

2017 DRAFTING REQUEST

Bill

For: **Chris Kapenga (608) 266-9174** Drafter: **agary**
 By: **Kyle Koenen** Secondary Drafters:
 Date: **4/14/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Sen.Kapenga@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Shareholder meetings of business corporations

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 4/19/2017				
/P1	agary 5/10/2017	kfollett 5/10/2017	mbarman 4/24/2017		
/1			lparisi 5/10/2017	lparisi 5/12/2017	

FE Sent For:

<END>

not needed

Gary, Aaron

From: Kunkel, Mark
Sent: Thursday, April 13, 2017 11:43 AM
To: Gary, Aaron
Subject: FW: Drafting Request
Attachments: Virtual Shareholder Meetings Language.pdf

Aaron: can you do this one?

From: Koenen, Kyle
Sent: Thursday, April 13, 2017 11:42 AM
To: Kunkel, Mark <Mark.Kunkel@legis.wisconsin.gov>
Subject: Drafting Request

Mark,
Here is the requested language we would like to have drafted.

Kyle Koenen

Chief of Staff

Office of Senator Chris Kapenga

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WISCONSIN
SUBCHAPTER VII
SHAREHOLDERS

180.0701 Annual meeting.

- (1) Except as provided in sub. (4), a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
- (2) A corporation may hold the annual shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold the annual meeting at its principal office. Notwithstanding the foregoing, the bylaws may authorize the board of directors, in its sole discretion, to determine that the annual meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized under s. 180.0709.
- (3) Failure to hold an annual meeting in one or more years does not affect the validity of any corporate action.
- (4) If so provided in the articles of incorporation or bylaws of an investment company, the investment company is not required to hold an annual meeting of shareholders in any year in which none of the following matters is required to be acted on by the shareholders under 15 USC 80a-1 to 80a-64:
 - (a) Election of directors.
 - (b) Approval of the investment advisory agreement.
 - (c) Ratification of the selection of independent certified public accountants licensed or certified under ch. 442.
 - (d) Approval of a distribution agreement.

180.0702 Special meeting.

- (1) A corporation shall hold a special meeting of shareholders if any of the following occurs:
 - (a) A special meeting is called by the board of directors or any person authorized by the articles of incorporation or bylaws to call a special meeting.
 - (b) The holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing one or more purposes for which it is to be held.
- (2) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to demand a special meeting is the date that the first shareholder signs the demand.
- (3) A corporation may hold a special shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold a special meeting at its principal office. Notwithstanding the foregoing, the bylaws may authorize the board of directors, in its sole discretion, to determine that the special meeting

shall not be held at any place, but may instead be held solely by means of remote communication as authorized under s. 180.0709.

(4) Only business within the purpose described in the meeting notice required by s. 180.0705 (2) (b) may be conducted at a special shareholders' meeting.

180.0703 Court-ordered meeting.

(1) The circuit court for the county where a corporation's principal office or, if none in this state, its registered office is located may, after notice to the corporation and an opportunity to be heard, order a meeting to be held on petition of a shareholder of the corporation who satisfies any of the following:

(a) Is entitled to participate in an annual meeting, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting and the corporation is required to hold an annual meeting under s. 180.0701 (1).

(b) Signed a demand for a special meeting valid under s. 180.0702, if the corporation failed to do any of the following:

1. Give notice of the special meeting within 30 days after the date that the demand was delivered to the corporation.

2. Hold the special meeting in accordance with the notice.

(2) The court may fix the time and place of the meeting or determine that the meeting shall be held solely by means of remote communication as authorized under s. 180.0709 and require that it be called and conducted in accordance with the corporation's articles of incorporation and bylaws in so far as possible, except that the court may do all of the following:

(a) Fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters.

(b) Enter other orders necessary to accomplish the purpose of the meeting.

180.0704 Action without meeting.

(1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting in any of the following ways:

(a) Without action by the board of directors, by all shareholders entitled to vote on the action.

(b) If the articles of incorporation so provide, by shareholders who would be entitled to vote at a meeting those shares with voting power to cast not less than the minimum number or, in the case of voting by voting groups, numbers of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote were present and voted, except action may not be taken under this paragraph with respect to an election of directors for which shareholders may vote cumulatively under s. 180.0728.

