

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

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

1 SECTION 1. Section 514B-61, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) If it appears that any person has engaged, is  
4 engaging, or is about to engage in any act or practice in  
5 violation of this part, part V, section 514B-103, 514B-123,  
6 514B-124.5, 514B-132, 514B-134, 514B-149, sections 514B-152 to  
7 514B-154, section 514B-154.5, or any of the commission's related  
8 rules or orders, the commission, without prior administrative  
9 proceedings, may maintain an action in the appropriate court to  
10 enjoin that act or practice or for other appropriate relief.  
11 The commission shall not be required to post a bond or to prove  
12 that no adequate remedy at law exists in order to maintain the  
13 action."

14 SECTION 2. Section 514B-65, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§514B-65 Investigative powers.** If the commission has  
17 reason to believe that any person is violating or has violated



1 this part, part V, section 514B-103, 514B-123, 514B-124.5,  
2 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154,  
3 section 514B-154.5, or the rules of the commission adopted  
4 pursuant thereto, the commission may conduct an investigation of  
5 the matter and examine the books, accounts, contracts, records,  
6 and files of all relevant parties. For purposes of this  
7 examination, the developer and the real estate broker shall keep  
8 and maintain records of all sales transactions and of the funds  
9 received by the developer and the real estate broker in  
10 accordance with chapter 467 and the rules of the commission, and  
11 shall make the records accessible to the commission upon  
12 reasonable notice and demand."

13 SECTION 3. Section 514B-66, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§514B-66 Cease and desist orders.** In addition to its  
16 authority under sections 514B-67 and 514B-68, whenever the  
17 commission has reason to believe that any person is violating or  
18 has violated this part, part V, section 514B-103, 514B-123,  
19 514B-124.5, 514B-132, 514B-134, 514B-149, sections 514B-152 to  
20 514B-154, section 514B-154.5, or the rules of the commission  
21 adopted pursuant thereto, it may issue and serve upon the person



1 a complaint stating its charges in that respect and containing a  
2 notice of a hearing at a stated place and upon a day at least  
3 thirty days after the service of the complaint. The person  
4 served has the right to appear at the place and time specified  
5 and show cause why an order should not be entered by the  
6 commission requiring the person to cease and desist from the  
7 violation of the law or rules charged in the complaint. If the  
8 commission finds that this chapter or the rules of the  
9 commission have been or are being violated, it shall make a  
10 report in writing stating its findings as to the facts and shall  
11 issue and cause to be served on the person an order requiring  
12 the person to cease and desist from the violations. The person,  
13 within thirty days after service upon the person of the report  
14 or order, may obtain a review thereof in the appropriate circuit  
15 court."

16 SECTION 4. Section 514B-68, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§514B-68 Power to enjoin.** Whenever the commission  
19 believes from satisfactory evidence that any person has violated  
20 this part, part V, section 514B-103, 514B-123, 514B-124.5,  
21 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154,



1 section 514B-154.5, or the rules of the commission adopted  
2 pursuant thereto, it may conduct an investigation of the matter  
3 and bring an action against the person in any court of competent  
4 jurisdiction on behalf of the State to enjoin the person from  
5 continuing the violation or doing any acts in furtherance  
6 thereof."

7 SECTION 5. Section 514B-69, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§514B-69 Penalties.** (a) Any person who violates or fails  
10 to comply with this part, part V, section 514B-103, 514B-123,  
11 514B-124.5, 514B-132, 514B-134, 514B-149, sections 514B-152 to  
12 514B-154, or section 514B-154.5, shall be guilty of a  
13 misdemeanor and shall be punished by a fine not exceeding  
14 \$10,000, or by imprisonment for a term not exceeding one year,  
15 or both. Any person who violates or fails to comply with any  
16 rule, order, decision, demand, or requirement of the commission  
17 under this part, part V, section 514B-103, 514B-123, 514B-124.5,  
18 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or  
19 section 514B-154.5, shall be punished by a fine not exceeding  
20 \$10,000.



1 (b) In addition to any other actions authorized by law,  
2 any person who violates or fails to comply with this part,  
3 part V, section 514B-103, 514B-123, 514B-124.5, 514B-132,  
4 514B-134, 514B-149, sections 514B-152 to 514B-154, section  
5 514B-154.5, or the rules of the commission adopted pursuant  
6 thereto, shall also be subject to a civil penalty not exceeding  
7 \$10,000 for any violation. Each violation shall constitute a  
8 separate offense."

