

# SENATE BILL REPORT

## SB 6040

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As Passed Senate, January 25, 2018

**Title:** An act relating to meetings under the business corporations act.

**Brief Description:** Addressing meetings under the business corporations act.

**Sponsors:** Senators Pedersen and Padden; by request of Washington State Bar Association.

**Brief History:**

**Committee Activity:** Law & Justice: 1/11/18, 1/18/18 [DP].

**Floor Activity:**

Passed Senate: 1/25/18, 49-0.

**Brief Summary of Bill**

- Allows a business corporation to hold its annual and special shareholder meetings remotely, instead of in-person, unless prohibited by the articles of incorporation or by-laws.
- Requires corporations to notify shareholders how to participate remotely, provide all shareholders with a reasonable opportunity to participate and vote during the meeting, and verify a remote participant's identity.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Business corporations. A business corporation exists as a legal entity separate from its owners. Corporations possess certain rights, privileges, and liabilities beyond those of an individual. Corporations form by adopting governance documents such as articles of incorporation and by-laws to define corporate structure and management.

Shareholders are the corporation's owners. The percentage of stock shares a shareholder owns represents their corporate ownership interest.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Shareholders typically elect the board of directors to oversee the corporation. The board selects corporate officers who manage day-to-day corporate operations.

Secretary of State's oversight. Washington's Secretary of State registers and licenses business corporations. The Secretary of State ensures that corporations comply with state law requirements such as filing an annual report and updating changes in corporate structure.

Annual and special shareholders' meetings. Current state laws require a business corporation to hold an in-person shareholders' meeting each year at an identified location or at the corporation's principal office unless shareholders take action by consent. A corporation may also hold in-person special shareholder meetings. The board of directors or other authorized persons may call for a special meeting.

**Summary of Bill:** A business corporation's board of directors or other authorized persons may decide to hold its annual meeting or special shareholder meetings using only remote communications unless the corporate governance documents specify otherwise. When a shareholder participates remotely, the law considers them personally present at the meeting.

If the articles of incorporation or by-laws allow remote annual or special corporate meetings the meeting procedure must:

- comply with any guidelines and procedures adopted by the corporation for remote meetings;
- provide information to the shareholders explaining how to participate in the remote meeting;
- verify the identity of the remotely-participating shareholders or proxies; and
- provide each meeting attendee with a reasonable opportunity to participate and vote during the meeting.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill comes from the Corporate Act Revision Committee of the Washington State Bar Association's Business Law Section. The committee is comprised of corporate law practitioners, in-house counsel, academics, and other subject matter experts. The committee puts great effort into maintaining Washington's Business Corporations Act, RCW 23B, up to date and effective when compared with other jurisdictions. The committee helps to keep Washington's business corporations laws advantageous for Washington corporations and shareholders.

Currently the default for shareholder meetings for Washington's business corporations is the in-person meeting. While a virtual meeting component is not prohibited, there is no current legal authority for an annual or special shareholder meeting to be 100 percent virtually-held.

Recent advances in technology for virtual meetings makes the virtual meeting option workable even for large public companies; hundreds of shareholders can participate in a single virtual meeting. Some have called this proposed change to the virtual annual meeting "CPR for annual meetings" because the information that can be shared, and the easy participation of many shareholders encourages many more shareholders to attend. Currently, not a lot of shareholders participate in the in-person only meetings. Under current law, corporate governance documents can allow for annual and special meetings that are a hybrid of in-person and virtual participation. If the corporate governance already provides the discretion for the board of directors to decide whether a meeting will be held in person or with virtual participation, a corporation wanting to move to the virtually-only meeting does not need to change its articles and by-laws to accomplish the change under this bill.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Michael Hutchings, Chair, Corporate Act Revision Committee of the Business Law Section of Washington State Bar Association.

**Persons Signed In To Testify But Not Testifying:** No one.