



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-2557 Corporations: directors. (2017-2018)

SHARE THIS:  

Date Published: 09/10/2018 09:00 PM

Assembly Bill No. 2557

CHAPTER 322

An act to amend Sections 5211, 5220, 7220, 9220, and 12360 of the Corporations Code, relating to corporations.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, Maienschein. Corporations: directors.

Existing law, the Nonprofit Corporation Law, regulates the organization and operation of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations.

The Nonprofit Corporation Law, with respect to nonprofit public benefit corporations and nonprofit mutual benefit corporations, requires directors to be elected for terms of not longer than 4 years, as fixed in the articles or bylaws of the corporation, except in certain circumstances. This law, with respect to nonprofit religious corporations, allows the articles or bylaws to provide for the tenure of directors, and in the absence of any provision in the articles or bylaws, provides for a one-year term. The Cooperative Corporation Law regulates the organization of consumer cooperatives, worker cooperatives, and various other types of cooperatives. This law also requires directors to be elected for terms not longer than 4 years, as fixed in the corporation's articles or bylaws, subject to certain exceptions and conditions.

This bill would permit all or a portion of the directors of any of the above types of corporations, if authorized in the articles or bylaws for the specific corporation, to hold office ex officio by virtue of occupying a specified position, either within or outside of the corporation. The bill would require the term of office of ex officio directors to coincide with their respective term of office for the position entitling them to serve on the board of directors, and to meet other specified conditions regarding their resignation or removal. The bill would also make various nonsubstantive and clarifying changes to these laws.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5211 of the Corporations Code is amended to read:

5211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered

personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each director participating in the meeting can communicate with all of the other directors concurrently.

(B) Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in or pursuant to the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may require the presence of one or more specified directors in order to constitute a quorum of the board to transact business, as long as the death or nonexistence of a specified director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate that director does not prevent the corporation from transacting business in the normal course of events. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in or pursuant to the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in or pursuant to the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or the bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting if all directors individually or collectively consent in writing to that action and if, subject to subdivision (a) of Section 5224, the number of directors then in office constitutes a quorum. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, "all directors" does not include an "interested director" as defined in subdivision (a) of Section 5233 or a "common director" as described in Section 5234 who abstains in writing from providing consent, if (1) the facts described in paragraph (2) or (3) of subdivision (d) of Section 5233 are established or the provisions of paragraph (1) or (2) of subdivision (a) of Section 5234 are satisfied, as appropriate, at or prior to execution of the written consent or consents; (2) the establishment of those facts or satisfaction of those provisions, as applicable, is included in the written consent or consents executed by the noninterested or noncommon directors or in other records of the corporation; and (3) the noninterested or noncommon directors, as applicable, approve the action by a vote that is sufficient without counting the votes of the interested directors or common directors.

(c) Each director shall have one vote on each matter presented to the board of directors for action. No director may vote by proxy.

(d) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

SEC. 2. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), (e), or (f), directors shall be elected for terms of not longer than four years, as fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. An amendment of the articles or bylaws may not extend the term of a director beyond that for which the director was elected, and any bylaw provision increasing the terms of directors may not be adopted without approval of the members (Section 5034).

(b) Unless otherwise provided in the articles or bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) For the purposes of this subdivision, "designator" means one or more designators. Notwithstanding subdivisions (a) to (c), inclusive, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection by a specified designator as provided by the articles or bylaws rather than by election. Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 5222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034) except as provided in subdivision (d) of Section 5150. Unless otherwise provided in the articles or bylaws, the entitlement to designate or select a director or directors shall cease if any of the following circumstances exist:

(1) The specified designator of that director or directors has died or ceased to exist.

(2) If the entitlement of the specified designator of that director or directors to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

(f) If authorized in the articles or bylaws of a corporation, all or any portion of the directors may hold office ex officio by virtue of occupying a specified position within the corporation or outside the corporation. The term of office of an ex officio director shall coincide with that director's respective term of office in the specified position entitling him or her to serve on the board of directors. Upon an ex officio director's resignation or removal from that position, or resignation or removal from the board for any reason, the term of office as a director of the corporation shall immediately cease. At that time, the successor in office shall become an ex officio director of the corporation, occupying the place of the former director.

SEC. 3. Section 7220 of the Corporations Code is amended to read:

7220. (a) Except as provided in subdivision (d), (e), or (f), directors shall be elected for terms of not longer than four years, as fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Except as otherwise provided in the articles or bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) For the purposes of this subdivision, "designator" means one or more designators. Notwithstanding subdivisions (a) to (c), inclusive, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection by a specified designator as provided by the articles or bylaws rather than by election. Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 7222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section

5034), except as provided in subdivision (d) of Section 7150. Unless otherwise provided in the articles or bylaws, the entitlement to designate or select a director or directors shall cease if any of the following circumstances exist:

(1) The specified designator of that director or directors has died or ceased to exist.

(2) If the entitlement of the specified designator of that director or directors to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

(f) If authorized in the articles or bylaws of a corporation, all or any portion of the directors may hold office ex officio by virtue of occupying a specified position within the corporation or outside the corporation. The term of office of an ex officio director shall coincide with that director's respective term of office in the specified position entitling him or her to serve on the board of directors. Upon an ex officio director's resignation or removal from that position, or resignation or removal from the board for any reason, the term of office as a director of the corporation shall immediately cease. At that time, the successor in office shall become an ex officio director of the corporation, occupying the place of the former director.

SEC. 4. Section 9220 of the Corporations Code is amended to read:

9220. (a) The articles or bylaws may provide for the tenure, election, selection, designation, removal, and resignation of directors.

(b) In the absence of any provision in the articles or bylaws, the term of directors shall be one year.

(c) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office.

(d) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

(e) If authorized in the articles or bylaws of a corporation, all or any portion of the directors may hold office ex officio by virtue of occupying a specified position within the corporation or outside the corporation. The term of office of an ex officio director shall coincide with that director's respective term of office in the specified position entitling him or her to serve on the board of directors. Upon an ex officio director's resignation or removal from that position, or resignation or removal from the board for any reason, the term of office as a director of the corporation shall immediately cease. At that time, the successor in office shall become an ex officio director of the corporation, occupying the place of the former director.

SEC. 5. Section 12360 of the Corporations Code is amended to read:

12360. (a) Except as provided in subdivision (d), directors shall be elected for terms of not longer than four years, as fixed in the articles or bylaws. In the absence of any provision in the articles or bylaws, the terms shall be one year. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members.

(b) Unless otherwise provided in the articles or bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office.

(c) The articles or bylaws may prescribe requirements for eligibility for election as a director.

(d) For the purposes of this subdivision, "designator" means one or more designators. Notwithstanding subdivisions (a) to (c), inclusive, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection by a specified designator as provided by the articles or bylaws rather than by election. Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (f) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 12224), except as provided in subdivision (d) of Section 12330. Unless otherwise provided in the articles or bylaws, the entitlement to designate or select a director or directors shall cease if any of the following circumstances exist:

(1) The specified designator of that director or directors has died or ceased to exist.

(2) If the entitlement of the specified designator of that director or directors to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

(f) If authorized in the articles or bylaws of a corporation, all or any portion of the directors may hold office ex officio by virtue of occupying a specified position within the corporation or outside the corporation. The term of office of an ex officio director shall coincide with that director's respective term of office in the specified position entitling him or her to serve on the board of directors. Upon an ex officio director's resignation or removal from that position, or resignation or removal from the board for any reason, the term of office as a director of the corporation shall immediately cease. At that time, the successor in office shall become an ex officio director of the corporation, occupying the place of the former director.