

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1780 (Chen)
Version: June 16, 2022
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Fiscal: No
Urgency: No
AWM

SUBJECT

Corporations: electronic transmissions by corporations: shareholders' meetings:
location

DIGEST

This bill authorizes a corporation to send communications to a shareholder via email unless the shareholder has expressly opted out, and authorizes a corporation to hold fully remote shareholder meetings unless specifically prohibited by its articles of incorporation or bylaws, until January 1, 2026.

EXECUTIVE SUMMARY

The COVID-19 pandemic caused an unprecedented societal move away from in-person gatherings to communicating via remote, audiovisual means. The rise of different COVID-19 variants between 2019 and 2022 prevented a straightforward return to the in-person "business as usual" and instead required many organizations to vacillate between in-person and remote engagement depending on the state of the pandemic. Remote means of convening have also proven popular for reasons unrelated to safety, such as the lack of a commute, ease of access for persons with disabilities, and the avoidance of the need to rent a physical space.

In 2021, the Legislature enacted AB 663 (Chen, Ch. 523, Stats. 2021), which authorized certain California corporations to hold fully remote shareholder meetings when an emergency, as defined, prevented a quorum of the board of directors from convening. In late December, in response to the omicron variant and concern over whether it truly prevented the gathering of a quorum, Governor Gavin Newsom signed an executive order allowing California corporations to hold fully remote shareholder meetings without a finding that a quorum could not convene until March 31, 2022. And in March of this year, the Legislature enacted, and the Governor signed, AB 789 (Grayson, Ch. 12, Stats. 2022), an urgency measure that effectively extended the executive order by

allowing specified California corporations to hold fully remote shareholder meetings until June 30, 2022.

This bill authorizes a corporation to hold a remote shareholder meeting, not conditioned on a state of emergency, unless the corporation's articles of incorporation or bylaws specifically prohibit doing so. This authorization will sunset on January 1, 2026. The bill also modifies the provisions relating to a corporation's communications with its shareholders. The author has agreed to amend the bill to bring it in line with the format of AB 786 and require shareholder meetings held at the discretion of the directors to be conducted through audiovisual means.

This bill is sponsored by the author and is supported by Pacific Gas & Electric Company, the Sempra Energy Utilities, and Southern California Edison. There is no known opposition. This bill was passed by the Senate Banking and Financial Institutions Committee with a 9-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines an "electronic transmission by a corporation" as a communication:
 - a) Delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication;
 - b) Made to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code; and
 - c) That creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. (Corp. Code, 20.)
- 2) Prohibits a corporation from transmitting an electronic transmission under 1) to an individual shareholder or member of the corporation who is a natural person unless, in addition to satisfying the requirements of 1), the consent to the transmission has been preceded by or includes a clear written statement to the recipient as to (a) any right of the recipient to have the record provided or made available on paper or in nonelectronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the

corporation, and (c) the procedures the recipient must use to withdraw consent. (Corp. Code, § 20.)

- 3) Establishes the General Corporation Law, which governs most corporations incorporated in this state, as specified. (Corp. Code, tit. 1, div. 1, §§ 100 et seq.)
- 4) Authorizes a corporation incorporated under 3) (a corporation) to hold a shareholder meeting via a hybrid of in-person and electronic remote means, provided that certain technological and recordkeeping requirements are met. (Corp. Code, § 600.)
- 5) Authorizes a corporation to hold a shareholder meeting through exclusively remote means under the following circumstances:
 - a) All of the shareholders consent to the remote meeting;
 - b) The board determines a remote meeting is necessary or appropriate because of an emergency; or
 - c) The meeting is conducted on or before June 30, 2022. (Corp. Code, § 600(e).)
- 6) Defines an “emergency,” for purposes of when a board may decide to hold a remote meeting under 5)(b), as specified events or circumstances – including natural catastrophes, attacks on or within the state, and a state of emergency proclaimed by the Governor – if and only if the event or circumstance prevents the board of directors from being readily convened for action. (Corp. Code, § 207.)

