

ACT 4

H.B. NO. 1360

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Legislature finds that publicly held Hawaii corporations should be permitted to restrict or qualify cumulative voting by provision in their articles of incorporation and/or bylaws, to discourage the election of a director or directors who would exclusively represent a special stockholder or group of stockholders, and to encourage the election of directors who would represent all stockholders in their deliberations.

SECTION 2. Section 416-74, Hawaii Revised Statutes, is amended to read as follows:

“§416-74 Cumulative voting. If not less than forty-eight hours prior to the time fixed for any annual meeting, or prior to the time fixed for any special meeting to be held as provided in section 416-73, or prior to the time fixed for any other special meeting to be held in lieu of the annual meeting for the election of directors, any stockholder or stockholders or member or members of the

corporation deliver to the president, vice-president, secretary, or treasurer of the corporation a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each stockholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the stockholder or member multiplied by the number of directors to be elected at the meeting, or in the case of a nonprofit corporation each member shall have a number of votes equal to the number of directors to be elected at the meeting; each stockholder or member shall be entitled to cumulate [his] the votes of said stockholder or member and give all thereof to one nominee or to distribute [his] the votes of said stockholder or member in such manner as the stockholder or member determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of association or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of association or bylaws[.]; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the directors, which vacancies may be filled in such manner as may be provided in the articles of association or bylaws."

SECTION 3. Act 167, Session Laws of Hawaii 1983, is amended by amending section -33 of section 1 to read as follows:

"§ -33 Voting of shares. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

Shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by [his] a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders delivers to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows: each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting; each shareholder shall be entitled to cumulate [his] the votes of said shareholder and give all thereof to one nominee or to distribute

[his] the votes of said shareholder in such manner as the shareholder determines among any or all of the nominees; and the nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees. The right to have directors elected by cumulative voting as aforesaid shall exist notwithstanding that provision therefor is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws[.]; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the directors, which vacancies may be filled in such manner as may be provided in the articles of incorporation or bylaws.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

Shares held by a personal representative may be voted by [him,] that individual, either in person or by proxy, without a transfer of such shares into [his] that individual's name. Shares standing in the name of a trustee may be voted by [him,] the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held [by him] without a transfer of such shares into [his] said trustee's name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into [his] the receiver's name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 9, 1985.)