(2) Action under sub. (1) must be evidenced by one or more written consents describing the action taken, signed by the number of shareholders necessary to take the action under sub. (1) (a) or (b) and delivered to the corporation for inclusion in the corporate records.

(3) Action taken under sub. (1) is effective when consents representing the required number of shares are delivered to the corporation, unless the consent specifies a different effective date. Within 10 days after action taken under sub. (1) (b) is effective, the corporation shall give notice of the action to shareholders who, on the record date determined under sub. (4), were entitled to vote on the action but whose shares were not represented on the written consent. The notice shall comply with s. 180.0141.

(4) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to take action without a meeting is the date that the first shareholder signs the consent under sub. (1).

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this chapter requires that notice of proposed action be given to shareholders who are not entitled to vote on the action and the action is to be taken under this section, the corporation shall give those nonvoting shareholders written notice of the proposed action at least 10 days before the action becomes effective. The notice shall comply with s. 180.0141 and shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

180.0705 Notice of meeting.

(1) A corporation shall notify shareholders of the date, time and place, if any, of each annual and special shareholders' meeting not less than 10 days nor more than 60 days before the meeting date, unless a different time is provided by this chapter, the articles of incorporation or the bylaws. If the board of directors has authorized participation by means of remote communication under s. 180.0709, the notice shall also describe the means of remote communication to be used. The notice shall comply with s. 180.0141. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2)

(a) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(b) Notice of a special meeting shall include a description of each purpose for which the meeting is called.

(3) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is given to shareholders.

(4)

(a) Unless the bylaws require otherwise and except as provided in par. (b), if an annual or special shareholders' meeting is adjourned to a different date, time or place, or will be held by a new means of remote communication, the corporation is not required to give notice of the new date, time ~~or~~, place or means of remote communication if the new date, time ~~or~~, place or means of remote communication is announced at the meeting before adjournment.

(b) If a new record date for an adjourned meeting is or must be fixed under s. 180.0707 (3), the corporation shall give notice of the adjourned meeting under this section to persons who are shareholders as of the new record date.

180.0706 Waiver of and exemption from notice.

(1) A shareholder may waive any notice required by this chapter, the articles of incorporation or the bylaws at any time. The waiver shall be in writing and signed by the shareholder entitled to the notice, contain the same information that would have been required in the notice under any applicable provisions of this chapter, except that the time and place of meeting need not be stated, and be delivered to the corporation for inclusion in the corporate records.

(2) A shareholder's attendance at a meeting, whether physical or remote, in person or by proxy, waives objection to all of the following:

(a) Lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting.

(b) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(3)

(a) Except as provided in par. (b), any notice required to be given by a corporation to a shareholder under this chapter is not required to be given if any of the following applies:

1. Notice of 2 consecutive annual meetings, and all notices of meetings during the period between these annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

2. All, but not less than 2, payments of dividends on securities during a one-year period, or 2 consecutive payments of dividends on securities during a period of more than one year, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

(b) If a shareholder to whom par. (a) applies delivers to the corporation a written notice containing the shareholder's current address, then, beginning 30 days after receipt of the notice by the corporation, the requirement that notice be given to the shareholder is reinstated, until such time as par. (a) may again apply.

180.0707 Record date.

(1) The bylaws may fix or provide the manner of fixing a future date as the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3)

(a) Except as provided in par. (b), a determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a

new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(b) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

180.0708 Conduct of meeting. Unless the articles of incorporation or bylaws provide otherwise, every meeting of the shareholders shall be conducted as follows:

(1) A chairperson shall preside over the meeting. The chairperson shall be appointed by the board of directors.

(2) The chairperson shall determine the order of business and the time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all shareholders.

(3) The chairperson shall determine and announce at the meeting the time at which the polls will close for each matter voted upon at the meeting. The polls close at the announced time, except that, if no such announcement is made, the polls close upon final adjournment of the meeting. After the polls close, no ballots, proxies, or votes or revocations or changes to ballots, proxies, or votes may be accepted.

180.0709 Remote Participation in Shareholders' Meeting. If authorized by the board of directors in its sole discretion and subject to any guidelines and procedures adopted by the board of directors, shareholders and proxies of shareholders not physically present at a meeting of shareholders, by means of remote communication, may:

(1) Participate in a meeting of shareholders; and

(2) Be deemed present in person and vote at a meeting of shareholders, whether the meeting is held at a designated place or solely by means of remote communication; provided that the corporation shall:

(a) Implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy of a shareholder;

(b) Implement reasonable measures to provide shareholders and proxies of shareholders 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 the proceedings; and

(c) Maintain a record of voting or action by any shareholder or proxy of a shareholder that votes or takes other action at the meeting by means of remote communication.

