

BY LAWS

ARMED FORCES COMMUNICATIONS ELECTRONICS ASSOCIATION HAWAII (AFCEA HAWAII)

(A Hawaii nonprofit corporation)

Voted and Approved version - February 2009

These bylaws of the Armed Forces Communications Electronics Association Hawaii (hereinafter, "AFCEA Hawaii" or the "Corporation") supersede the bylaws dated March 30, 1953, and all amendments thereto.

ARTICLE I

GENERAL

Section 1.1 Mailing Address of Principal Office: The mailing address of the Corporation's principal office is P.O. Box 31156, Honolulu, Hawaii 96820.

Section 1.2 Street Address of Registered Office and Registered Agent: The street address of the Corporation's registered office is 808 Ahua Street, Suite 26, Honolulu, Hawaii 96819. The Corporation shall maintain a registered agent at the Corporation's registered office as required under Section 6.2.

Section 1.3 Seal. The Corporation may, but need not, have a corporate seal. The seal of the Corporation shall be in such form and bear the name of the Corporation and such other words as the Board of Directors from time to time shall prescribe.

Section 1.4 Fiscal Year. The fiscal year of the Corporation is April 1 through March 31, or *as* may otherwise be established by the Board of Directors.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Number and Qualification of Directors. The number of directors of the Corporation shall consist of three (3) or more individuals, with the number fixed by the Board of Directors in accordance with Section 2.3, below. The number of directors may be increased or decreased from time to time, provided that the number of directors shall not be less than three. The president and immediate past president shall automatically serve as directors.

Except for the president and immediate past president who shall qualify to be officers of the Corporation and shall automatically serve as directors, a director must have the following qualifications: (1) be a member in good standing of the Armed Forces

Communications Electronics Association International (AFCEA International), a nonprofit 501(c)(6) corporation located in Washington, DC, (2) have served as a past officer or committee chair in AFCEA Hawaii or another official AFCEA International Chapter, and (3) be domiciled in the State of Hawaii.

Section 2.2 Term of Office. Except as otherwise provided in this section, all directors, whether elected, designated or appointed, shall hold office for a term of two (2) years. A director may be elected for successive terms; provided, however, that a director may not serve more than two consecutive terms. Provided further that a director may be re-elected into office for such terms after sitting out for at least one (1) year.

The initial directors of the Corporation shall consist of five (5) directors. Two of the five directors will serve one (1) year terms and the remaining three directors will serve two (2) year terms. Thereafter, all directors, except for the president and immediate past president, shall hold office for two-year terms.

The president shall serve as a director for the term that the president occupies that office or, in the case of the immediate past president, for the immediate period following that term in office until a successor to the office *is* subsequently elected.

A decrease in the number of directors or term of office does not shorten an incumbent director's term. The term of a director filling a vacancy expires at the end of the unexpired term that the director is filling. Even if a term has expired, a director shall continue to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

Section 2.3 Annual Meeting and Election. The number of directors shall be fixed and the directors elected at each annual meeting of the Board of Directors or at such other time as the Board may designate.

The annual meeting is to be held on the second Tuesday of June in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following, or on such other day as may be designated by the Board of Directors. The annual meeting shall be held at such time and place as the Board of Directors may designate. At the annual or other meeting as determined by the Board of Directors, the Board shall fix the number of directors for the ensuing year, which number may be decreased or increased thereafter at any special meeting (provided that the number of directors shall not be less than three (3)), directors shall be elected and officers appointed, as necessary, any general business which may be brought before the meeting shall be transacted, and other corporate action may be taken as may be appropriate.

Except for the current president and immediate past president of the Corporation who shall automatically serve as directors, the delegates shall elect the directors *as* follows: a volunteer group of delegates shall recommend a candidate or candidates for the office of director to the delegates, and the delegates in turn shall vote to affirm any such recommendation at a duly noticed meeting held for such purpose. The notice of such meeting shall indicate that the matter

will be voted upon and include the name or names of each recommended candidate and other information as may be required by the Board.

Section 2.4 Vacancies. The Board of Directors may fill a vacancy occurring on the Board of Directors by an elected, appointed, or designated director and any directorship to be filled by reason of any increase in the number of directors, as may be reasonably necessary if the delegates are unable to readily assemble. If the directors remaining in office constitute fewer than a quorum of the Board, the directors may fill the vacancy by a majority vote of the directors remaining in office.

If a vacancy will occur at a specified later date (by reason of a resignation effective at a later date or otherwise), such vacancy may be filled before it actually occurs so long as the new director does not take office until the vacancy occurs.

Section 2.5 Resignation of Directors. A director may resign at any time by giving written notice to the Board of Directors, its presiding officer, or to the President or Secretary. Such resignation will be effective when the notice is effective, unless the notice specifies a later effective date. If the notice specifies a later effective date, the delegates may fill the pending vacancy before that date so long as the successor does not take office until the effective date. If the delegates are not able to readily assemble, the Board may fill such vacancy.

Section 2.6. Removal. A director may be removed from office without cause by the affirmative vote of two-thirds (2/3) of the directors or such greater number as is set forth in the articles or bylaws. In no event shall such vote be made with less than two-thirds vote of the directors.

The President, presiding officer of the Board or Secretary shall give written notice of the removal to the director. A removal is effective when the notice is effective, unless the notice specifies a future effective date.

The vacancy shall be filled in accordance with this section and Section 2.4.

ARTICLE III

MEETINGS OF THE BOARD OF DIRECTORS

Section 3.1 Regular Meetings. If the bylaws or the Board fixes the time and place of a directors' meeting, the meeting is a regular meeting. Regular meetings of the Board of Directors shall be held at least annually, at such times and places as may be indicated in the bylaws or as the Board of Directors may provide by resolution. Notice of regular meetings shall be given in accordance with Section 3.3, below.

Section 3.2 Special Meetings. All meetings other than regular meetings are special meetings. Notice of each special meeting shall be given in accordance with Section 3.3, below.

