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## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VI to be appropriately  
3 designated and to read as follows:

4           "§514B-           Use of proxies restricted; certain practices  
5 excluded. (a) Notwithstanding any other provision of this  
6 chapter or the declaration or bylaws of a condominium to the  
7 contrary, the use of a proxy, proxy form, or holder of a proxy  
8 shall be prohibited for any vote or for meeting quorum  
9 requirements pursuant to this chapter or the declaration or  
10 bylaws of a condominium.

11           (b) The following practices shall not be deemed as the use  
12 of a proxy, proxy form, or holder of a proxy:

13           (1) Any vote or action described in section 514B-123(a);  
14           and

15           (2) The presence at a meeting by, or vote cast by, an  
16           individual representative of a unit owner; provided



1           that the unit owner is a person other than an  
2           individual."

3           SECTION 2. Section 514B-106, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5           "(b) The board [~~may~~] shall not act on behalf of the  
6 association to amend the declaration or bylaws (sections  
7 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium  
8 from the provisions of this chapter (section 514B-47), or to  
9 elect members of the board or determine the qualifications,  
10 powers and duties, or terms of office of board members  
11 (subsection (e)); provided that [~~nothing in this subsection~~  
12 ~~shall be construed to prohibit board members from voting proxies~~  
13 ~~(section 514B-123) to elect members of the board; provided~~  
14 ~~further that~~] notwithstanding anything to the contrary in the  
15 declaration or bylaws, the board may only fill vacancies in its  
16 membership to serve until the next annual or duly noticed  
17 special association meeting. Notice of a special association  
18 meeting to fill vacancies shall include notice of the election.  
19 Any special association meeting to fill vacancies shall be held  
20 on a date that allows sufficient time for owners to declare

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1 their intention to run for election [~~and to solicit proxies for~~  
2 ~~that purpose~~]."

3 SECTION 3. Section 514B-121, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsections (b) and (c) to read:

6 "(b) Notwithstanding any other provision of this chapter,  
7 [~~except as provided in subsection (e),~~] or the declaration or  
8 bylaws of a condominium to the contrary, at any association  
9 meeting the board may direct the use of an electronic voting  
10 device to comply with subsection (e)(2), regardless of whether a  
11 secret ballot is used or required. [~~Except as provided in~~  
12 ~~subsection (e), the]~~ The use shall be subject to the following:

13 (1) The electronic voting device and all associated  
14 equipment shall be isolated from any connection to an  
15 external network, including the Internet, or shall use  
16 a form of encryption comparable to that used for  
17 secured internet web browsers;

18 (2) The board shall establish reasonable procedures to  
19 provide for the secrecy and integrity of the unit  
20 owners' votes, including but not limited to procedures



1           that ensure the availability of a printed audit trail  
2           containing:

3           (A) The reference number or internet address of the  
4           electronic voting device;

5           (B) Each common interest voted; and

6           (C) The vote that was tabulated;

7       (3) A copy of the printed audit trail shall be available  
8       to owners after the meeting in the same manner  
9       provided by sections 514B-154 and 514B-154.5; and

10       (4) A copy of the procedures established pursuant to  
11       paragraph (2) shall be available at no charge to any  
12       owner and a copy shall be available at any meeting at  
13       which the association uses an electronic voting  
14       device.

15       If any conflict arises between this subsection and  
16       subsection (e), subsection (e) shall control.

17       (c) Special meetings of the association may be called by  
18       the president, a majority of the board, or by a petition to the  
19       secretary or managing agent signed and dated by not less than  
20       twenty-five per cent of the unit owners as shown in the  
21       association's record of ownership; provided that if the



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1 secretary or managing agent fails to send out the notices for  
2 the special meeting within fourteen days of receipt of the  
3 petition, the petitioners shall have the authority to set the  
4 time, date, and place for the special meeting and to send out  
5 the notices [~~and proxies~~] for the special meeting at the  
6 association's expense in accordance with the requirements of the  
7 bylaws and of this part; provided further that a special meeting  
8 based upon a petition to the secretary or managing agent shall  
9 be set no later than sixty days from receipt of the petition.  
10 The petition shall be valid only if submitted within one hundred  
11 twenty days of the earliest signature."

