

Date of Hearing: June 22, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

SB 351 (Committee on Banking and Financial Institutions) – As Amended June 9, 2015

SENATE VOTE: 38-0

SUBJECT: Corporations.

SUMMARY: Makes various changes to the Corporations Code to correct references to the "chairman of the board" and expands emergency bylaws to consumer cooperative corporations. Specifically, **this bill:**

- 1) Updates permissible titles allowed when referring to the chair of a board.
- 2) Adds a provision authorizing a consumer cooperative cooperation to enact bylaws effective only during an emergency relating to the management and conduct its ordinary business affairs, to include, among others, bylaws providing procedures for designating additional or substitute directors.
 - a) Defines "emergency" as any of the following events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action:
 - i) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or, regardless of cause, any fire, flood, or explosion;
 - ii) An attack on this state or nation by an enemy of the United States of America, or upon receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent;
 - iii) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations; and,
 - iv) A state of emergency proclaimed by a Governor or by the President of the United States.
- 3) Makes other technical changes.

EXISTING LAW:

- 1) Provides that a corporation shall have a chairman of the board or a president or both, a secretary, a chief financial officer and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments and share certificates. The president, or if there is no president the chairman of the board, is the general manager and chief executive officer of the corporation, unless

otherwise provided in the articles or bylaws. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. (Corporations Code, Section 312)

- 2) Authorizes for-profit, public benefit, mutual benefit, and religious corporations to take specified actions in good faith to further their corporations' ordinary business operations, in anticipation of or during an emergency. (Corporations Code, Sections 207, 5140, 7140, and 9140)

FISCAL EFFECT: None.

COMMENTS:

This measure: amends the Corporations Code to provide that a corporation shall have a "chairperson of the board," who may be given the title of chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board. Makes conforming changes throughout the Corporations Code to standardize the manner in which a chairperson of the board is referenced; and, adds provisions to the Consumer Cooperative Corporation Law (Corporations Code Section 12200 et seq.) to allow a consumer cooperative corporation to take specified actions to conduct the corporation's ordinary business operations and affairs, as specified, in anticipation of or during an emergency. Further authorizes the bylaws of a consumer cooperative corporation to contain any provision, not in conflict with the corporation's articles of incorporation, to manage and conduct the ordinary business affairs of the corporation, as specified.

Need for the bill:

AB 351 addresses two issues:

- 1) Adds emergency powers and bylaw provisions to the California Consumer Cooperative Corporation Law (Cosponsored by the Nonprofit Organizations Committee and Corporations Committee of the Business Law Section of the California State Bar): In 2013, the Nonprofit Organizations Committee and the Corporations Committee of the Business Law Section of the California State Bar jointly sponsored AB 491 (Torres), Chapter 255, Statutes of 2013. AB 491 amended the sections of the Corporations Code applicable to for-profit, public benefit, mutual benefit, and religious corporations to help ensure that these corporations did not incur liability for specified actions taken in good faith to further the corporations' ordinary business operations, in anticipation of, or during an emergency. Examples of actions that were authorized under AB 491 include: modification of lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from an emergency; relocating the principal office, designating alternative principal offices or regional offices, or authorizing the officers to do so; giving notice to a director or directors in any practicable manner under the circumstances, when notice of a meeting of the board cannot be given to that director or directors in the manner ordinarily required; and deeming that one or more officers of the corporation that are present at a board meeting is a director, as necessary to achieve a quorum for that meeting.

Due to a drafting oversight, AB 491 did not amend the Consumer Cooperative Corporation Law. SB 351 corrects that drafting oversight by adding the language contained in AB 491 to the Consumer Cooperative Corporation Law.

- 2) Updates and corrects sections of the Corporations Code which refer to Chair, Chairperson, Chairman, Chairwoman, and Chair of the Board (Co-sponsored by the Nonprofit Organizations Committee and Corporations Committee of the Business Law Section of the California State Bar): At various places within the Corporations Code, corporations are authorized to have a chair of the board, who may be given the title "chair of the board," "chairperson of the board," "chairman of the board," or "chairwoman of the board." However, existing law does not expressly authorize use of the titles "chair," "chairperson," "chairman," or "chairwoman." Because these titles are not expressly authorized in statute, corporate filings submitted to the California Secretary of State's office are returned to the filer if the term "chair" (rather than "chair of the board") or "chairman" (rather than chairman of the board) is used as a signatory for the filing. Updating and clarifying the Corporations Code to allow chairs to be referenced in multiple ways will eliminate these sorts of returned filings.

Related Legislation:

AB 816 (Bonta) renames the Consumer Cooperative Corporation Law to the Cooperative Corporation Law. Pending in Senate Banking and Financial Institutions Committee.

Prior Legislation:

AB 491 (Torres, Chapter 255, Statutes of 2013) amended the sections of the Corporations Code applicable to for-profit, public benefit, mutual benefit, and religious corporations to help ensure that these corporations did not incur liability for specified actions taken in good faith to further the corporations' ordinary business operations, in anticipation of or during an emergency.

REGISTERED SUPPORT / OPPOSITION:

Support

State Bar of California (Sponsor)

Opposition

None on file.

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