



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 12, 2006

GOV. MSG. NO. 870

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 2193 SD1 HD1 CD1

On July 11, 2006, Senate Bill No. 2193, entitled "A Bill for an Act Relating to Planned Community Associations" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

This bill addresses issues of access to board meetings and association documents of planned community associations.

While the bill contains some provisions that would give homeowners in planned communities greater access to information about the management of their association, the bill also contains some provisions that might work to exclude homeowner participation in the affairs of their community.

Most notably, the bill deletes from current law the requirement that board meeting minutes include the recorded votes of board members. Deleting this provision could be construed to remove the accountability for actions of the board members. It may also make it more difficult to identify potential conflicts of interest when a board member should have abstained from voting.

Second, the bill allows for the examination of board meeting minutes but deletes language that allows for the review of the association's meeting minutes. Since association business is conducted at both types of meetings, it is unclear why the legislation allows homeowners to review one set of documents but not the other set of documents.

Third, the bill allows the Planned Community Association Board to set up committees and subcommittees at various times and places and requires that the members of the committees and subcommittees be identified by name. This seems reasonable. However, the bill also allows the Board to eliminate committees and subcommittees without regard to the fact that some

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committees are established as a result of requirements placed on the development by the counties as a condition of approval.

Finally, some members of planned communities have expressed concern that this bill could be interpreted to allow homeowner input on matters on a board agenda, but would preclude homeowners from commenting on important matters not on a board agenda. They believe this could lead to some boards deliberately not putting sensitive topics up for discussion.

The bill contains provisions indicating planned community meetings should be open, ensures that minutes are available to the members, and requires detailed financial information to be made available for inspection.

For the foregoing reasons, I allowed Senate Bill No. 2193 to be come law as Act 312 effective July 11, 2006 without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. The legislature finds that planned community
2 associations can have a major impact on the planned community
3 and its members. Members of planned communities are not only
4 subject to the restrictions and obligations in the recorded
5 declarations and bylaws of the association, they are also
6 subject to the decisions and actions of the association's board
7 of directors and its agents. These boards and their agents may
8 sometimes conduct the business of the association in an
9 inconsistent manner, or without the knowledge and consent of the
10 members of the association.

11 The purpose of this Act is to make the actions of board
12 members of planned community associations more transparent, and
13 to increase the accountability of the board to the association.

14 SECTION 2. Section 421J-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§421J-5[+] Meetings of the board of directors[-];
17 committee or subcommittee. (a) [~~Whenever practicable, all~~] All
18 meetings of the board of directors, other than executive



1 sessions, shall be open to all members to provide input on the
2 matters being discussed. Members who are not on the board of
3 directors may participate in any deliberation or discussion,
4 other than during executive sessions, unless a majority of a
5 quorum of the board of directors votes otherwise.

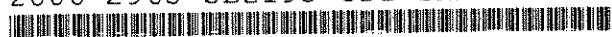
6 (b) The board of directors shall meet at least once each
7 year.

8 (c) ~~[Minutes of the meetings of the board of directors~~
9 ~~shall include the recorded vote of each board member on all~~
10 ~~motions except motions voted upon in executive session.~~

11 ~~(d)]~~ The board of directors, with the approval of a
12 majority of a quorum of its members, may adjourn any meeting and
13 reconvene in executive session to discuss and vote upon matters
14 concerning personnel, litigation in which the association is or
15 may become involved, or as may be necessary to protect the
16 attorney-client privilege of the association. The general
17 nature of any business to be considered in executive session
18 shall be first announced in the regular session.

19 ~~(e)]~~ (d) No board member shall vote by proxy at board
20 meetings.

21 ~~(f)]~~ (e) A director who has a conflict of interest on any
22 issue before the board shall disclose the nature of the conflict



1 of interest prior to a vote on that issue at the board meeting,
2 and the minutes of the meeting shall record the fact that a
3 disclosure was made.

4 (f) The board may appoint committees or subcommittees to
5 review and consider any specific matters, and may alter or
6 eliminate the committees or subcommittees; provided that the
7 board in the minutes of the meeting at which the action was
8 taken to appoint the committee or subcommittee shall:

9 (1) Report that the committee or subcommittee was
10 appointed;

11 (2) Identify the members of the committee or subcommittee;
12 and

13 (3) Describe the matter that the committee or subcommittee
14 is to review and consider."