180.0720 Shareholders' list for meeting.

(1) After fixing a record date for a meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by class or series of shares and show the address of and number of shares held by each shareholder.

(2) The corporation shall make the shareholders' list available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing to the date of the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to the shareholders' list is provided with the notice of the meeting, or (ii) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or his or her agent or attorney may, on written demand, inspect and, subject to s. 180.1602 (2) (b) 3. to 5., copy the list, during regular business hours and at his or her expense, during the period that it is available for inspection under this subsection. If the corporation determines that the list will be made available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders of the corporation.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or his or her agent or attorney may inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the entire time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

(4) If the corporation refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by sub. (2), on petition of the shareholder, the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located may, after notice to the corporation and an opportunity to be heard, order the inspection or copying at the corporation's expense. The court may also postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

180.0721 Voting entitlement of shares.

(1) Except as provided in subs. (2) and (4) and s. 180.1150, or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a domestic corporation are not entitled to vote if they are owned, directly or indirectly, by a 2nd domestic corporation or foreign corporation and the first domestic corporation owns, directly or indirectly, a sufficient number of shares entitled to elect a majority of the directors of the 2nd domestic corporation or foreign corporation.

(3) Subsection (2) does not limit the power of a domestic corporation or foreign corporation to vote any shares, including its shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after written notice of redemption that complies with s. 180.0141 is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

180.0722 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy

(2)

(a) A shareholder entitled to vote at a meeting of shareholders, or to express consent or dissent in writing to any corporate action without a meeting of shareholders, may authorize another person to act for the shareholder by appointing the person as proxy. An appointment of a proxy may be in durable form as provided in ch. 244.

(b) Without limiting the manner in which a shareholder may appoint a proxy under par. (a), a shareholder or the shareholder's authorized officer, director, employee, agent or attorney-in-fact may use any of the following as a valid means to make such an appointment:

1. Appointment of a proxy in writing by signing or causing the shareholder's signature to be affixed to an appointment form by any reasonable means, including, but not limited to, by facsimile signature.

2. Appointment of a proxy by transmitting or authorizing the transmission of an electronic transmission of the appointment to the person who will be appointed as proxy or to a proxy solicitation firm, proxy support service organization or like agent authorized to receive the transmission by the person who will be appointed as proxy. Every electronic transmission shall contain, or be accompanied by, information that can be used to reasonably determine that the shareholder transmitted or authorized the transmission of the electronic transmission. Any person charged with determining whether a shareholder transmitted or authorized the transmission of the electronic transmission shall specify the information upon which the determination is made.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the information in the appointment form under par. (b) 1. or the electronic transmission under par. (b) 2. may be substituted or used in lieu of the original appointment form or electronic transmission for any purpose for which the original appointment form or electronic transmission could be used, but only if the copy, facsimile telecommunication or other reliable reproduction is a complete reproduction of the information in the original appointment form or electronic transmission.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment.

(4)

(a) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

1. A pledgee.
2. A person who purchased or agreed to purchase the shares.
3. A creditor of the corporation who extended it credit under terms requiring the appointment.
4. An employee or officer of the corporation whose employment contract requires the appointment.
5. A party to a voting agreement created under s. 180.0731.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent of the corporation authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

(6) Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) Subject to s. 180.0724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

(8) A proxy appointed in connection with a shareholder vote under s. 180.1150 (5):

(a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in the manner provided under sub. (2) (b).

(b) Shall be solicited and appointed apart from the sale of or offer to purchase shares of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

(c) May not be solicited sooner than 30 days before the meeting called under s. 180.1150 (5), unless otherwise agreed in writing by the person acting under s. 180.1150 and the directors of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

180.0723 Shares held by nominees.

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth all of the following:

- (a) The types of nominees to which it applies.
- (b) The rights or privileges that the corporation recognizes in a beneficial owner.
- (c) The manner in which the nominee selects the procedure.
- (d) The information that must be provided when the procedure is selected.
- (e) The period for which selection of the procedure is effective.
- (f) Other aspects of the rights and duties created.

