

Date of Hearing: March 28, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1780 (Chen) – As Amended March 11, 2022

SUBJECT: Corporations: shareholders' meetings: location

SUMMARY: Authorizes a corporation to conduct its annual shareholder meeting remotely unless expressly prohibited by the corporation's articles of incorporation or bylaws.

Specifically, **this bill:**

- 1) Amends the definition of "electronic transmission by the corporation" to allow the communication to be sent to a recipient who has not provided a written objection to its use, rather than a recipient who has provided an unrevoked consent to its use.
- 2) Authorizes a meeting of shareholders, unless expressly prohibited by the articles of incorporation or bylaws, to be held at "no place" and authorizes a board of directors, in its sole discretion, to determine that the annual shareholder meeting may be conducted, in whole or in part, by any of the following methods:
 - a) Notwithstanding any written objection, electronic transmission by and to the corporation.
 - b) Electronic video screen communication, conference telephone, or other means of remote communication.
- 3) Deletes language prohibiting a corporation from conducting a meeting of shareholders fully remote unless all of the shareholders consent or if the board determines it is necessary or appropriate because of emergency, as defined.
- 4) Contains an urgency clause that would make the act go into immediate effect upon the signature of the governor.

EXISTING LAW:

- 1) Defines an "electronic transmission by the corporation" to mean a communication delivered by fax, e-mail, electronic message board, or other means of electronic message board to a recipient who has provided an unrevoked consent to the use of those means of transmission. (Corporations Code Section 20.)
- 2) Prohibits a corporation from conducting a shareholder meeting solely by electronic transmission unless either all of the shareholders consent or the board determines it is necessary or appropriate because of an emergency, as defined. (Section 600 of the Corporations Code.)
- 3) Defines an emergency as any specified events or circumstances as a result of which, and only so long, a quorum of the corporation's board of directors cannot be readily convened for action. (Section 207 of the Corporations Code.)

FISCAL EFFECT: None. This bill is keyed Nonfiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

According to the author:

With the temporary allowance given by the Governor's Executive order, attendance at these shareholder meetings has been substantially higher. Given the lack of transportation necessary to appear at these meetings, it comes as no surprise that participation has been significantly higher. This kind of behavior is an indicator, that the remote shareholder meetings work, and should be encouraged.

2) Background.

The annual shareholder meeting is a key mechanism through which shareholders can shape the direction of a company. At this meeting, which is required under state law, a shareholder can vote on a range of issues, including board appointments, executive compensation, and dividend payments.

Current law permits fully remote participation in shareholder meetings as long as the corporation adheres to certain process rules. For example, the corporation must implement “reasonable measures” to provide shareholders or their proxy the opportunity to participate in the meeting and to vote on matters, and the corporation must record the vote or action taken by a shareholder who is participating remotely. Importantly, until recently, the law allowed for one shareholder to withhold consent for a fully virtual meeting, even during emergencies, thus causing the corporation to be required to hold a hybrid meeting with an option for physical attendance.

In response to the COVID-19 pandemic, both the administration and the Legislature took action to give companies additional flexibility to hold remote shareholder meetings. The Governor issued Executive Order (EO) N-40-20 to, among many of its provisions, ease requirements around in-person shareholder meetings. And, AB 663 (Chen), Chapter 523, Statutes of 2020, loosened the rules around when a shareholder meeting could be held remotely, especially during times of emergency. Among many of the changes enacted by AB 663, a shareholder meeting can now be conducted fully remotely if the board determines it is necessary or appropriate because of an emergency, as defined. In such emergency situations, a shareholder meeting can be held remotely even if one shareholder withholds consent.

While AB 663 provided much-needed flexibility for a corporation seeking to hold its annual shareholder meeting remotely during an emergency, the nature of the COVID-19 pandemic continues to generate confusion. Under current law, a qualified “emergency” that triggers the possibility of an all-remote shareholder meeting is an emergency (such as a fire, pandemic, terrorist attack, or other specified event) that, as a result of which, a quorum of the corporation’s board of directors “cannot be readily convened for action.” In the current stage of the pandemic, it may be possible to readily convene a board, even if it may not be appropriate or safe to do so.

In response to this concern, the Governor issued Executive Order (EO) N-23-21 on December 16, 2021. That EO, among other things, allows for additional remote shareholder meetings, ordering that:

To the extent that Corporations Code section 207(i)(5) requires that a quorum of a corporation's board of directors cannot be readily convened in order for there to exist an emergency as defined therein, that requirement is waived, from the date of this Order until March 31, 2022, as to any corporation conducting shareholder meetings using remote technology pursuant to Corporations Code section 600(e), as amended by Assembly Bill 663, in -reliance on the proclaimed State of Emergency related to the COVID-19 pandemic.

