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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.

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



1       §421J-B Removal of directors elected by members or  
2 directors. (a) The members may remove a director elected by  
3 the members with or without cause unless otherwise provided in  
4 the association documents. If the removal is successful, the  
5 replacement director shall be elected for the remainder of the  
6 removed director's term in accordance with all applicable  
7 requirements and procedures in the association documents and  
8 this chapter. If the replacement director is not elected at the  
9 meeting in which the removal occurred, notwithstanding anything  
10 to the contrary in the association documents, the board may fill  
11 vacancies to serve until the next annual or duly noticed special  
12 meeting of the association.

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

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



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

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

9        (1) The board of directors recommends removal of the  
10 director; or

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

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

18        (B) Contains the printed name, identification of the  
19 unit, address of the signing members, and dates  
20 of their signatures;



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

8           (D) Is submitted within one hundred twenty days of  
9           the earliest signature.

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

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

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



1        (i) If, at the beginning of a director's term on the  
2 board, the association documents provide that the director may  
3 be 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        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~~] a 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~~] shall state that the  
7 purpose, or one of the purposes, of the meeting is removal of  
8 the director.

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

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

17 (h) A director elected by the board may be removed without  
18 cause by the vote of two-thirds of the directors then in office  
19 or [~~such~~] a greater number as is set forth in the articles or  
20 bylaws; provided that a director elected by the board to fill



1 the vacancy of a director elected by the members may be removed  
2 without cause by the members, but not the board.

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

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

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

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

21 (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~~] subsection (a) shall  
10 state:

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

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

19 (c) The requirements of this section shall not be  
20 interpreted to preclude any association member from proposing an



1 amendment to the declaration or bylaws [~~or proposing to remove a~~  
2 ~~member of the board at an association meeting~~].

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

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

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

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



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on January 1, 2023.



**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 1/1/2023. (CD1)

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