9 SECTION 6. Section 514B-106, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§514B-106 Board; powers and duties.** (a) Except as  
12 provided in the declaration, the bylaws, subsection (b), or  
13 other provisions of this chapter, the board may act in all  
14 instances on behalf of the association. In the performance of  
15 their duties, officers and members of the board shall owe the  
16 association a fiduciary duty and exercise the degree of care and  
17 loyalty required of an officer or director of a corporation  
18 organized under chapter 414D. Any violation by a board or its  
19 officers or members of the mandatory provisions of section 514B-  
20 161 or 514B-162 may constitute a violation of the fiduciary duty  
21 owed pursuant to this subsection; provided that a board member



1 may avoid liability under this subsection by indicating in  
2 writing the board member's disagreement with such board action  
3 or rescinding or withdrawing the violating conduct within forty-  
4 five days of the occurrence of the initial violation.

5 (b) The board may not act on behalf of the association to  
6 amend the declaration or bylaws (sections 514B-32(a)(11) and  
7 514B-108(b)(7)), to remove the condominium from the provisions  
8 of this chapter (section 514B-47), or to elect members of the  
9 board or determine the qualifications, powers and duties, or  
10 terms of office of board members (subsection (e)); provided that  
11 nothing in this subsection shall be construed to prohibit board  
12 members from voting [~~proxies~~] (section 514B-123) to elect  
13 members of the board; provided further that notwithstanding  
14 anything to the contrary in the declaration or bylaws, the board  
15 may only fill vacancies in its membership to serve until the  
16 next annual or duly noticed special association meeting. Notice  
17 of a special association meeting to fill vacancies shall include  
18 notice of the election. Any special association meeting to fill  
19 vacancies shall be held on a date that allows sufficient time  
20 for owners to declare their intention to run for election and to  
21 solicit [~~proxies~~] votes for that purpose.



1           (c) Within thirty days after the adoption of any proposed  
2 budget for the condominium, the board shall make available a  
3 copy of the budget to all the unit owners and shall notify each  
4 unit owner that the unit owner may request a copy of the budget.

5           (d) The declaration may provide for a period of developer  
6 control of the association, during which a developer, or persons  
7 designated by the developer, may appoint and remove the officers  
8 and members of the board. Regardless of the period provided in  
9 the declaration, a period of developer control terminates no  
10 later than the earlier of:

11           (1) Sixty days after conveyance of seventy-five per cent  
12 of the common interest appurtenant to units that may  
13 be created to unit owners other than a developer or  
14 affiliate of the developer;

15           (2) Two years after the developer has ceased to offer  
16 units for sale in the ordinary course of business;

17           (3) Two years after any right to add new units was last  
18 exercised; or

19           (4) The day the developer, after giving written notice to  
20 unit owners, records an instrument voluntarily



1           surrendering all rights to control activities of the  
2           association.

3 A developer may voluntarily surrender the right to appoint and  
4 remove officers and members of the board before termination of  
5 that period, but in that event the developer may require, for  
6 the duration of the period of developer control, that specified  
7 actions of the association or board, as described in a recorded  
8 instrument executed by the developer, be approved by the  
9 developer before they become effective.

10           (e) Not later than the termination of any period of  
11 developer control, the unit owners shall elect a board of at  
12 least three members; provided that projects created after  
13 May 18, 1984, with one hundred or more individual units, shall  
14 have an elected board of at least nine members unless the  
15 membership has amended the bylaws to reduce the number of  
16 directors; and provided further that projects with more than one  
17 hundred individual units where at least seventy per cent of the  
18 unit owners do not reside at the project may amend the bylaws to  
19 reduce the board to as few as five members by the written  
20 consent of a majority of the unit owners or the vote of a  
21 majority of a quorum at any annual meeting or special meeting





1 called for that purpose. The association may rely on its  
2 membership records in determining whether a unit is owner-  
3 occupied. A decrease in the number of directors shall not  
4 deprive an incumbent director of any remaining term of office.

5 (f) At any regular or special meeting of the association,  
6 any member of the board may be removed and successors shall be  
7 elected for the remainder of the term to fill the vacancies thus  
8 created. The removal and replacement shall be by a vote of a  
9 majority of the unit owners and, otherwise, in accordance with  
10 all applicable requirements and procedures in the bylaws for the  
11 removal and replacement of directors and, if removal and  
12 replacement is to occur at a special meeting, section  
13 514B-121(c).

14 (g) Within ninety days after being elected or appointed to  
15 the board, each newly elected or appointed director shall  
16 certify in writing to the secretary of the association that the  
17 director:

18 (1) Has read the association's declaration, articles of  
19 incorporation, bylaws, house rules, and other  
20 association documents necessary for the operation of  
21 the property;



1       (2) Shall work to uphold the association's declaration,  
2       articles of incorporation, bylaws, house rules, and  
3       other association documents to the best of the  
4       director's ability; and

5       (3) Shall faithfully discharge the director's fiduciary  
6       duty to the association.