180.0724 Acceptance of instruments showing shareholder action.

(1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(b) The name signed purports to be that of a personal representative, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver or proxy appointment.

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all co-owners.

(3) The corporation may reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this section or s. 180.0722 (2) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or s. 180.0722 (2) is valid unless a court of competent jurisdiction determines otherwise.

180.0725 Quorum and voting requirements for voting groups.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, it is considered present for purposes of determining whether a quorum exists, for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors under s. 180.0728, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast

opposing the action, unless the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or this chapter requires a greater number of affirmative votes.

180.0726 Action by single and multiple voting groups.

- (1) If the articles of incorporation or this chapter provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by the voting group as provided in s. 180.0725.
- (2) If the articles of incorporation or this chapter provides for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in s. 180.0725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.
- (3) A voting group described in s. 180.0103 (19) (b) constitutes a single voting group for purposes of voting on the matter on which the shares are entitled to vote.

180.0727 Greater or lower quorum or greater voting requirements.

- (1) The articles of incorporation may provide, or authorize the bylaws under s. 180.1021 to provide, for a greater or lower quorum requirement or a greater voting requirement for shareholders or voting groups of shareholders than is provided by this chapter.
- (2) An amendment to the articles of incorporation that adds, changes or deletes a greater or lower quorum requirement or a greater voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

180.0728 Voting for directors; cumulative voting.

- (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. In this subsection, "plurality" means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election.
- (2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for cumulative voting. If the articles of incorporation contain a statement indicating that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, the shareholders so designated are entitled to multiply the number of votes that they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.
- (3)
 - (a) Except as provided in par. (c), shares entitled under sub. (2) to vote cumulatively may not be voted cumulatively at a particular meeting unless any of the following notice requirements are satisfied:
 1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

2. A shareholder who has the right to cumulate his or her votes gives notice that complies with s. 180.0141 to the corporation not less than 48 hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting.

(b) If one shareholder gives notice under par. (a) 2., all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

(c) If shares of a corporation that is a close corporation under s. 180.1801 are entitled under sub. (2) to vote cumulatively, the shares may not be voted cumulatively at a particular meeting unless the notice requirement of par. (a) 1. or 2. is satisfied or unless shares were voted cumulatively in the last election of directors.

(4) For purposes of this section, votes against a candidate are not given legal effect and are not counted as votes cast in an election of directors.

180.0730 Voting trusts.

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. The voting trust agreement may include any provision consistent with the voting trust's purpose. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date that the first shares subject to the trust are registered in the trustee's name.

180.0731 Voting agreements.

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to s. 180.0730.

(2) A voting agreement created under this section is specifically enforceable.

180.0740 Definitions applicable to ss. 180.0740 to 180.0747. In ss. 180.0740 to 180.0747:

(1) "Beneficial owner" means a person whose shares are held in a voting trust or held by a nominee on the person's behalf.

(2) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in ss. 180.0743 and 180.0745 to 180.0747, in the right of a foreign corporation.

180.0741 Standing. A shareholder or beneficial owner may not commence or maintain a derivative proceeding unless the shareholder or beneficial owner satisfies all of the following:

(1) Was a shareholder or beneficial owner of the corporation at the time of the act or omission complained of or became a shareholder or beneficial owner through transfer by operation of law from a person who was a shareholder or beneficial owner at that time.

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

180.0742 Demand. No shareholder or beneficial owner may commence a derivative proceeding until all of the following occur:

(1) A written demand is made upon the corporation to take suitable action.

(2) Ninety days expire from the date on which the demand was made, unless the shareholder or beneficial owner is notified before the expiration of 90 days that the corporation has rejected the demand or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

180.0743 Stay of proceedings. If the domestic corporation or foreign corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period that the court considers appropriate.

180.0744 Dismissal.

(1) The court shall dismiss a derivative proceeding on motion by the corporation if the court finds, subject to the burden of proof assigned under sub. (5) or (6), that one of the groups specified in sub. (2) or (6) has determined, acting in good faith after conducting a reasonable inquiry upon which its conclusions are based, that maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed under sub. (6), the determination in sub. (1) shall be made by any of the following:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

(b) A majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the voting, independent directors constitute a quorum.

(3) Whether a director is independent for purposes of this section may not be determined solely on the basis of any one or more of the following factors:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination was made rejecting a demand by a shareholder or beneficial owner, the complaint shall allege with particularity facts establishing any of the following:

(a) That a majority of the board of directors did not consist of independent directors at the time that the determination was made.

