

ORIGINAL



GOV. MSG. NO 1137

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 4, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 4, 2011, the following bill was signed into law:

SB1349 SD1 HD1

RELATING TO NONPROFIT CORPORATIONS
ACT 037 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

'11 MAY -4 P5:10

A BILL FOR AN ACT

RELATING TO NONPROFIT CORPORATIONS.

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

1 SECTION 1. The purpose of this Act is to implement certain
2 portions of the Model Nonprofit Corporations Act, Third Edition.
3 The legislature finds that voting by ballot and through
4 electronic means is an efficient way to permit members of
5 nonprofit corporations to vote or take other actions. This Act
6 clarifies that members of Hawaii nonprofit corporations may take
7 action by electronically-transmitted ballots.

8 The legislature also finds that allowing the conduct of
9 membership meetings through electronic communications technology
10 in appropriate circumstances allows for greater participation by
11 members in nonprofit membership corporations and reduces the
12 costs associated with annual elections and matters involving
13 membership voting. This Act also clarifies that membership
14 meetings of Hawaii nonprofit corporations may utilize
15 appropriate electronic communication methods.

16 Finally, this Act expressly permits nonprofit corporations
17 to utilize electronic transmission to provide notice to
18 directors in the manner currently permitted for notice to



1 members; provided that the member or director has consented to
2 receive notice by that method.

3 SECTION 2. Chapter 414D, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§414D- Action by ballot. (a) Except as otherwise
7 provided by the articles of incorporation or bylaws of a
8 corporation, any action that may be taken at any annual,
9 regular, or special meeting of members may be taken without a
10 meeting if the corporation delivers a ballot to every member
11 entitled to vote on the matter. The corporation may deliver
12 ballots by electronic transmission.

13 (b) A ballot shall:

- 14 (1) Be either in written form or in the form of an
15 electronic transmission;
16 (2) Set forth each proposed action;
17 (3) Provide an opportunity to vote for or withhold a vote
18 for each candidate for election as a director or
19 officer; and
20 (4) Provide an opportunity to vote for or against each
21 proposed action.



1 (c) Approval by ballot pursuant to this section shall be
2 valid only if:

3 (1) The number of votes cast by ballot equals or exceeds
4 the quorum required to be present at a meeting to
5 authorize the action; and

6 (2) The number of affirmative votes equals or exceeds the
7 number of affirmative votes for approval that would be
8 required to approve the action at a meeting.

9 (d) All solicitations for votes by ballot shall:

10 (1) Indicate the number of responses needed to meet the
11 quorum requirements;

12 (2) State the percentage of approvals necessary to approve
13 each action; and

14 (3) Specify the time by which a ballot shall be received
15 by the corporation in order to be counted.

16 (e) Except as otherwise provided in the articles of
17 incorporation or bylaws of the corporation, a ballot shall not
18 be revoked."

19 SECTION 3. Section 414D-14, Hawaii Revised Statutes, is
20 amended by amending the definitions of "approved by (or approval
21 by) the members" and "vote" to read as follows:



1 "Approved by the members" [+]or "approval by[+] the
2 members" means an act approved or ratified by [~~the~~]:

3 (1) The affirmative vote of a majority of the votes
4 represented and [~~voting~~] cast at a duly held meeting
5 at which a quorum is present [~~(which affirmative votes~~
6 ~~also constitute a majority of the required quorum) or~~
7 ~~by a written~~];

8 (2) A ballot or written consent in conformity with this
9 chapter; or [~~by the~~]

10 (3) The affirmative vote, [~~written~~] ballot, or written
11 consent of [~~such~~] the greater proportion, including
12 the votes of all the members of any class, unit, or
13 grouping as may be provided in the articles, bylaws,
14 or this chapter for any specified member action.

15 "Vote" includes authorization by [~~written~~] ballot and
16 written consent."

17 SECTION 4. Section 414D-15, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsections (a) and (b) to read:

20 "(a) Notice may be oral, in the form of an electronic
21 transmission as described in subsections (i) and (j), or
22 written.