7       The written certification shall be valid for the entirety of the  
8       director's uninterrupted term of office. A director who fails  
9       to timely file the written certification shall be automatically  
10      suspended from service on the board until the director complies  
11      with this subsection. The board may appoint a member to  
12      temporarily fill the vacancy during the director's period of  
13      suspension. The secretary shall retain a director's written  
14      certification for inspection by association members for five  
15      years after a director's election or appointment, or the  
16      duration of the director's uninterrupted term of office ,  
17      whichever is longer. Failure to have a written certification on  
18      file shall not affect the validity of any board action."

19       SECTION 7. Section 514B-121, Hawaii Revised Statutes, is  
20      amended as follows:

21       1. By amending subsections (b) and (c) to read:



1           "(b) Notwithstanding any other provision of this chapter,  
2 except as provided in subsection (e), or the declaration or  
3 bylaws of a condominium to the contrary, at any association  
4 meeting the board may direct the use of an electronic voting  
5 device regardless of whether a secret ballot is used or  
6 required. Except as provided in subsection (e), the use shall  
7 be subject to the following:

8           (1) The electronic voting device and all associated  
9 equipment shall be isolated from any connection to an  
10 external network, including the Internet, or shall use  
11 a form of encryption comparable to that used for  
12 secured internet web browsers;

13           (2) The board shall establish reasonable procedures to  
14 provide for the secrecy and integrity of the unit  
15 owners' votes, including but not limited to procedures  
16 that ensure the availability of a printed audit trail  
17 containing:

18           (A) The reference number or internet address of the  
19 electronic voting device;

20           (B) Each common interest voted; ~~and~~

21           (C) The vote that was tabulated;



1           (D) Authentication of each unit owner's identity  
2           including, with respect to units owned by a land  
3           trust, a living trust, a corporation, or other  
4           legal entity, a person designated in writing by  
5           the trustee, officer, or manager of the entity to  
6           cast votes on behalf of the owner until a  
7           subsequent document is filed with the  
8           association; and

9           (E) Authentication of the validity of each electronic  
10           vote to ensure that the vote was not altered in  
11           transit;

12           (3) A receipt from the electronic voting device shall be  
13           immediately available to each unit owner who casts an  
14           electronic vote and a copy of the printed audit trail  
15           shall be available to owners for recount, inspection,  
16           and review after the meeting in the same manner  
17           provided by sections 514B-154 and 514B-154.5; [~~and~~]

18           (4) A copy of the procedures established pursuant to  
19           paragraph (2) shall be available at no charge to any  
20           owner and a copy shall be available at any meeting at



1           which the association uses an electronic voting  
2           device[-];

3           (5) A unit owner voting electronically shall be counted as  
4           being in attendance at the meeting for purposes of  
5           determining a quorum; and

6           (6) The vote shall be limited to the issue specifically  
7           identified in the electronic vote.

8           If any conflict arises between this subsection and  
9           subsection (e), subsection (e) shall control.

10           (c) Special meetings of the association may be called by  
11           the president, a majority of the board, or by a petition to the  
12           secretary or managing agent signed and dated by not less than  
13           twenty-five per cent of the unit owners as shown in the  
14           association's record of ownership; provided that if the  
15           secretary or managing agent fails to send out the notices for  
16           the special meeting within fourteen days of receipt of the  
17           petition, the petitioners shall have the authority to set the  
18           time, date, and place for the special meeting and to send out  
19           the notices [~~and proxies~~] for the special meeting at the  
20           association's expense in accordance with the requirements of the  
21           bylaws and of this part; provided further that a special meeting



1 based upon a petition to the secretary or managing agent shall  
2 be set no later than sixty days from receipt of the petition.  
3 The petition shall be valid only if submitted within one hundred  
4 twenty days of the earliest signature."

5 2. By amending subsection (e) to read:

6 "(e) All association meetings shall be conducted in  
7 accordance with the most recent edition of Robert's Rules of  
8 Order Newly Revised. Notwithstanding any provision to the  
9 contrary in the association's declaration or bylaws or in  
10 subsection (b), electronic meetings and electronic, machine, or  
11 mail voting may be authorized by the board in its sole  
12 discretion:

13 (1) During any period in which a state of emergency or  
14 local state of emergency, declared pursuant to chapter  
15 127A, is in effect in the county in which the  
16 condominium is located;

17 (2) For any association meeting for which notice was given  
18 while a state of emergency or local state of  
19 emergency, declared pursuant to chapter 127A, was in  
20 effect for the county in which the condominium is  
21 located but is no longer in effect as of the date of



1 the meeting; provided that the meeting is held within  
2 sixty days of the date the notice was first given;

3 (3) For any electronic, machine, or mail voting for which  
4 notice of voting has been sent; provided that the  
5 electronic, machine, or mail voting deadline is within  
6 sixty days of the date the notice was first sent;

7 (4) Whenever approved in advance by:

8 (A) Written consent of a majority of unit owners; or

9 (B) Majority vote at an association meeting; or

10 (5) Whenever otherwise authorized in an association's  
11 declaration or bylaws.