(b) That the requirements of sub. (1) have not been met.

(5) If a majority of the board of directors did not consist of independent directors at the time that the determination rejecting a demand was made, the corporation shall have the burden of proving that the requirements of sub. (1) have been met. If a majority of the board of directors consisted of independent directors at the time that the determination was made, the shareholder or beneficial owner shall have the burden of proving that the requirements of sub. (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to determine whether maintenance of the derivative proceeding is in the best interests of the corporation. If a panel is appointed under this subsection, the shareholder or beneficial owner shall have the burden of proving that the requirements of sub. (1) have not been met.

180.0745 Discontinuance or settlement. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the beneficial owners, the shareholders or a class of shareholders of the domestic corporation or foreign corporation, the court shall direct that notice be given to the shareholders and beneficial owners affected.

180.0746 Payment of expenses. On termination of the derivative proceeding, the court may do any of the following:

(1) Notwithstanding s. 814.04 (1), order the domestic corporation or foreign corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the derivative proceeding by the shareholder or beneficial owner who commenced or maintained the derivative proceeding if the court finds that the derivative proceeding has resulted in a substantial benefit to the domestic corporation or foreign corporation.

(2) Order the shareholder or beneficial owner who commenced or maintained the derivative proceeding to pay any defendant's reasonable expenses, including attorney fees, notwithstanding s. 814.04 (1), incurred in defending the derivative proceeding if it finds that the derivative proceeding was commenced or maintained without reasonable cause or for an improper purpose.

180.0747 Applicability to foreign corporations. In any derivative proceeding in the right of a foreign corporation, the matters covered by ss. 180.0741, 180.0742 and 180.0744 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation.



State of Wisconsin
2017 - 2018 LEGISLATURE

Wanted
Mon. 4/24

LRB-3047/P1

ARG. *kg*

in 4/19

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 **AN ACT ...; relating to:** shareholders' meetings of business corporations.

Analysis by the Legislative Reference Bureau

This bill allows shareholders of a business corporation to participate in shareholders' meetings by means of remote communication, without being physically present at the meeting.

Under current law, with an exception, a corporation must hold an annual meeting of shareholders at a time and place stated in or fixed in accordance with its bylaws. If no place is so stated, the annual meeting is held at the corporation's principal office. A corporation may also hold special shareholders' meetings at the place stated in or fixed in accordance with its bylaws or, if none, at the corporation's principal office. Before a shareholders' meeting, a corporation must prepare a list of the names of all its shareholders entitled to notice of the meeting. The corporation must make this list available for inspection by any shareholder, for a certain period, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. The corporation must also make the list available for shareholder inspection during the meeting.

Under this bill, a corporation's board of directors may allow shareholders not physically present at a shareholders' meeting to participate in the meeting by means of remote communication and to be considered to be present in person and to vote at the meeting, if the corporation 1) has implemented reasonable measures to verify that each person considered to be present and permitted to vote at the meeting by means of remote communication is a shareholder; 2) has implemented reasonable measures to provide shareholders 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 the proceedings; and 3) maintains a record of voting or action by shareholders by means of remote communication. These provisions also apply to proxies of shareholders. A corporation's bylaws may allow the board of directors to determine that shareholders' meetings are held solely by means of remote communication, and the provisions described above apply regardless of whether the meeting is held at a designated place or solely by means of remote communication. If the board of directors has allowed participation by means of remote communication, the corporation's notice to shareholders of the shareholders' meeting must describe the means of remote communication to be used.

The bill also allows a corporation to make its shareholders' list available on a reasonably accessible electronic network, instead of making it available at the corporation's principal office or at a place identified in the meeting notice. If the corporation elects to make its shareholders list available on a reasonably accessible electronic network, the information required to gain access to the list must be provided with the meeting notice. If a shareholders' meeting is held solely by means of remote communication, the shareholders' list must be available on a reasonably accessible electronic network during the meeting.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 180.0701 (2) of the statutes is renumbered 180.0701 (2) (a) and
2 amended to read:

3 180.0701 (2) (a) ~~A~~ Subject to par. (b), a corporation may hold the annual
4 shareholders' meeting in or outside this state at the place stated in or fixed in
5 accordance with the bylaws. If Subject to par. (b), if no place is stated in or fixed in
6 accordance with the bylaws, the corporation shall hold the annual meeting at its
7 principal office.

