



## BUSINESS LAW SECTION

NONPROFIT & UNINCORPORATED ORGANIZATIONS COMMITTEE  
THE STATE BAR OF CALIFORNIA  
180 Howard Street  
San Francisco, CA 94105-1639  
<http://www.calbar.org/buslaw/nonprofits/>

### *NONPROFIT AND UNINCORPORATED ASSOCIATION CLEANUP*

#### LEGISLATIVE PROPOSAL (BLS-2010-02)

**TO:** Office of Governmental Affairs  
**FROM:** Lani Meanley Collins, Chair  
Business Law Section (the “Section”) Nonprofit & Unincorporated Organizations  
Committee (the “Committee”)  
**DATE:** June 1, 2009  
**RE:** Proposal to add California Corporations Code Sections 7914 and 9634, and to amend  
Corporations Code Sections 5211, 5212, 5213, 5235, 6321, 6324, 7211, 7212, 7213,  
8321, 8324, 9211, 9212, 9213, 9250, and 18300

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#### SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the “Executive Committee”):  
Approval Vote:

For: 15      Against: 0

Date of Approval by Legislative Subcommittee of the Executive Committee:  
Approval Vote:

For: 6      Against: 0

Date of Approval by the Committee: May 22, 2009  
Approval Vote:

For: 9      Against: 0

Date of Approval by Legislative Subcommittee of the Committee: June 1, 2009  
Approval Vote:

For: 5      Against: 0

<b>Executive Committee Contact:</b>	<b>Committee Contact:</b>
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## **HISTORY, DIGEST AND PURPOSE**

This Proposal seeks to clarify various sections of the Corporations Code so that nonprofit corporations and unincorporated associations may have more certainty in their operations. The amendments clarify when an interested director is not required for a unanimous written consent and when a specified director is no longer necessary for a quorum. The Proposal also provides cross-references to charitable trust provisions in the Government Code, to health facilities provisions in the Nonprofit Public Benefit Corporation Law, and to the Uniform Prudent Management of Institutional Funds Act (UPMIFA) in the Probate Code to alert nonprofit corporations and unincorporated associations to applicable related code sections.

### **History**

The Nonprofit Corporation Law became effective in 1980. Some of the code sections affected by this Proposal have been amended since their original codification. Sections 5211, 7211, and 9211 have been amended several times, most recently in 2005, and Sections 6321, 9212, and 8321 have also been amended. Sections 5212, 5213, 5235, 6324, 7212, 7213, 8324, 9213, and 9250 have not been amended since enactment. Section 18300 was added in 2005.

AB 1233 (Silva) is a pending bill sponsored by the Nonprofit & Unincorporated Organizations Committee, which would also amend Sections 5211, 5212, 5213, 7211, 7212, 7213, 9211, 9212, and 9213.

### **Proposal and Reasons for the Proposal**

#### Directors with a Conflict and Specified Director for a Quorum

The Proposal would amend Corporations Code Sections 5211(b), 7211(b) and 9211(b), dealing with the unanimous written consent of the directors without the consent of an interested director. It would eliminate ambiguity regarding the definition of “interested director” and make other changes as discussed below.

The ambiguity arises because, using Section 5211 as an example, it is not entirely clear whether the phrase “ ‘ . . . interested director’ as defined in Section 5233, . . . ” as used in subdivision (b) of Section 5211(b) means (1) simply a director who has a material financial interest in a transaction to which the corporation is a party, i.e., without regard to whether Section 5233 applies to the transaction or remedies under its subsection (h) are available, or (2) such a director in a transaction that is covered by Section 5233 because the exclusionary provisions of Section 5233(d) do not apply or the remedies in Section 5233(h) would be available. It is important to remove this ambiguity because a consent presumably will not be valid unless a director who appears to be excused from signing it and does not do so actually falls within the correct definition.

The amendment makes the definition described in (2) above applicable and refers only to Section 5233(a) for the definition of interested director. Section 5233(b) excludes three specified types of transactions approval of which would not seem to necessitate nonparticipation of a director. The third of these three clearly would not trigger abstention of an “interested” director from voting because it refers to a transaction of which the interested director or directors have no actual knowledge and which does not exceed specified amounts.