12 The association shall implement reasonable measures to verify  
13 that each person permitted to vote is a member of the  
14 association [~~or proxy of a member~~].

15 As used in this subsection, "mail voting" includes sending  
16 or receiving written ballots via mail, courier, or electronic  
17 transmission; provided that the transmission is a complete  
18 reproduction of the original."

19 SECTION 8. Section 514B-123, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "**§514B-123 Association meetings; voting; [proxies-]**  
2 **ballots; notice of election.** (a) If only one of several owners  
3 of a unit is present at a meeting of the association, that owner  
4 is entitled to cast all the votes allocated to that unit. If  
5 more than one of the owners is present, the votes allocated to  
6 that unit may be cast only in accordance with the agreement of a  
7 majority in interest of the owners, unless the declaration or  
8 bylaws expressly provide otherwise. There is majority agreement  
9 if any one of the owners casts the votes allocated to that unit  
10 without protest being made by any of the other owners of the  
11 unit to the person presiding over the meeting before the polls  
12 are closed.

13           (b) [~~Votes allocated to a unit may be cast pursuant to a~~  
14 ~~proxy duly executed by a unit owner.~~] A unit owner may vote by  
15 mail or electronic transmission [~~through a duly executed proxy~~].  
16 If a unit is owned by more than one person, each owner of the  
17 unit may vote or register protest to the casting of votes by the  
18 other owners of the unit [~~through a duly executed proxy~~]. In  
19 the absence of protest, any owner may cast the votes allocated  
20 to the unit [~~by proxy. A unit owner may revoke a proxy given~~  
21 ~~pursuant to this section only by actual notice of revocation to~~





1 ~~the secretary of the association or the managing agent. A proxy~~  
2 ~~is void if it purports to be revocable without notice].~~

3 (c) No votes allocated to a unit owned by the association  
4 may be cast for the election or reelection of directors;  
5 provided that, notwithstanding section 514B-106(b) or any  
6 provision in an association's declaration or bylaws to the  
7 contrary, in a mixed-use project containing units for  
8 residential and nonresidential use, where the board is comprised  
9 of directors elected by owners of residential units and  
10 directors elected by owners of nonresidential units, the  
11 association, acting by and through its board, may cast the vote  
12 or votes allocated to any nonresidential unit owned by the  
13 association in any election of one or more directors where those  
14 eligible to vote in the election are limited to owners of one or  
15 more nonresidential units, which includes the nonresidential  
16 unit owned by the association.

17 (d) A [~~proxy,~~] ballot, to be valid, shall:

18 (1) Be delivered to the secretary of the association or  
19 the managing agent, if any, no later than 4:30 p.m.  
20 Hawaii-Aleutian Standard Time on the second business



1 day prior to the date of the meeting to which it  
2 pertains; and

3 (2) Contain at least the name of the association[~~7~~] and  
4 the date of the meeting of the association[~~7~~,~~the~~  
5 ~~printed names and signatures of the persons giving the~~  
6 ~~proxy, the unit numbers for which the proxy is given,~~  
7 ~~the names of persons to whom the proxy is given, and~~  
8 ~~the date that the proxy is given.~~

9 ~~(c) If a proxy is a standard proxy form authorized by the~~  
10 ~~association, the proxy shall comply with the following~~  
11 ~~additional requirements:~~

12 ~~(1) The proxy shall contain boxes wherein the owner may~~  
13 ~~indicate that the proxy is given:~~

14 ~~(A) For quorum purposes only;~~

15 ~~(B) To the individual whose name is printed on a line~~  
16 ~~next to this box;~~

17 ~~(C) To the board as a whole and that the vote is to~~  
18 ~~be made on the basis of the preference of the~~  
19 ~~majority of the directors present at the meeting;~~

20 ~~or~~



1           ~~(D) To those directors present at the meeting with~~  
2           ~~the vote to be shared with each director~~  
3           ~~receiving an equal percentage;~~  
4           ~~provided that if the proxy is returned with no box or~~  
5           ~~more than one of the boxes in subparagraphs (A)~~  
6           ~~through (D) checked, the proxy shall be counted for~~  
7           ~~quorum purposes only; and~~

8           ~~(2) The proxy form shall also contain a box wherein the~~  
9           ~~owner may indicate that the owner wishes to obtain a~~  
10           ~~copy of the annual audit report required by section~~  
11           ~~514B-150.~~

12           ~~(f) A proxy shall only be valid for the meeting to which~~  
13           ~~the proxy pertains and its adjournments, may designate any~~  
14           ~~person as proxy, and may be limited as the unit owner desires~~  
15           ~~and indicates; provided that no proxy shall be irrevocable~~  
16           ~~unless coupled with a financial interest in the unit].~~

17           (e) In the case of any election of one or more directors,  
18           to be valid, a ballot:

19           (1) Shall list all eligible candidates in alphabetical  
20           order by last name, without indicating whether any  
21           candidates are incumbents;