12 2. By amending subsection (e) to read:

13 "(e) All association meetings shall be conducted in  
14 accordance with the most recent edition of Robert's Rules of  
15 Order Newly Revised. Notwithstanding any provision to the  
16 contrary in the association's declaration or bylaws or in  
17 subsection (b), [~~electronic meetings and electronic, machine, or~~  
18 ~~mail voting may be authorized by the board in its sole~~  
19 ~~discretion:~~

20 ~~(1) During any period in which a state of emergency or~~  
21 ~~local state of emergency, declared pursuant to chapter~~



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1           ~~127A, is in effect in the county in which the~~  
2           ~~condominium is located;~~

3           ~~(2) For any association meeting for which notice was given~~  
4           ~~while a state of emergency or local state of~~  
5           ~~emergency, declared pursuant to chapter 127A, was in~~  
6           ~~effect for the county in which the condominium is~~  
7           ~~located but is no longer in effect as of the date of~~  
8           ~~the meeting; provided that the meeting is held within~~  
9           ~~sixty days of the date the notice was first given;~~

10          ~~(3) For any electronic, machine, or mail voting for which~~  
11          ~~notice of voting has been sent; provided that the~~  
12          ~~electronic, machine, or mail voting deadline is within~~  
13          ~~sixty days of the date the notice was first sent;~~

14          ~~(4) Whenever approved in advance by:~~

15               ~~(A) Written consent of a majority of unit owners; or~~  
16               ~~(B) Majority vote at an association meeting; or~~

17          ~~(5) Whenever otherwise authorized in an association's~~  
18          ~~declaration or bylaws.]~~

19          members of the association shall be allowed to participate in  
20          mail voting and participate in any association meeting by means



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

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

9 Each member of the association who participates in a  
10 meeting by means of internet, teleconference, or other  
11 electronic transmission technology shall be deemed to be present  
12 in person at the meeting. The association shall implement  
13 reasonable measures to verify that each person permitted to vote  
14 is a member of the association [~~or proxy of a member~~].

15 As used in this subsection, "mail voting" includes sending  
16 or receiving written ballots via mail, courier, or electronic  
17 transmission; provided that the transmission is a complete  
18 reproduction of the original."

19 SECTION 4. Section 514B-123, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§514B-123   **Association meetings; voting; proxies.** (a) If  
2 only one of several owners of a unit is present at a meeting of  
3 the association, that owner is entitled to cast all the votes  
4 allocated to that unit. If more than one of the owners is  
5 present, the votes allocated to that unit may be cast only in  
6 accordance with the agreement of a majority in interest of the  
7 owners, unless the declaration or bylaws expressly provide  
8 otherwise. There is majority agreement if any one of the owners  
9 casts the votes allocated to that unit without protest being  
10 made by any of the other owners of the unit to the person  
11 presiding over the meeting before the polls are closed.

12           (b) ~~[Votes allocated to a unit may be cast pursuant to a~~  
13 ~~proxy duly executed by a unit owner.]~~ A unit owner may vote by  
14 mail or electronic transmission ~~[through a duly executed proxy].~~  
15 ~~[If a unit is owned by more than one person, each owner of the~~  
16 ~~unit may vote or register protest to the casting of votes by the~~  
17 ~~other owners of the unit through a duly executed proxy. In the~~  
18 ~~absence of protest, any owner may cast the votes allocated to~~  
19 ~~the unit by proxy. A unit owner may revoke a proxy given~~  
20 ~~pursuant to this section only by actual notice of revocation to~~  
21 ~~the secretary of the association or the managing agent. A proxy~~





1 ~~is void if it purports to be revocable without notice.]~~ The  
2 association shall mail out a paper ballot to each unit owner no  
3 later than \_\_\_\_\_ days before the date of any meeting for the  
4 annual or other periodic election of board members.

