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# 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       association documents provide for cumulative voting by members,  
6       members may so vote, by multiplying the number of votes the  
7       members are entitled to cast by the number of positions for whom  
8       they are entitled to vote, and cast the product for a single  
9       candidate or distribute the product among two or more  
10       candidates. The candidates receiving the highest number of  
11       votes under this section, up to the total number of positions to  
12       be filled, shall be deemed elected, and shall be given the  
13       longest term.

14       (b) Unless otherwise provided in the association  
15       documents, cumulative voting shall 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 a director elected by  
6 the members with or without cause unless otherwise provided in  
7 the association documents. If the removal is successful, the  
8 replacement director shall be elected for the remainder of the  
9 removed director's term in accordance with all applicable  
10 requirements and procedures in the association documents and  
11 this chapter. If the replacement director is not elected at the  
12 meeting in which the removal occurred, notwithstanding anything  
13 to the contrary in the association documents, the board may fill  
14 vacancies to serve until the next annual or duly noticed special  
15 meeting of the association.

16        (b) If a director is elected by a class, chapter, or other  
17 organizational unit, or by region or other geographic grouping,  
18 the director may be removed only by the members of that class,  
19 chapter, unit, or grouping.

20        (c) Except as provided in subsection (i), a director may  
21 be removed under subsection (a) or (b) only if the number of



1 votes cast to remove the director would be sufficient to elect  
2 the director at a meeting to elect directors.

3 (d) If cumulative voting is authorized at the meeting, the  
4 director may not be removed if the number of votes, or if the  
5 director was elected by a class, chapter, unit, or grouping of  
6 members, the number of votes of that class, chapter, unit, or  
7 grouping, sufficient to elect the director under cumulative  
8 voting is against the director's removal.

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

11 (1) The board of directors recommends removal of the  
12 director; or

13 (2) A member delivers to the secretary of the association  
14 or managing agent a petition for removal of the  
15 director that:

16 (A) Is signed by members representing at least one  
17 hundred units or members who own at least twenty-  
18 five per cent of the total number of units in the  
19 planned community, whichever is less;



1           (B) Contains the printed name, identification of the  
2           unit, address of the signing members, and dates  
3           of their signatures;

4           (C) Is delivered within seven days after the posting  
5           of a notice of intent to distribute proxies that  
6           includes the election of directors in accordance  
7           with section 421J-4(e), or within seven days  
8           after the posting of a notice of intent to  
9           distribute a notice of a meeting under section  
10          421J-3.5(f); and

11          (D) Is submitted within one hundred twenty days of  
12          the earliest signature.

13          (f) If the board of directors recommends removal, or if a  
14          timely petition is delivered to the secretary of the association  
15          or managing agent, the secretary or managing agent shall include  
16          the proposed removal in the notice of the meeting.

17          (g) In computing whether a director is protected from  
18          removal under subsections (b) through (d), it shall be assumed  
19          that the votes against removal of the director are cast in an  
20          election for the number of directors to the class to which that



1 director belonged at the meeting at which the removal is  
2 proposed.

3 (h) An entire board of directors may be removed pursuant  
4 to subsections (a) through (c).

5 (i) If, at the beginning of a director's term on the  
6 board, the association documents provide that the director may  
7 be removed for missing a specified number of board meetings, the  
8 board may remove the director for failing to attend the  
9 specified number of meetings. The director may be removed only  
10 if a majority of the directors then in office vote for the  
11 removal."

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

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



1 (b) Unless otherwise provided in the articles or bylaws,  
2 cumulative voting shall not be permitted. If authorized in the  
3 articles or bylaws, cumulative voting may be permitted; provided  
4 that:

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

7 (2) A member gives notice of the member's intent to  
8 cumulatively vote not less than forty-eight hours  
9 before the meeting or ~~[such]~~ a longer period as may be  
10 required by the articles or bylaws; and

11 (3) If one member gives notice of intent to cumulatively  
12 vote, all other members participating in the election  
13 may cumulate their votes without giving further  
14 notice.

15 (c) A director elected by cumulative voting may be removed  
16 by the members without cause if the requirements of section  
17 414D-138 are met unless the votes cast against removal or not  
18 consenting in writing to the removal would be sufficient to  
19 elect the director if voted cumulatively at an election at which  
20 the same total number of votes were cast and the entire number  
21 of directors authorized at the time of the director's most



1 recent election were then being elected; provided that if the  
2 action is taken by ballot, all members entitled to vote had  
3 voted.

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

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

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

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

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

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



1 (d) If cumulative voting is authorized, a director may not  
2 be removed if the number of votes, or if the director was  
3 elected by a class, chapter, unit, or grouping of members, the  
4 number of votes of that class, chapter, unit, or grouping,  
5 sufficient to elect the director under cumulative voting is  
6 voted against the director's removal.

7 (e) A director elected by members may be removed by the  
8 members only at a meeting called for the purpose of removing the  
9 director and the meeting notice ~~[must]~~ shall state that the  
10 purpose, or one of the purposes, of the meeting is removal of  
11 the director.

12 (f) In computing whether a director is protected from  
13 removal under subsections (b) to (d), it ~~[should]~~ may be assumed  
14 that the votes against removal of the director are cast in an  
15 election for the number of directors of the class to which ~~[the]~~  
16 that director ~~[to be removed]~~ belonged on the date of that  
17 director's election.

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

20 (h) A director elected by the board may be removed without  
21 cause by the vote of two-thirds of the directors then in office





1 or ~~[such]~~ a greater number as is set forth in the articles or  
2 bylaws; provided that a director elected by the board to fill  
3 the vacancy of a director elected by the members may be removed  
4 without cause by the members, but not the board.

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

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

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

16 **"§421J-3.5 Notice required; regular, annual, and special**  
17 **meetings.** (a) Not less than fourteen days in advance of any  
18 regular, annual, or special meeting of an association, the  
19 secretary or other officer specified in the bylaws shall give  
20 written notice of the meeting to each member of the association



1 as provided in the bylaws of the association or by two or more  
2 of the following means:

3 (1) Hand delivery;

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

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

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

12 (b) Notice pursuant to [~~this section~~] subsection (a) shall  
13 state:

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

15 (2) The items on the agenda, including the general nature  
16 of and rationale for any proposed amendment to the  
17 declaration or bylaws; any proposal for a special  
18 assessment, unless the authority for a special  
19 assessment is otherwise provided for in the  
20 association's governing documents; and any proposal to  
21 remove a member of the board.



1 (c) The requirements of this section shall not be  
2 interpreted to preclude any association member from proposing an  
3 amendment to the declaration or bylaws [~~or proposing to remove a~~  
4 ~~member of the board at an association meeting~~].

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

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

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

20 SECTION 5. In codifying the new sections added by section  
21 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect on January 1, 2050.



**Report Title:**

Planned Community Associations; Nonprofit Corporations;  
Cumulative Voting; Directors; Removal

**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. Effective 1/1/2050. (HD1)

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

