

JAN 26 2011

A BILL FOR AN ACT

RELATING TO NONPROFIT CORPORATIONS.

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

1 SECTION 1. The legislature finds that the use of voting by
2 ballot and voting through electronic means will be an efficient
3 way to permit members of nonprofit corporations to vote or take
4 action. This Act is intended to clarify that members of Hawaii
5 nonprofit corporations may take action by ballots that may be
6 transmitted electronically, as contemplated by the model
7 nonprofit corporation act, third edition.

8 The legislature also finds that allowing membership
9 meetings to be held using electronic technology in appropriate
10 circumstances will allow for greater participation by members in
11 nonprofit membership corporations and reduce the costs
12 associated with annual elections and matters involving
13 membership voting. This Act is also intended to clarify that
14 membership meetings of Hawaii nonprofit corporations may utilize
15 appropriate electronic communication methods as contemplated by
16 the model nonprofit corporation act, third edition.

17 Finally, this Act expressly permits nonprofit corporations
18 to utilize electronic transmission to provide notice to



1 directors in the manner currently permitted for notice to
2 members. In each case, however, electronic transmission may
3 only be used if the member or director has consented to receive
4 notice by that method.

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

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

15 (b) A ballot shall:

16 (1) Be either in written form or in the form of an
17 electronic transmission;

18 (2) Set forth each proposed action;

19 (3) Provide an opportunity to vote for, or withhold a vote
20 for, each candidate for election as a director or, if
21 applicable, officer; and



1 (4) Provide an opportunity to vote for, or against, each
2 other proposed action.

3 (c) Approval by ballot pursuant to this section shall be
4 valid only if the number of votes cast by ballot equals or
5 exceeds the quorum required to be present at a meeting
6 authorizing the action, and the number of approvals equals or
7 exceeds the number of votes that would be required to approve
8 the action at a meeting at which the total number of votes cast
9 was the same as the number of votes cast by ballot.

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

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

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

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

17 (e) Except as otherwise provided in the articles of
18 incorporation or bylaws, a ballot may not 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 (or approval by) the members" means approved
2 or ratified by the affirmative vote of a majority of the votes
3 represented and voting at a duly held meeting at which a quorum
4 is present (which affirmative votes also constitute a majority
5 of the required quorum) or by a [~~written~~] ballot or written
6 consent in conformity with this chapter or by the affirmative
7 vote, [~~written~~] ballot, or written consent of such greater
8 proportion, including the votes of all the members of any class,
9 unit, or grouping as may be provided in the articles, bylaws, or
10 this chapter for any specified member action.

11 "Vote" includes authorization by [~~written~~] ballot and
12 written consent."

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

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

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

19 (b) Notice may be communicated in person; by telephone,
20 telegraph, teletype, or other form of wire or wireless
21 communication; [~~or~~] by mail or private carrier[~~-~~]; or by
22 electronic transmission as described in subsections (i) and (j).



1 If these forms of personal notice are impracticable, notice may
2 be communicated by newspaper of general circulation in the area
3 where published; or by radio, television, or other form of
4 public broadcast communication."

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

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

15 (1) The corporation is unable to deliver by electronic
16 transmission two consecutive notices given by the
17 corporation in accordance with such consent; and

18 (2) The inability to deliver becomes known to the
19 secretary or an assistant secretary of the
20 corporation, to the transfer agent, or other person
21 responsible for giving notice; provided that the
22 inadvertent failure to treat such inability as a



1 revocation shall not invalidate any meeting or other
2 action.

3 (j) Notice given pursuant to subsection (i) shall be
4 deemed given:

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

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

11 (3) If by posting on an electronic network together with
12 separate notice to the member or director of [such]
13 the specific posting, upon the later of the posting
14 and the giving of [such] the separate notice; and

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

17 An affidavit of the secretary, assistant secretary, transfer
18 agent, or other agent of the corporation that the notice has
19 been given by a form of electronic transmission, in the absence
20 of fraud, shall be prima facie evidence of the facts stated
21 therein."



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

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

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

14 "[~~+~~]**\$414D-101**[~~+~~] **Annual and regular meetings.** (a) A
15 corporation with members shall hold a membership meeting
16 annually at a time stated in or fixed in accordance with the
17 bylaws.

18 (b) A corporation with members may hold regular membership
19 meetings at the times stated in or fixed in accordance with the
20 bylaws.