1 (b) Notice may be communicated in person; by telephone,
2 telegraph, teletype, or other form of wire or wireless
3 communication; [~~or~~] by mail or private carrier[~~;~~]; or by
4 electronic transmission as described in subsections (i) and (j).
5 If these forms of personal notice are impracticable, notice may
6 be communicated by a newspaper of general circulation in the
7 area where it is published; or by radio, television, or other
8 form of public broadcast communication."

9 2. By amending subsections (i) and (j) to read:

10 "(i) Without limiting the manner by which notice otherwise
11 may be given to members[~~;~~] or directors, notice to members or
12 directors given by the corporation under this chapter, the
13 articles of incorporation, or the bylaws shall be effective if
14 provided by electronic transmission consented to by the member
15 or director to whom the notice is given. Any consent shall be
16 revocable by the member or director by written notice or notice
17 by electronic transmission to the corporation. [~~Any consent~~]
18 Consent shall be deemed revoked if:

19 (1) The corporation is unable to deliver by electronic
20 transmission two consecutive notices given by the
21 corporation in accordance with [~~such~~] the consent; and



1 (2) The inability to deliver becomes known to the
2 secretary or an assistant secretary of the
3 corporation, to the transfer agent, or other person
4 responsible for giving notice; provided that the
5 inadvertent failure to treat [~~such~~] the inability to
6 give electronic notice as a revocation shall not
7 invalidate any meeting or other action.

8 (j) Notice given pursuant to subsection (i) shall be
9 deemed given:

10 (1) If by facsimile telecommunication, when directed to a
11 number at which the member or director has consented
12 to receive notice;

13 (2) If by electronic mail, when directed to an electronic
14 mail address at which the member or director has
15 consented to receive notice;

16 (3) If by posting on an electronic network together with
17 separate notice to the member or director of [~~such~~]
18 the specific posting, upon the later of the posting
19 and the giving of [~~such~~] the separate notice; and

20 (4) If by any other form of electronic transmission, when
21 directed to the member[~~-~~] or director.



1 An affidavit of the secretary, assistant secretary, transfer
2 agent, or other agent of the corporation that the notice has
3 been given by a form of electronic transmission, in the absence
4 of fraud, shall be prima facie evidence of the [~~facts stated~~
5 ~~therein.~~] fact of notice."

6 SECTION 5. Section 414D-17, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) If for any reason it is impractical or impossible for
9 any corporation to call or conduct a meeting of its members,
10 delegates, or directors[~~7~~] or otherwise obtain their consent[~~7~~]
11 in the manner prescribed by its articles, bylaws, or this
12 chapter, then upon petition of a director, officer, delegate, or
13 member, the court may order that [~~such a~~] the meeting be called
14 or that a [~~written~~] ballot or other form of obtaining the vote
15 of members, delegates, or directors be authorized[~~7~~] in [~~such~~] a
16 manner [~~as~~] that the court finds fair and equitable under the
17 circumstances."

18 SECTION 6. Section 414D-101, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[~~f~~]**\$414D-101[~~f~~]** **Annual and regular meetings.** (a) A
21 corporation with members shall hold a membership meeting



1 annually at a time stated in or fixed in accordance with the
2 bylaws.

3 (b) A corporation with members may hold regular membership
4 meetings at the times stated in or fixed in accordance with the
5 bylaws.

6 (c) Annual and regular membership meetings may be held in
7 or out of this State at the place stated in or fixed in
8 accordance with the bylaws. If no place is stated in or fixed
9 in accordance with the bylaws, annual and regular meetings shall
10 be held at the corporation's principal office.

11 (d) At the annual meeting:

12 (1) The president and chief financial officer shall report
13 on the activities and financial condition of the
14 corporation; and

15 (2) The members shall consider and act upon [~~such~~] other
16 matters as may be raised consistent with the notice
17 requirements of sections 414D-105 and 414D-111.

18 (e) At regular meetings, the members shall consider and
19 act upon [~~such~~] matters as may be raised consistent with the
20 notice requirements of sections 414D-105 and 414D-111.



1 (f) The failure to hold an annual or regular meeting at a
2 time stated in or fixed in accordance with a corporation's
3 bylaws shall not affect the validity of any corporate action.