There is also a gap not presently covered by these three subsections. A director who is a “common director” under Section 5234 may quite properly want to abstain from voting on any transaction between a corporation of which he is a director and another corporation or business of which he is also a director: The transaction may be void or voidable unless the disclosures described in Section 5234(a)(1) are made and the board approves the transaction as set forth in that subsection or the transaction is just and reasonable as to the corporation when authorized. The changes in Sections 5211(b), etc. include changes designed to prevent the existence of a “common director” in a transaction from creating doubt as to the transaction’s validity.

A board should not approve, and an interested director should not allow approval of, a transaction by unanimous consent with or without his or her participation except with appropriate disclosures and other actions. This is because without them, an “interested director” of a public benefit corporation may be exposed to the liabilities provided in Section 5233(h) and the transaction may be void or voidable under Section 5234 if the director is a common director under that Section. Further, in any such case, to protect validity of the transaction, the corporation would need to evidence adequately in the consent form or its other records the existence of a material financial interest and the disclosures and other actions taken, in case either the validity of the written consent is challenged or the applicability of Section 5233 or Section 5234 is asserted.

Sections 5211(b), 7211(b) and 9211(b) should warn the users of unanimous consents of the respective problems and prescribe the solution for proper use of the Sections.

Currently, Sections 5211(b), 7211(b) and 9211(b) do not clearly articulate the requirement that the number of directors serving at the time an action is taken by unanimous written consent must constitute a quorum. The Proposal makes this clear. If for some reason the number of directors in office does not constitute a quorum and the directors desire only to fill vacancies on the board, a written consent could be used to do that notwithstanding the requirement in these three sections because Sections 5224(a), 7224(a) and 9224(a) permit filling of vacancies on a board by “the unanimous written consent of the directors then in office.”

Finally, the phrase “members of the board” and “member” have been changed to “director” or “directors”, both for simplicity and to not confuse them with members as defined in Section 5056.

### Reference to Applicable Provisions in the Government Code

The Proposal provides cross-references in the Corporations Code to alert practitioners to the important requirements contained in Government Code Section 12586 substantially affecting governance of nonprofit corporations. The amendments are made to Sections 5212, 5213, 5235, 6321, 6324, 7212, 7213, 8321, 8324, 9212, 9213, and 18300.

Government Code Section 12586 contains three subdivisions which are addressed by this Proposal, subdivisions (a), (e), and (g). Subdivision (a) requires a charitable organization to submit reports to the Attorney General regarding the assets it is holding for charitable purposes in addition to the annual report to members. Subdivision (e), added by the 2004 amendment, imposes two new requirements on charitable organizations with gross revenue, as defined, in excess of \$2 million. Subdivision (e)(1) requires the preparation of annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. That subdivision also requires the public disclosure of the audited statements financial statements.

Subdivision (e)(2) requires the board of directors to appoint an audit committee with specific limitations on its membership and describes certain duties to be fulfilled by the audit committee. Under subdivision (e)(2), the audit committee may include non-board members but may not include any member of the staff, including the president or chief executive officer and the treasurer or chief financial officer, or any person who has a material financial interest in any entity doing business with the charitable organization. The chair of the audit committee may not be a member of the finance committee, and members of the finance committee must constitute less than half of the audit committee.

Subdivision (e)(2) also specifies the duties of the audit committee. Subject to the supervision of the board of directors, the audit committee shall be responsible for (1) recommending to the board of directors the retention and termination of the independent auditor; (2) negotiating the independent auditor's compensation on behalf of the board of directors; (3) conferring with the auditor to satisfy the audit committee members that the financial affairs of the corporation are in order; (4) reviewing and determining whether to accept the audit; and (5) assuring that any nonaudit services performed by the auditing firm conform with standards for auditor independence; and (6) approving performance of nonaudit services by the auditing firm.

Subdivision (g) of Section 12586, also added by the 2004 amendment, requires the board of directors of charitable organizations to review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur (1) initially upon the hiring of the officer, (2) whenever the term of employment, if any, of the officer is renewed or extended, and (3) whenever the officer's compensation is modified.

This Proposal aims to alert practitioners to the existence of these significant laws affecting the organization, governance and reporting obligations of charitable organizations that

are within the subject matter scope of existing sections of the Corporations Code but which were codified in the Government Code. By including cross-references in the pertinent Corporations Code section to the related section in the Government Code, practitioners will receive notice that a charitable organization may have additional obligations, stated in the Government Code, regarding committee structures, reporting obligations and executive compensation decisions.

