
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 other proposed action.



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

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

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

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

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

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

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

21 ""Approved by [+]or approval by[+] the members" means
22 approved or ratified: by the affirmative vote of a majority of



1 the votes represented and [~~voting~~] cast at a duly held meeting
 2 at which a quorum is present [~~which~~]; provided that the
 3 affirmative votes also constitute a majority of the required
 4 quorum[~~]~~; by a [~~written~~] ballot or written consent in
 5 conformity with this chapter; or by the affirmative vote,
 6 [~~written~~] ballot, or written consent of [~~such~~] the greater
 7 proportion, including the votes of all the members of any class,
 8 unit, or grouping as may be provided in the articles, bylaws, or
 9 this chapter for any specified member action.

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

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

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

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

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

22 If these forms of personal notice are impracticable, notice may



1 be communicated by newspaper of general circulation in the area
2 where it is published; or by radio, television, or other form of
3 public broadcast communication."

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

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

- 14 (1) The corporation is unable to deliver by electronic
15 transmission two consecutive notices given by the
16 corporation in accordance with [~~such~~] the consent; and
- 17 (2) The inability to deliver becomes known to the
18 secretary or an assistant secretary of the
19 corporation, to the transfer agent, or other person
20 responsible for giving notice; provided that the
21 inadvertent failure to treat [~~such~~] the inability to



1 give electronic notice as a revocation shall not
2 invalidate any meeting or other 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.~~] fact of notice."



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~~[7]~~ or otherwise obtain their consent~~[7]~~
6 in the manner prescribed by its articles, bylaws, or this
7 chapter, then upon petition of a director, officer, delegate, or
8 member, the court may order that ~~[such a]~~ the meeting be called
9 or that a ~~[written]~~ ballot or other form of obtaining the vote
10 of members, delegates, or directors be authorized~~[7]~~ in ~~[such]~~ a
11 manner ~~[as]~~ that the court finds fair and equitable under the
12 circumstances."

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

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

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



1 (c) Annual and regular membership meetings may be held in
2 or out of this State at the place stated in or fixed in
3 accordance with the bylaws. If no place is stated in or fixed
4 in accordance with the bylaws, annual and regular meetings shall
5 be held at the corporation's principal office.

6 (d) At the annual meeting:

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

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

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

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

19 (g) If authorized by the board of directors in its sole
20 discretion, members or proxies of members may participate at an
21 annual or regular meeting of members by means of the Internet,



1 teleconference, or other electronic transmission technology in a
2 manner that allows members the opportunity to:

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

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

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

17 "**§414D-102 Special meetings.** (a) A corporation with
18 members shall hold a special meeting of members:

- 19 (1) On call of its board, or the person or persons
20 authorized to do so by the articles or bylaws; or
21 (2) Unless the articles or bylaws provide otherwise, if
22 the holders of at least five per cent of the voting



1 power of any corporation sign, date, and deliver to
2 any corporate officer one or more written demands for
3 the meeting describing the purpose or purposes for
4 which it is to be held.

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

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

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



1 (e) Only those matters that are within the purpose or
2 purposes described in the meeting notice required by section
3 414D-105 [~~may~~] shall be conducted at a special meeting of
4 members.

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

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

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



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

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

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

16 "**§414D-115 Other methods of electing directors.** [~~(a)~~] A
17 corporation may provide in its articles or bylaws for the
18 election of directors by members or delegates:

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



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

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

13 "~~[+]§414D-116[+]~~ **Corporation's acceptance of votes.** (a)
14 If the name signed on a vote, ballot, consent, waiver, or proxy
15 appointment corresponds to the name of a member, the
16 corporation, acting in good faith, is entitled to accept the
17 vote, ballot, consent, waiver, or proxy appointment and to give
18 it effect as the act of the member.

19 (b) If the name signed on a vote, ballot, consent, waiver,
20 or proxy appointment does not correspond to the record name of a
21 member, the corporation if acting in good faith is nevertheless



1 entitled to accept the vote, ballot, consent, waiver, or proxy
2 appointment and give it effect as the act of the member if:

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

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

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

16 (4) The name signed purports to be that of an
17 administrator, executor, guardian, or conservator
18 representing the member and, if the corporation
19 requests, evidence of fiduciary status acceptable to
20 the corporation has been presented with respect to the
21 vote, ballot, consent, waiver, or proxy appointment;
22 and



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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

7 "(e) If the board seeks to have the plan approved by the
8 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. The copy or summary of the plan
11 for members of the surviving corporation shall include any
12 provision that, if contained in a proposed amendment to the
13 articles of incorporation or bylaws, would entitle members to
14 vote on the provision. The copy or summary of the plan for
15 members of the disappearing corporation shall include a copy or
16 summary of the articles and bylaws that will be in effect
17 immediately after the merger takes effect."

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

20 "(f) If the board needs to have the transaction approved
21 by the members by written consent or [~~written~~] ballot, the



1 material soliciting the approval shall contain or be accompanied
2 by a copy or summary of a description of the transaction."

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

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

9 SECTION 17. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12



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. (SD1)

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