4 (g) If authorized by the board of directors in its sole
5 discretion, members or proxies of members may participate at an
6 annual or regular meeting of members by means of the Internet,
7 teleconference, or other electronic transmission technology in a
8 manner that allows members the opportunity to:

- 9 (1) Read or hear the proceedings substantially
10 concurrently with the occurrence of the proceedings;
11 (2) Vote on matters submitted to the members;
12 (3) Pose questions; and
13 (4) Make comments.

14 A member or proxy of a member participating in a meeting by
15 means authorized by this subsection shall be deemed to be
16 present in person at the meeting. The corporation shall
17 implement reasonable measures to verify that each person deemed
18 present and permitted to vote at the meeting by means of the
19 Internet, teleconference, or other electronic transmission
20 technology is a member or proxy of a member."

21 SECTION 7. Section 414D-102, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§414D-102 Special meetings.** (a) A corporation with
2 members shall hold a special meeting of members:

3 (1) On call of its board, or the person or persons
4 authorized to do so by the articles or bylaws; or

5 (2) Unless the articles or bylaws provide otherwise, if
6 the holders of at least five per cent of the voting
7 power of any corporation sign, date, and deliver to
8 any corporate officer one or more written demands for
9 the meeting describing the purpose or purposes for
10 which it is to be held.

11 (b) The close of business on the thirtieth day before
12 delivery of the demand or demands for a special meeting to any
13 corporate officer shall be the record date for the purpose of
14 determining whether the five per cent requirement of subsection
15 (a) has been met.

16 (c) If a notice for a special meeting demanded under
17 subsection (a)(2) is not given pursuant to section 414D-105
18 within thirty days after the date the written demand or demands
19 are delivered to a corporate officer, [~~regardless of~~]
20 notwithstanding the requirements of subsection (d), a person
21 signing the demand or demands may set the time and place of the
22 meeting and give notice pursuant to section 414D-105.



1 (d) Special meetings of members may be held in or out of
2 this State at the place stated in or fixed in accordance with
3 the bylaws. If no place is stated or fixed in accordance with
4 the bylaws, special meetings shall be held at the corporation's
5 principal office.

6 (e) Only those matters that are within the purpose or
7 purposes described in the meeting notice required by section
8 414D-105 [~~may~~] shall be conducted at a special meeting of
9 members.

10 (f) If authorized by the board of directors in its sole
11 discretion, members or proxies of members may participate at a
12 special meeting of members by means of the Internet,
13 teleconference, or other electronic transmission technology in a
14 manner that allows members the opportunity to:

- 15 (1) Read or hear the proceedings substantially
16 concurrently with the occurrence of the proceedings;
17 (2) Vote on matters submitted to the members;
18 (3) Pose questions; and
19 (4) Make comments.

20 A member or proxy of a member participating in a meeting by
21 means authorized by this subsection shall be deemed to be
22 present in person at the meeting. The corporation shall



1 implement reasonable measures to verify that each person deemed
2 present and permitted to vote at the meeting by means of the
3 Internet, teleconference, or other electronic transmission
4 technology is a member or proxy of a member."

5 SECTION 8. Section 414D-114, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) A director elected by cumulative voting may be
8 removed by the members without cause if the requirements of
9 section 414D-138 are met unless the votes cast against
10 removal[~~7~~] or not consenting in writing to the removal[~~7~~] would
11 be sufficient to elect the director if voted cumulatively at an
12 election at which the same total number of votes were cast [~~for~~
13 ~~if the action is taken by [written] ballot, all memberships~~
14 ~~entitled to vote were voted~~] and the entire number of directors
15 authorized at the time of the director's most recent election
16 were then being elected[~~7~~]; provided that if the action is taken
17 by ballot, all members entitled to vote had voted."

18 SECTION 9. Section 414D-115, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§414D-115 Other methods of electing directors.** [~~a~~] A
21 corporation may provide in its articles or bylaws for the
22 election of directors by members or delegates:



- 1 (1) On the basis of chapter or other organizational unit;
- 2 (2) By region or other geographic unit;
- 3 (3) By preferential voting; or
- 4 (4) By any other reasonable method.