5 (c) No votes allocated to a unit owned by the association  
6 may be cast for the election or reelection of directors;  
7 provided that, notwithstanding section 514B-106(b) or any  
8 provision in an association's declaration or bylaws to the  
9 contrary, in a mixed-use project containing units for  
10 residential and nonresidential use, where the board is comprised  
11 of directors elected by owners of residential units and  
12 directors elected by owners of nonresidential units, the  
13 association, acting by and through its board, may cast the vote  
14 or votes allocated to any nonresidential unit owned by the  
15 association in any election of one or more directors where those  
16 eligible to vote in the election are limited to owners of one or  
17 more nonresidential units, which includes the nonresidential  
18 unit owned by the association.

19 ~~[(d) A proxy, to be valid, shall:~~

20 ~~(1) Be delivered to the secretary of the association or~~  
21 ~~the managing agent, if any, no later than 4:30 p.m.~~



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1           ~~Hawaii Aleutian Standard Time on the second business~~  
2           ~~day prior to the date of the meeting to which it~~  
3           ~~pertains; and~~

4           ~~(2) Contain at least the name of the association, the date~~  
5           ~~of the meeting of the association, the printed names~~  
6           ~~and signatures of the persons giving the proxy, the~~  
7           ~~unit numbers for which the proxy is given, the names~~  
8           ~~of persons to whom the proxy is given, and the date~~  
9           ~~that the proxy is given.~~

10           ~~(c) If a proxy is a standard proxy form authorized by the~~  
11           ~~association, the proxy shall comply with the following~~  
12           ~~additional requirements:~~

13           ~~(1) The proxy shall contain boxes wherein the owner may~~  
14           ~~indicate that the proxy is given:~~

15           ~~(A) For quorum purposes only;~~

16           ~~(B) To the individual whose name is printed on a line~~  
17           ~~next to this box;~~

18           ~~(C) To the board as a whole and that the vote is to~~  
19           ~~be made on the basis of the preference of the~~  
20           ~~majority of the directors present at the meeting;~~

21           ~~or~~



1           ~~(D) To those directors present at the meeting with~~  
2           ~~the vote to be shared with each director~~  
3           ~~receiving an equal percentage;~~  
4           ~~provided that if the proxy is returned with no box or~~  
5           ~~more than one of the boxes in subparagraphs (A)~~  
6           ~~through (D) checked, the proxy shall be counted for~~  
7           ~~quorum purposes only; and~~

8           ~~(2) The proxy form shall also contain a box wherein the~~  
9           ~~owner may indicate that the owner wishes to obtain a~~  
10           ~~copy of the annual audit report required by section~~  
11           ~~514B-150.~~

12           ~~(f) A proxy shall only be valid for the meeting to which~~  
13           ~~the proxy pertains and its adjournments, may designate any~~  
14           ~~person as proxy, and may be limited as the unit owner desires~~  
15           ~~and indicates; provided that no proxy shall be irrevocable~~  
16           ~~unless coupled with a financial interest in the unit.~~

17           ~~(g) A copy, facsimile telecommunication, or other reliable~~  
18           ~~reproduction of a proxy may be used in lieu of the original~~  
19           ~~proxy for any and all purposes for which the original proxy~~  
20           ~~could be used; provided that any copy, facsimile~~



1 ~~telecommunication, or other reproduction shall be a complete~~  
2 ~~reproduction of the entire original proxy.~~

3 ~~(h) Nothing in this section shall affect the holder of any~~  
4 ~~proxy under a first mortgage of record encumbering a unit or~~  
5 ~~under an agreement of sale affecting a unit.~~

6 ~~(i) With respect to the use of association funds to~~  
7 ~~distribute proxies:~~

