

Memorandum in Opposition

BUSINESS LAW SECTION -- COMMITTEE ON CORPORATIONS LAW

BLS #1

June 14, 2011

A. 1710
S. 447

By: M. of A. Kavanagh
By: Senator L. Krueger

Assembly Committee: Corporations, Authorities
and Commissions

Senate Committee: Corporations, Authorities and
Commissions

Effective Date: Immediately

AN ACT to amend the business corporation law, in relation to attendance of a meeting of shareholders by remote communication

LAW AND SECTION REFERRED TO: Paragraph (b), (c) and (d) of Section 602 of the Business Corporation Law are relettered paragraphs (c), (d) and (e) and a new paragraph (b) is added

This bill would mandate that all New York corporations whose shares are traded on a stock exchange or in the over-the-counter market (i) use reasonable measures to enable shareholders not physically present to witness shareholder meetings and (ii) provide reasonable means to permit shareholders to vote or cast proxies at meetings by electronic communications. Because this requirement is mandatory, the Committee on Corporations and Other Business Entities opposes it. The Committee would support legislation that permits, but does not require, a board to implement these measures.

To date, relatively few public corporations webcast their annual meetings. The 2008 Annual Meeting Survey of the Society of Corporate Secretaries and Governance Professionals reported that out of 224 respondents, only 42 webcast their annual meeting live (the 2009 survey is not yet available). To require webcasts of annual meetings of all publicly traded New York corporations could impose a substantial financial burden, especially for smaller corporations without in-house expertise in such areas. Secondly, the bill would require the corporation to allow shareholders to vote by telephonic or internet voting "at such meeting." Based on conversations with proxy solicitors, we understand that almost all corporations who permit telephonic and internet voting cut such procedures off either the night before or the morning before the meeting. This is necessary so that the results (which are often compiled by an outside entity and reported to the corporation) can be tabulated on a timely basis at the meeting. As a practical matter, given that the vast majority of shares are held in nominee

name, which nominees have an even earlier deadline in order to vote their proxies, mandating electronic voting at the meeting would not make such a procedure available to most beneficial holders as there would be no opportunity for them to so instruct the record holder to vote during the meeting.

Finally, we would note several drafting matters. First, the bill refers to “reasonable measures” for witnessing the procedures and “reasonable means” to vote, but defines only “reasonable measures,” with respect to both witnessing and voting. Second, the wording “cast proxies” is used. Votes are cast, but proxies are not. A more appropriate wording would be “issued,” “granted” or “executed.” Third, because this bill originated from a bill a few years ago which addressed remote communication at annual meetings, or “virtual” meetings, rather than webcasts and electronic voting, the term remote communication is used several places in the statute. Because use of the internet and telephone is not commonly referred to a “remote communications,” the wording on subparagraph (b) (i) of “electronic communications” would be better used throughout.

Based on the foregoing, the Business Law Section Committee on Corporations Law **OPPOSES** this legislation.

Section Chair: Paul Silverman, Esq

Committee Chair: Jeffrey Bagner, Esq.