By providing cross-references in the Corporations Code to the Government Code, practitioners' level of professional service to their clients will be enhanced by assuring they are aware of significant obligations of charitable organizations which do not appear in the Corporations Code. The cross-references will also contribute to the goal of the Nonprofit Integrity Act of 2004, of which Section 12586 is a part, to help assure compliance with its provisions so that the public's confidence in the financial integrity of charitable organizations is enhanced. Finally, the Proposal seeks to avoid inadvertent non-compliance with Section 12586 which may result in late filing penalties (Section 12586.1 of the Government Code), the suspension or revocation of the registration of a charitable organization (Government Code Section 12598(e)(1)), payment of the Attorney General's attorneys' fees and costs (Government Code Section 12598(b)), and civil or criminal penalties (Government Code Section 12591.1). Given the importance of subdivisions (a), (e) and (g) of Section 12586 of the Government Code to a charitable organization's obligations regarding committee structures, reporting obligations and executive compensation decisions, cross-references in the Corporations Code to the Government Code are an easy way to assure awareness and fulfillment of a charitable organization's statutory obligations.

Present Section 18300 of Article 1 of Chapter 6 of Title 3 of the Corporations Code is reserved by the Legislature for legislation relating to the governance of unincorporated associations. In 2004, unincorporated associations which hold property for charitable purposes, subject to certain exceptions, were explicitly brought within the regulatory oversight of the Attorney General by the Nonprofit Integrity Act of 2004 (Government Code Sections 12850 through 12599). The proposed amendment to Section 18300 would serve the purpose of alerting practitioners to the existence of important laws affecting unincorporated associations outside of the Corporations Code.

#### References to Health Facility Provisions

Corporations Code Sections 5914 *et seq.* impose specific filing requirements on corporations operating or controlling health facilities (as defined). These sections include religious corporations and mutual benefit corporations as well as public benefit corporations -- they cover "any nonprofit corporation that is defined in Corp. Code § 5046" (which defines public benefit, mutual benefit and religious corporations) that owns or controls certain health facilities. However, there are no cross references in the 7000 or 9000 laws that would incorporate these sections by reference and thereby call attention to them. Also, apparently, Sections 5915 through 5919 appear to apply only to public benefit corporations and Section 5920 through 5924 appear to apply to all three types of corporations (rather duplicatively as to public benefit corporations).

The Proposal adds the cross-references in new Sections 7914 and 9634. The cross-references are necessary; otherwise a mutual benefit or religious corporation might not even know that it is covered, and possibly fail to make required filings.

#### Reference to UPMIFA

Probate Code Section 18508 as it read until January 1, 2009 (old Uniform Management of Institutional Funds Act (UMIFA)), provided that “[n]othing in this part alters the status of governing boards, or the duties and liabilities of directors, under other laws of this state.” This brought into play not only Corporations Code Sections 5231 and 5240, applicable to public benefit corporations, but also Corporations Code Sections 9241 and 9250, applicable to religious corporations. UPMIFA eliminated this section. SB 1329 (Harman) of 2008, which enacted UPMIFA in California, also amended Corporations Code Section 5240, but nothing was done about religious corporations.

To remedy this, the Proposal amends Section 9250 to add a subsection (b), which mirrors Section 5240.

#### **APPLICATION**

If enacted in 2010, the proposed legislation would become effective in 2011.

#### **PENDING LITIGATION**

We are not aware of any specific pending litigation that would be affected by this Proposal.

#### **LIKELY SUPPORT AND OPPOSITION**

We anticipate support from nonprofit corporations and unincorporated associations organized under the laws of California but have not taken any steps to assess the potential for such support, much less solicit it. We are unaware of any specific segments that might oppose this Proposal.

#### **FISCAL IMPACT**

None.

#### **GERMANENESS**

The matters addressed in this Proposal require the special knowledge, training, experience or technical expertise of the Section and of members of the Committee. The position advanced would promote clarity, consistency, and comprehensiveness in the law.

## TEXT OF PROPOSAL

§ 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) ~~Members of the board~~ *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 ~~members~~ *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 ~~member~~ *director* participating in the meeting can communicate with all of the other ~~members~~ *directors* concurrently.