8 ~~(1) Any board that intends to use association funds to~~  
9 ~~distribute proxies, including the standard proxy form~~  
10 ~~referred to in subsection (e), shall first post notice~~  
11 ~~of its intent to distribute proxies in prominent~~  
12 ~~locations within the project at least twenty one days~~  
13 ~~before its distribution of proxies. If the board~~  
14 ~~receives within seven days of the posted notice a~~  
15 ~~request by any owner for use of association funds to~~  
16 ~~solicit proxies accompanied by a statement, the board~~  
17 ~~shall mail to all owners either:~~

18 ~~(A) A proxy form containing the names of all owners~~  
19 ~~who have requested the use of association funds~~  
20 ~~for soliciting proxies accompanied by their~~  
21 ~~statements; or~~



1           ~~(B) A proxy form containing no names, but accompanied~~  
2           ~~by a list of names of all owners who have~~  
3           ~~requested the use of association funds for~~  
4           ~~soliciting proxies and their statements.~~

5           ~~The statement, which shall be limited to black text on~~  
6           ~~white paper, shall not exceed one single-sided~~  
7           ~~8 1/2" x 11" page, indicating the owner's~~  
8           ~~qualifications to serve on the board or reasons for~~  
9           ~~wanting to receive proxies; and~~

10          ~~(2) A board or member of the board may use association~~  
11          ~~funds to solicit proxies as part of the distribution~~  
12          ~~of proxies. If a member of the board, as an~~  
13          ~~individual, seeks to solicit proxies using association~~  
14          ~~funds, the board member shall proceed as a unit owner~~  
15          ~~under paragraph (1).~~

16          ~~(j) No managing agent or resident manager, or their~~  
17          ~~employees, shall solicit, for use by the managing agent or~~  
18          ~~resident manager, any proxies from any unit owner of the~~  
19          ~~association that retains the managing agent or employs the~~  
20          ~~resident manager, nor shall the managing agent or resident~~



1 ~~manager cast any proxy vote at any association meeting except~~  
2 ~~for the purpose of establishing a quorum.~~

3 ~~(k)]~~ (d) No board shall adopt any rule prohibiting the  
4 ~~[solicitation of proxies or]~~ distribution of materials relating  
5 to association matters on the common elements by unit owners;  
6 provided that a board may adopt rules regulating reasonable  
7 time, place, and manner of ~~[the solicitations or distributions,~~  
8 ~~or both.]~~ distribution."

9 SECTION 5. Section 514B-124.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) If the bylaws provide for cumulative voting for an  
12 election at a meeting, each unit owner present in person ~~[or~~  
13 ~~represented by proxy]~~ shall have a number of votes equal to the  
14 unit owner's voting percentage multiplied by the number of  
15 positions to be filled at the election."

16 SECTION 6. Section 514B-125, Hawaii Revised Statutes, is  
17 amended by amending subsection (f) to read as follows:

18 "(f) A director shall not vote by proxy ~~[at board~~  
19 ~~meetings]~~."

20 SECTION 7. Section 514B-150, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) The board shall make available a copy of the annual  
2 audit to each unit owner at least thirty days prior to the  
3 annual meeting [~~which~~] that follows the end of the fiscal year.  
4 [~~The board shall not be required to submit a copy of the annual~~  
5 ~~audit report to an owner if the proxy form issued pursuant to~~  
6 ~~section 514B-123(e) is not marked to indicate that the owner~~  
7 ~~wishes to obtain a copy of the report.] If the annual audit has  
8 not been completed by that date, the board shall make available:~~

- 9           (1) An unaudited year end financial statement for the  
10                 fiscal year to each unit owner at least thirty days  
11                 prior to the annual meeting; and
- 12           (2) The annual audit to all owners at the annual meeting,  
13                 or as soon as the audit is completed, but not later  
14                 than six months after the annual meeting."