History: 1989 a. 303; 1995 a. 271; 2001 a. 16.

8 **SECTION 2.** 180.0701 (2) (b) of the statutes is created to read:

9 180.0701 (2) (b) A corporation's bylaws may authorize the board of directors,
10 in its sole discretion, to determine that the annual shareholders' meeting shall not
11 be held at any place, but may instead be held solely by means of remote
12 communication as authorized under s. 180.0709.

1 **SECTION 3.** 180.0702 (3) of the statutes is renumbered 180.0702 (3) (a) and
2 amended to read:

3 180.0702 (3) (a) ~~A~~ Subject to par. (b), a corporation may hold a special
4 shareholders' meeting in or outside this state at the place stated in or fixed in
5 accordance with the bylaws. If Subject to par. (b), if no place is stated in or fixed in
6 accordance with the bylaws, the corporation shall hold a special meeting at its
7 principal office.

History: 1989 a. 303.

8 **SECTION 4.** 180.0702 (3) (b) of the statutes is created to read:

9 180.0702 (3) (b) A corporation's bylaws may authorize the board of directors,
10 in its sole discretion, to determine that a special shareholders' meeting shall not be
11 held at any place, but may instead be held solely by means of remote communication
12 as authorized under s. 180.0709.

13 **SECTION 5.** 180.0703 (2) (intro.) of the statutes is amended to read:

14 180.0703 (2) (intro.) The court may fix the time and place of the meeting or
15 determine that the meeting shall be held solely by means of remote communication
16 as authorized under s. 180.0709 and require that it the meeting be called and
17 conducted in accordance with the corporation's articles of incorporation and bylaws
18 in so far as possible, except that the court may do all of the following:

History: 1989 a. 303.

19 **SECTION 6.** 180.0705 (1) of the statutes is amended to read:

20 180.0705 (1) A corporation shall notify shareholders of the date, time, and
21 place, if any, of each annual and special shareholders' meeting not less than 10 days
22 nor more than 60 days before the meeting date, unless a different time is provided
23 by this chapter, the articles of incorporation, or the bylaws. If the board of directors
24 has authorized participation by means of remote communication under s. 180.0709,

1 the notice shall also describe the means of remote communication to be used. The
2 notice shall comply with s. 180.0141. Unless this chapter or the articles of
3 incorporation require otherwise, the corporation is required to give notice only to
4 shareholders entitled to vote at the meeting.

5 History: 1989 a. 303.

5 **SECTION 7.** 180.0705 (4) (a) of the statutes is amended to read:

6 180.0705 (4) (a) Unless the bylaws require otherwise and except as provided
7 in par. (b), if an annual or special shareholders' meeting is adjourned to a different
8 date, time, or place or will be held by a new means of remote communication, the
9 corporation is not required to give notice of the new date, time ~~or~~, place, or means of
10 remote communication if the new date, time ~~or~~, place, or means of remote
11 communication is announced at the meeting before adjournment.

12 History: 1989 a. 303.

12 **SECTION 8.** 180.0706 (2) (intro.) of the statutes is amended to read:

13 180.0706 (2) (intro.) A shareholder's attendance at a meeting, whether
14 physical or remote, in person or by proxy, waives objection to all of the following:

15 History: 1989 a. 303; 1995 a. 400; 2005 a. 476.

15 **SECTION 9.** 180.0709 of the statutes is created to read:

16 **180.0709 Remote participation in shareholders' meeting.** (1) If
17 authorized by the board of directors in its sole discretion, and subject to sub. (2) and
18 to any guidelines and procedures adopted by the board of directors, shareholders and
19 proxies of shareholders not physically present at a meeting of shareholders may
20 participate in the meeting by means of remote communication.

21 (2) If shareholders and proxies of shareholders participate in a meeting of
22 shareholders by means of remote communication as provided in sub. (1), the
23 participating shareholders and proxies of shareholders are deemed to be present in
24 person and to vote at the meeting of shareholders, whether the meeting is held at a

1 designated place or solely by means of remote communication, if all of the following
2 apply:

3 (a) The corporation has implemented reasonable measures to verify that each
4 person deemed present and permitted to vote at the meeting by means of remote
5 communication is a shareholder or proxy of a shareholder.

