

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2062 (Grayson)
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Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Credit unions

DIGEST

This bill makes various technical amendments to the California Credit Union Law, including allowing a credit union to hold a regular or special meeting of the members through telephonic or audiovisual means, among other changes.

EXECUTIVE SUMMARY

State and federal law require a business to receive permission from a federal or state supervisory authority, commonly referred to as a charter, prior to engaging in business as a credit union. A person or group of people who wants to open a credit union in California has the choice of seeking a state charter or a federal charter. The choice of which charter to seek may be influenced by a variety of factors, including the differences in authorities, permissions, requirements, and prohibitions imposed on a charterholder by the laws, regulations, and guidance associated with the charter.

Periodically, the California Credit Union League sponsors legislation to amend the statutory law that governs state-chartered credit unions. These bills typically contain a mix of technical and clarifying changes, as well as amendments that mimic or otherwise relate to changes in federal law that affect credit unions. This bill is the latest example of such legislation and addresses a range of topics, including clarifying self-dealing and credit union eligibility provisions. The author has agreed to amend the bill's provisions authorizing a credit union to hold a member meeting through fully remote means, to conform that authorization to the authorization granted to other corporations under state law.

This bill is sponsored by the California Credit League. The Committee has not received timely opposition to this bill. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 6-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Credit Union Law, which governs credit unions operating in the state, except for federally chartered credit unions. (Fin. Code, div. 5, §§ 14000 et seq.)
- 2) Provides that, if and to the extent any provision of the Credit Union Law is preempted by federal law, that provision shall not apply and shall not be enforced. (Fin. Code, § 14001.5.)
- 3) Requires a credit union governed by 1) to be incorporated under the Nonprofit Mutual Benefit Corporation Law of the State, and requires a covered credit union to satisfy certain requirements before filing its articles of incorporation with the Secretary of State. (Fin. Code, §§ 14100-14160.)
- 4) Authorizes the Department of Financial Protection and Innovation (DFPI) to administer the Credit Union Law. (Fin. Code, §§ 14200-14319.)
- 5) Provides that the equity capital of a credit union consists of the credit union's regular reserve account, the undivided earnings account, any appropriated undivided earnings accounts, and other forms of capital approved by the Commissioner of the DFPI. (Fin. Code, § 14400.)
- 6) Provides that the savings capital, undivided profits, and reserve funds of a credit union shall be deposited only in the following:
 - a) Commercial banks or trust companies incorporated under the laws of this state.
 - b) National banks doing business in this state.
 - c) Shares or periodic certificates received by, or any form of evidence of interest or indebtedness issued by, any credit union organized under the Credit Union Law, federal law, or as determined acceptable by the Commissioner of the DFPI. (Fin. Code, § 14406.)
- 7) Provides that the directors of a credit union shall have all of the following duties, unless the bylaws expressly reserve any or all of the duties to the members:
 - a) To act upon all applications for membership; the directors may delegate this power, as specified.
 - b) To expel members for specified causes; the directors may delegate this power, as specified.
 - c) To determine the interest rate on obligations with members and to authorize the payment of interest refunds to borrowing members.

- d) To fix the maximum number of shares that may be held by, and establish the maximum amount of obligations which may be entered into with, one member.
 - e) To declare dividends on shares in accordance with the credit union's policies and to determine the interest rate or rates that will be paid on certificates for funds.
 - f) To amend the bylaws, except where membership approval is required.
 - g) To fill vacancies in the credit committee and temporarily fill in vacancies, as specified.
 - h) To direct the deposit or investment of funds, except loans to members.
 - i) To designate alternate members of the credit committee who shall serve in the absence or inability of the regular members to perform their duties.
 - j) To perform or authorize any action not inconsistent with law or regulation and not specifically reserved by the bylaws for the members and to perform any other duties as the bylaws prescribe. (Fin. Code, § 14456.)
- 8) Provides that every credit union may invest in the following securities:
- a) The shares of stock of a corporation, or in membership or economic interests of a limited liability company (LLC), organized solely for the purpose of providing services to credit unions, provided the corporation or LLC is formed by a credit union or group of credit unions.
 - b) The securities of a corporation or in membership or economic interests of an LLC that is not a corporation or LLC of the type described in 8)(a) and that provides services to credit unions, provided that the investment is approved by the Commissioner of the DFPI. (Fin. Code, § 14651.)
- 9) Provides that no officer, director, or employee of a credit union, directly or indirectly, shall purchase or be interested in the purchase of:
- a) Any of the credit union's assets for an amount less than the current market value thereof.
 - b) Any of the credit union's obligations or assets for an amount less than the book value thereof, unless all the directors of the credit union previously approve the purchase by resolution and a copy of the resolution is delivered to the Commissioner of the DFPI immediately after adoption. (Fin. Code, §§ 14765, 14766.)
- 10) Provides that a person violating 9) shall be liable to the people of the State for each offense in the amount of twice the value of the obligation or asset. (Fin. Code, § 14765, 14766.)
- 11) Provides that the members of a credit union shall hold an annual meeting for the election of directors, a supervisory committee, as specified, and a credit committee, if provided for in its bylaws; the annual meeting shall be held upon such notice and such time and place as the bylaws provide. (Fin. Code, § 14804.)