This bill:

- 1) Modifies the provisions authorizing an electronic transmission from a corporation to a shareholder to authorize a corporation to provide an electronic transmission unless the shareholder has expressly opted out of electronic transmissions.
- 2) Authorizes the board of directors of a corporation, in its sole discretion and irrespective of whether any shareholder has opted out of electronic transmission by the corporation, to determine that a meeting of shareholders may be conducted by electronic transmission by and to the corporation or by electronic video screen communication, conference telephone, or other means of remote communication subject to the corporation implementing reasonable measures to:
 - a) Provide shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholder, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings.
 - b) Maintain a record of any shareholder or proxyholder votes or any other action taken by a shareholder or proxyholder at the meeting, as specified.
 - c) Verify that each person who voted remotely is a shareholder or proxyholder.

- 3) Provides that the provisions of this bill sunset on January 1, 2026.

COMMENTS

1. Author's comment

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. The state of the law on remote shareholder meetings

Prior to the COVID-19 pandemic, corporations incorporated in California were not authorized to hold annual shareholder meetings entirely through remote electronic means absent consent from all of their shareholders. Corporations are, however, authorized to conduct hybrid shareholder meetings – meetings wherein the board of directors had to convene a quorum at an in-person location, but shareholders had the option to attend remotely, subject to certain technical and recordkeeping requirements.¹

At the onset of the COVID-19 pandemic, Governor Gavin Newsom, in recognition of the risks of large, in-person gatherings, issued executive orders authorizing California corporations to hold fully remote shareholder meetings.² The executive orders were allowed to expire on September 30, 2021, in light of what appeared to be the waning pandemic.³ In the interim, the Legislature enacted, and the Governor signed, AB 663 (Chen, Ch. 523, Stats. 2021), which authorized a California corporation to hold a fully remote shareholder meeting either with the consent of all the shareholders or when the board determines that it is necessary and appropriate as a result of an emergency, as defined, that prevents a quorum of the board from readily convening.⁴

Near the end of 2021, as the omicron variant of COVID-19 spread through the state, Governor Newsom signed a new executive order relating to corporate meetings. Responding to California corporations that were unsure whether the omicron variant constituted an “emergency” under AB 663, the order re-authorized California corporations to conduct fully remote shareholder meetings without shareholder consent

¹ Corp. Code, §§ 600, 5510, 7150, 9411, 12460.

² See Governor's Exec. Order No. N-40-20 (Mar. 30, 2021); Governor's Exec. Order No. N-80-20 (Sept. 23, 2020).

³ See Governor's Exec. Order No. N-08-21 (June 11, 2021).

⁴ AB 663 (Chen, Ch. 523, Stats. 2021).

until March 31, 2022.⁵ In anticipation of the expiration of the executive order, the Legislature enacted AB 769 (Grayson, Ch. 12, Stats. 2022), an urgency measure allowing a California corporation to hold a fully remote shareholder meeting for any reason until June 30, 2022.

3. This bill allows corporations incorporated under the General Corporation Law to hold remote shareholder meetings at the discretion of the directors, unless prohibited in the corporation's articles of incorporation or bylaws

This bill authorizes specified California corporations to hold fully remote shareholder meetings at the discretion of the board of directors unless the corporation's articles of incorporation or bylaws expressly prohibit such meetings. The bill's provisions will sunset on January 1, 2026.

This bill adds to existing law that already authorizes hybrid shareholder meetings, wherein the directors must appear physically and shareholders can opt to appear in-person or through remote means.⁶ The difference is, under the hybrid model the choice to appear in person or remotely lies with the shareholders; this bill gives the authority to the directors, allowing them to side-step in-person contact with shareholders entirely. As currently in print, the bill allows a corporation to proceed via an audio-only (generally telephonic) means, which is consistent with current law allowing an audio-only remote option when it is (1) in addition to an in-person option or (2) with the consent of all the shareholders. Part 4 of this analysis contains proposed amendments to require fully remote meetings to be conducted through audiovisual means when the directors opt for a remote-only meeting so as to provide greater transparency and accountability at annual shareholder meetings.