Section 3.3 Call and Notice of Meetings. Unless the articles or bylaws provide otherwise, meetings of the Board of Directors may be called by or at the request of the presiding officer of the Board of Directors, the President, or twenty percent (20%) of the directors then in office. The person or persons authorized to call meetings may fix the place and time for holding any meeting called by them. The Secretary shall give notice of each meeting of the Board of Directors for which notice is required.

(1) Notice Requirements.

(a) Regular meetings of the Board of Directors may be held without notice, except as provided in subsection (c), below.

(b) Special meetings of the Board of Directors shall be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting, except as provided in subsection (c), below.

(c) Any Board action to remove a director or approve a matter as described below must be preceded by at least seven (7) days' written notice to each director indicating that the matter will be voted upon and other information as required under the rules, unless such notice is waived by a director as provided in Section 3.3(3):

- (i) Election, designation, and appointment of directors;
- (ii) Filling a vacancy on the Board of Directors;
- (iii) Removal of a director;
- (iv) Approval of a conflict of interest transaction;
- (v) Determination and authorization of indemnification;
- (vi) Amendment of the articles of incorporation (including restatement of the articles);
- (vii) Amendment of the bylaws;
- (viii) Approval to increase or decrease the quorum or voting requirements;
- (ix) Approval of a plan of merger (the notice must also state that the purpose is to consider the proposed merger)(mergers shall be performed in accordance

with the Hawaii Nonprofit Corporations Act, and prior written notice to the attorney general shall be made and approvals obtained, as necessary, under the Act);

(x) Approval of a sale, lease, exchange, or other disposition of all, or substantially all, of assets other than in the usual and regular course of activities (the notice shall also state that the purpose of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the Corporation and contain a copy or summary of a description of the transaction)(the sale or other disposition of assets shall be performed in accordance with the Hawaii Nonprofit Corporations Act, HRS 414D-222, as amended, and prior written notice shall be provided to the attorney general, as necessary, under the Act);

(xi) Approval of a plan of conversion (the notice must also state that the purpose of the meeting is to consider the proposed conversion);

(xii) Approval of a plan of dissolution of the Corporation (including revocation of the plan of dissolution) (the notice must also state that the purpose of the meeting is to consider corporate dissolution (or revocation of the plan) and contain a copy or summary of the plan)(dissolution shall be performed in accordance with the Hawaii Nonprofit Corporations Act, and prior written notice to the attorney general shall be made, as necessary, under the Act).

(2) Form of Notice and Effectiveness. Notice may be oral or written (unless otherwise indicated) and made as follows: communicated in person, by telephone, telegraph, teletype or other form of wire or wireless communication, or by mail or private carrier. If such forms of personal communication are impracticable, notice may be made as follows: by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast.

(a) Oral notice is effective when it is communicated if done in a comprehensible manner.

(b) Written notice, if done in a comprehensible form, is effective at the earliest of the following: (i) when received; (ii) five (5) days after it is mailed with the US Postal Service (as evidenced by the postmark), provided that the correct address and first class postage are used; or (iii) on the date shown on the return receipt signed by or on behalf of the addressee, if sent by registered or certified mail.

(3) Waiver of Notice. A director may at any time waive any notice required under the Hawaii Nonprofit Corporations Act, articles of incorporation or bylaws by submitting a signed waiver of notice, which shall be filed with the minutes or corporate records. A director's attendance at or participation in a meeting also waives any required notice unless the director at the beginning of the meeting or prior to the vote on a matter not properly noticed, objects to lack of notice and does not thereafter vote for or assent to the objected to action.

Section 3.4 Quorum and Adjournment. A majority of the directors in office fixed under Section 2.3, above, immediately before a meeting begins constitutes a quorum. Unless the Hawaii Nonprofit Corporations Act, the articles of incorporation or the bylaws require the vote of a greater number of directors, no action taken shall bind the Corporation unless a majority of the directors present at a meeting at which a quorum is present concurs with such action. Each director shall be entitled to one (1) vote.

In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third (1/3) of the number of directors in office or two (2) directors.

In the absence of a quorum, the presiding officer or a majority of the directors present may adjourn the meeting from time to time until a quorum is present.

Section 3.5 Telephone and Video Meetings. Subject to the notice requirements in Section 3.3, above, and unless otherwise provided by the articles or bylaws, the Board of Directors may allow any or all of the directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication whereby all participating directors can hear each other at the same time, such as by telephone conferencing or video teleconferencing. Participation by such means shall constitute presence in person at a meeting.

Section 3.6 Action Without Meeting. Unless the articles or bylaws provide otherwise, any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors sign one or more written consents describing the action taken and include such consent(s) in the minutes filed with the corporate records reflecting the action taken. The action taken is effective when the last director signs the consent, unless the consent specifies a different effective date. Such consent shall have the same effect as a meeting vote.

ARTICLE IV

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 4.1 Powers. All corporate powers are vested in the Board of Directors to the fullest extent permitted by the laws of the State of Hawaii. Such corporate powers shall be exercised by or under the authority of the Board of Directors, including the management of the Corporation's affairs.

Section 4.2 Duties. The Board of Directors shall conduct, manage and control the affairs and business of the Corporation, and promulgate and enforce rules and regulations, consistent with the law, the articles of incorporation and the bylaws.

Section 4.3 Committees.

(1) Creation of Committees and Powers. Unless prohibited or limited by the articles or bylaws, the Board of Directors may create committees of the Board and appoint

members of the Board to serve on them. The creation of a committee and appointment of members to it must be approved by the greater of a majority of the directors then in office or the number of directors required to take action under Section 3.4. Each committee shall have two (2) or more directors, who serve at the pleasure of the Board.

Each committee shall have and exercise all the authority of the Board of Directors to the extent specified by the Board, the articles of incorporation or the bylaws; provided, however, that a committee may not:

- (a) Authorize distributions;
- (b) Elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; or
- (c) Adopt, amend, or repeal the articles of incorporation or the bylaws.

The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 4.4, below.

(2) Committee Meetings, Notice and Voting. Sections 3.1 to 3.6, above, which govern meetings, notice and waiver of notice, quorum and voting requirements, and action without meetings of the Board, apply to committees and their members.

