

Ten FAQ's Concerning Proposed Bylaw Amendment #6

These FAQ's are prepared for inclusion in a "voting guide for members" being compiled by AILA's ExCom to be placed on InfoNet in conjunction with voting on bylaw amendments at the Annual Meeting on 19 June.

While I generally consider FAQ's a contrived way to present an argument through answers to questions nobody ever asked, in this case all of the following are actual questions that Members have asked, either on the Message Center or in emails or telephone calls. (Michael Owens, proponent, Bylaw Amendment #6, 20 May 2014.)

Q1 What does Amendment #6 do?

A1 Its main objective and effect is to anchor in the bylaws every AILA Member's right to vote on any future bylaw proposal by means of a "secure online proxy" or email. This will enfranchise the 98% of AILA Members who do not attend member meetings and currently cannot vote.

Q2 How do Amendment #6 and the other proposed bylaw amendments affect one another?

A2 Not at all. Amendment #6 does not affect the governing structure of AILA in any way. It is a stand alone amendment that merely brings some currently unlawful bylaw provisions into compliance with the applicable law and enfranchises Members.

Q3 Why are there references in the discussion of Amendment #6 to New York law, when AILA is located in Washington, DC?

A3 Because AILA is incorporated in New York and governed by New York not-for-profit corporation law.

Q4 Why is Amendment #6 necessary?

A4 AILA's current provision for amendment of the bylaws by electronic "voting" (Art IX, Sec 1, B) is unlawful and invalid under NY law for several reasons.

The two main defects with the current provision are:

First, electronic "voting" as now provided for in the bylaws is not allowed under

NY law. This defect is cured through the use of an electronic “proxy” (see, Q/A 5, below).

Second, the current provision purports to allow an electronic vote on proposed bylaws amendments that is entirely separate from any meeting of Members. New York law requires that votes of the membership be taken only at a meeting of Members. This defect is cured by integrating the electronic proxy vote with a meeting of Members (see, Q/A’s 5 and 7, Method, below).

Q5 What is a proxy and why is it used?

A5 A proxy is merely a designation to a “proxy holder”, an agent, to deliver your vote, exactly as you direct, to the member meeting where the bylaw will be voted on.

New York law requires that in order for a member to cast his or her vote the member must be physically present at the meeting where the vote is taken. However, the law also allows for proxy voting through a proxy holder who attends the meeting. And this is how many NY corporations conduct their membership and shareholder votes. Voting can thus be accomplished without you personally attending a meeting through your electronic submission of a proxy to an independent proxy holder who will attend the meeting and deliver your vote. In fact, this is how exactly how the vote for ExCom officers and BOG directors in being accomplished by AILA this year using the services of the VoteNet company. In the future, the same procedure can be used for voting on bylaw amendments.

Q6 What other voting procedures does Amendment #6 affect?

A6 It conforms AILA’s bylaw voting procedure to New York law by dropping the requirement in the current bylaw that at least 50% of AILA Members (6,500 out of 13,000) participate in the vote in order for a favorable vote on bylaws to be valid.

The current bylaw amendment provision (Art IX, Sec 1, B) requires both a 2/3's affirmative vote for approval of an amendment AND a participation in the vote by 50% of total Membership participation (6,500 Members of AILA’s 13,000 must actually vote) in order for the approval to be effective. No recorded vote of the AILA membership for anything has ever exceeded 25%, and votes are usually under 20%. This requirement rendered the current bylaw provision completely useless. Now that electronic proxy voting will be integrated with a meeting of members (as it must be under NY law), such a participation requirement would

effectively make impossible an effective vote on any and every proposed bylaw amendment. When invalid Art IX, Sec 1, B goes to the dustbin, the 50% participation requirement will go with it and will not be replaced.

Q7 What method does Amendment #6 provide for proposing and voting on future bylaw amendments, and what is the time line for the process?

A7 Method:

Any single Member can propose a bylaw amendment (this is the same as the current rule). The proposal must be submitted to the Board of Governors at least 21 days prior to the next quarterly BOG meeting.

The BOG has the opportunity to “ prepare a brief statement of commentary on the proposed change or changes (indicating the general sense of the Board Members as to whether they favor or do not favor the proposed change or changes).” This is consistent with the current bylaw and practice.