- 12) Provides that special meetings of the members of a credit union may be held upon order of the board of directors, or upon the written request of 10 members or 3 percent of membership, whichever is greater. Notice of special meetings must be given to all members specifying the date, time, place, and purpose of the meeting. (Fin. Code, § 14805.)
- 13) Imposes restrictions on when a credit union may enter into an obligation with an official, including limiting the aggregate amount of all obligations outstanding to officials, except obligations fully secured by shares, shall not exceed 20 percent of the aggregate dollar amount of all savings capital of the credit union.
 - a) An “obligation” is any loan or approved line of credit, including both used and unused portions, on which the official is a borrower, co-borrower, cosigner, endorser, or guarantor.
 - b) An “official” is a director, member of the supervisory committee, member of the audit committee, or member of the credit committee of the credit union. (Fin. Code, § 15050.)
- 14) Requires the board of directors of a credit union to establish written policies which shall set forth the policies of the credit union with respect to any obligation that is offered to the members of the credit union, including the maximum amounts and terms for any obligation offered and other specified terms. (Fin. Code, § 15100.)

This bill:

- 1) Provides that the savings capital of a credit union shall consist of the payments made by members on shares, and adds cross-references to this definition where the Credit Union Law refers to the savings capital.
- 2) Authorizes the directors of a credit union to utilize an automated system to establish membership eligibility pursuant to a written membership plan adopted by the board of directors if all of the following conditions are met:
 - a) The automated system is regularly tested for compliance with the credit union’s membership criteria, the credit union’s field of membership, and applicable laws and regulations.
 - b) An application for new membership approved using an automated system is reviewed by directors or their delegates within five business days to ensure compliance with 2)(a).
 - c) The written membership plan includes a plan to address an approved application determined not to be in compliance with 2)(a).
- 3) Authorizes the board of directors of a credit union to, by resolution, delegate the following to an asset-liability management committee or similar committee, consistent with the policies of the board of directors:

- a) Determining the interest rate on obligations with members and authorizing the payment of interest refunds to borrowing members.
 - b) Declaring dividends on shares in accordance with the credit union's policies and determining the interest rate or rates that will be paid on certificates for funds.
 - c) The authority to determine the dividend rates on share accounts, as specified.
- 4) Provides, in connection with a delegation to an asset-liability management committee or similar committee pursuant to 3):
- a) The asset-liability management committee or similar committee may be composed of directors, nondirector management officials, or both directors and nondirector management officials.
 - b) The asset-liability management committee or similar committee shall provide a report to the board of directors, at least monthly, that specifies any actions taken.
- 5) Provides that a credit union may invest in the shares of stock of a corporation, or in membership or economic interests of an LLC, organized solely for the purpose of providing services to credit unions, provided the corporation or LLC is formed by one or more credit unions, one or more corporations or LLCs.
- 6) Defines a "credit union service organization" to include an organization set forth in 5) or a corporation or LLC defined in the existing Financial Code section 14651(a).
- 7) Clarifies the prohibitions on an officer, director, or employee purchasing the assets or obligations of a credit union, by doing all of the following:
- a) Removing the references to "assets" from the statute addressing obligations, to create a clear distinction between the restrictions relating to assets and those relating to obligations.
 - b) Providing that, in calculating the fair market value of an asset, the credit union may use the average of value of two valuations of the asset from two separate third parties recognized in the industry for establishing market value in connection with a private-party purchase and sale of comparable assets.
 - c) Providing that the method used for determining the book value of an obligation shall be set forth in a written policy governing the sale of credit union obligations established and approved by the board of directors, and must be consistent with generally accepted accounting principles.
 - d) Providing that the prohibition on the purchase of a credit union's assets does not apply to the purchase of used credit union equipment or furnishings by an officer or director if the current market value of the asset or assets purchased does not exceed \$500 in the aggregate, and that the prohibition does not prohibit the credit union from making a gift to an officer or director

- if the current market value of the gift or gifts does not exceed \$500 in the aggregate.
- 8) Provides that, unless prohibited by the articles or bylaws of the credit union, an annual meeting or special meeting of the shareholders of a credit union may be conducted in whole or in part by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication if the credit union implements reasonable measures to do the following:
- a) To provide members and proxyholders, if proxyholders are allowed, a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings.
 - b) If any member or proxyholder, if proxies are allowed, votes or takes other action at the meeting by means of electronic transmission to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, to maintain a record of that vote or action in its books and records.
 - c) To verify that each person who has voted remotely is a member or proxyholder, if proxies are allowed.
- 9) Provides that a credit union may conduct a member meeting solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, provided that any member unable to participate using the method selected is offered a reasonable alternative method to participate. A de minimis disruption of an audio or audiovisual feed does not require a credit union to end a meeting under, or render the corporation out of compliance with, this requirement.