(3) Standing Committees. The standing committees of the Corporation are as follows:

- (a) Asia-Pacific TechNet
- (b) Financial Investments

Section 4.4 Standards of Conduct For Directors. A director shall discharge the director's duties as a director or member of a committee:

- (1) In good faith;
- (2) With the care an ordinary prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the Corporation's best interests.

In performing such duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the following:

(1) One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons regarding matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the Board of which the director is not a member regarding matters within its jurisdiction and the director reasonably believes the committee merits confidence.

A director is not acting in good faith if the director has knowledge, which would make reliance upon these persons or the committee unwarranted.

Section 4.5 Director Conflict of Interest. A director has a conflict of interest if the director has a direct or indirect interest in a transaction with the Corporation. A director has an indirect interest in a transaction if another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction, or another entity of which the director is a director, officer, or trustee is a party to the transaction.

A conflict of interest transaction cannot be voided or the basis of holding a director liable if the transaction is fair at the time it is entered into or is approved as described in the next paragraph.

A conflict of interest transaction may be approved if either of the following occurs:

(1) The material facts of the transaction and the director's interest are disclosed or known to the Board or a committee of the Board, and the transaction is authorized, approved, or ratified by an affirmative vote of a majority of the directors either on the Board or on the committee, who have no direct or indirect interest in the transaction; provided, that a transaction may not be authorized, approved, or ratified by a single director. Such majority vote of the directors on the Board shall constitute a quorum for the purposes of taking action under this section.

(2) The attorney general approves the transaction before or after it is completed in the case of a public benefit corporation. (See Section 15.2.)

The articles of incorporation, the bylaws or the Board of Directors, by resolution, may impose additional requirements on conflict of interest transactions.

ARTICLE V

OFFICERS

Section 5.1 Designation and Authority. The officers of the Corporation shall be as follows: the President, Executive Vice-President, Treasurer, Secretary, Vice-President for Programs, Vice-President for Publicity, Vice-President for Membership, Vice-President for Awards, Vice-President for Education, and such assistant officers and other officers as the Board of Directors shall from time to time designate. The officers shall perform the duties and have the authority as set forth in the bylaws, or to the extent consistent with the bylaws, as prescribed in a resolution of the Board or by direction of an officer authorized by the Board to prescribe the duties and authority of other officers.

Section 5.2 Appointment, Term of Office and Qualification. The Board of Directors shall appoint the officers at the annual meeting of the Board or at such other time as the Board may determine. Officers shall be appointed to serve a one (1) year term. Officers may be appointed for successive terms; provided, however, that an officer may not serve more than three (3) consecutive terms. The same individual may simultaneously hold more than one office in the Corporation, provided that not less than two (2) persons shall be officers.

To qualify as an officer, candidates must be a member in good standing of AFCEA International and affiliated with AFCEA Hawaii.

Section 5.3 Resignation and Removal. An officer may resign at any time by delivering notice to the Corporation, and the resignation will be effective when the notice is effective unless the notice specifies a future effective date. If the resignation is made effective at a future date and the Corporation accepts that date, the Board of Directors may fill the pending vacancy before the effective date, provided the successor does not take office until the effective date. An officer's resignation shall not affect the Corporation's contract rights, if any, with the officer.

Except as otherwise provided in the articles or bylaws, the Board of Directors may remove an officer at any time with or without cause. The removal of an officer shall not affect the officer's contract rights, if any, with the Corporation.

Section 5.4 President. The President shall preside at all meetings of the Board of Directors. Unless otherwise determined by the Board of Directors or provided in the bylaws, the President shall have general charge and supervision of the Corporation. The President shall perform such other duties as are incident to the office or are required by the Board of Directors or bylaws.

Section 5.5 Executive Vice-President. In the absence or disability or refusal to act by the President, the Executive Vice-President or Vice-Presidents, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the

President. The Executive Vice-President shall have such powers and perform such other duties as from time to time may be prescribed by the Board of Directors, President or bylaws.

Section 5.6 Treasurer. The Treasurer shall exercise general supervision over the receipt, custody, and disbursement of corporate funds. The Treasurer shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Treasurer or Assistant Treasurers, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Treasurer during the absence or disability of the Treasurer or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.7 Secretary. The Secretary shall have the following duties:

- (1) Prepare the minutes of Board, committee, and delegate meetings;
- (2) Give proper notice of all meetings of the Board of Directors and delegates and of any committee in accordance with Article III and Article XIII;
- (3) Authenticate records;
- (4) Keep and maintain the records and reports described in Section 6.3;

and

(5) Perform all other duties assigned by the Board of Directors, President or bylaws.

The Assistant Secretary or Assistant Secretaries, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Secretary during the absence or disability of the Secretary or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.8 Vice-President for Programs. The Vice-President for Programs shall plan and organize programs and events, which meet AFCEA Hawaii's objective of encouraging the exchange of ideas and close cooperation between government agencies, the military, industry, and educational institutions. The Vice-President for Programs shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Vice-President for Programs or Assistant Vice-Presidents for Programs, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Vice-President for Programs during the absence or disability of the Vice-President for Programs or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.9 Vice-President for Publicity. The Vice-President for Publicity shall serve as the focal point for information about AFCEA programs and events and create press releases, flyers, email and other media products to disseminate information to the public and AFCEA supporters. The Vice-President for Publicity shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Vice-President for Publicity or Assistant Vice-Presidents for Publicity, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Vice-President for Publicity during the absence or disability of the Vice-President for Publicity or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.10 Vice-President for Membership. The Vice-President for Membership shall coordinate new member recruitment and retention of existing members. The Vice-President for Membership will maintain a record that reflects those members of AFCEA International maintaining official affiliation with AFCEA Hawaii. The Vice-President for Membership shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Vice-President for Membership or Assistant Vice-Presidents for Membership, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Vice-President for Membership during the absence or disability of the Vice-President for Membership or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.11 Vice-President for Awards. The Vice-President for Awards shall plan and coordinate awards to recognize outstanding contributors to AFCEA Hawaii's programs and objectives and to encourage members of the general public to pursue scientific and technical career fields. The Vice-President for Awards shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Vice-President for Awards or Assistant Vice-Presidents for Awards, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Vice-President for Awards during the absence or disability of the Vice-President for Awards or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.12 Vice-President for Education. The Vice-President for Education shall develop and coordinate awards, scholarships and programs to further the technical and scientific education of AFCEA International members, students, teachers, and others in the State of Hawaii. The Vice-President for Education shall perform all other duties assigned by the Board of Directors, President or bylaws. The Assistant Vice-President for Education or Assistant Vice-Presidents for Education, if appointed, shall, in the order designated by the Board of Directors or President, perform all the duties and exercise all the powers of the Vice-President for Education during the absence or disability of the Vice-President for Education or whenever the office is vacant, and shall perform all the duties assigned by the Board of Directors, President or bylaws.