15           SECTION 8. Section 514B-153, Hawaii Revised Statutes, is  
16 amended by amending subsection (e) to read as follows:

17           "(e) The managing agent, resident manager, or board shall  
18 keep an accurate and current list of members of the association  
19 and their current addresses, and the names and addresses of the  
20 vendees under an agreement of sale, if any. The list shall be  
21 maintained at a place designated by the board, and a copy shall



1 be available, at cost, to any member of the association as  
2 provided in the declaration or bylaws or rules and regulations  
3 or, in any case, to any member who furnishes to the managing  
4 agent or resident manager or the board a duly executed and  
5 acknowledged affidavit stating that the list:

6 (1) Will be used by the owner personally and only for the  
7 purpose of soliciting votes [~~or proxies~~] or providing  
8 information to other owners with respect to  
9 association matters; and

10 (2) Shall not be used by the owner or furnished to anyone  
11 else for any other purpose.

12 A board may prohibit commercial solicitations.

13 Where the condominium project or any units within the  
14 project are subject to a time share plan under chapter 514E, the  
15 association shall only be required to maintain in its records  
16 the name and address of the time share association as the  
17 representative agent for the individual time share owners unless  
18 the association receives a request by a time share owner to  
19 maintain in its records the name and address of the time share  
20 owner."





1 SECTION 9. Section 514B-154, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) After any association meeting, and not earlier, unit  
4 owners shall be permitted to examine [~~proxies,~~] tally sheets,  
5 ballots, owners' check-in lists, and the certificate of  
6 election; provided that:

7 (1) Owners shall make a request to examine the documents  
8 within thirty days after the association meeting;

9 (2) The board may require owners to furnish to the  
10 association a duly executed and acknowledged affidavit  
11 stating that the information is requested in good  
12 faith for the protection of the interest of the  
13 association or its members or both; and

14 (3) Owners shall pay for administrative costs in excess of  
15 eight hours per year.

16 The documents may be destroyed ninety days after the  
17 association meeting; provided that [~~in the event of~~] if a  
18 contested election[~~7~~] occurs, the documents shall be retained  
19 until the contested election is resolved. Copies of tally  
20 sheets, owners' check-in lists, and the certificates of election  
21 from the most recent association meeting shall be provided to



1 any owner upon the owner's request; provided that the owner pays  
2 a reasonable fee for duplicating, postage, stationery, and other  
3 administrative costs associated with handling the request."

4 SECTION 10. Section 514B-154.5, Hawaii Revised Statutes,  
5 is amended by amending subsection (a) to read as follows:

6 "(a) Notwithstanding any other provision in the  
7 declaration, bylaws, or house rules, if any, the following  
8 documents, records, and information, whether maintained, kept,  
9 or required to be provided pursuant to this section or  
10 section 514B-152, 514B-153, or 514B-154, shall be made available  
11 to any unit owner and the owner's authorized agents by the  
12 managing agent, resident manager, board through a board member,  
13 or the association's representative:

14 (1) All financial and other records sufficiently detailed  
15 in order to comply with requests for information and  
16 disclosures related to the resale of units;

17 (2) An accurate copy of the declaration, bylaws, house  
18 rules, if any, master lease, if any, a sample original  
19 conveyance document, and all public reports and any  
20 amendments thereto;



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- 1           (3) Detailed, accurate records in chronological order of  
2           the receipts and expenditures affecting the common  
3           elements, specifying and itemizing the maintenance and  
4           repair expenses of the common elements and any other  
5           expenses incurred and monthly statements indicating  
6           the total current delinquent dollar amount of any  
7           unpaid assessments for common expenses;
- 8           (4) All records and the vouchers authorizing the payments  
9           and statements kept and maintained at the address of  
10          the project, or elsewhere within the State as  
11          determined by the board, subject to section 514B-152;
- 12          (5) All signed and executed agreements for managing the  
13          operation of the property, expressing the agreement of  
14          all parties, including but not limited to financial  
15          and accounting obligations, services provided, and any  
16          compensation arrangements, including any subsequent  
17          amendments;
- 18          (6) An accurate and current list of members of the  
19          condominium association and the members' current  
20          addresses and the names and addresses of the vendees  
21          under an agreement of sale, if any. A copy of the