In other contexts, this Committee has received significant opposition to legislation that allows persons in power to opt for entirely remote meetings. These opponents generally express the concern that cutting off in-person access – particularly at meetings that are intended to give access to persons in positions of authority. The Assembly Banking and Finance Committee's analysis of this bill specifically raised the concern that taking away the opportunity for shareholders to engage with directors and officers in person may negatively affect shareholders' ability to voice their opinion or receive crucial information, though the extent of this impact is not yet fully known. Staff for this Committee, however, is not aware of any opposition to this bill, including from shareholder activist groups. This bill's provisions will sunset in three years; if this Committee passes this bill, hopefully three years' worth of remote shareholder meetings will provide the Legislature with better data from which to determine whether to extend the permissions.

⁵ See Governor's Exec. Order No. N-23-21 (Dec. 21, 2021).

⁶ Corp. Code, § 600.

4. Amendments

As noted above, the author has agreed to significantly streamline the bill to make it consistent with AB 769 and to require shareholder meetings conducted through remote means at the discretion of the board to include a live audiovisual feed. The proposed amendments are as follows, subject to any nonsubstantive changes Legislative Council may make:

Amendment

Strike sections 1-5 of the bill, and amend subdivision (e) of Corporations Code section 600 as follows:

(e) A meeting of the shareholders 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 corporation implements reasonable measures: (1) to provide shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, (2) if any shareholder or proxyholder 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, and (3) to verify that each person **participating who has voted** remotely is a shareholder or proxyholder. A corporation shall not conduct a meeting of shareholders solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication unless one or more of the following conditions apply: (A) all of the shareholders consent; ~~or~~ (B) the board determines it is necessary or appropriate because of an emergency, as defined in paragraph (5) of subdivision (i) of Section 207; or (C) **notwithstanding the absence of consent from all shareholders pursuant to subparagraph (A) of this subdivision and subdivision (b) of Section 20** the meeting is conducted on or before ~~June 30, 2022~~ **December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. A de minimis disruption of an audio, visual, or audiovisual feed does not require a corporation to end a shareholder meeting under, or render the corporation out of compliance with, this section.**

5. Arguments in support

According to bill supporter Pacific Gas and Electric Company:

AB 1780 authorizes corporations to continue to hold shareholder meetings remotely, regardless of whether there is a state of emergency declaration in

effect. In doing so, the bill permits shareholders who are only able to attend remotely (for health, time conflict, travel cost, or other reasons) to participate virtually. Currently the Corporations Code only sanctions electronically enabled virtual meetings if every shareholder has consented, and impossibility for publicly traded corporations with widely dispersed shareholdings. Given this reality, it is prudent to allow shareholder meetings via remote communication.

SUPPORT

Pacific Gas & Electric Company
Sempra Energy Utilities
Southern California Edison

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 769 (Grayson, Ch. 12, Stats. 2022) authorized specified corporations incorporated in California to hold fully remote shareholder meetings on or before June 30, 2022.

AB 663 (Chen, Ch. 523, Stats. 2021) among other things, authorized California corporations to hold fully remote shareholder meetings (1) with the consent of all of the shareholders, or (2) when the board determines that a remote meeting is necessary or appropriate as the result of an ongoing emergency, as defined.

SB 351 (Senate Banking and Financial Institutions Committee, Ch. 98, Stats. 2015) provided cooperative corporations with the same emergency authority granted to general and nonprofit corporations.

AB 491 (Torres, Ch. 255, Stats. 2013) granted general and nonprofit corporations the authority to take certain actions in emergencies.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 72, Noes 0)

Assembly Banking and Finance Committee (Ayes 10, Noes 0)