Section 5.13 Standards of Conduct For Officers. An officer with discretionary authority shall discharge the officer's duties as follows:

- (1) In good faith;
- (2) With the care an ordinary prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the Corporation's best interests.

In performing such duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the following:

- (1) One or more officers or employees of the Corporation who the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) Legal counsel, public accountants, or other persons regarding matters the officer reasonably believes are within the person's professional or expert competence.

An officer is not acting in good faith if the officer has knowledge, which would make reliance upon these persons unwarranted.

ARTICLE VI

ADMINISTRATION

Section 6.1 Organization of the Corporation. The Incorporator, after receiving the filed copy of the articles of incorporation, shall hold an organizational meeting to elect the directors and complete the organization of the Corporation or to elect the directors and the directors shall complete the organization of the Corporation. To complete the organization of the Corporation, the officers of the Corporation shall be appointed, the bylaws adopted, and any other business brought before the meeting shall be carried on.

Section 6.2 Registered Office and Agent. The Corporation shall continuously maintain in this State a registered office and a registered agent. The registered office may be the same as its place of business. The registered agent may be (1) an individual who resides in this State and whose business office is identical with the registered office, (2) a domestic entity authorized to transact business in this State and whose business office is identical with the registered office, or (3) a foreign entity authorized to transact business in this State and whose business office is identical with the registered office.

The Corporation may change its registered office or agent, or if the agent's street address changes, the registered agent may change the street address of the Corporation's registered office, or the agent may resign as the registered agent in the manner provided by the Hawaii Nonprofit Corporations Act, Hawaii Revised Statutes (HRS) 414D-72 and -73.

Section 6.3 Records.

(1) Records. The Corporation shall keep the following records:

(a) Permanent records of the following: minutes of the meetings of the Board of Directors, a record of all actions taken by the directors without a meeting, and a record of all actions taken by committees of the Board of Directors as authorized under Section 4.3, above, and of the delegates; and

(b) Appropriate accounting records.

Such records shall be maintained in written form or in another form capable of conversion into written form within a reasonable time.

(2) Copies of Records. The Corporation shall keep copies of the following records at its principal office:

(a) The articles of incorporation (or restated articles) and all amendments currently in effect;

(b) The bylaws (or restated bylaws) and all amendments currently in effect;

(c) A list of the names and business or home addresses of the Corporation's current directors and officers, and the names and addresses of the delegates for purposes of providing notice to the delegates; and

(d) The most recent annual report filed with the Director of the Department of Commerce and Consumer Affairs.

Section 6.4 Annual Report. The Corporation shall deliver an annual report to the Director of the Department of Commerce and Consumer Affairs on a form furnished by the Department. The annual report shall be filed within the time periods prescribed under the Hawaii Nonprofit Corporations Act, HRS 414D-308, as amended.

ARTICLE VII

DISTRIBUTIONS; LOANS OR GUARANTEES

Section 7.1 Prohibited Distributions. The Corporation shall not make any distributions, except as otherwise provided under the law. "Distribution" means "the payment of

a dividend or any part of the income or profit of a corporation to its members, directors, or officers." (HRS 414D-14.)

Section 7.2 Private Benefit Prohibited. No part of the net earnings of the Corporation shall inure in whole or in part to the benefit of, or be distributable to, private shareholders or individuals.

Thus, the Corporation shall not authorize or issue shares of stock, and no dividend shall be paid and no part of the income or profit of the Corporation shall be distributed to its directors or officers.

The Corporation may pay a reasonable compensation to its directors or officers for services rendered in furtherance of the Corporation's purposes as set forth in the articles of incorporation, provided that no such payment shall be deemed to be a dividend or a distribution of income or profit.

Section 7.3 Loans or Guaranties Prohibited. The Corporation shall not lend money to or guaranty the obligation of a director or officer of the Corporation.

The Corporation shall further not lend money where the money is intended to be used for political purposes, such that it would violate the prohibition against political campaign activity of a corporation, exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986, or the corresponding provision of any future federal tax code.

ARTICLE VIII

EXECUTION OF INSTRUMENTS

All checks and other orders for the payment of money, drafts, notes, bonds, acceptances, contracts, and all other instruments, except as otherwise provided in the bylaws, shall be signed by such person or persons as shall be designated by resolution of the Board of Directors.

Unless authorized by the Board of Directors, no director, officer, agent or employee of the Corporation shall have any power or authority to bind the Corporation by any contract or other instrument or to pledge its credit or to render it liable for any purpose or amount.

ARTICLE IX

LIABILITY AND INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 9.1 Limitation of Liability to Corporation. No director of the Corporation shall be personally liable to the Corporation for any monetary damages because of a breach of the director's duties to the Corporation; provided, that such liability shall not be eliminated in the following circumstances:

- (1) For breach of the director's duty of loyalty to the Corporation;
- (2) For acts or omissions not made in good faith or that involve intentional misconduct or knowing violation of the law;
- (3) For transactions from which a director derived an improper personal economic benefit;
- (4) For any improper conflict of interest transaction with the Corporation in which a director had a direct or indirect interest;
- (5) For any transaction in which a director received a loan or guaranty of obligation from the Corporation; or
- (6) For any transaction where a director votes for or assents to an unlawful distribution.