COMMENTS

1. Author's comment

According to the author:

The California Credit Union League champions a “state-charter modernization bill” every few years to promote governance and management efficiencies and to keep state-chartered credit unions on an even playing field with federally chartered credit unions. Between modernization clean up bills, the League compiles a list of issues brought to them by their members. AB 2062 is the culmination of many discussions between state-chartered credit unions, their trade association, and other stakeholders.

2. Background on state and federal credit unions

“A credit union is a cooperative, organized for the purposes of promoting thrift and saving among its members, creating a source of credit for them at rates of interest set by the board of directors, and providing an opportunity for them to use and control their own money on a democratic basis in order to improve their economic and social conditions.”¹ Credit unions can be organized under state or federal law. The Federal Credit Union Act governs federally chartered credit unions, under the administration of the National Credit Union Administration (NCUA).² Credit unions chartered within this state are governed by the Credit Union Law, which is administered by the DFPI.³ The State retains its authority to govern state-chartered credit unions except where expressly preempted by federal law.⁴

3. This bill makes a variety of changes to the California Credit Union Law

This bill, which is sponsored by the California Credit Union League, makes a number of changes to the California Credit Union Law. The bill is intended to “clean up” provisions within the California Credit Union Law; the Legislature generally passes such a bill every few years.⁵

This bill would do all of the following:

- Authorize directors or their delegates to use an automated system to establish eligibility for membership in a credit union, provided that the automated membership eligibility applications are reviewed by the directors or their delegates within five business days of the application.
- Authorize boards to delegate authority relating to dividends to an asset liability management committee or similar committee, subject to parameters established by the board. This is intended to permit credit unions to be able to respond more quickly to shifts in market rates, thereby making it easier for credit unions to offer competitive dividend rates.
- Authorize credit unions to hold annual and special meetings through specified remote means. This provision is discussed further in Part 4, and the author has agreed to the amendments set forth in Part 5.
- Authorize a credit union to own a credit union service organization (CSUO) that was formed by a CSUO. Current law allows a credit union to own a CSUO if it was formed by a credit union, but does not expressly permit a credit union to own a CSUO formed by a CSUO.
- Clarify provisions relating to prohibited self-dealing between a credit union and an officer, director, or employee of the credit union. Current law prohibits a

¹ Fin. Code, § 14002.

² 12 U.S.C. §§ 1751 et seq.

³ Fin. Code, div. 5, §§ 14000 et seq.

⁴ *Id.*, § 14001.5.

⁵ See Prior legislation, *infra*.

credit union from selling assets to its officers, directors, or employees for less than they are worth, but is silent as to how the value of the asset should be calculated. This bill adds methods for determining the market and book values of an asset, and adds an exemption to the self-dealing prohibition for gifts and assets under \$500 in the aggregate.

- Reinstates the definition of “savings capital.” This definition was deleted in 2019, in a bill sponsored by the California Credit Union League, as part of the deletion of a broader provision that was no longer consistent with federal law. This bill reinstates that definition, because the term “savings capital” is used elsewhere in the California Credit Union Law.

These provisions are discussed in further detail in the Senate Banking and Financial Institutions Committee’s analysis of this bill, which is incorporated herein by reference.

4. The scope of this bill’s remote meetings provision exceeds what is permitted under state or federal law

Current state law permits corporations – including corporations incorporated under the Nonprofit Mutual Benefit Corporation Law – to hold fully remote shareholder or member meetings, without the consent of the shareholders or members, if one of two conditions are met: (1) the remote meeting is necessary due to a state of emergency, or (2) the meeting is conducted via a live audiovisual feed for the duration of the meeting.⁶ The corporation may offer an audio-only feed in addition to the audiovisual feed, and must take certain steps to protect the integrity of the meeting, such as providing means by which shareholders or members can participate and vote in the meeting.⁷