(B) Each ~~member~~ *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 the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in 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 ~~members of the board~~ *directors* shall individually or collectively consent in writing to that action: *and, subject to subdivision (a) of Section 5224, if the number of directors serving at the time 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 the unanimous vote of the directors. For purposes of this subdivision only, “all ~~members of the board~~ *directors*” does not include an “interested director” as defined in subdivision (a) of Section 5233: *or a “common director” as described in subdivision (b) of Section 5234 who abstains in writing from providing consent, where (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 or common directors.* .

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

**§ 5212.** (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033).

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) The approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 5210, but may not delegate the powers set forth in paragraphs (1) through (8) of subdivision (a) of this section.

*(d) The board shall take such actions regarding audit committees as are required by subdivision (e) of Section 12586 of the Government Code, if applicable.*

**§ 5213.** (a) 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. 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, except that neither the secretary nor the chief financial officer may serve concurrently as the president or chairman of the board. *Any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

(c) If the articles or bylaws provide for the election of any officers by the members, the term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years.

**§ 5235.** (a) The board may fix the compensation of a director, as director or officer, and no obligation, otherwise valid, to pay such compensation shall be voidable merely because the persons receiving the compensation participated in the decision to pay it, unless it was not just and reasonable as to the corporation at the time it was authorized, ratified or approved. *The board shall take such other actions as are required by subdivision (g) of Section 12586 of the Government Code, if applicable.*

(b) In the absence of fraud, any liability under this section shall be limited to the amount by which the compensation exceeded what was just and reasonable, plus interest from the date of payment.

**§ 6321.** (a) Except as provided in subdivision (c), (d), or (f), the board shall cause an annual report to be sent to the members not later than 120 days after the close of the corporation's fiscal year.

Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year.

(5) Any information required by Section 6322.

(b) The report required by subdivision (a) shall be (i) accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation *or (ii) if applicable, prepared and made available in the manner required by paragraph (1) of subdivision (e) of Section 12586 of the Government Code.*

(c) Subdivision (a) does not apply to any corporation which receives less than twenty-five thousand dollars (\$25,000) in gross revenues or receipts during the fiscal year.

(d) Where a corporation has provided, pursuant to Section 5510, for regular meetings of members less often than annually, then the report required by subdivision (a) need be made to members only with the frequency with which regular membership meetings are required, unless the articles or bylaws require a report more often.

(e) Subdivisions (c) and (d) notwithstanding, a report with the information required by subdivision (a) shall be furnished annually to:

(1) All directors of the corporation; and

(2) Any member who requests it in writing.

(f) A corporation which in writing solicits contributions from 500 or more persons need not send the report otherwise required by subdivision (a) if it does all of the following:

(i) Includes with any written material used to solicit contributions a written statement that its latest annual report will be mailed upon request and that such request may be sent to the corporation at a name and address which is set forth in the statement.

The term "annual report" as used in this subdivision refers to the report required by subdivision (a).

(ii) Promptly mails a copy of its latest annual report to any person who requests a copy thereof; and

(iii) Causes its annual report to be published not later than 120 days after the close of its fiscal year in a newspaper of general circulation in the county in which its principal office is located.

**§ 6324.** (a) Nothing in this part relieves a corporation from the requirements of Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code

*including, without limitation, subdivision (a) of Section 12586.* If a report sent to the Attorney General in compliance with the requirements of Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code includes the information required in the annual report, then the corporation may furnish a copy of its report to the Attorney General in lieu of the annual report, whenever it is required to furnish an annual report.

(b) A corporation shall furnish any member who so requests a copy of any report filed by the corporation pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code. The corporation may impose reasonable charges for copying and mailing a report furnished under this subdivision.

**§ 7211.** (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 provided 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 if there is no notice, designated in the bylaws or by resolution of the board.

(6) ~~Members of the board~~ *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 ~~members~~ *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 ~~member~~ *director* participating in the meeting can communicate with all of the other ~~members~~ *directors* concurrently.

