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## OLR Bill Analysis

### sSB 986

#### ***AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM TRUST CODE, RULE AGAINST PERPETUITIES, CONNECTICUT UNIFORM POWER OF ATTORNEY ACT, CONNECTICUT BUSINESS CORPORATION ACT AND CONNECTICUT REVISED NONSTOCK CORPORATION ACT.***

#### **SUMMARY:**

This bill allows a business or nonstock corporation's board of directors to determine that a shareholder or member meeting, as applicable, may be held entirely remotely, unless the bylaws require the meeting to be held at a physical location. The bill makes related changes regarding electronic access to the required list of shareholders or members for meetings. These provisions generally codify the governor's executive orders on remote meetings (EO 7I, § 11 (Mar. 21, 2020); EO 7NN, § 2 (May 13, 2020)).

The bill specifies when the shareholders or members alone, or also the board, may amend certain bylaw provisions, including those prohibiting remote-only meetings. It changes certain procedures for nonstock corporation actions without a meeting.

It makes various changes to the state's Uniform Trust Code, such as (1) defining "terms of the trust" under the code and other trust laws and (2) requiring designated representatives to act in good faith on the beneficiary's behalf.

The bill:

1. specifies that if someone is signing a power of attorney on behalf of a principal, both must be physically present at the signing;
2. allows land conveyances by natural persons to be signed by an

agent authorized by a power of attorney; and

3. makes a minor change to a definition in the Connecticut Qualified Dispositions in Trust Act (QDTA) (§ 6).

It makes a technical correction to a 2019 change to the rule against perpetuities (§ 7). That provision generally extended, from 90 to 800 years, the period within which certain interests must vest to be valid.

Lastly, the bill makes other minor, technical, and conforming changes.

**EFFECTIVE DATE:** Upon passage for the corporation and rule against perpetuities provisions, and the latter applies to any trusts created on or after January 1, 2020; October 1, 2021, for the power of attorney and land conveyance provisions; and January 1, 2022, for the trust code and QDTA provisions.

#### **§§ 10-24 — CORPORATIONS**

The bill allows a business or nonstock corporation's board of directors to determine that any shareholder or member annual or special meeting be held entirely remotely, subject to the conditions below, unless the bylaws require the meeting to be held at a physical location. The bill makes several related conforming changes.

Current statute does not authorize entirely remote meetings but it does allow business corporation boards to authorize any class or series of shareholders to participate in a meeting remotely. The bill extends this latter provision to non-stock corporations (§ 22).

Existing law sets certain parameters for shareholders participating remotely (CGS § 33-703(b)). The bill extends these provisions to (1) nonstock corporation members and (2) meetings held entirely remotely for both business and nonstock corporations. Under these provisions, remote participants are deemed to be present and may vote at the meeting if the corporation implements reasonable measures to:

1. verify that each participant is a shareholder (or member as

applicable) and

2. provide a reasonable opportunity for them to participate in the meeting and vote on submitted matters, including an opportunity to communicate and read or hear the proceedings substantially concurrent with the proceedings.

### ***Court-Ordered Meetings (§§ 12 & 19)***

Existing law allows courts to order a corporation meeting to be held in certain circumstances (e.g., upon a shareholder's or member's application because the required annual meeting was not held within a specified timeframe).

The bill allows courts to order remote-only meetings unless the bylaws require meeting at a physical location. These meetings must follow the guidelines above and any other court-imposed guidelines and procedures.

### ***Notice Requirements (§§ 15 & 23)***

By law, after setting a meeting date, a corporation must prepare an alphabetical list of all shareholders or members, as applicable, entitled to vote at the meeting. It must make the list available for inspection two business days after giving notice of the meeting to (1) any shareholder or (2) any member entitled to vote.

The bill generally gives corporations the option of making the list available on a reasonably accessible electronic network, rather than just at its principal office or another location near the meeting as under current law. For remote-only meetings, the bill requires that the list be made available for inspection on the electronic network during the meeting.

In either case, a corporation providing the list electronically must provide, in the meeting notice, information on how to access it. Additionally, a corporation may take reasonable steps to ensure that the electronic list is available only to its shareholders or members.

### ***Bylaw Amendments (§§ 16 & 24)***

The bill provides that business corporation bylaws that prohibit remote-only meetings may be amended or repealed as follows:

1. only by the shareholders, if shareholders originally adopted the provision, or
2. by either the shareholders or the board, if the incorporator, incorporators, or board originally adopted it.