At the federal level, the NCUA has expressly declined to authorize fully remote member meetings for federally chartered credit unions except as an emergency measure during the height of the COVID-19 pandemic.⁸ In 2019, prior to the pandemic, the NCUA considered requests to implement a remote-only meeting option to its model federal credit union bylaws and declined, instead implementing the option for a hybrid model.⁹ At the time, the NCUA expressed concern that “a movement towards completely virtual meetings in an effort to increase member access to meetings could unintentionally result in member disenfranchisement” and harm “the rights of members who do not have access to electronic devices or who may live in areas without access to broadband internet.”¹⁰ During the COVID-19 pandemic, the NCUA authorized fully remote meetings on an emergency basis; at the end of 2022, however,

⁶ Corp. Code, § 7510. The authorization for fully remote meetings via an audiovisual feed is set to sunset on December 31, 2025; AB 2908 (Chen, 2024), which this Committee passed with a vote of 11-0, would eliminate the sunset.

⁷ Corp. Code, § 7510.

⁸ See 12 C.F.R. pt. 701, App’x A, art. IV, § 1.

⁹ See NCUA final rule, Federal Credit Union Bylaws, 84 Fed. Reg. 53278-01, 53283.

¹⁰ *Ibid.*

the NCUA issued guidance requiring federal credit unions to resume in-person or hybrid member meetings beginning in 2023.¹¹ The NCUA reminded federal credit unions that hybrid meetings remained an option under the current regulations, and that hybrid meetings should be sufficient to preserve credit union resources and reduce the effort required to hold in-person meetings.¹²

This bill would give state-chartered credit unions more leeway to hold fully remote member meetings than is granted to other state corporations or to federally chartered credit unions. Specifically, this bill would allow state-chartered credit unions to hold fully remote annual and specially set member meetings, without the consent of the members, via a telephonic means only. The author has agreed to amend the bill to conform the remote meeting provisions to the provisions in the Nonprofit Mutual Benefit Corporation Law, under which all California credit unions are required to be incorporated.

5. Amendments

To ensure that members of state-chartered credit unions have the same protections relating to remote shareholder meetings as members of other nonprofit corporations in the state, the author has agreed to amend the bill to permit credit unions to hold fully remote shareholder meetings under the same terms as other nonprofit mutual benefit corporations. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment 1

At page 9, delete lines 3-31 and insert:

“(b) Unless prohibited by the articles or bylaws of the credit union, a regular or special meeting of the members, including an annual meeting, may be conducted, in whole or in part, by means of remote communication as set forth in subdivision (f) of Section 7510 of the Corporations Code.”

Amendment 2

At page 10, delete lines 1-6 and insert:

“(b) Unless prohibited by the articles or bylaws of the credit union, a regular or special meeting of the members, including an annual meeting, may be conducted, in

¹¹ NCUA Letter to Credit Unions 22-FCU-03 (Dec. 7, 2022), available at https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/expiration-emergency-exemption-certain-person-meeting-requirements?utm_medium=email&utm_source=NCUAgovdelivery. Link current as of June 27, 2024.

¹² *Ibid.*

whole or in part, by means of remote communication as set forth in subdivision (f) of Section 7510 of the Corporations Code.”

6. Arguments in support

According to the California Credit League, the bill’s sponsor:

The California Credit Union League (CCUL) is the proud sponsor of Assembly Bill 2062 and its efforts to update and strengthen the credit union state charter. Credit unions have the option of either being state-chartered or federally chartered entities. Federally chartered credit unions are regulated by the National Credit Union Administration (NCUA) and in California, state-chartered credit unions are regulated by the Department of Financial Protection and Innovation (DFPI). Both federal and state governments periodically update their charters to stay competitive in their appeal and to create an even playing field in the dual charter system. This bill makes necessary updates to the state charter that are outlined below and upholds the incentive for state-chartered credit unions to benefit from having a regulator with a local perspective. AB 2062 allows credit unions to keep up with the ever-changing landscape and best serve their members and communities across California.

SUPPORT

California Credit Union League (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 2908 (Chen, 2024) removes the sunset on the provisions authorizing corporations organized under the General Corporation Law, certain nonprofit corporations, and cooperative corporations to hold fully remote shareholder meetings without the consent of the shareholders. AB 2908 is pending on the Senate Floor.

Prior Legislation:

SB 269 (Portantino, Ch. 762, Stats. 2021) updated provisions of the Credit Union Law and increases parity between state law applicable to state-chartered credit unions and federal law applicable to federally chartered credit unions.

SB 1031 (Portantino, 2020) was substantially similar to SB 269. SB 269 was held in the Senate Banking and Financial Institutions Committee due to COVID-19-related bill limits.

AB 2862 (Limón, Ch. 267, Stats. 2018) made assorted changes to the Credit Union Law in order to increase parity between state-chartered and federally chartered credit unions.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 65, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Banking and Finance Committee (Ayes 9, Noes 0)
