

AMENDED IN ASSEMBLY MAY 26, 1998
AMENDED IN ASSEMBLY APRIL 21, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 2377

Introduced by Assembly Member Frusetta

February 20, 1998

An act to ~~amend Section 301.5 of~~ *add Section 301.7 to* the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2377, as amended, Frusetta. Corporations: listed corporations: boards of directors.

Existing law authorizes a listed corporation, by amendment of its articles or bylaws, to adopt provisions to divide the board of directors into 2 or 3 classes or to eliminate cumulative voting, or both. Existing law defines a "listed corporation" for these purposes as, among other things, a corporation with outstanding securities designated as qualified for trading as a national market system security on the National Association of Securities Dealers Automatic Quotation System if the corporation has at least 800 ~~shareholders~~ *holders of its equity securities* as of the record date of the corporation's most recent annual shareholders meeting.

This bill would ~~decrease the number of required shareholders in that definition from 800 to 600 shareholders~~ *authorize a listed corporation that is engaged in business limited to the operation and maintenance of a recreation*

venture having golf and tennis facilities and ancillary dining and beverage services to divide its board of directors into 2 classes with 1/2 of the directors to be elected by the shareholders annually, as long as it has at least 600 holders of its equity securities. The bill would restrict the applicability of this provision to eligible corporations that limit each holder of its securities to 5 shares and require those persons to occupy dwellings immediately contiguous to the real property of the corporation, and would require an amendment of the corporation's articles or bylaws.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 301.5 of the Corporations Code~~
 2 SECTION 1. Section 301.7 is added to the
 3 Corporations Code, to read:
 4 301.7. (a) A listed corporation engaged in business
 5 limited to the operation and maintenance of a recreation
 6 venture having golf and tennis facilities and ancillary
 7 dining and beverage services may, by amendment of its
 8 articles or bylaws, adopt provisions allowing division of its
 9 board of directors into two classes, with one-half of the
 10 directors or as close an approximation as possible to be
 11 elected at each annual meeting of shareholders, provided
 12 that the corporation's bylaws or articles limit each holder
 13 of the securities to no more than five shares and require
 14 those holders to occupy dwellings immediately
 15 contiguous to the real property of the corporation. An
 16 article or bylaw amendment providing for division of the
 17 board of directors into classes may only be adopted by the
 18 approval of the board and the outstanding shares (Section
 19 152) voting as a single class, notwithstanding Section 903.
 20 Directors of a listed corporation that meet these
 21 conditions may be elected by classes at a meeting of
 22 shareholders at which an amendment to the articles or
 23 bylaws described in this paragraph is approved, but the
 24 extended terms for directors are contingent on that
 25 approval, and in the case of an amendment to the articles,



1 *the filing of any necessary amendment to the articles*
2 *pursuant to Section 905 or 910.*

3 *(b) For purposes of this section, a “listed corporation”*
4 *means a corporation described in paragraph (1) or (2) of*
5 *subdivision (d) of Section 301.5, except that a corporation*
6 *described in paragraph (2) of subdivision (d) of that*
7 *section shall be required to only have at least 600 holders*
8 *of its equity securities as of the record date of the*
9 *corporation’s most recent annual meeting of*
10 *shareholders as long as it meets all other requirements of*
11 *that paragraph.*

12 *(c) If an article amendment referred to in subdivision*
13 *(a) is adopted by a listed corporation, the certificate of*
14 *amendment shall include a statement of the facts showing*
15 *that the corporation is a listed corporation within the*
16 *meaning of subdivision (b).*

17 ~~is amended to read:~~

18 ~~301.5. (a) A listed corporation may, by amendment~~
19 ~~of its articles or bylaws, adopt provisions to divide the~~
20 ~~board of directors into two or three classes to serve for~~
21 ~~terms of two or three years respectively, or to eliminate~~
22 ~~cumulative voting, or both. After the issuance of shares,~~
23 ~~a corporation which is not a listed corporation may, by~~
24 ~~amendment of its articles or bylaws, adopt provisions to~~
25 ~~be effective when the corporation becomes a listed~~
26 ~~corporation to divide the board of directors into two or~~
27 ~~three classes to serve for terms of two or three years~~
28 ~~respectively, or to eliminate cumulative voting, or both.~~
29 ~~An article or bylaw amendment providing for division of~~
30 ~~the board of directors into classes, or any change in the~~
31 ~~number of classes, or the elimination of cumulative voting~~
32 ~~may only be adopted by the approval of the board and the~~
33 ~~outstanding shares (Section 152) voting as a single class,~~
34 ~~notwithstanding Section 903.~~

35 ~~(b) If the board of directors is divided into two classes~~
36 ~~pursuant to subdivision (a), the authorized number of~~
37 ~~directors shall be no less than six and one-half of the~~
38 ~~directors or as close an approximation as possible shall be~~
39 ~~elected at each annual meeting of shareholders. If the~~
40 ~~board of directors is divided into three classes, the~~



1 authorized number of directors shall be no less than nine
2 and one third of the directors or as close an
3 approximation as possible shall be elected at each annual
4 meeting of shareholders. Directors of a listed corporation
5 may be elected by classes at a meeting of shareholders at
6 which an amendment to the articles or bylaws described
7 in subdivision (a) is approved, but the extended terms for
8 directors are contingent on that approval, and in the case
9 of an amendment to the articles, the filing of any
10 necessary amendment to the articles pursuant to Section
11 905 or 910.

12 (e) If directors for more than one class are to be
13 elected by the shareholders at any one meeting of
14 shareholders and the election is by cumulative voting
15 pursuant to Section 708, votes may be cumulated only for
16 directors to be elected within each class.

17 (d) For purposes of this section, a “listed corporation”
18 means any of the following:

19 (1) A corporation with outstanding shares listed on the
20 New York Stock Exchange or the American Stock
21 Exchange.

22 (2) A corporation with outstanding securities
23 designated as qualified for trading as a national market
24 system security on the National Association of Securities
25 Dealers Automatic Quotation System (or any successor
26 national market system) if the corporation has at least 600
27 holders of its equity securities as of the record date of the
28 corporation’s most recent annual meeting of
29 shareholders. For purposes of determining the number of
30 holders of a corporation’s equity securities under this
31 paragraph, there shall be included, in addition to the
32 number of recordholders reflected on the corporation’s
33 stock records, the number of holders of the equity
34 securities held in the name of any nominee holder which
35 furnishes the corporation with a certification equivalent
36 to the certification permitted by subdivision (a) of
37 Section 2115, provided, that the corporation retains the
38 certification with the record of shareholders and makes
39 the certification available for inspection and copying in
40 the same manner as provided in Section 1600.



1 ~~(c) If an article amendment referred to in subdivision~~
2 ~~(a) is adopted by a listed corporation, the certificate of~~
3 ~~amendment shall include a statement of the facts showing~~
4 ~~that the corporation is a listed corporation within the~~
5 ~~meaning of subdivision (d). If an article or bylaw~~
6 ~~amendment referred to in subdivision (a) is adopted by~~
7 ~~a corporation which is not a listed corporation, the~~
8 ~~provision, as adopted, shall include the following~~
9 ~~statement or the substantial equivalent: “This provision~~
10 ~~shall become effective only when the corporation~~
11 ~~becomes a listed corporation within the meaning of~~
12 ~~Section 301.5 of the Corporations Code.”~~

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