21 (c) Annual and regular membership meetings may be held in
22 or out of this State at the place stated in or fixed in



1 accordance with the bylaws. If no place is stated in or fixed
2 in accordance with the bylaws, annual and regular meetings shall
3 be held at the corporation's principal office.

4 (d) At the annual meeting:

5 (1) The president and chief financial officer shall report
6 on the activities and financial condition of the
7 corporation; and

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

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

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

17 (g) If authorized by the board of directors in its sole
18 discretion, members or proxies of members may participate at an
19 annual or regular meeting of members by means of the internet,
20 teleconference, or other electronic transmission technology in a
21 fashion pursuant to which the members have the opportunity to:



- 1 (1) Read or hear the proceedings substantially
- 2 concurrently with their occurrence;
- 3 (2) Vote on matters submitted to the members;
- 4 (3) Pose questions; and
- 5 (4) Make comments.

6 A member or proxy of a member participating in a meeting by
7 those means shall be deemed to be present in person at the
8 meeting. The corporation shall implement reasonable measures to
9 verify that each person deemed present and permitted to vote at
10 the meeting by means of the internet, teleconference, or other
11 electronic transmission technology, is a member or proxy of a
12 member."

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

15 "**§414D-102 Special meetings.** (a) A corporation with
16 members shall hold a special meeting of members:

- 17 (1) On call of its board, or the person or persons
- 18 authorized to do so by the articles or bylaws; or
- 19 (2) Unless the articles or bylaws provide otherwise, if
- 20 the holders of at least five per cent of the voting
- 21 power of any corporation sign, date, and deliver to
- 22 any corporate officer one or more written demands for



1 the meeting describing the purpose or purposes for
2 which it is to be held.

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

8 (c) If a notice for a special meeting demanded under
9 subsection (a)(2) is not given pursuant to section 414D-105
10 within thirty days after the date the written demand or demands
11 are delivered to a corporate officer, regardless of the
12 requirements of subsection (d), a person signing the demand or
13 demands may set the time and place of the meeting and give
14 notice pursuant to section 414D-105.

15 (d) Special meetings of members may be held in or out of
16 this State at the place stated in or fixed in accordance with
17 the bylaws. If no place is stated or fixed in accordance with
18 the bylaws, special meetings shall be held at the corporation's
19 principal office.

20 (e) Only those matters that are within the purpose or
21 purposes described in the meeting notice required by section
22 414D-105 may be conducted at a special meeting of members.



1 (f) If authorized by the board of directors in its sole
2 discretion, members or proxies of members may participate at a
3 special meeting of members by means of the internet,
4 teleconference, or other electronic transmission technology in a
5 fashion pursuant to which the members have the opportunity to:

6 (1) Read or hear the proceedings substantially
7 concurrently with their occurrence;

8 (2) Vote on matters submitted to the members;

9 (3) Pose questions; and

10 (4) Make comments.

11 A member or proxy of a member participating in a meeting by
12 those means shall be deemed to be present in person at the
13 meeting. The corporation shall implement reasonable measures to
14 verify that each person deemed present and permitted to vote at
15 the meeting by means of the internet, teleconference, or other
16 electronic transmission technology, is a member or proxy of a
17 member."

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

20 "(c) A director elected by cumulative voting may be
21 removed by the members without cause if the requirements of
22 section 414D-138 are met unless the votes cast against removal,



1 or not consenting in writing to the removal, would be sufficient
2 to elect the director if voted cumulatively at an election at
3 which the same total number of votes were cast (or, if the
4 action is taken by ~~written~~ ballot, all memberships entitled to
5 vote were voted) and the entire number of directors authorized
6 at the time of the director's most recent election were then
7 being elected."

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

10 "**§414D-115 Other methods of electing directors.** ~~[(a)]~~ A
11 corporation may provide in its articles or bylaws for the
12 election of directors by members or delegates:

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

17 ~~[(b) Where directors or officers are to be elected by
18 members, the bylaws or board of directors may allow the election
19 to be conducted by mail if no less than two thousand five
20 hundred members are eligible to vote on the record date
21 determined pursuant to section 414D-107, and the primary purpose
22 of the corporation is the management of a planned community as~~



1 ~~defined in section 421J-2. Except for the corporations~~
2 ~~described in this subsection, the election of directors may be~~
3 ~~conducted by mail only if so provided in a corporation's bylaws~~
4 ~~or articles of incorporation.]"~~

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

7 "[+]§414D-116[+] Corporation's acceptance of votes. (a)

8 If the name signed on a vote, ballot, consent, waiver, or proxy
9 appointment corresponds to the name of a member, the
10 corporation, acting in good faith, is entitled to accept the
11 vote, ballot, consent, waiver, or proxy appointment and to give
12 it effect as the act of the member.

