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# A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

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

4           "§421J-A Cumulative voting for directors. (a) If the  
5 articles of incorporation, declaration, or bylaws provide for  
6 cumulative voting by members, members may so vote, by  
7 multiplying the number of votes the members are entitled to cast  
8 by the number of positions for whom they are entitled to vote,  
9 and cast the product for a single candidate or distribute the  
10 product among two or more candidates. The candidates receiving  
11 the highest number of votes under this section, up to the total  
12 number of positions to be filled, shall be deemed elected, and  
13 shall be given the longest term.

14           (b) Unless otherwise provided in the articles of  
15 incorporation, declaration, or bylaws, cumulative voting shall  
16 not be permitted.



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

4        **§421J-B Removal of directors elected by members or**  
5 **directors.** (a) The members may remove one or more directors  
6 elected by cumulative voting by the members with or without  
7 cause unless otherwise provided in the articles of  
8 incorporation, declaration, or bylaws. If the removal is  
9 successful, the replacement director or directors shall be  
10 elected for the remainder of the removed director's or  
11 directors' term or terms in accordance with all applicable  
12 requirements and procedures in the articles of incorporation,  
13 declaration, or bylaws, and this chapter. If a replacement  
14 director is not elected at the meeting at which the removal  
15 occurred, notwithstanding any provision to the contrary in the  
16 articles of incorporation, declaration, or bylaws, the board may  
17 fill vacancies to serve until the next annual or duly noticed  
18 special association meeting.

19        (b) If a director is elected by a class, chapter, or other  
20 organizational unit, or by region or other geographic grouping,



1 the director may be removed only by the members of that class,  
2 chapter, unit, or grouping.

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

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

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

15 (1) The member delivers to the secretary of the  
16 association or managing agent a petition for removal  
17 of one or more directors, signed by members  
18 representing at least one hundred units or members who  
19 own at least twenty-five per cent of the total number  
20 of units in the planned community, whichever is less,  
21 and containing the printed name, identification of the



1           unit, and address of the signing members and dates of  
2           their signatures; and

3           (2) The petition is so delivered within seven days after  
4           the posting of a notice of intent to distribute  
5           proxies that include the election of directors in  
6           accordance with section 421J-4(e) or within seven days  
7           after the posting of a notice of the meeting under  
8           section 421J-3.5(e).

9           (f) If a timely petition is delivered to the secretary of  
10          the association or managing agent, the secretary or managing  
11          agent shall include the proposed removal in the notice of the  
12          meeting.

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

19          (h) An entire board of directors may be removed under  
20          subsections (a) through (c).



1        (i) If, at the beginning of a director's term on the  
2 board, the articles of incorporation, declaration, or bylaws  
3 provide that the director may be removed for missing a specified  
4 number of board meetings, the board may remove the director for  
5 failing to attend the specified number of meetings. The  
6 director may be removed only if a majority of the directors then  
7 in office vote for the removal."

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

10        **"§414D-114 Cumulative voting for directors.** (a) If the  
11 articles or bylaws provide for cumulative voting by members,  
12 members may so vote, by multiplying the number of votes the  
13 members are entitled to cast by the number of directors for whom  
14 they are entitled to vote, and cast the product for a single  
15 candidate or distribute the product among two or more  
16 candidates.

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



- 1           (1) The meeting notice or statement accompanying the  
2           notice states that cumulative voting shall take place;
- 3           (2) A member gives notice of the member's intent to  
4           cumulatively vote not less than forty-eight hours  
5           before the meeting or such longer period as may be  
6           required by the articles or bylaws; and
- 7           (3) If one member gives notice of intent to cumulatively  
8           vote, all other members participating in the election  
9           may cumulate their votes without giving further  
10          notice.
- 11          (c) A director elected by cumulative voting may be removed  
12          by the members without cause if the requirements of section  
13          414D-138 are met unless the votes cast against removal or not  
14          consenting in writing to the removal would be sufficient to  
15          elect the director if voted cumulatively at an election at which  
16          the same total number of votes were cast and the entire number  
17          of directors authorized at the time of the director's most  
18          recent election were then being elected; provided that if the  
19          action is taken by ballot, all members entitled to vote had  
20          voted.



1 (d) Members may not cumulatively vote if the directors and  
2 members are identical.

3 (e) This section shall not apply to any planned community  
4 association governed by chapter 421J."

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

7 " ~~§414D-138~~ **Removal of directors elected by members**  
8 **or directors.** (a) The members may remove one or more directors  
9 elected by them without cause unless otherwise provided in the  
10 articles or bylaws.

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

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

19 (d) If cumulative voting is authorized, a director may not  
20 be removed if the number of votes, or if the director was  
21 elected by a class, chapter, unit, or grouping of members, the



1 number of votes of that class, chapter, unit, or grouping,  
2 sufficient to elect the director under cumulative voting is  
3 voted against the director's removal.

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

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

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

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





1 (i) If, at the beginning of a director's term on the  
2 board, the articles or bylaws provide that the director may be  
3 removed for missing a specified number of board meetings, the  
4 board may remove the director for failing to attend the  
5 specified number of meetings. The director may be removed only  
6 if a majority of the directors then in office vote for the  
7 removal.

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

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

12 **"§421J-3.5 Notice required; regular, annual, and special**  
13 **meetings.** (a) Not less than fourteen days in advance of any  
14 regular, annual, or special meeting of an association, the  
15 secretary or other officer specified in the bylaws shall give  
16 written notice of the meeting to each member of the association  
17 as provided in the bylaws of the association or by two or more  
18 of the following means:

19 (1) Hand delivery;



- 1           (2) United States mail sent to the mailing address of each  
2           unit or to another mailing address designated in  
3           writing by the association member;
- 4           (3) Electronic mail to the electronic mailing address  
5           designated in writing by the association member; or
- 6           (4) Posting of the meeting notice in its entirety on a  
7           portion of the association's website that is  
8           accessible to all members.
- 9           (b) Notice pursuant to this section shall state:
- 10          (1) The date, time, and place of the meeting; and
- 11          (2) The items on the agenda, including the general nature  
12          of and rationale for any proposed amendment to the  
13          declaration or bylaws; any proposal for a special  
14          assessment, unless the authority for a special  
15          assessment is otherwise provided for in the  
16          association's governing documents; and any proposal to  
17          remove a member of the board.
- 18          (c) The requirements of this section shall not be  
19          interpreted to preclude any association member from proposing an  
20          amendment to the declaration or bylaws [~~or proposing to remove a~~  
21          ~~member of the board at an association meeting~~].



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

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

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

16 SECTION 5. In codifying the new sections added by section  
17 1 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to read 'S. M. M.', is written over a horizontal line.



# S.B. NO. 2085

**Report Title:**

Planned Community Associations; Nonprofit Corporations;  
Directors

**Description:**

Establishes requirements for cumulative voting and the removal of directors of planned community associations. Exempts planned community associations from certain requirements regarding cumulative voting for and the removal of directors under the Hawaii Nonprofit Corporations Act.

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

