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AB-231 Shareholders' meetings: remote communication. (2023-2024)

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Assembly Bill No. 231

CHAPTER 115

An act to amend Sections 600, 5510, 7510, 9411, and 12460 of the Corporations Code, relating to corporations.

[Approved by Governor July 27, 2023. Filed with Secretary of State July 27, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 231, Chen. Shareholders' meetings: remote communication.

Existing law authorizes and regulates the formation and operation of a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation. Existing law authorizes meetings of members to be held at any place as stated or fixed in the bylaws, as specified, and provides that, subject to certain conditions, members not physically present may participate in a meeting, be deemed present, and vote by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication. Existing law prohibits conducting a meeting of members solely by electronic transmission, electronic video screen communication, conference telephone, or other remote communications unless all of the or members consent, the board determines it is necessary or appropriate because of an emergency, as defined, or if the meeting is conducted on or before June 30, 2022.

Existing law, the General Corporation Law, additionally authorizes corporations not governed by other specified state laws to conduct a meeting of shareholders solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication if the meeting is conducted on or before December 31, 2025, as specified, and includes a live audiovisual feed for the duration of the meeting. Existing law provides that a de minimis disruption of an audio, visual, or audiovisual feed does not require a corporation to end a shareholder meeting under, or render the corporation out of compliance with, the above-described provisions.

This bill would authorize corporations conducting a meeting on or before December 31, 2025, as described above, to offer, in addition to the live audiovisual feed, an audio-only means of participation. The bill would grant the shareholder or proxyholder the right to choose whether to participate via audiovisual or audio-only means and would prohibit the corporation from imposing any barriers on either mode of participation. The bill would provide that a de minimis disruption of an audio or audiovisual feed does not require a corporation to end a shareholder meeting under, or render the corporation out of compliance with, those provisions. The bill would extend those same provisions to a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation holding a meeting of members.

Existing law requires a corporation to implement reasonable measures when it conducts a meeting of shareholders solely by specified means of remote communication. The General Corporation Law requires a corporation not governed by other specified state laws to verify that a person who has voted remotely is a shareholder or proxyholder. Existing law requires a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation to verify that each person participating remotely is a member or proxyholder.

This bill would instead require a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation to verify that person who has voted remotely is a member or proxyholder, thereby aligning those corporations with the parallel requirement set forth in the General Corporation Law.

Existing law requires a cooperative corporation or a corporation not governed by other specified state laws to provide members or shareholders, and proxyholders as applicable, a reasonable opportunity to participate in a meeting conducted by remote communication, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings. Existing law requires a nonprofit public benefit corporation, nonprofit mutual benefit corporation, or nonprofit religious corporation to provide members and proxyholders a reasonable opportunity to participate in a meeting conducted by remote communication, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

This bill would instead require a nonprofit public benefit corporation, nonprofit mutual benefit corporation, or nonprofit religious corporation to provide members and proxyholders an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, thereby aligning those corporations with the parallel requirements set forth in the Cooperative Corporation Law and in the General Corporation Law.

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

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

SECTION 1. Section 600 of the Corporations Code is amended to read:

600. (a) Meetings of shareholders may be held at any place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal office of the corporation. Subject to any limitations in the articles or bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders, subject to subdivision (e).

(b) An annual meeting of shareholders shall be held for the election of directors on a date and at a time stated in or fixed in accordance with the bylaws. However, if the corporation is a regulated management company, a meeting of shareholders shall be held as required by the Federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). Any other proper business may be transacted at the annual meeting. For purposes of this subdivision, "regulated management company" means a regulated investment company as defined in Section 851 of the federal Internal Revenue Code.