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

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

20 (2) The name signed purports to be that of an attorney-in-
21 fact of the member and if the corporation requests,
22 evidence acceptable to the corporation of the



1 signatory's authority to sign for the member has been
2 presented with respect to the vote, ballot, consent,
3 waiver, or proxy appointment;

4 (3) Two or more persons hold the membership as co-tenants
5 or fiduciaries and the name signed purports to be the
6 name of at least one of the co-holders and the person
7 signing appears to be acting on behalf of all the co-
8 holders;

9 (4) The name signed purports to be that of an
10 administrator, executor, guardian, or conservator
11 representing the member and, if the corporation
12 requests, evidence of fiduciary status acceptable to
13 the corporation has been presented with respect to the
14 vote, ballot, consent, waiver, or proxy appointment;
15 and

16 (5) The name signed purports to be that of a receiver or
17 trustee in bankruptcy of the member, and, if the
18 corporation requests, evidence of this status
19 acceptable to the corporation has been presented with
20 respect to the vote, ballot, consent, waiver, or proxy
21 appointment.

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

7 (d) The corporation and its officer or agent who accepts
8 or rejects a vote, ballot, consent, waiver, or proxy appointment
9 in good faith and in accordance with the standards of this
10 section are not liable in damages to the member for the
11 consequences of the acceptance or rejection.

12 (e) Corporate action based on the acceptance or rejection
13 of a vote, ballot, consent, waiver, or proxy appointment under
14 this section is valid unless a court of competent jurisdiction
15 determines otherwise.

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

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

20 "(c) In corporations without members, any board action to
21 remove a director or to approve a matter that would require
22 approval by the members if the corporation had members, shall



1 not be valid unless each director is given at least seven days'
2 [~~written~~] notice that the matter will be voted upon at a
3 directors' meeting or unless notice is waived pursuant to
4 section 414D-146."

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

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

9 (1) If any members are entitled to vote on an amendment,
10 the board of directors shall adopt a resolution
11 setting forth the proposed amendment and directing
12 that it be submitted to a vote at an annual or special
13 meeting of the members. [~~Written notice~~] Notice
14 setting forth the proposed amendment or a summary of
15 the changes to be effected thereby shall be given to
16 each member entitled to vote at the meeting within the
17 time and in the manner provided in this chapter for
18 the giving of notice of meetings to members. The
19 proposed amendment shall be adopted upon receiving at
20 least two-thirds of the votes [~~which~~] that members
21 present at the meeting or represented by proxy are
22 entitled to cast; and



1 (2) If there are no members or no members entitled to vote
2 thereon, an amendment shall be adopted at a meeting of
3 the board of directors upon its receiving the vote of
4 a majority of the directors in office."

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

7 "(c) If the board seeks to have the restatement approved
8 by the members at a membership meeting, the corporation shall
9 notify each of its members of the proposed membership meeting
10 ~~[in writing]~~ in accordance with section 414D-105. The notice
11 ~~[must]~~ shall also state that the purpose, or one of the
12 purposes, of the meeting is to consider the proposed restatement
13 and contain or be accompanied by a copy or summary of the
14 restatement.

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

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

21 "(e) If the board seeks to have the plan approved by the
22 members by written consent or ~~[written]~~ ballot, the material



1 soliciting the approval shall contain or be accompanied by a
2 copy or summary of the plan. The copy or summary of the plan
3 for members of the surviving corporation shall include any
4 provision that, if contained in a proposed amendment to the
5 articles of incorporation or bylaws, would entitle members to
6 vote on the provision. The copy or summary of the plan for
7 members of the disappearing corporation shall include a copy or
8 summary of the articles and bylaws that will be in effect
9 immediately after the merger takes effect."

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

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

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

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



1 SECTION 17. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 18. This Act shall take effect upon its approval.
4

INTRODUCED BY:

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Report Title:

Nonprofit Corporations

Description:

Amends the Hawaii nonprofit corporations act to permit member actions by ballot and electronic voting, use of electronic notice, and conduct of meeting by teleconference.

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