- 1        (2) Shall not allow for write-in candidates; and
- 2        (3) Shall not contain a space for the owner's signature.
- 3        (f) With respect to any election of one or more directors:
- 4        (1) The first notice of election shall:
- 5            (A) Be mailed or electronically submitted to each
- 6            unit owner at least sixty days before the
- 7            election;
- 8            (B) Contain the correct name and mailing address of
- 9            the association; and
- 10          (C) Contain language reminding unit owners of the
- 11          notice of intent requirements under subsection
- 12          (g); and
- 13        (2) The second notice of election shall be:
- 14            (A) Mailed to unit owners between twenty-one and
- 15            thirty-four days before the election;
- 16            (B) Be accompanied by:
- 17                (i) The written annual meeting notice and
- 18                agenda;
- 19                (ii) A printed ballot for each unit owned by that
- 20                owner; and



1            (iii) An envelope that meets the requirements of  
2    subsection (f); and

3            (C) Posted conspicuously and continuously on the  
4    condominium property at least twenty-one days  
5    before the annual meeting and election.

6            (g) A unit owner who wishes to serve on the board shall  
7    submit written notice of intent to the board or managing agent  
8    no later than forty days before the election, accompanied by a  
9    written statement to the board of the unit owner's  
10     qualifications to serve on the board or reasons for wanting to  
11     receive votes. The statement shall be limited to black text on  
12     white paper and shall not exceed one single-sided eight and one-  
13     half inches by eleven inches page.

14           (h) The written notice of intent under subsection (g)  
15     shall be deemed effective upon receipt by the association when  
16     submitted by one or more of the following methods:

- 17           (1) Certified mail, return receipt requested;  
18           (2) Personal delivery;  
19           (3) Regular mail; or  
20           (4) Facsimile.

1 Upon receipt of a timely written notice by personal delivery,  
2 regular mail, or facsimile, the association shall issue a  
3 written acknowledgment of receipt to the unit owner.

4 (i) If a member of the board, in the member's individual  
5 capacity, seeks to solicit votes using association funds, the  
6 board member shall submit written notice of intent to the board  
7 no later than forty days before the election, accompanied by a  
8 written statement to the board indicating the member's reasons  
9 for wanting to receive votes.

10 (j) A ballot envelope that accompanies the second notice  
11 of election under subsection (f)(2) shall:

12 (1) Contain an unmarked, smaller inner envelope to ensure  
13 secrecy in voting for each completed ballot;

14 (2) A larger, outer envelope to return each completed  
15 ballot, preaddressed to the person or entity  
16 authorized to receive ballots on behalf of the  
17 association, with space on the outside of the envelope  
18 for:

19 (A) The name of the eligible unit owner, unit number,  
20 and unit owner's signature, and



1            (B) A box to indicate whether the unit owner wishes  
 2            to receive a copy of the annual audit report  
 3            required by section 514B-150;

4            (3) A copy of any written statements received by the board  
 5            under subsection (g); and

6            (4) Instructions directing a unit owner, upon completion  
 7            of the ballot, to place the ballot in the inner  
 8            envelope, place the sealed inner envelope in the outer  
 9            envelope, and seal the outer envelope.

10           ~~(g)~~ (k) A copy, facsimile telecommunication, or other  
 11 reliable reproduction of a [~~proxy~~] ballot may be used in lieu of  
 12 the original [~~proxy~~] ballot for any and all purposes for which  
 13 the original [~~proxy~~] ballot could be used; provided that any  
 14 copy, facsimile telecommunication, or other reproduction shall  
 15 be a complete reproduction of the entire original [~~proxy.~~]  
 16 ballot.

17           ~~(h)~~ (l) Nothing in this section shall affect the holder  
 18 of any [~~proxy~~] ballot under a first mortgage of record  
 19 encumbering a unit or under an agreement of sale affecting a  
 20 unit.



1       ~~[(i) With respect to the use of association funds to~~  
2 ~~distribute proxies:~~

3       ~~(1) Any board that intends to use association funds to~~  
4 ~~distribute proxies, including the standard proxy form~~  
5 ~~referred to in subsection (c), shall first post notice~~  
6 ~~of its intent to distribute proxies in prominent~~  
7 ~~locations within the project at least twenty one days~~  
8 ~~before its distribution of proxies. If the board~~  
9 ~~receives within seven days of the posted notice a~~  
10 ~~request by any owner for use of association funds to~~  
11 ~~solicit proxies accompanied by a statement, the board~~  
12 ~~shall mail to all owners either:~~

13       ~~(A) A proxy form containing the names of all owners~~  
14 ~~who have requested the use of association funds~~  
15 ~~for soliciting proxies accompanied by their~~  
16 ~~statements; or~~

17       ~~(B) A proxy form containing no names, but accompanied~~  
18 ~~by a list of names of all owners who have~~  
19 ~~requested the use of association funds for~~  
20 ~~soliciting proxies and their statements.~~