(c) If there is a failure to hold the annual meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the organization of the corporation or after its last annual meeting, the superior court of the proper county may summarily order a meeting to be held upon the application of any shareholder after notice to the corporation giving it an opportunity to be heard. The shares represented at the meeting, either in person or by proxy, and entitled to vote thereat shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the articles or bylaws or in this division to the contrary. The court may issue any orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

(d) Special meetings of the shareholders may be called by the board, the chairperson of the board, the president, the holders of shares entitled to cast not less than 10 percent of the votes at the meeting, or any additional persons as may be provided in the articles or bylaws.

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication if the corporation implements reasonable measures: (1) to provide shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any shareholder or proxyholder votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person who has voted remotely is a shareholder or proxyholder. A corporation shall not conduct a meeting of shareholders solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the shareholders consent; (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (i) of Section 207; or (C) notwithstanding the absence of consent from all shareholders pursuant to (A) or subdivision (b) of Section 20, the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A

corporation holding a meeting pursuant to (C) may offer, in addition to remote audiovisual feed, an audio-only means by which a shareholder or proxyholder may participate provided that the choice between participating via audiovisual or via audio-only means is made by the shareholder or proxyholder and the corporation does not impose any barriers to either mode of participation. A de minimis disruption of an audio or audiovisual feed does not require a corporation to end a shareholder meeting under, or render the corporation out of compliance with, this subdivision.

SEC. 2. Section 5510 of the Corporations Code is amended to read:

5510. (a) Meetings of members may be held at a place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings of members shall be held at the principal office of the corporation. Subject to any limitations in the articles or the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members, subject to subdivision (f).

(b) A regular meeting of members shall be held on a date, time, and with the frequency stated in or fixed in accordance with the bylaws, but in any event in each year in which directors are to be elected at that meeting for the purpose of conducting such election, and to transact any other proper business which may be brought before the meeting.

(c) If a corporation with members is required by subdivision (b) to hold a regular meeting and fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation, or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member or the Attorney General, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairperson of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication if the corporation implements reasonable measures: (1) to provide members and proxyholders, if proxies are allowed, a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any member or proxyholder, if proxies are allowed, votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person who has voted remotely is a member or proxyholder, if proxies are allowed. A corporation shall not conduct a meeting of members solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the members consent; (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (n) of Section 5140; or (C) notwithstanding the absence of consent from all members pursuant to (A) or subdivision (b) of Section 20, the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A corporation holding a meeting pursuant to (C) may offer, in addition to remote audiovisual feed, an audio-only means by which a member or proxyholder may participate provided that the choice between participating via audiovisual or via audio-only means is made by the member or proxyholder and the corporation does not impose any barriers to either mode of participation. A de minimis disruption of an audio or audiovisual feed does not require a corporation to end a meeting under, or render the corporation out of compliance with, this subdivision.

SEC. 3. Section 7510 of the Corporations Code is amended to read:

7510. (a) Meetings of members may be held at a place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings of members shall be held at the principal office of the corporation. Subject to any limitations in the articles or bylaws of the corporation, if authorized by the board of directors in its sole discretion,

and subject to those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members, subject to subdivision (f).

(b) A regular meeting of members shall be held on a date and time, and with the frequency stated in or fixed in accordance with the bylaws, but in any event in each year in which directors are to be elected at that meeting for the purpose of conducting such election, and to transact any other proper business which may be brought before the meeting.

(c) If a corporation with members is required by subdivision (b) to hold a regular meeting and fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member or the Attorney General, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairperson of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication if the corporation implements reasonable measures: (1) to provide members and proxyholders, if proxies are allowed, a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any member or proxyholder, if proxies are allowed, votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person who has voted remotely is a member or proxyholder, if proxies are allowed. A corporation shall not conduct a meeting of members solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the members consent; (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (m) of Section 7140; or (C) notwithstanding the absence of consent from all members pursuant to (A) or subdivision (b) of Section 20, the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A corporation holding a meeting pursuant to (C) may offer, in addition to remote audiovisual feed, an audio-only means by which a member or proxyholder may participate provided that the choice between participating via audiovisual or via audio-only means is made by the member or proxyholder and the corporation does not impose any barriers to either mode of participation. A de minimis disruption of an audio or audiovisual feed does not require a corporation to end a meeting under, or render the corporation out of compliance with, this subdivision.