Current law provides that if the board originally adopted the bylaws, then either the board or shareholders may amend or repeal provisions that set greater board quorum or voting requirements than provided by law. The bill extends these provisions to such bylaws originally adopted by the incorporator or incorporators. As under current law, board action to adopt or amend these provisions must meet the quorum requirement and be adopted by the vote required under the unamended bylaws or under the proposed amendment, whichever is greater.

The bill contains analogous provisions for nonstock corporations (§ 24).

***Nonstock Corporation Action Without Meeting (§ 20)***

By law, any nonstock corporate action that may be taken at a members' meeting, including an election, may also be taken without a meeting if the members consent. The bill changes certain procedures regarding these actions and makes related minor and technical changes.

The bill requires the corporation to deliver a notice with a written ballot to all members entitled to vote on the matter, setting forth the proposed actions, and allowing members to vote on each proposal or director candidate, as applicable.

Under the bill, for matters other than director elections, votes conducted this way are valid only if the number of votes cast and approvals at least equals the required number for a comparable meeting. The bill eliminates a current provision, which provides that

unless the certificate of incorporation provides otherwise, votes conducted this way must be determined based on the total number of votes, rather than the total number entitled to vote.

It requires solicitations for votes by ballot to (1) indicate the quorum requirements, (2) state the percentage of approvals necessary to approve each matter other than director elections, and (3) specify the ballot receipt deadline.

The bill prohibits these ballots from being revoked, unless the certificate of incorporation or bylaws allow revocation.

Current law provides that, if not otherwise set by law, the record date for determining which members are entitled to take action without a meeting is the date the first member signs the consent or ballot. The bill instead sets it as the date the (1) first member signs the consent or (2) corporation delivers the required notice.

## **§§ 1-5 — TRUST CODE**

### ***Definitions (§ 1)***

PA 19-137 adopted the Connecticut Uniform Trust Code, establishing numerous rules on creating, modifying, terminating, and enforcing trusts. Under current law, the trust code's definitions apply to the code itself and to the Connecticut Uniform Directed Trust Act. The bill applies the definitions to various other trust-related statutes (the entirety of Chapter 802c of the statutes).

Several provisions in the trust code refer to the "terms of a trust." For example, the trust code generally allows the terms of a trust to override its provisions, with 14 enumerated exceptions (CGS § 45a-499e).

The bill defines the "terms of a trust," except as provided below, as the manifestation of the settlor's intent regarding a trust's provisions as (1) expressed in the trust instrument or (2) established by other evidence that would be admissible in a judicial proceeding.

Alternatively, the terms of a trust are its provisions as established,

determined, or amended by:

1. a trustee or other person authorized under the trust instrument, a statute, or a court order;
2. a court order; or
3. a nonjudicial settlement agreement, or court approval of the combination of a testamentary trust with another trust or division of a testamentary trust into separate trusts, pursuant to applicable provisions of the trust code.

***Designated Representatives (§§ 2 & 3)***

Under the trust code, a trust instrument generally may (1) designate someone other than the settlor to represent and bind a beneficiary or (2) authorize someone, other than a trustee or the settlor, to designate someone to represent and bind a beneficiary. The representative may receive notices or other reports on the beneficiary's behalf. (These provisions do not apply if the beneficiary is a charity.)

The bill requires the designated representative to act in good faith on the beneficiary's behalf.

In situations where a trustee must send a notice to the trust's qualified beneficiaries, the bill eliminates the requirement for the trustee to also send it to any designated representatives. Instead, it authorizes the trustee to send notices to those representatives who are qualified to represent a beneficiary, instead of sending it to the beneficiary.

***Limitation on Beneficiary's Creditor (§ 5)***

The bill prohibits a beneficiary's creditor, other than a settlor's creditor if the settlor is also a beneficiary, from attaching or compelling a distribution of property that is subject to a power of withdrawal that has lapsed, been waived, or released over all or part of the trust property. (A power of withdrawal is a presently exercisable power of appointment that meets certain requirements.)

Existing law additionally prohibits these creditors from attaching or compelling a distribution that is subject to certain powers in three specific situations.

### **§ 8 — POWERS OF ATTORNEY**

Current law requires a power of attorney to be signed by (1) the principal or (2) someone else at the principal's direction and in his or her conscious presence. The bill specifies that if someone else is signing for the principal, they both must be physically present at the same location when the document is signed.

### **§ 9 — LAND CONVEYANCES**

Under current law, if the party conveying land (i.e., the grantor) is a natural person, the conveyance must be signed by the grantor or his or her agent authorized for that purpose by a power executed, acknowledged, and witnessed in the manner required for conveyances.

The bill additionally allows the conveyance to be signed by an agent authorized by a validly executed, acknowledged, and witnessed power of attorney.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/29/2021)