5 ~~[(b) Where directors or officers are to be elected by~~
6 ~~members, the bylaws or board of directors may allow the election~~
7 ~~to be conducted by mail if no less than two thousand five~~
8 ~~hundred members are eligible to vote on the record date~~
9 ~~determined pursuant to section 414D-107, and the primary purpose~~
10 ~~of the corporation is the management of a planned community as~~
11 ~~defined in section 421J 2. Except for the corporations~~
12 ~~described in this subsection, the election of directors may be~~
13 ~~conducted by mail only if so provided in a corporation's bylaws~~
14 ~~or articles of incorporation.]"~~

15 SECTION 10. Section 414D-116, Hawaii Revised Statutes, is
16 amended to read as follows:

17 " ~~[+]§414D-116[+]~~ **Corporation's acceptance of votes.** (a)
18 If the name signed on a vote, ballot, consent, waiver, or proxy
19 appointment corresponds to the name of a member, the
20 corporation, acting in good faith, is entitled to accept the
21 vote, ballot, consent, waiver, or proxy appointment and to give
22 it effect as the act of the member.



1 (b) If the name signed on a vote, ballot, consent, waiver,
2 or proxy appointment does not correspond to the record name of a
3 member, the corporation if acting in good faith is nevertheless
4 entitled to accept the vote, ballot, consent, waiver, or proxy
5 appointment and give it effect as the act of the member if:

6 (1) The member is an entity and the name signed purports
7 to be that of an officer or agent of the entity;

8 (2) The name signed purports to be that of an attorney-in-
9 fact of the member and if the corporation requests,
10 evidence acceptable to the corporation of the
11 signatory's authority to sign for the member has been
12 presented with respect to the vote, ballot, consent,
13 waiver, or proxy appointment;

14 (3) Two or more persons hold the membership as co-tenants
15 or fiduciaries [~~and~~], the name signed purports to be
16 the name of at least one of the co-holders, and the
17 person signing appears to be acting on behalf of all
18 the co-holders;

19 (4) The name signed purports to be that of an
20 administrator, executor, guardian, or conservator
21 representing the member and, if the corporation
22 requests, evidence of fiduciary status acceptable to



1 the corporation has been presented with respect to the
2 vote, ballot, consent, waiver, or proxy appointment;
3 and

4 (5) The name signed purports to be that of a receiver or
5 trustee in bankruptcy of the member, and, if the
6 corporation requests, evidence of this status
7 acceptable to the corporation has been presented with
8 respect to the vote, ballot, consent, waiver, or proxy
9 appointment.

10 (c) The corporation is entitled to reject a vote, ballot,
11 consent, waiver, or proxy appointment if the secretary or other
12 officer or agent authorized to tabulate votes, acting in good
13 faith, has reasonable basis for doubt about the validity of the
14 signature on it or the signatory's authority to sign for the
15 member.

16 (d) The corporation and its officer or agent who accepts
17 or rejects a vote, ballot, consent, waiver, or proxy appointment
18 in good faith and in accordance with the standards of this
19 section are not liable in damages to [~~the~~] a member for the
20 consequences of the acceptance or rejection.

21 (e) Corporate action based on the acceptance or rejection
22 of a vote, ballot, consent, waiver, or proxy appointment under



1 this section is valid unless a court of competent jurisdiction
2 determines otherwise.

3 (f) A ballot may be signed by means of an electronic
4 signature in accordance with chapter 489E."

5 SECTION 11. Section 414D-145, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) In corporations without members, any board action to
8 remove a director or to approve a matter that would require
9 approval by the members if the corporation had members, shall
10 not be valid unless each director is given at least seven days'
11 [~~written~~] notice that the matter will be voted upon at a
12 directors' meeting or unless notice is waived pursuant to
13 section 414D-146."

14 SECTION 12. Section 414D-182, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Amendments to the articles of incorporation shall be
17 made in the following manner:

18 (1) If any members are entitled to vote on an amendment,
19 the board of directors shall adopt a resolution
20 setting forth the proposed amendment and directing
21 that it be submitted to a vote at an annual or special
22 meeting of the members. [~~Written notice~~] Notice



1 setting forth the proposed amendment or a summary of
2 the changes to be effected [~~thereby~~] by the proposed
3 amendments shall be given to each member entitled to
4 vote at the meeting within the time and in the manner
5 provided in this chapter for the giving of notice of
6 meetings to members. The proposed amendment shall be
7 adopted upon receiving at least two-thirds of the
8 votes [~~which~~] that members present at the meeting or
9 represented by proxy are entitled to cast; and

10 (2) If there are no members or no members entitled to vote
11 [~~thereon,~~] on an amendment, an amendment shall be
12 adopted at a meeting of the board of directors upon
13 its receiving the vote of a majority of the directors
14 in office."