3) **In comes 769 (Grayson)**

In response to the March 31, 2022 expiration of remote shareholder meetings, as granted by the EO, the Legislature passed AB 769 (Grayson) to allow additional flexibility until June 30, 2022. As of the publication of this analysis, AB 769 was awaiting signature by the Governor.

Earlier versions of AB 769 tied remote work flexibility to the existence of a public health emergency state of emergency, thereby authorizing virtual shareholder meetings for the duration of the COVID-19 pandemic. However, the bill was subsequently amended to be a strict three-month extension of the current policy.

4) **Is it appropriate to permanently allow remote shareholder meetings?**

The experience of remote shareholder meetings over the last two years has sparked interest across other states and countries in allowing the policy to be in place permanently. At the state level, New York State recently enacted A-1237 (Paulin), which allows for-profit and not-for-profit corporations to hold their shareholder or member meetings solely through virtual means, unless such meetings are prohibited by the company's articles of organization or bylaws.¹ Internationally, other nations already allowed remote shareholder meetings prior to the pandemic (including: Colombia, Turkey, South Africa, Taiwan, and Vietnam) while others are now considering permanent policies.²

As noted above, the annual shareholder meeting enables a shareholder to engage directly with the corporation's leaders and to vote on a range of issues, and as such policymakers should proceed cautiously when allowing, permanently, the ability for all this to take place virtually. Taking away an opportunity for a shareholder to conduct this activity in person may have negative impacts on a shareholder's ability to voice their opinion or receive crucial information, though the extent of this impact is not yet fully known.

¹ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01237&term=2021&Summary=Y&Memo=Y.

² Varun Eknath et al., "Are virtual meetings for companies' shareholder and board members the new normal?" World Bank Blogs (July 26, 2021), available at <https://blogs.worldbank.org/developmenttalk/are-virtual-meetings-companies-shareholders-and-board-members-new-normal>.

Moreover, shareholder meetings also provide other stakeholders a chance to use in-person events as a way to engage a corporation's board. Whether it come from students³ or environmental activists⁴ or workers⁵, protests and displays of activism at the location of a shareholder meeting have become a key strategy to help ensure certain voices are heard.

Yet, there are some early indications that activism – from both shareholders and outside stakeholders – can still be successful in a remote environment. For example, in May 2021 activist shareholder and hedge fund Engine No. 1 unseated Exxon Mobil Corp board members at the company's annual shareholder meeting, which was done in part to force the company to reckon with its climate change policies.⁶ Moreover, outside groups such as climate activists have still staged protests outside company headquarters on the days of remote shareholder meetings, even if there was physically nearby.⁷

5) Next steps

The committee recommends a five-year sunset. The committee proposes to add a five-year sunset to the bill's two major provisions (amendment in Section 20 and Section 600 of the Corporations Code). This will allow the Legislature to revisit this issue and evaluate whether remote shareholder meetings have, in any way, accommodated boards of directors at the direct expense of shareholders.

6) More technical amendments will be needed.

In addition to the committee's proposed amendments described in Comment #5, additional amendments will be needed at a future date to apply the bill's provisions to other types of corporations, including nonprofit corporations, and to ensure that the bill does not conflict with AB 769's changes, if AB 769 becomes law. Because of the timing of this hearing and the unknown status of AB 769, these matters could not be fully resolved.

REGISTERED SUPPORT / OPPOSITION:

Support

³ Ashley Smith, "Rally for Recognition," Inside Higher Ed (July 28, 2015), available at <https://www.insidehighered.com/news/2015/07/28/student-advocacy-groups-protest-itt-tech-shareholders-hold-annual-meeting>.

⁴ Alex Ruppenthal, "Protestors Disrupt Chase Shareholder Meeting Over Financing of Controversial Pipeline," WTTW (May 21, 2019), available at <https://news.wttw.com/2019/05/21/protesters-disrupt-chase-shareholder-meeting-over-financing-controversial-pipeline>.

⁵ Shirin Ghaffary, "Google employees protest at Alphabet's shareholder meeting," Vox (June 19, 2019), available at <https://www.vox.com/recode/2019/6/19/18691870/google-employees-activists-protest-alphabet-shareholder-meeting>.

⁶ Jennifer Hiller and Svea Herbst-Bayliss, "Exxon loses board seats to activist hedge fund in landmark climate vote," Reuters (May 26, 2021), available at: <https://www.reuters.com/business/sustainable-business/shareholder-activism-reaches-milestone-exxon-board-vote-nears-end-2021-05-26/>.

⁷ "Activists protest AIG's Support for Fossil Fuels During Company Shareholder Meeting," Public Citizen (May 12, 2021), available at <https://www.citizen.org/news/activists-protest-aigs-support-for-fossil-fuels-during-company-shareholder-meeting/>.

Edison International and Affiliates, Including Southern California Edison
Pacific Gas and Electric Company
Sempra Energy Utilities

Opposition

None on file.

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