(B) Each ~~member~~ *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 the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, 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 ~~members of the board~~ *directors* shall individually or collectively consent in writing to that action; *and, subject to subdivision (a) Section 7224, if 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 the unanimous vote of the directors. For purposes of this subdivision only, “all ~~members of the board~~ *directors*” does not include an “interested director” as defined in subdivision (a) of Section 5233, insofar as it is made applicable pursuant to Section 7238; *or a “common director” as described in subdivision (b) of Section 7233 who abstains in writing from providing consent, where (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 7233 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 or common directors.*

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

**§ 7212.** (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as

alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033).

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) With respect to any assets held in charitable trust, the approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.

(c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 7151 or otherwise, powers as authorized by Section 7210, but may not delegate the powers set forth in paragraphs (1) through (8) of subdivision (a) of this section.

*(d) Where a corporation holds assets in charitable trust, the board shall take such actions regarding audit committees as are required by subdivision (e) of Section 12586 of the Government Code, if applicable.*

**§ 7213.** (a) 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. 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. *Where a corporation holds assets in charitable trust, any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

**§ 7914.** *The provisions of Article 2 (commencing with § 5914 of Chapter 9 of Part 2) apply to mutual benefit corporations to the extent provided therein.*

**§ 8321.** (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member, the board shall promptly cause the most recent annual report to be sent to the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 8322.

(b) The report required by subdivision (a) shall be (i) accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation *and (ii) if applicable, prepared and made available in the manner required by paragraph (1) of subdivision (e) of Section 12586 of the Government Code.*

(c) Subdivision (a) does not apply to any corporation that receives less than ten thousand dollars (\$10,000) in gross revenues or receipts during the fiscal year.

**§ 8324.** (a) Nothing in this part relieves a corporation from the requirements of Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code as to any assets held in charitable trust *including, without limitation, subdivision (a) of Section 12586. If a report sent to the Attorney General in compliance with the requirements of Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code includes the information required in the annual report, then the corporation may furnish a copy of its report to the Attorney General in lieu of the annual report, whenever it is required to furnish an annual report.*

(b) A corporation shall furnish any member who so requests a copy of any report filed by the corporation pursuant to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of the Government Code. The corporation may impose reasonable charges for copying and mailing a report furnished under this subdivision.

**§ 9211.** (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 a 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 provided 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.

(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) ~~Members of the board~~ *Directors* may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation. 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 long as all ~~members~~ *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 ~~member~~ *director* participating in the meeting can communicate with all of the other ~~members~~ *directors* concurrently.

(B) Each ~~member~~ *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 the articles or bylaws constitutes a quorum of the board for the transaction of business.

(8) 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 as is required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all ~~members of the board~~ *directors* shall individually or collectively consent in writing to that action: *and if, subject to subdivision (a) of Section 9224, the number of directors serving at the time 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 and effect as the 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 9243 or a "common director" as described in subdivision (b) of Section 9244 who abstains in writing from providing consent, where (1) the facts described in paragraph (2) or (3) of subdivision (d) of Section 9243 are established or the provisions of paragraph (1) of subdivision (a) of Section 9244 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 or common directors.*

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

**§ 9212.** (a) Subject to any provision in the articles or bylaws: (i) the board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board; and (ii) appointments to such committees shall be by a majority vote of the directors then in office. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033).

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(b) Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 9210, but may not delegate the powers set forth in paragraphs (1) through (6) of subdivision (a) of this section.

(d) *The board shall take such actions regarding audit committees as are required by subdivision (e) of Section 12586 of the Government Code, if applicable.*

**§ 9213.** (a) 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. 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, except that neither the secretary nor the chief financial officer may serve concurrently as the president or chairman of the board. *Any compensation of the president or chief executive*

*officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

**§ 9250.** (a) In investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing a corporation's investments, the board shall meet the standards set forth in Section 9241.

(b) *Nothing in this section shall be construed to preclude the application of the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code) if that act would otherwise be applicable, but nothing in the Uniform Prudent Management of Institutional Funds Act alters the status of governing boards, or the duties and liabilities of directors, under this Part.*

**§ 9634.** *The provisions of Article 2 (commencing with § 5914 of Chapter 9 of Part 2) apply to religious corporations to the extent provided therein.*

**§ 18300.** (a) It is the intent of the Legislature to enact legislation relating to the governance of unincorporated associations.

(b) *Unincorporated associations holding property for charitable purposes shall comply with the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Article 7 of Chapter 6, Part 2, Division 3 of Title 2 of the Government Code (Sections 12580 through 12599.7), if applicable.*