15 SECTION 13. Section 414D-184, Hawaii Revised Statutes, is
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) If the board seeks to have the restatement approved
18 by the members at a membership meeting, the corporation shall
19 notify each of its members of the proposed membership meeting
20 [~~in writing~~] in accordance with section 414D-105. The notice
21 [~~must~~] shall also state that the purpose, or one of the
22 purposes, of the meeting is to consider the proposed restatement



1 and contain or be accompanied by a copy or summary of the
2 restatement.

3 (d) If the board seeks to have the restatement approved by
4 the members by [~~written~~] ballot or written consent, the material
5 soliciting the approval shall contain or be accompanied by a
6 copy or summary of the restatement."

7 SECTION 14. Section 414D-202, Hawaii Revised Statutes, is
8 amended by amending subsection (e) to read as follows:

9 "(e) If the board seeks to have the plan approved by the
10 members by written consent or [~~written~~] ballot, the material
11 soliciting the approval shall contain or be accompanied by a
12 copy or summary of the plan. The copy or summary of the plan
13 for members of the surviving corporation shall include any
14 provision that, if contained in a proposed amendment to the
15 articles of incorporation or bylaws, would entitle members to
16 vote on the provision. The copy or summary of the plan for
17 members of the disappearing corporation shall include a copy or
18 summary of the articles and bylaws that will be in effect
19 immediately after the merger takes effect."

20 SECTION 15. Section 414D-222, Hawaii Revised Statutes, is
21 amended by amending subsection (f) to read as follows:



1 "(f) If the board needs to have the transaction approved
2 by the members by written consent or [~~written~~] ballot, the
3 material soliciting the approval shall contain or be accompanied
4 by a copy or summary of a description of the transaction."

5 SECTION 16. Section 414D-242, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) If the board seeks to have dissolution approved by
8 the members by written consent or [~~written~~] ballot, the material
9 soliciting the approval shall contain or be accompanied by a
10 copy or summary of the plan of dissolution."

11 SECTION 17. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 18. This Act shall take effect upon its approval.

APPROVED this 4 day of MAY , 2011



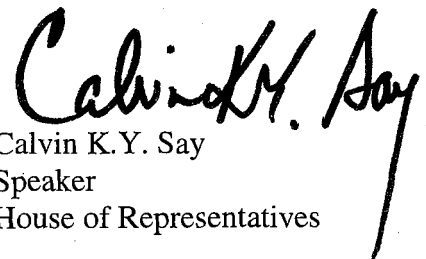
GOVERNOR OF THE STATE OF HAWAII

SB No. 1349, SD 1, HD 1

THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: April 12, 2011
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Twenty-Sixth Legislature of the State of Hawaii, Regular Session of 2011.



Calvin K. Y. Say
Speaker
House of Representatives



Patricia Mau-Shimizu
Chief Clerk
House of Representatives

1 "(f) If the board needs to have the transaction approved
2 by the members by written consent or [~~written~~] ballot, the
3 material soliciting the approval shall contain or be accompanied
4 by a copy or summary of a description of the transaction."

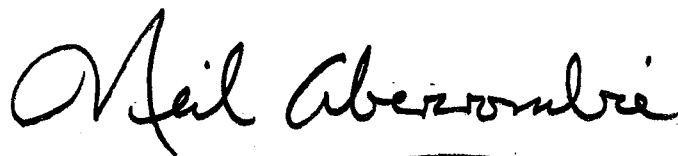
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7 "(e) If the board seeks to have dissolution approved by
8 the members by written consent or [~~written~~] ballot, the material
9 soliciting the approval shall contain or be accompanied by a
10 copy or summary of the plan of dissolution."

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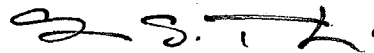


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAII

Date: April 18, 2011
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011.



President of the Senate



Clerk of the Senate