SEC. 4. Section 9411 of the Corporations Code is amended to read:

9411. (a) Subject to the provisions of this chapter, regular and special meetings of members shall be called, noticed, and held as may be ordered by the board. Notwithstanding the foregoing, the notice of a members' meeting or any report may be sent by electronic communication or other means of remote communication if the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (n) of Section 9140. Subject to any limitations in the articles or bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members, subject to subdivision (f).

(b) Special meetings of members for any lawful purpose may be called by the board or the chairperson of the board or the president. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(c) Upon request in writing to the chairperson of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of members, the board shall expeditiously set a reasonable time and place for the meeting and the officer forthwith shall cause notice to be given to the members entitled to vote of the time and place of the meeting. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) The transactions of any meeting of members, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person (or, if proxies are allowed, by proxy), and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting, or approval of the minutes thereof except as provided in subdivision (e).

(e) Any member approval required under subdivision (b) of Section 9150, Section 9222, Section 5812 (made applicable pursuant to Section 9620), subdivision (a) of Section 9631, subdivision (c) of Section 9640, subdivision (a) of Section 6015 (made applicable pursuant to Section 9640), or subdivision (b) of Section 9680, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication, conference telephone, or other means of remote communication if the corporation implements reasonable measures: (1) to provide members and proxyholders (if proxies are allowed) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any member or proxyholder (if proxies are allowed) votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person who has voted remotely is a member or proxyholder (if proxies are allowed). A corporation shall not conduct a meeting of members solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the members consent; (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (n) of Section 9140; or (C) notwithstanding the absence of consent from all members pursuant to (A) or subdivision (b) of Section 20, the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A corporation holding a meeting pursuant to (C) may offer, in addition to remote audiovisual feed, an audio-only means by which a member or proxyholder may participate provided that the choice between participating via audiovisual or via audio-only means is made by the member or proxyholder and the corporation does not impose any barriers to either mode of participation. A de minimis disruption of an audio or audiovisual feed does not require a corporation to end a meeting under, or render the corporation out of compliance with, this subdivision.

SEC. 5. Section 12460 of the Corporations Code is amended to read:

12460. (a) Meetings of members may be held at a place within or without this state that is stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings of members shall be held at the principal office of the corporation. Subject to any limitations in the articles or bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to those guidelines and procedures as the board of directors may adopt, members not physically present in person at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, participate in a meeting of members, be deemed present in person, and vote at a meeting of members, subject to subdivision (f).

(b) Except as provided in Section 12460.5, a regular meeting of members shall be held annually. In any year in which directors are elected, the election shall be held at the regular meeting unless the directors are chosen in some other manner authorized by law. Any other proper business may be transacted at the meeting.

(c) If a corporation fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation or after its last regular meeting, or if the

corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented at a meeting called or by written ballot ordered pursuant to subdivision (c) and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or provision in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairperson of the board, the president, or other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members, however, in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of three worker-members or 5 percent of the worker-members. In a worker cooperative with fewer than four worker-members, special meetings may be called by one worker-member.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation, by electronic video screen communication, conference telephone, or other means of remote communication if the corporation implements reasonable measures: (1) to provide members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person who has voted remotely is a member. A corporation shall not conduct a meeting of members solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the members consent; (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (m) of Section 12320; or (C) notwithstanding the absence of consent from all members pursuant to (A) or subdivision (b) of Section 20, the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A corporation holding a meeting pursuant to (C) may offer, in addition to remote audiovisual feed, an audio-only means by which a member may participate provided that the choice between participating via audiovisual or via audio-only means is made by the member and the corporation does not impose any barriers to either mode of participation. A de minimis disruption of an audio or audiovisual feed does not require a corporation to end a meeting under, or render the corporation out of compliance with, this subdivision.