Not later than 40 days before the next BOG meeting, the proposal, together with the recommendation of the BOG, will be distributed to Members for their electronic proxy vote. The vote must be submitted not later than 10 days before the meeting. This tendering and voting procedure is consistent with the current bylaws and practice.

A special meeting of Members will be called by the President to coincide with the BOG meeting for the purpose of accepting the proxy votes and also any live votes by Members present. (A “special” meeting of members is simply any meeting other than an Annual meeting.)

Time Line (assuming a 360 day year):

Day

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|----|---|
| 1 | Submission of proposed amendment at least 21 days before quarterly BOG meeting |
| 21 | BOG meeting; discussion of proposal |
| 70 | Fifty day window for further BOG discussion; BOG discussion with proponent about possible changes to the proposal |
| 71 | Publication of the proposed amendment to the Membership together with BOG comments for electronic proxy vote |

101 Deadline for receipt of proxy votes

111 Quarterly BOG meeting; specially called meeting of Members to receive the vote on the amendment proposal

Q8 Some critics say that allowing Members to propose amendments four times a year will lead to a flood of amendment proposals and year round campaigning for them. Is this a realistic concern?

A8 Based on prior experience, no.

As mentioned above, the current bylaws allow any single Member to propose a bylaw once a year prior to the Annual meeting. So far as we know, there have been very few amendments ever proposed by Members who were not on the BOG or acting on behalf of AILA leadership. Proposing and promoting a bylaw amendment is an arduous task. There is no reason to believe that the mere opportunity to propose an amendment at four times during the year, rather than only once, will incite Members to suddenly propose a flood of amendments. And if this were to occur, numerous minor bylaw amendments are available to control the problem.

Q9 Some critics say that Amendment #6 only authorizes voting by (or limits voting to) submission of proxies by email, and excludes use of other “online” methods. Therefore, it doesn’t really provide a complete solution and should be rejected. What about this?

A9 Not true.

Inclusion of the word “email” in Amendment #6 may have been an unfortunate oversight. But **it will pose a problem only if AILA leadership chooses to make it a problem.**

In short, the only-by-email fuss is a diversion. At its most persuasive, it’s the equivalent of the following:

Fast food workers propose an industry starting wage of \$13 per hour.

Fast food industry responds: “You’re asking for \$13 per hour. But it would require \$14 to get you above the poverty line, so \$13 is not a complete solution. Let’s just stick with the federal minimum wage of \$7.25.”

Longer version:

New York law allows submission of a proxy by “the transmission of a telegram, cablegram **or other means of electronic transmission** to the person who will be the holder of the proxy”. This the same law under which the electronic submission of proxies to VoteNet is now occurring in the election for officers and directors. Amendment #6 states that “All Members will receive instructions about how to execute and return their secure electronic proxy”. This is the same bylaw authority upon which AILA bases its use of VoteNet. Thus, Amendment #6 provides ample authority for AILA to provide the Members with secure, seamless proxy voting for bylaws using VoteNet or a similar service.

If AILA leadership chooses to disregard the intent of the amendment and to interpret it as requiring voting only by email, here are the consequences and ways to respond :

First, **email voting still is light years better than no vote at all!** It’s may not be \$14. But it’s \$13. Not \$7.25.

Second, email voting does not have to be the chaotic mess that we are experiencing with this year’s bylaw vote. Technologically, a competent service provider (perhaps VoteNet) can configure a voting template for use through your email program that will be essentially as convenient as the VoteNet “online” procedure. All AILA has to do is give the order.

Third, if AILA leadership persists in requiring proxy voting only by standard email (as it is doing this time), an implementing bylaw amendment can be passed requiring AILA leadership to use the most sophisticated and efficient online voting service available.

At worst Amendment #6 provides AILA Members with the only guaranteed opportunity they have ever had to vote on bylaws.

Q10 What is Section H of the amendment all about?

A10 Section H is a provision that allows Members or the Executive Committee to implement an emergency amendment procedure in the event of an unforeseen, exigent need for swift bylaw amendment in the essential interest of AILA. To invoke the procedure, 15 Members or three members of the Executive Committee must submit a request. In addition, for the procedure to go forward, the Executive Committee must give its unanimous approval. **Thus, use of this provision remains subject to the veto of the Executive Committee and cannot be abused by Members.**