Section 9.2 Liability for Unlawful Distributions. Unless a director complies with the applicable standards of conduct described in Section 4.4, above, a director who votes for or assents to an unlawful distribution in violation of the Hawaii Nonprofit Corporations Act shall be personally liable to the Corporation for the amount of the distribution that exceeds what could have been distributed without violating the Act. A director that is liable for an unlawful distribution is entitled to contribution from other directors who voted for or assented to the distribution without complying with the standards of conduct and each person who received the unlawful distribution.

Section 9.3 Indemnification.

(1) Definitions. The following definitions contained in the Hawaii Nonprofit Corporations Act (HRS 414D-159) apply to this Section 9.3:

(a) "Director" means an individual who is or was a director of the Corporation or an individual who, while a director of the Corporation, is or was serving at the Corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan

at the Corporation's request if the director's duties to the Corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan.

(b) "Expenses" includes counsel fees.

(c) "Official capacity" means with respect to a director, the office of director in the Corporation and with respect to an officer, employee, or agent of the Corporation who is not a director, the office in the Corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(d) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

(e) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, or reasonable expenses actually incurred with respect to a proceeding.

An officer of the Corporation who is not a director is entitled to indemnification under Section 9.3(3) and is entitled to apply to the court for court-ordered indemnification under Section 9.3(5) to the same extent as a director.

The Corporation may indemnify and advance expenses to an officer, employee, or agent of the Corporation who is not a director under this section to the same extent as a director.

(2) The Corporation may indemnify a former or current director made a party to a proceeding against liability incurred in the proceeding if the person (a) acted in good faith and (b) in a manner the person reasonably believed in the case of conduct in an official capacity, that the person's conduct was in the Corporation's best interests and in all other cases, that the person's conduct, at a minimum, did not oppose the Corporation's best interests, and (c) with respect to a criminal proceeding, that the person had no reasonable cause to believe the person's conduct was unlawful.

A person's conduct with respect to an employee benefit plan for a purpose the person reasonably believed to be in the interests of the participants in and beneficiaries of the plan satisfies the requirements of subsection 9.3(2)(b), in the paragraph above, regarding conduct in all other cases, that the person's conduct, at a minimum, did not oppose the Corporation's best interests.

The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that such person failed to meet the standard of conduct described in this section.

The Corporation may not indemnify a person's liability under this section where such liability has been determined in connection with a proceeding by or in the right of the Corporation, or in connection with any other proceeding whether or not involving action in an official capacity, in which the person is found liable on the basis of the person's improper receipt of a personal benefit.

Indemnification allowed under this section in connection with a proceeding by or in the right of the Corporation is limited to reasonable expenses incurred in connection with the proceeding.

(3) To the extent that a director seeking indemnification has been wholly successful, on the merits or otherwise, in the defense of a proceeding in which the person was a party because the person is or was a director of the Corporation, the Corporation shall indemnify such person against reasonable expenses actually incurred in connection with the proceeding.

(4) Before a final decision is made in a proceeding, the Corporation may advance funds to pay for or reimburse the reasonable expenses of a director made a party to the proceeding, provided as follows:

(a) The person provides the Corporation with a written affirmation of the person's good faith belief that the person has met the standard of conduct described in Section 9.3(2), above;

(b) The person provides the Corporation with a written undertaking, signed by the person or on the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the standard of conduct; and

(c) It is determined that the facts then known to those making the determination do not preclude indemnification.

Such determinations and authorizations shall be made in the manner described in Section 9.3(6), below.

(5) A director made a party to a proceeding may apply to the court conducting the proceeding or to another court of competent jurisdiction for court-ordered indemnification. Upon receipt of the application, the court after giving any notice the court considers necessary may order indemnification in an amount it considers proper if it determines as follows:

(a) That the person is entitled to mandatory indemnification under Section 414D-161 of the Hawaii Nonprofit Corporations Act, Hawaii Revised Statutes, in which case the court shall also order the Corporation to pay the person's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) The person is fairly and reasonably entitled to indemnification under all the relevant circumstances, whether or not the person met the standard of conduct set forth in Section 9.3(2), above, or was found liable in connection with a proceeding by or in the right of the corporation, or in connection with any other proceeding whether or not involving action in an official capacity, in which the person was found liable on the basis of the person's improper receipt of a personal benefit, but if the person was found liable indemnification is limited to reasonable expenses incurred.

(6) The Corporation shall make indemnification payments under Sections 9.3(2) and (4) only if authorized in the specific case upon a determination that the person seeking indemnification has met the standard of conduct set forth in those sections. Such determination shall be made (a) by the Board of Directors by majority vote of a quorum consisting of directors who are not at the time parties to the proceeding, or (b) if such quorum is not obtainable, by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate) consisting solely of two (2) or more directors not at the time parties to the proceeding, or (c) if a committee cannot be designated, by special legal counsel selected by the Board of Directors or its committee in the manner prescribed in subsections (a) or (b), or a majority vote of the full Board (in which selection directors who are parties may participate). Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if special legal counsel makes the determination, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (c) to select counsel.

(7) The indemnification provided by this Section 9.3 shall not be deemed exclusive of any other rights to which those seeking indemnification are entitled under the law.

(8) The Corporation may purchase insurance on behalf of a person who is or was a director, officer, employee, or agent of the Corporation, or who, while a director, officer, employee, or agent of the Corporation, is or was serving at the Corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise,

against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, or agent, whether or not the Corporation would have the power to indemnify the person against the same liability under Section 9.3(2) or 9.3(3).

(9) This Section 9.3 shall be effective with respect to those persons covered by this section and in respect to proceedings pending on or after the effective date of the articles of incorporation, as allowed by law.

ARTICLE X

POLITICAL ACTIVITY

No substantial part of the activities of the Corporation shall be participating directly or indirectly, or intervening, in political campaigns on behalf of or in opposition to any candidate for public office.

ARTICLE XI

AMENDMENTS

Section 11.1 Amendment of Bylaws. Except as provided in Section 11.3, the Board of Directors may alter, amend, or repeal the bylaws or adopt new bylaws by an affirmative vote of not less than a majority of the Board of Directors at a meeting duly called and noticed for that purpose.

