

SUBJECT: Allowing use of electronic transmission to conduct corporate meetings

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Kolkhorst, Bohac, J. Moreno, Solomons, Zedler
0 nays
1 present not voting — Oliveira
1 absent — Martinez Fischer

WITNESSES: For — Phillip L. Allbritten, Atmos Energy Corp.; (*Registered but did not testify:*) Tom D. Stephens, Atmos Energy Corp.
Against — None

BACKGROUND: Under the Texas Business Corporations Act (TBCA), art. 2.25, a written or printed notice stating the place, day, and hour of a shareholders' meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, must be delivered in person or by mail not less than 10 nor more than 60 days before the date of the meeting. The corporation's president, secretary, or person who calls the meeting must issue the notice to each shareholder entitled to vote. If mailed, the notice is considered delivered when deposited with postage prepaid in the U.S. mail and addressed to the shareholder at his or her address as it appears on the share transfer records of the corporation.

DIGEST: CSHB 2578 would authorize a corporate shareholder to participate in a special or annual meeting by conference telephone or similar communication equipment by which all shareholders participating in the meeting hear each other, unless the corporation's articles of incorporation or bylaws provided otherwise. A shareholder who participated in a meeting by this means would be considered present in person at the meeting. With the shareholder's consent, a corporation could give the shareholder any notice under the TBCA or its articles of incorporation or bylaws by means of an electronic transmission that:

- would not directly involve the physical transmission of paper;
- would create a record that could be retained, retrieved, and reviewed by the recipient; and
- could be reproduced directly in paper form by the recipient through an automated process.

The shareholder could specify the form of the electronic transmission to be used and could revoke this consent by written notice to the corporation. The shareholder's consent would be revoked if the corporation could not deliver two consecutive notices by electronic transmission and if a person responsible for delivering notice for the corporation knew that the delivery of these transmissions was unsuccessful. Inadvertent failure to treat the unsuccessful transmissions as a revocation of shareholder consent could not invalidate a meeting or other action.

Notice would be considered given when the notice was:

- transmitted to a facsimile number provided by the shareholder for the purpose of receiving notice;
- transmitted to an electronic mail address provided by the shareholder for the purpose of receiving notice;
- posted on an electronic network, and a message was sent to the shareholder at the address provided by the shareholder for the purpose of alerting the shareholder to a posting; or
- communicated to the shareholder by any other form of electronic transmission consented to by the shareholder.

In the absence of fraud, an affidavit of an agent of the corporation stating that notice was given by electronic transmission would constitute complete evidence that the notice was given.

Upon the consent of a director, the director could receive notice of a regular or special meeting of the board of directors by electronic transmission. The bill would apply all the same notice provisions to directors that it would apply to shareholders.

CSHB 2578 would authorize a corporation's board of directors to allow a shareholder or a shareholder's proxy to vote by electronic transmission. The

transmission would have to contain or be submitted with information establishing that the shareholder or the shareholder's proxy had authorized the transmission.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2578 would update the TBCA to accommodate current technology, save resources, and encourage greater shareholder participation in corporate governance. Electronic mail, fax transmissions, and telephone technology all allow shareholders and directors to interact reliably with corporations to obtain information and vote. Texas is one of only eight states that do not allow corporations to use electronic transmission for providing formal notices. Like shareholders and directors of corporations of most other states, shareholder and directors in Texas should have the option of receiving formal corporate notices and to vote their shares by electronic transmission.

CSHB 2578 would result in substantial savings and increased shareholder participation. For example, Atmos Energy estimates that it likely would save \$100,000 each year by providing notices and allowing voting by electronic transmission, as most of its shareholders would elect to use their technology for these purposes. States that allow electronic transmissions for formal corporate notices and voting have seen shareholder voting increase.

The bill also would contain reasonable safeguards. Shareholders and directors who elected to use electronic transmissions under the statute could withdraw their consent. Two unsuccessful transmissions to a shareholder or director would revoke their consent to this method of receiving notice, if the responsible corporate agent discovered the failure. Also, CSHB 2578 would append to the notice provision of existing law, making it clear that current delivery requirements still would apply.

**OPPONENTS
SAY:**

By creating a new method for allowing shareholders to receive meeting notices from their corporations without requiring explicitly the delivery of these notices a certain number of days in advance, CSHB 2578 could cause confusion in regard to the timing of notification deliveries. The bill should reference the existing time requirement for these deliveries.

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The bill would not specify sufficiently the information that must accompany a vote by electronic transmission in order to communicate that the shareholder or the shareholder's proxy had authorized the transmission.

NOTES:

The committee substitute made nonsubstantive changes in the language and syntax of the original bill.