6 (b) The corporation has implemented reasonable measures to provide
7 shareholders and proxies of shareholders a reasonable opportunity to participate in
8 the meeting and to vote on matters submitted to the shareholders, including an
9 opportunity to read or hear the proceedings of the meeting concurrently with the
10 proceedings.

11 (c) The corporation maintains a record of voting or action by any shareholder
12 or proxy of a shareholder that votes or takes other action at the meeting by means
13 of remote communication.

14 **SECTION 10.** 180.0720 (2) of the statutes is renumbered 180.0720 (2) (a) and
15 amended to read:

16 180.0720 (2) (a) The corporation shall make the shareholders' list available for
17 inspection by any shareholder, beginning 2 business days after notice of the meeting
18 is given for which the list was prepared and continuing to the date of the meeting.
19 The list shall be made available at the corporation's principal office or, at a place
20 identified in the meeting notice in the city where the meeting will be held, or on a
21 reasonably accessible electronic network if the information required to gain access
22 to the list is provided with the notice of the meeting.

23 (b) A shareholder or his or her agent or attorney may, on written demand,
24 inspect and, subject to s. 180.1602 (2) (b) 3. to 5., copy the list, during regular business
25 hours and at his or her expense, during the period that it is available for inspection

1 under this subsection par. (a). If the corporation determines that the list will be made
2 available on an electronic network, the corporation may take reasonable steps to
3 ensure that such information is available only to shareholders of the corporation.

4 **SECTION 11.** 180.0720 (3) of the statutes is amended to read:

5 180.0720 (3) The corporation shall make the shareholders' list available at the
6 meeting, and any shareholder or his or her agent or attorney may inspect the list at
7 any time during the meeting or any adjournment. If the meeting is held solely by
8 means of remote communication, the list shall be open to the examination of any
9 shareholder during the entire time of the meeting on a reasonably accessible
10 electronic network, and the information required to access the list shall be provided
11 with the notice of the meeting.

12 History: 1989 a. 303.

SECTION 12. 180.0720 (4) of the statutes is amended to read:

13 180.0720 (4) If the corporation refuses to allow a shareholder or his or her agent
14 or attorney to inspect the shareholders' list before or at the meeting, or to copy the
15 list as permitted by sub. (2) (b), on petition of the shareholder, the circuit court for
16 the county where the corporation's principal office or, if none in this state, its
17 registered office is located may, after notice to the corporation and an opportunity to
18 be heard, order the inspection or copying at the corporation's expense. The court may
19 also postpone the meeting for which the list was prepared until the inspection or
20 copying is complete.

21 History: 1989 a. 303.

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

TODAY

LRB-3047/1
ARG:kjf

in 5/10

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

5/10 Hc w/ Tim - wants //

No changes

1 AN ACT *to renumber and amend* 180.0701 (2), 180.0702 (3) and 180.0720 (2);
2 *to amend* 180.0703 (2) (intro.), 180.0705 (1), 180.0705 (4) (a), 180.0706 (2)
3 (intro.), 180.0720 (3) and 180.0720 (4); and *to create* 180.0701 (2) (b), 180.0702
4 (3) (b) and 180.0709 of the statutes; **relating to:** shareholders' meetings of
5 business corporations.

Analysis by the Legislative Reference Bureau

This bill allows shareholders of a business corporation to participate in shareholders' meetings by means of remote communication, without being physically present at the meeting.

Under current law, with an exception, a corporation must hold an annual meeting of shareholders at a time and place stated in or fixed in accordance with its bylaws. If no place is so stated, the annual meeting is held at the corporation's principal office. A corporation may also hold special shareholders' meetings at the place stated in or fixed in accordance with its bylaws or, if none, at the corporation's principal office. Before a shareholders' meeting, a corporation must prepare a list of the names of all its shareholders entitled to notice of the meeting. The corporation must make this list available for inspection by any shareholder, for a certain period, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. The corporation must also make the list available for shareholder inspection during the meeting.

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23 reasonably accessible electronic network if the information required to gain access
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21 be heard, order the inspection or copying at the corporation's expense. The court may
22 also postpone the meeting for which the list was prepared until the inspection or
23 copying is complete.

24 (END)

Kohn, Hanna

From: Sen.Kapenga
Sent: Friday, May 12, 2017 3:19 PM
To: LRB.Legal
Subject: Draft Review: LRB -3047/1

Please Jacket LRB -3047/1 for the SENATE.