1           ~~The statement, which shall be limited to black text on~~  
2           ~~white paper, shall not exceed one single-sided~~  
3           ~~8-1/2" x 11" page, indicating the owner's~~  
4           ~~qualifications to serve on the board or reasons for~~  
5           ~~wanting to receive proxies; and~~

6           ~~(2) A board or member of the board may use association~~  
7           ~~funds to solicit proxies as part of the distribution~~  
8           ~~of proxies. If a member of the board, as an~~  
9           ~~individual, seeks to solicit proxies using association~~  
10           ~~funds, the board member shall proceed as a unit owner~~  
11           ~~under paragraph (1).~~

12           ~~(j) No managing agent or resident manager, or their~~  
13           ~~employees, shall solicit, for use by the managing agent or~~  
14           ~~resident manager, any proxies from any unit owner of the~~  
15           ~~association that retains the managing agent or employs the~~  
16           ~~resident manager, nor shall the managing agent or resident~~  
17           ~~manager cast any proxy vote at any association meeting except~~  
18           ~~for the purpose of establishing a quorum.]~~

19           ~~[(k)]~~ (m) No board shall adopt any rule prohibiting the  
20           solicitation of [~~proxies~~] votes or distribution of materials  
21           relating to association matters on the common elements by unit



1 owners; provided that a board may adopt rules regulating  
2 reasonable time, place, and manner of the solicitations or  
3 distributions, or both."

4 SECTION 9. Section 514B-124.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+]§514B-124.5[+] **Voting for elections; cumulative**  
7 **voting[-]; runoff elections; penalties.** (a) If the bylaws  
8 provide for cumulative voting for an election at a meeting, each  
9 unit owner [~~present in person or represented by proxy~~] shall  
10 have a number of votes equal to the unit owner's voting  
11 percentage multiplied by the number of positions to be filled at  
12 the election.

13 (b) Each unit owner shall be entitled to cumulate the  
14 votes of the unit owner and give all of the votes to one nominee  
15 or distribute the votes among any or all of the nominees.

16 (c) The nominee or nominees receiving the highest number  
17 of votes under this section, up to the total number of positions  
18 to be filled, shall be deemed elected and shall be given the  
19 longest term.



1 (d) This section shall not prevent the filling of  
2 vacancies on the board of directors in accordance with this  
3 chapter and the association's governing documents.

4 (e) A quorum shall not be required to hold the election;  
5 provided that the election shall not be valid unless at least  
6 twenty per cent of the eligible unit owners cast ballots. The  
7 association shall have blank ballots available at the election  
8 for distribution to eligible unit owners who have not yet voted.  
9 The ballots shall be handled in the same manner as ballots  
10 submitted with the second notice of election under section 514B-  
11 123(j).

12 (f) A unit owner may not authorize any other person to  
13 vote on the owner's behalf; provided that a unit owner who needs  
14 assistance casting a ballot may obtain such assistance.

15 (g) The regular election of directors shall occur at the  
16 annual meeting. The first order of business at the annual  
17 meeting shall be the collection of ballots not yet cast.

18 (h) An election shall not be required unless the number of  
19 candidates who file notices of intent pursuant to section 514B-  
20 123(g) or are nominated exceed the number of board vacancies, or  
21 the board vacancies are for unequal lengths of terms of office.



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1       (i) The association shall conduct a runoff election for  
2 candidates who tie unless the bylaws provide a different method  
3 for deciding tie votes. If a runoff election is required, the  
4 runoff election shall be held between twenty-one days and thirty  
5 days after the date of the election at which the tie vote  
6 occurred. Within seven days of the election at which the tie  
7 vote occurred, the board shall mail or personally deliver to the  
8 unit owners a notice of runoff election. The notice shall  
9 specify the date of the runoff election and meet the  
10 requirements for ballot envelopes submitted with the second  
11 notice of election specified under section 514B-123(j).

12       (j) Any challenge to the election process shall be  
13 commenced within sixty days after the election results are  
14 announced.

15       (k) A ballot that is not cast in accordance with this  
16 chapter shall be deemed invalid.

17       (l) Any person who knowingly votes when the person is not  
18 entitled to vote under this chapter shall be guilty of a class C  
19 felony.



1        (m) Forgery of a ballot envelope used in an election under  
2 this chapter or certificate of election is punishable as forgery  
3 in the third degree pursuant to section 708-853."