Section 11.2 Amendment of Articles of Incorporation. Except as provided in Section 11.3, the articles of incorporation may be amended or restated by the Board of Directors by an affirmative vote of not less than a majority of the Board of Directors at a meeting duly called and noticed for that purpose, and in the manner provided by the Hawaii Nonprofit Corporations Act, *as amended*.

Section 11.3 Amendment Affecting Delegates. Any amendment to the articles of incorporation or the bylaws, which would affect the rights and benefits of the delegates must be approved by the delegates by the following procedure:

(1) Before adopting a resolution proposing such amendment, the Board of Directors shall give notice of the general nature of the amendment to the delegates.

(2) After adopting a resolution proposing such amendment, the Board must give notice to the delegates proposing the amendment, and the notice shall include one or more statements of up to five hundred (500) words opposing the amendment if such statement is submitted by any five (5) delegates, or by delegates having three percent (3%) or more of the voting power, whichever is less. The notice must be given within twenty (20) days from the time

the Board has voted to submit the amendment to the delegates for approval. The Corporation shall pay for the production and postage.

(3) The proposed amendment must be approved by the delegates, whether through attendance or proxy, in accordance with Section 13.6.

ARTICLE XII DELEGATES

Section 12.1 Definition: Delegates. "Delegates" means "those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters." (Hawaii Nonprofit Corporations Act, HRS 414D-14.)

The delegates of the Corporation shall consist of those persons who are admitted as delegates under the provisions of the articles of incorporation or bylaws. Admission of a delegate in the Corporation is evidenced by the Corporation's current list of delegates.

Section 12.2 Admission of Delegates. The delegates of the Corporation shall include those persons who meet all of the following criteria: (1) members in good standing of AFCEA International, (2) recognized by AFCEA International as affiliated with AFCEA Hawaii, and (3) who are in attendance at an annual meeting as defined in Article XIII (or have sent a proxy to vote at the annual meeting in accordance with Section 13.8) that is a Hawaii Affiliate. A "Hawaii Affiliate" is a person who is an AFCEA International member that is in Hawaii and attends AFCEA Hawaii functions. No person shall be admitted as a delegate without the person's consent.

Section 12.3 Differences in Rights and Obligations of Delegates. All delegates have the same rights and obligations with respect to voting. All delegates shall have the same rights and obligations with respect to any other matter, except as otherwise indicated in the articles or bylaws.

Section 12.4 Termination, Expulsion or Suspension of Delegates. No Delegate may be expelled or suspended unless such action is taken pursuant to a fair and reasonable procedure and carried out in good faith. The procedure shall be deemed fair and reasonable if the action is carried out in either of the following two (2) ways:

(1) By giving the delegate affected reasonable notice and an opportunity to be heard, as follows:

(a) The Corporation provides the delegate with at least fifteen (15) days prior written notice of the expulsion, suspension or termination and states the reason(s) for the action; and

(b) The Corporation gives the delegate an opportunity to be heard, orally or in writing, by a person or persons authorized to decide to cancel such action not less than five (5) days before the effective date of the expulsion, suspension or termination.

(2) Alternatively, by a procedure that is fair and reasonable taking into consideration all the relevant facts and circumstances.

Any written notice given by mail shall be sent to the delegate's last known address as shown in the Corporation's records.

ARTICLE XIII

DELEGATE MEETINGS AND VOTING

Section 13.1 Annual and Regular Meetings. The Corporation may hold an annual meeting of the delegates at such times stated or fixed in accordance with the bylaws or determined by the Board. Regular delegate meetings may also be held at such times stated or fixed in accordance with the bylaws or determined by the Board.

Annual or regular delegate meetings shall be held in the State of Hawaii at a place stated or fixed in accordance with the bylaws. If no place is stated, such meetings shall be held at the Corporation's principal office.

Section 13.2 Special Meetings. Special meetings of the delegates may be called by the Board of Directors, the person or persons authorized to do so by the articles or bylaws, or upon one or more written demands by the holders of at least five percent (5%) of the voting power of the Corporation, which is signed, dated, describes the purpose or purposes for which the meeting is to be held, and delivered to a corporate officer.

For purposes of the written demand or demands for a meeting, the close of business on the thirtieth (30th) day before delivery of the demand or demands for a special meeting to the corporate officer shall be the record date for the purpose of determining whether the five percent (5%) requirement has been met.

Upon delivery of the written demand or demands, the Corporation shall provide notice to the delegates in accordance with the Notice of Meetings of Delegates provision of the bylaws, within thirty (30) days. If such notice is not given, a person signing the demand or demands may set the time and place of the meeting and give appropriate notice.

Special delegate meetings shall be held in the State of Hawaii at such place stated or fixed in accordance with the bylaws. If no place is stated, such meetings shall be held at the Corporation's principal office.

Only those matters within the purpose or purposes described in the meeting notice under the Notice of Meetings of Delegates provision may be conducted at a special meeting of delegates.

Section 13.3 Notice of Meetings of Delegates. The Corporation shall give notice of the meetings of delegates in a fair and reasonable manner. Notice shall be deemed fair and reasonable if given as follows:

(1) The Corporation gives notice to the delegates of the date, time, and place of annual, regular, and special meetings within a period, no fewer than ten (10) days or more than sixty (60) days before the meeting date; and

(2) The notice includes a description of the matter or matters for which the meeting is called.

Other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that a description of the matter or matters for which the meeting is called must be given.

Unless otherwise provided in the bylaws, if an annual, regular or special meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place, so long as the new date, time or place is announced at the meeting prior to the adjournment; provided, that if a new record date for the adjourned meeting must be fixed under Section 13.5, then notice shall be given under this section to the delegates of record as of the new record date.

Section 13.4 Waiver of Notice by Delegate. A delegate may waive any notice required by the articles of incorporation or bylaws before or after the date and time stated in the notice by delivering to the Corporation a signed waiver of notice, which shall be filed with the minutes or corporate records.

A delegate's attendance at a meeting (1) waives any objection to lack of notice or defective notice, unless the delegate at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (2) waives any objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the delegate objects to considering the matter when it is presented.

