



## *School Business Law Update*

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### CHANGES TO NONPROFIT CORPORATION LAW MAY AFFECT ENTITIES SUPPORTING DISTRICTS

Assembly Bill 1233 (Silva) made a series of changes to the Nonprofit Corporation Law which may impact nonprofits supporting school and community college districts. The principal changes, which took effect January 1, are summarized below.

1. **"Ex-Officio" Directors.** Many nonprofits designate "ex-officio" directors - people who serve on the nonprofit board of directors by virtue of occupying another position, such as District Superintendent, members of school and community college governing boards, etc. In the past, these nonprofit directors have sometimes been designated as non-voting members. AB 1233 now gives these directors the power to vote. Specifically, the bill modified the Corporations Code to provide that where the articles of incorporation or bylaws of the nonprofit designate a person to serve on the nonprofit board by virtue of holding a specified position, that person shall be considered a director for all purposes and will now have the same rights and obligations, including the right to vote, as the other directors.

If the nonprofit does not wish the ex-officio directors to have the power to vote, changes in the articles and/or bylaws may need to be made.

2. **Immunity from Liability/Insurance Coverage.** Under existing law, nonprofit directors and officers serving without compensation enjoy certain immunities from liability for specified negligent acts or omissions provided the nonprofit maintains a general liability insurance policy at the time the claim is made. For the immunity to continue to apply the law now provides that the insurance policy must be applicable to the particular claim (it must be found to cover the damages alleged to have been caused by the director or officer).

3. **Approval of Amendments to Articles and Bylaws.** Some nonprofits have provisions requiring written approval of amendments to the articles of incorporation or bylaws by a specified person, which in some instances could be a district representative. AB 1233 provides that the person's permission is not required if the person has died, or if the right to approve is in the capacity of an officer or other status and the office or status has ceased to exist. In addition, where a request for a approval has been made in writing and the person with authority to grant approval does not respond within a specified time frame, the approval requirement will no longer be required.

4. **Quorum – Presence of Specified Directors.** Existing law contains requirements concerning what constitutes a quorum for the transaction of business. AB 1233 now permits a nonprofit to specify in its articles or bylaws that the presence of specified members of the board of directors is required for a quorum to exist.

5. **Committees.** Committees exercising the authority of the nonprofit board of directors can only be composed of directors. It was implied that a board could appoint advisory committees containing non-board members, which do not carry the authority of the Board. AB 1233 now confirms that a board can create committees with nondirectors which do not exercise board authority.

6. **Dissolution.** At the point of dissolution, it can sometimes be difficult to locate a sufficient number of members of the nonprofit board still in office to authorize the necessary actions to wind up and dissolve. SB 1233 modified the Corporations Code to permit a corporation meeting certain requirements, including lack of a quorum, to proceed to elect to voluntarily wind up and dissolve.

If you have any questions concerning these changes, please do not hesitate to contact our office.

– Grant Herndon

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