

ACT 69

S.B. NO. 2685

A Bill for an Act Relating to Planned Community Associations.

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

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

**“§421J-A Cumulative voting for directors.** (a) If the association documents provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of positions for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates. The candidates receiving the highest number of votes under this section, up to the total number of positions to be filled, shall be deemed elected, and shall be given the longest term.

(b) Unless otherwise provided in the association documents, cumulative voting shall not be permitted.

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

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

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

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

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

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

- (1) The board of directors recommends removal of the director; or
- (2) A member delivers to the secretary of the association or managing agent a petition for removal of the director that:
  - (A) Is signed by members representing at least one hundred units or members who own at least twenty-five per cent of the total number of units in the planned community, whichever is less;
  - (B) Contains the printed name, identification of the unit, address of the signing members, and dates of their signatures;
  - (C) Is delivered within seven days after the posting of a notice of intent to distribute proxies that includes the election of directors in accordance with section 421J-4(e), or within seven days after the posting of a notice of intent to distribute a notice of a meeting under section 421J-3.5(f); and
  - (D) Is submitted within one hundred twenty days of the earliest signature.

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

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

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

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

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

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

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

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

- (2) A member gives notice of the member's intent to cumulatively vote not less than forty-eight hours before the meeting or ~~[such]~~ a longer period as may be required by the articles or bylaws; and
- (3) If one member gives notice of intent to cumulatively vote, all other members participating in the election may cumulate their votes without giving further notice.
- (c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 414D-138 are met unless the votes cast against removal or not consenting in writing to the removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected; provided that if the action is taken by ballot, all members entitled to vote had voted.
- (d) Members may not cumulatively vote if the directors and members are identical.
- (e) This section shall not apply to any planned community association governed by chapter 421J."

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

**~~[[~~§414D-138~~]]~~ Removal of directors elected by members or directors.**

(a) The members may remove one or more directors elected by them without cause unless otherwise provided in the articles or bylaws.

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

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

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

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

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

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

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

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the

specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

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

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

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

- (1) Hand delivery;
- (2) United States mail sent to the mailing address of each unit or to another mailing address designated in writing by the association member;
- (3) Electronic mail to the electronic mailing address designated in writing by the association member; or
- (4) Posting of the meeting notice in its entirety on a portion of the association’s website that is accessible to all members.

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

- (1) The date, time, and place of the meeting; and
- (2) The items on the agenda, including the general nature of and rationale for any proposed amendment to the declaration or bylaws; any proposal for a special assessment, unless the authority for a special assessment is otherwise provided for in the association’s governing documents; and any proposal to remove a member of the board.

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

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

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

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

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 2022.)

**Note**

1. Edited pursuant to HRS §23G-16.5.