Section 13.5 Record Date: Determining Delegates Entitled to Notice, Vote, and Other. The record dates for determining the delegates' entitlement to notice, vote, and any other action allowed and provided for in the articles of incorporation, bylaws, and the Nonprofit Corporations Act are as follows:

(1) Record Date For Entitlement to Notice of Delegates' Meetings. The bylaws may fix or provide the manner of fixing a date as the record date for determining the delegates entitled to notice of a delegates' meeting. If the bylaws do not fix or provide for fixing such a date, the Board may fix a future date as a record date. If no such record date is fixed,

delegates at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(2) Record Date For Entitlement to Vote. The bylaws may fix or provide the manner of fixing a date as the record date for determining the delegates entitled to vote at a delegates' meeting. If the bylaws do not fix or provide for fixing such a date, the Board may fix a future date as a record date. If no such record date is fixed, delegates on the date of the meeting who are otherwise eligible to vote are entitled to vote.

(3) Record Date For Entitlement to Other Rights. The bylaws may fix or provide the manner for determining a date *as* the record date for the purpose of determining the delegates entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a date, the Board may fix in advance such a record date. If no such record date is fixed, delegates at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

A record date may not be more than seventy (70) days before the meeting or action requiring a determination of delegates occurs.

A determination of delegates entitled to notice of or to vote at a delegates meeting is effective for any adjournment of the meeting, unless the Board fixes a new date for determining the right to notice or the right to vote, which the Board must do if the meeting is adjourned to a date more than seventy (70) days after the record date for determining delegates entitled to notice of the original meeting.

Section 13.6 Voting Requirements. A majority vote of the delegates present at a meeting is the act of the delegates, unless the articles of incorporation, bylaws or the Hawaii Nonprofit Corporations Act require a greater vote.

Any amendment to the bylaws to increase or decrease the vote required for any delegate action must be approved by the delegates.

Section 13.8 Proxy Voting.

(1) Appointment of a Proxy by a Delegate. A delegate may appoint a proxy to vote or otherwise act for the delegate by signing an appointment form personally or by an attorney-in-fact. A delegate may authorize another person to act as a proxy for the delegate, as follows:

(a) By executing a writing authorizing another person or persons to act as a proxy, which may be accomplished by the delegate or by the delegate's authorized attorney-in-fact, officer, director, employee or agent signing the writing or causing the delegate's signature to be affixed to the writing by any reasonable means (e.g., by fax); or

(b) By transmitting or authorizing the transmission of a facsimile or other electronic transmission authorizing the person or persons to act as a proxy for the delegate to the person or persons who will be the holder of the proxy or other agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the delegate. A copy, facsimile or other reliable reproduction of the writing or transmission created under the foregoing may be used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, provided that such copy, facsimile or other reproduction is a complete reproduction of the entire original writing or transmission.

(2) Revocability of the Appointment. An appointment of a proxy is revocable by the delegate making the proxy. •

ARTICLE XIV

INSPECTION OF CORPORATE RECORDS

Section 14.1 Inspection of Records by Members of AFCEA International Who Are Affiliated With AFCEA Hawaii.

(1) Inspection of Certain Records in Section 6.3(2). Subject to Section 6.3(2), any person who is a member in good standing of AFCEA International and affiliated with AFCEA Hawaii is entitled to inspect and copy the following records at a reasonable time and location specified by the Corporation; provided, that the person gives the Executive Vice-President and the Secretary of the Corporation written notice at least thirty (30) business days before the date on which the person wishes to inspect and copy the records:

- (a) The articles of incorporation (or restated articles) and all amendments currently in effect;
- (b) The bylaws (or restated bylaws) and all amendments currently in effect;
- (c) A list of the names of the Corporation's current directors and officers; and
- (d) The most recent annual report filed with the Director of the Department of Commerce and Consumer Affairs.

(2) Inspection of Certain Records Under Section 6.3(1). Any person who is a member in good standing of AFCEA International and affiliated with AFCEA Hawaii is entitled to inspect and copy, at a reasonable time and location specified by the Corporation, the following records; provided, that the person gives the Executive Vice-President and the Secretary of the Corporation written notice at least thirty (30) business days before the date on which the person wishes to inspect and copy the records and meets the requirements of subsection (3), below:

(a) Excerpts from minutes of the meetings of the Board of Directors, a record of all actions taken by the directors without a meeting, and a record of all actions taken by committees of the Board of Directors as authorized under Section 4.3, above; and

(b) Accounting records of the Corporation.

(3) Requirements For Inspection of Records Under Subsection (2). Any person who is a member in good standing of AFCEA International and affiliated with AFCEA Hawaii may inspect and copy the records identified in subsection (2), above, only if:

(a) The demand to inspect and copy is made in good faith and for a proper purpose;

(b) The person describes with reasonable particularity the purpose and the records the person desires to inspect; and

(c) The records are directly connected with the stated purpose.

(4) No Effect on Other Inspection Rights. This section does not affect a person's right to inspect records as the person may otherwise be entitled to as a litigant or by court order.

Section 14.2 Scope of Inspection.

(1) Copies. A person's right to copy records under Section 14.1 includes, if reasonable, the right to receive copies made by photographic, xerox or other means.

(2) Copy Cost. The Corporation may impose a reasonable charge for labor and materials to cover the cost of copies provided to a person demanding inspection; provided, however, that such charge may not exceed the estimated cost of production or reproduction of the records,

ARTICLE XV

OVERSIGHT OF NONPROFITS BY THE ATTORNEY GENERAL

Section 15.1 Notice to the Attorney General of Commencement of Proceeding. Written notice shall be given to the attorney general of any proceeding that the Hawaii Nonprofit Corporations Act authorizes the attorney general to bring, but has been brought by another person. Such written notice shall be given to the attorney general within ten (10) days of the commencement of the proceeding.

Whenever the Nonprofit Corporations Act requires that notice be given to the attorney general before or after the commencement of a proceeding or permits the attorney general to commence a proceeding:

(1) If no proceeding has been commenced, the attorney general may take appropriate action, including seeking injunctive relief; or

(2) If a person other than the attorney general has commenced a proceeding, the attorney general may intervene in the proceeding.