1 list shall be available, at cost, to any unit owner or  
2 owner's authorized agent who furnishes to the managing  
3 agent, resident manager, or the board a duly executed  
4 and acknowledged affidavit stating that the list:

5 (A) Shall be used by the unit owner or owner's  
6 authorized agent personally and only for the  
7 purpose of soliciting votes [~~or proxies~~] or for  
8 providing information to other unit owners with  
9 respect to association matters; and

10 (B) Shall not be used by the unit owner or owner's  
11 authorized agent or furnished to anyone else for  
12 any other purpose;

13 (7) The association's most current financial statement, at  
14 no cost or on twenty-four-hour loan, at a convenient  
15 location designated by the board;

16 (8) Meeting minutes of the association, pursuant to  
17 section 514B-122;

18 (9) Meeting minutes of the board, pursuant to  
19 section 514B-126, which shall be:

20 (A) Available for examination by unit owners or  
21 owners' authorized agents at no cost or on



1                   twenty-four-hour loan at a convenient location at  
2                   the project, to be determined by the board; or

3                   (B) Transmitted to any unit owner or owner's  
4                   authorized agent making a request for the minutes  
5                   within fifteen days of receipt of the request by  
6                   the owner or owner's authorized agent; provided  
7                   that:

8                   (i) The minutes shall be transmitted by mail,  
9                   electronic mail transmission, or facsimile,  
10                  by the means indicated by the owner or  
11                  owner's authorized agent, if the owner or  
12                  owner's authorized agent indicated a  
13                  preference at the time of the request; and

14                  (ii) The owner or owner's authorized agent shall  
15                  pay a reasonable fee for administrative  
16                  costs associated with handling the request,  
17                  subject to section 514B-105(d);

18                  (10) Financial statements, general ledgers, the accounts  
19                  receivable ledger, accounts payable ledgers, check  
20                  ledgers, insurance policies, contracts, and invoices  
21                  of the association for the duration those records are



1           kept by the association, and any documents regarding  
2           delinquencies of ninety days or more shall be  
3           available for examination by unit owners or owners'  
4           authorized agents at convenient hours at a place  
5           designated by the board; provided that:

6           (A) The board may require unit owners or owners'  
7           authorized agents to furnish to the association a  
8           duly executed and acknowledged affidavit stating  
9           that the information is requested in good faith  
10          for the protection of the interests of the  
11          association, its members, or both; and

12          (B) Unit owners or owners' authorized agents shall  
13          pay for administrative costs in excess of eight  
14          hours per year;

15          (11) [~~Proxies, tally~~] Tally sheets, ballots, unit owners'  
16          check-in lists, and the certificate of election  
17          subject to section 514B-154(c);

18          (12) Copies of an association's documents, records, and  
19          information, whether maintained, kept, or required to  
20          be provided pursuant to this section or  
21          section 514B-152, 514B-153, or 514B-154;



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- 1       (13) A copy of the management contract from the entity that
- 2             manages the operation of the property before the
- 3             organization of an association;
- 4       (14) Other documents requested by a unit owner or owner's
- 5             authorized agent in writing; provided that the board
- 6             shall give written authorization or written refusal
- 7             with an explanation of the refusal within thirty
- 8             calendar days of receipt of a request for documents
- 9             pursuant to this paragraph; and
- 10       (15) A copy of any contract, written job description, and
- 11             compensation between the association and any person or
- 12             entity retained by the association to manage the
- 13             operation of the property on-site, including but not
- 14             limited to the general manager, operations manager,
- 15             resident manager, or site manager; provided that
- 16             personal information may be redacted from the contract
- 17             copy, including but not limited to the manager's date
- 18             of birth, age, signature, social security number,
- 19             residence address, telephone number, non-business
- 20             electronic mail address, driver's license number,
- 21             Hawaii identification card number, bank account







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**Report Title:**

Condominiums; Meetings; Members; Proxies; Internet; Voting

**Description:**

Prohibits the use of proxies in condominium association voting. Requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology. Requires associations to mail out paper ballots before any annual or other periodic election of board members.

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