15 SECTION 3. Section 421J-7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§421J-7[+] Documents of the association. (a) [~~Upon~~
18 ~~approval by the board,~~] Association documents, the most current
19 financial statement of the association, and the minutes of the
20 most recent meeting of the board of directors (other than
21 minutes of executive sessions) shall be made available for
22 examination by any member at no cost, on twenty-four-hour loan



1 or during reasonable hours [~~, at a location designated by the~~
2 ~~board].~~

3 (b) [~~The approved minutes of other meetings of the board,~~
4 ~~other than executive sessions, and the approved meetings of the~~
5 ~~association for the current and prior year, shall be made~~
6 ~~available for examination by members during reasonable hours at~~
7 ~~a location designated by the board. Copies of those meeting~~
8 ~~minutes shall be provided to any member upon the member's~~
9 ~~request if the member pays a reasonable fee for duplication,~~
10 ~~postage, stationery, and other administrative costs associated~~
11 ~~with handling the request.] The minutes of board meetings other
12 than executive sessions, once approved, for the current and
13 prior year shall be:~~

14 (1) Available for examination by any member at no cost or
15 on twenty-four-hour loan; or

16 (2) Transmitted to any member requesting copies of the
17 minutes, by the board, the managing agent, or the
18 association's representative, within a reasonable
19 period of time from receipt of the request; provided
20 that:

21 (A) The minutes shall be transmitted by mail,
22 electronic mail transmission, or facsimile, as

1 requested by the member, if the member indicates
2 a preference at the time of the request; and

3 (B) Reasonable costs of duplication, postage,
4 stationery, and other administrative costs
5 associated with handling the request shall be
6 borne by the requesting member;

7 and

8 (3) Maintained by the association for at least five years.

9 (c) Financial statements, general ledgers, accounts
10 receivable ledgers, accounts payable ledgers, check ledgers,
11 insurance policies, contracts, invoices of the association for
12 the [~~current and prior year,~~] duration those records are kept by
13 the association, and any documents regarding delinquencies of
14 ninety days or more[~~7~~] shall be made available for examination
15 by members at reasonable hours at a location designated by the
16 board; provided that members shall pay for all costs associated
17 with the examination of these documents. The board may require
18 members to furnish the association with an affidavit stating
19 that the foregoing information is requested in good faith for
20 the protection of the interests of the association, its members,
21 or both. Copies of these documents shall be provided to any
22 member upon the member's request if the member pays a reasonable



1 fee for duplication, postage, stationery, and other
2 administrative costs associated with handling the request.

3 (d) Members may view proxies, tally sheets, ballots,
4 members' check-in lists, and the certificates of election, if
5 any, for a period of thirty days following any association
6 meeting; provided that members [~~shall pay~~] may be charged for
7 [~~all~~] any costs associated with the examination of the
8 documents. The board may require members to furnish to the
9 association an affidavit stating that the foregoing information
10 is requested in good faith for the protection of the interests
11 of the association, its members, or both. Proxies and ballots
12 may be destroyed following the thirty-day period. Copies of
13 tally sheets, members' check-in lists, and the certificates of
14 election from the most recent association meeting shall be
15 provided to any member upon the member's request if the member
16 pays a reasonable fee for duplication, postage, stationery, and
17 other administrative costs associated with handling the request.

18 (e) Members may file a written request with the board to
19 examine other documents of the association. The board shall
20 give written authorization, or written refusal with an
21 explanation of the refusal, for the examination within sixty
22 calendar days of receipt of the request. The board may



1 condition its approval of any such request upon payment of
2 reasonable fees. Without limitation, books and records kept by
3 or on behalf of an association may be withheld from inspection
4 and copying to the extent that they concern:

- 5 (1) Personnel records;
- 6 (2) An individual's medical records;
- 7 (3) Records relating to business transactions that are
8 currently in negotiation;
- 9 (4) Communications [~~which~~] that are privileged because of
10 attorney-client privilege or any other applicable
11 privilege of the association;
- 12 (5) Complaints against an individual member of the
13 association;
- 14 (6) Any records, the release of which could be a violation
15 of any law, ordinance, rule, or regulation; or
16 (7) Similar records."

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

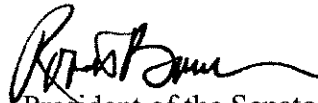
20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.


22 SECTION 6. This Act shall take effect on July 1, 2006.

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.


President of the Senate



Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.


Speaker, House of Representatives


Clerk, House of Representatives