Section 15.2 Definition: "Public Benefit Corporation" A "public benefit corporation" is any corporation:

(1) Designated by statute as a public benefit corporation;

(2) Exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

(3) Organized for public or charitable purposes and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a 501(c)(3) corporation.

To the extent that the Corporation holds itself out as operating for a public purpose and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a section 501(c)(3) corporation, it may be deemed a public benefit corporation. (See Official Comment to Section 17.07 of the Revised Model Nonprofit Corporation Act (1987).)

Section 15.3 Limitations on Mergers by Public Benefit Corporations.

(1) Limitation on Mergers Without Prior Approval. Without the prior approval of the circuit court for the first circuit in a proceeding in which the attorney general has been given written notice, a public benefit corporation may merge only with the following:

(a) A public benefit corporation;

(b) A foreign corporation that would qualify as a public benefit corporation;

(c) A wholly owned corporation; provided, that the public benefit corporation is the surviving corporation and continues to be a public benefit corporation after the merger;

(d) A corporation; provided, as follows:

(i) On or before the effective date of the merger, the assets of the public benefit corporation with an equal value to the greater of the fair market value of the net tangible and intangible assets (including goodwill), or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred to one or more persons who would have received its assets under FRS 414D-245(a)(5) and (6) had it dissolved. (Section 414D-245(a) provides for allowable activities of a corporation following dissolution, which are appropriate to wind up and liquidate its affairs. Subsection -245(a)(5) allows a corporation to transfer its assets as provided in or authorized by its articles or bylaws. Subsection -245(a)(6) allows a public benefit corporation to transfer its assets to one or more public benefit corporations under certain conditions.);

(ii) The public benefit corporation shall return, transfer or convey an asset held by it upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and

(iii) A majority of the directors of the public benefit corporation, who are not and will not become members or shareholders in or officers, employees, agents or consultants of the surviving corporation, approve the merger.

(2) Special Notice Requirement For Mergers Under Subsection (1)(d). A public benefit corporation shall give at least twenty (20) days written notice to the attorney general before the consummation of any merger with a corporation described in subsection (1)(d), above. Such notice shall include a copy of the proposed plan of merger.

Section 15.4 Notice to the Attorney General of Intention to Dissolve.

(1) Prior Notice to Attorney General Required. A public benefit corporation shall give written notice to the attorney general of its intention to dissolve before it submits the articles of dissolution to the Department of Commerce and Consumer Affairs. The notice shall include a copy or summary of the plan of dissolution.

(2) Limitation on Transference/Conveyance of Assets. A public benefit corporation may not transfer or convey assets until twenty (20) days after it has given written notice to the attorney general as required under subsection (1) or until the attorney general has consented in writing to the dissolution, or indicated in writing that no action will be taken in respect to the dissolution, transfer or conveyance, whichever is earlier.

(3) List of Assets Transferred/Conveyed to be Provided to the Attorney General. Following approval of the dissolution and the public benefit corporation has transferred or conveyed all or substantially all of its assets, the board of directors shall prepare and deliver to the attorney general a list of those to whom the assets were transferred or conveyed, other than creditors, and indicate their addresses and the assets received.

Section 15.5 Challenging Actions Beyond the Scope of the Corporate Powers (Ultra Vires).

(1) Proceeding Against the Corporation. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. Such a proceeding may be brought by the attorney general or a director.

(2) Proceeding Against Others. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. Such a proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative, or in the case of a public benefit corporation, by the attorney general.

Section 15.6 Derivative Suits. A "derivative suit" is a proceeding that is based upon the primary right of the corporation, but is asserted on its behalf by another because of the corporation's failure, deliberate or otherwise, to act upon the primary right. (Cf., H. Black M.A., Black's Law Dictionary at 399 (5th ed. 1979).)

A derivative suit may be brought on behalf of a corporation to obtain a judgment in its favor by a director. Such action shall be brought in accordance with **HRS 414D-90**, and each complainant shall be a director at the time the proceeding is commenced.

If the proceeding involves a public benefit corporation, the complainant(s) shall notify the attorney general of the proceeding within ten (10) days after commencing the proceeding.

Section 15.7 Removal of Directors by Judicial Proceeding.

(1) Grounds For Removal. The circuit court of the county where a corporation's principal office is located may remove a director from office in a proceeding brought by persons identified in subsection (2), below, if the removal is in the corporation's best interest due to the following:

- (a) The director's fraudulent or dishonest conduct;
- (b) The director's gross abuse of authority or discretion; or
- (c) A final judgment, which finds that the director has violated a duty set forth in **BRS 414D-149** (standards of care for directors) (see Section 4.4 of the bylaws) and **414D-152** (liability for unlawful distributions) (see Section 9.2 of the bylaws), and that removal is in the corporation's best interest.

(2) Complainants. A proceeding to remove a director shall be made in accordance with BRS 414D-140 and may be brought by:

(a) The corporation; or

(b) The attorney general in the case of a public benefit corporation.

(3) Notice to the Attorne^y General. If a public benefit corporation brings a proceeding under this section, it shall give written notice of the proceeding to the attorney general within ten (10) days of the commencement of the proceeding.

Section 15.8 Sale of Assets Other Than in the Regular Course of Activities. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the board of directors in accordance with FIRS 414D222.

In any such disposition of its assets, a public benefit corporation shall give written notice to the attorney general twenty (20) days before the actual disposition of the assets, unless the attorney general has given the corporation a written waiver of this requirement.

Section 15.9 Judicial Dissolution. The attorney general may bring a court action to dissolve a corporation, and the court may, in turn, dissolve the corporation if the attorney general establishes that:

(1) The corporation obtained its articles of incorporation through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(3) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(4) The corporation is a public benefit corporation and is no longer able to carry out its activities.

Such a proceeding may also be brought by a director or any person specified in the articles of incorporation or a creditor on the grounds recited in HRS 414D-252(b) and (c).

If a person or persons other than the attorney general bring an involuntary dissolution proceeding for a public benefit corporation, such person or persons shall give written notice of the proceeding to the attorney general within ten (10) days after the commencement of the proceeding.