

## ASSEMBLY THIRD READING

AB 1780 (Chen)

As Amended April 5, 2022

2/3 vote. Urgency

**SUMMARY**

Authorizes a corporation, until January 1, 2028, to conduct its annual shareholder meeting fully remotely unless expressly prohibited by the corporation's articles of incorporation or bylaws.

**Major Provisions**

- 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. This provision sunsets on January 1, 2028.
- 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 specified methods, including through remote communication. Removes the requirement that a board needs unanimous consent from shareholders in order for a shareholder meeting to be conducted fully remotely. These provisions sunset on January 1, 2028.
- 3) Contains an urgency cause that would make the act go into immediate effect upon signature of the governor.

**COMMENTS**

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. Following this, the Governor issued EO N-23-31 to extend this flexibility through March 31, 2022. Due to continued uncertainty around the COVID-19 pandemic, the Legislature then passed AB 769 (Grayson), Chapter 12, Statutes of 2022, to allow fully remote shareholder meetings until June 30, 2022.

The positive 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. 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.

This bill makes a number of changes in the Corporations Code to give a corporation the ability to more easily conduct its shareholder meeting remotely as well as communicate electronically with shareholders, though the company would still need to comply with existing rules to ensure shareholders can participate and vote. These provisions will sunset on January 1, 2028, after which current law will become operative.

**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."

**Arguments in Support**

Southern California Edison writes in support:

"The COVID-19 pandemic has had a sweeping impact on the way in which companies conduct business. As a result of the pandemic, many companies have been required to hold a variety of meetings in a virtual environment. Virtual meetings have proven to be an opportunity to enhance corporate governance and transparency by fostering more shareholder participation.

Challenges arising in the COVID-19 pandemic have demonstrated that existing provisions that provide some flexibility to the board of directors of a California corporation during an emergency do not adequately recognize the need for such flexibility outside the context of an emergency. AB 1780 would clarify existing law by allowing corporations to hold meetings of shareholders at "any place" or "no place," unless expressly prohibited by a corporation's articles of incorporation or bylaws. The bill would also authorize a corporate board of directors to conduct shareholder meetings by electronic transmission, electronic video screen communication, conference telephone, or other means of remote communication."

**Arguments in Opposition**

None on file.

**FISCAL COMMENTS**

None. This bill is keyed Nonfiscal by Legislative Counsel.

## **VOTES**

**ASM BANKING AND FINANCE: 10-0-2**

**YES:** Grayson, Chen, Bauer-Kahan, Cervantes, Choi, Mike Fong, Gabriel, Cristina Garcia, Petrie-Norris, Stone

**ABS, ABST OR NV:** Nguyen, Wicks

## **UPDATED**

VERSION: April 5, 2022

CONSULTANT: Luke Reidenbach / B. & F. / (916) 319-3081

FN: 0002218