4        SECTION 10. Section 514B-150, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6        "(b) The board shall make available a copy of the annual  
7 audit to each unit owner at least thirty days prior to the  
8 annual meeting which follows the end of the fiscal year. The  
9 board shall not be required to submit a copy of the annual audit  
10 report to an owner if the [~~proxy form~~] ballot envelope issued  
11 pursuant to section [~~514B-123(e)~~] 514B-123(j) is not marked to  
12 indicate that the owner wishes to obtain a copy of the report.  
13 If the annual audit has not been completed by that date, the  
14 board shall make available:

- 15        (1) An unaudited [~~year-end~~] year-end financial statement  
16        for the fiscal year to each unit owner at least thirty  
17        days prior to the annual meeting; and  
18        (2) The annual audit to all owners at the annual meeting,  
19        or as soon as the audit is completed, but not later  
20        than six months after the annual meeting."



1 SECTION 11. Section 514B-153, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3 "(e) The managing agent, resident manager, or board shall  
4 keep an accurate and current list of members of the association  
5 and their current addresses, and the names and addresses of the  
6 vendees under an agreement of sale, if any. The list shall be  
7 maintained at a place designated by the board, and a copy shall  
8 be available, at cost, to any member of the association as  
9 provided in the declaration or bylaws or rules and regulations  
10 or, in any case, to any member who furnishes to the managing  
11 agent or resident manager or the board a duly executed and  
12 acknowledged affidavit stating that the list:

13 (1) Will be used by the owner personally and only for the  
14 purpose of soliciting votes [~~or proxies~~] or providing  
15 information to other owners with respect to  
16 association matters; and

17 (2) Shall not be used by the owner or furnished to anyone  
18 else for any other purpose.

19 A board may prohibit commercial solicitations.

20 Where the condominium project or any units within the  
21 project are subject to a time share plan under chapter 514E, the



1 association shall only be required to maintain in its records  
 2 the name and address of the time share association as the  
 3 representative agent for the individual time share owners unless  
 4 the association receives a request by a time share owner to  
 5 maintain in its records the name and address of the time share  
 6 owner."

7 SECTION 12. Section 514B-154, Hawaii Revised Statutes, is  
 8 amended by amending subsection (c) to read as follows:

9 "(c) After any association meeting, and not earlier, unit  
 10 owners shall be permitted to examine [~~proxies,~~] tally sheets,  
 11 ballots, owners' check-in lists, and the certificate of  
 12 election; provided that:

13 (1) Owners shall make a request to examine the documents  
 14 within thirty days after the association meeting;

15 (2) The board may require owners to furnish to the  
 16 association a duly executed and acknowledged affidavit  
 17 stating that the information is requested in good  
 18 faith for the protection of the interest of the  
 19 association or its members or both; and

20 (3) Owners shall pay for administrative costs in excess of  
 21 eight hours per year.



1           The documents may be destroyed ninety days after the  
2 association meeting; provided that in the event of a contested  
3 election, the documents shall be retained until the contested  
4 election is resolved. Copies of tally sheets, owners' check-in  
5 lists, and the certificates of election from the most recent  
6 association meeting shall be provided to any owner upon the  
7 owner's request; provided that the owner pays a reasonable fee  
8 for duplicating, postage, stationery, and other administrative  
9 costs associated with handling the request."

10           SECTION 13. Section 514B-154.5, Hawaii Revised Statutes,  
11 is amended by amending subsection (a) to read as follows:

12           "(a) Notwithstanding any other provision in the  
13 declaration, bylaws, or house rules, if any, the following  
14 documents, records, and information, whether maintained, kept,  
15 or required to be provided pursuant to this section or section  
16 514B-152, 514B-153, or 514B-154, shall be made available to any  
17 unit owner and the owner's authorized agents by the managing  
18 agent, resident manager, board through a board member, or the  
19 association's representative:





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- 1           (1) All financial and other records sufficiently detailed  
2                   in order to comply with requests for information and  
3                   disclosures related to the resale of units;
- 4           (2) An accurate copy of the declaration, bylaws, house  
5                   rules, if any, master lease, if any, a sample original  
6                   conveyance document, and all public reports and any  
7                   amendments thereto;
- 8           (3) Detailed, accurate records in chronological order of  
9                   the receipts and expenditures affecting the common  
10                  elements, specifying and itemizing the maintenance and  
11                  repair expenses of the common elements and any other  
12                  expenses incurred and monthly statements indicating  
13                  the total current delinquent dollar amount of any  
14                  unpaid assessments for common expenses;
- 15          (4) All records and the vouchers authorizing the payments  
16                  and statements kept and maintained at the address of  
17                  the project, or elsewhere within the State as  
18                  determined by the board, subject to section 514B-152;
- 19          (5) All signed and executed agreements for managing the  
20                  operation of the property, expressing the agreement of  
21                  all parties, including but not limited to financial



1 and accounting obligations, services provided, and any  
2 compensation arrangements, including any subsequent  
3 amendments;

4 (6) An accurate and current list of members of the  
5 condominium association and the members' current  
6 addresses and the names and addresses of the vendees  
7 under an agreement of sale, if any. A copy of the  
8 list shall be available, at cost, to any unit owner or  
9 owner's authorized agent who furnishes to the managing  
10 agent, resident manager, or the board a duly executed  
11 and acknowledged affidavit stating that the list:

12 (A) Shall be used by the unit owner or owner's  
13 authorized agent personally and only for the  
14 purpose of soliciting votes [~~or proxies~~] or for  
15 providing information to other unit owners with  
16 respect to association matters; and

17 (B) Shall not be used by the unit owner or owner's  
18 authorized agent or furnished to anyone else for  
19 any other purpose;



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1           (7) The association's most current financial statement, at  
2           no cost or on twenty-four-hour loan, at a convenient  
3           location designated by the board;

4           (8) Meeting minutes of the association, pursuant to  
5           section 514B-122;

6           (9) Meeting minutes of the board, pursuant to section  
7           514B-126, which shall be:

8           (A) Available for examination by unit owners or  
9           owners' authorized agents at no cost or on  
10          twenty-four-hour loan at a convenient location at  
11          the project, to be determined by the board; or

12          (B) Transmitted to any unit owner or owner's  
13          authorized agent making a request for the minutes  
14          within fifteen days of receipt of the request by  
15          the owner or owner's authorized agent; provided  
16          that:

17          (i) The minutes shall be transmitted by mail,  
18          electronic mail transmission, or facsimile,  
19          by the means indicated by the owner or  
20          owner's authorized agent, if the owner or



1 owner's authorized agent indicated a  
2 preference at the time of the request; and  
3 (ii) The owner or owner's authorized agent shall  
4 pay a reasonable fee for administrative  
5 costs associated with handling the request,  
6 subject to section 514B-105(d);

7 (10) Financial statements, general ledgers, the accounts  
8 receivable ledger, accounts payable ledgers, check  
9 ledgers, insurance policies, contracts, and invoices  
10 of the association for the duration those records are  
11 kept by the association, and any documents regarding  
12 delinquencies of ninety days or more shall be  
13 available for examination by unit owners or owners'  
14 authorized agents at convenient hours at a place  
15 designated by the board; provided that:

16 (A) The board may require unit owners or owners'  
17 authorized agents to furnish to the association a  
18 duly executed and acknowledged affidavit stating  
19 that the information is requested in good faith  
20 for the protection of the interests of the  
21 association, its members, or both; and



- 1           (B) Unit owners or owners' authorized agents shall
- 2                     pay for administrative costs in excess of eight
- 3                     hours per year;
- 4       (11) [~~Proxies, tally~~] Tally sheets, ballots, unit owners'
- 5                     check-in lists, and the certificate of election
- 6                     subject to section 514B-154(c);
- 7       (12) Copies of an association's documents, records, and
- 8                     information, whether maintained, kept, or required to
- 9                     be provided pursuant to this section or section
- 10                    514B-152, 514B-153, or 514B-154;
- 11       (13) A copy of the management contract from the entity that
- 12                     manages the operation of the property before the
- 13                     organization of an association;
- 14       (14) Other documents requested by a unit owner or owner's
- 15                     authorized agent in writing; provided that the board
- 16                     shall give written authorization or written refusal
- 17                     with an explanation of the refusal within thirty
- 18                     calendar days of receipt of a request for documents
- 19                     pursuant to this paragraph; and
- 20       (15) A copy of any contract, written job description, and
- 21                     compensation between the association and any person or



1           entity retained by the association to manage the  
2           operation of the property on-site, including but not  
3           limited to the general manager, operations manager,  
4           resident manager, or site manager; provided that  
5           personal information may be redacted from the contract  
6           copy, including but not limited to the manager's date  
7           of birth, age, signature, social security number,  
8           residence address, telephone number, non-business  
9           electronic mail address, driver's license number,  
10          Hawaii identification card number, bank account  
11          number, credit or debit card number, access code or  
12          password that would permit access to the manager's  
13          financial accounts, or any other information that may  
14          be withheld under state or federal law."

15          SECTION 14. This Act does not affect rights and duties  
16 that matured, penalties that were incurred, and proceedings that  
17 were begun before its effective date.

18          SECTION 15. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20          SECTION 16. This Act shall take effect upon its approval.

21



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INTRODUCED BY:

*[Handwritten Signature]* BR



# S.B. NO. 1202

**Report Title:**

Condominium Associations; Real Estate Commission; Voting; Proxies; Condominium Boards of Directors; Unit Owners; Elections; Notices; Ballots; Penalties

**Description:**

Expands the real estate commissions enforcement authority to include violations of requirements for association meetings and board of director elections. Requires newly elected or appointed condominium association board members to certify in writing compliance with specified duties and obligations. Clarifies electronic voting device procedures. Eliminates proxy voting for condominium associations. Establishes additional requirements and procedures for association meetings and board of director elections, including notices of election, notice of intent to run for election, ballots, and runoff elections. Establishes penalties for improper voting and forgery of ballot envelopes.

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

