
3 removed for missing a specified number of board meetings, the
4 board may remove the director for failing to attend the
5 specified number of meetings. The director may be removed only
6 if a majority of the directors then in office vote for the
7 removal.

8 (j) This section shall not apply to any planned community
9 association governed by chapter 421J."

10 SECTION 4. Section 421J-3.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§421J-3.5 Notice required; regular, annual, and special
13 meetings. (a) Not less than fourteen days in advance of any
14 regular, annual, or special meeting of an association, the
15 secretary or other officer specified in the bylaws shall give
16 written notice of the meeting to each member of the association
17 as provided in the bylaws of the association or by two or more
18 of the following means:

19 (1) Hand delivery;



1 (2) United States mail sent to the mailing address of each
2 unit or to another mailing address designated in
3 writing by the association member;

4 (3) Electronic mail to the electronic mailing address
5 designated in writing by the association member; or

6 (4) Posting of the meeting notice in its entirety on a
7 portion of the association's website that is
8 accessible to all members.

9 (b) Notice pursuant to this section shall state:

10 (1) The date, time, and place of the meeting; and

11 (2) The items on the agenda, including the general nature

12 of and rationale for any proposed amendment to the

13 declaration or bylaws; any proposal for a special

14 assessment, unless the authority for a special

15 assessment is otherwise provided for in the

16 association's governing documents; and any proposal to

17 remove a member of the board.

18 (c) The requirements of this section shall not be

19 interpreted to preclude any association member from proposing an

20 amendment to the declaration or bylaws [~~or proposing to remove a~~

21 ~~member of the board at an association meeting~~].



1 (d) The requirements of this section shall not be
2 interpreted to apply to any board meetings or committee meetings
3 of a planned community association.

4 (e) Notwithstanding any provision to the contrary in the
5 association documents, the association may conduct an annual,
6 regular, or special meeting remotely in a manner consistent with
7 section 414D-101(g) or 414D-102(f), as applicable.

8 (f) If the board of directors does not intend to use
9 association funds to distribute proxies that include the
10 election of directors and therefore does not post notice
11 pursuant to section 421J-4(e), the board shall post notice in
12 prominent locations within the project of its intent to
13 distribute written notice of an association meeting at least
14 twenty-one days in advance of distributing written notice under
15 subsection (a)."

16 SECTION 5. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



H.B. NO. 1781

1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 21 2022



H.B. NO. 1781

Report Title:

Planned Community Associations; Nonprofit Corporations;
Directors

Description:

Establishes requirements for cumulative voting and the removal of directors of planned community associations. Exempts planned community associations from certain requirements regarding cumulative voting for and the removal of directors under the Hawaii Nonprofit Corporations Act.

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

