SENATE RULES COMMITTEE AB 1780
Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 1780
Author: Chen (R)
Amended: 6/30/22 in Senate
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 9-0, 6/15/22
AYES: Limón, Ochoa Bogh, Bradford, Caballero, Dahle, Durazo, Hueso, Min, Portantino

SENATE JUDICIARY COMMITTEE: 10-0, 6/28/22
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, Jones, McGuire, Stern, Wieckowski, Wiener
NO VOTE RECORDED: Borgeas

ASSEMBLY FLOOR: 72-0, 4/18/22 - See last page for vote

SUBJECT: Corporations: shareholders' meetings: remote communication

SOURCE: Author

DIGEST: This bill authorizes a corporation to hold a fully remote shareholder meeting, without prior consent from shareholders, if the meeting is conducted on or before December 31, 2025, and the meeting includes a live audiovisual feed for the duration of the meeting.

ANALYSIS:

Existing law:

1) Establishes formation and governance requirements related to corporations pursuant to the General Corporation Law. (Corporations Code Section 100 et seq.)

2) Defines an "electronic transmission by the corporation" to mean a communication delivered by fax, e-mail, electronic message board, or other

means of electronic communication to a recipient who has provided an unrevoked consent to the use of those means of transmission. (Corporations Code Section 20)

3) Defines an "emergency" – in the context of certain corporate governance actions – as specified events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action. (Corporations Code Section 207)

4) Allows for a shareholder or member meeting to be conducted solely by electronic transmission if all of the shareholders or members consent or if the board of directors determines it is necessary or appropriate because of an emergency or if the meeting is conducted on or before June 30, 2022. (Corporations Code Sections 600)

This bill 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, if the meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting, as specified.

Comments

1) *Purpose*

The purpose of this bill is to allow the board of directors of a corporation to determine that a shareholder meeting will be conducted exclusively via electronic transmission or other means of remote communication without first receiving consent of all shareholders. Three investor-owned utility companies – PG&E, Sempra Energy Utilities, and Southern California Edison – support this bill.

2) *Remote shareholder meetings during the pandemic*

Historically, state law required corporations organized in California to hold their annual shareholder meetings at a physical location unless the corporation received unanimous consent from all shareholders to conduct a remote-only meeting. In the early stages of the COVID-19 pandemic, the Governor issued Executive Order N-40-20, which allowed corporations to conduct remote-only meetings given the public health risks associated with large gatherings in a physical setting.

In 2021, the Legislature passed and the Governor signed AB 663 (Chen, Chapter 523, Statutes of 2021) which provided additional flexibility to corporations related to conducting their annual shareholder meetings remotely. Starting January 1, 2022, the new law permits a corporation to hold its shareholder meetings remotely without first needing to receive unanimous consent of its shareholders, so long as the board of directors of the corporation determines it necessary and appropriate because of an emergency.

Importantly, the definition of "emergency" in the Corporations Code hinges on whether a quorum of the board of directors can be readily convened for action. As corporations evaluated the new law in late 2021 and assessed health risks associated with rising cases of the Omicron variant, corporate managers were concerned that (a) the phrase "readily convened for action" was not a clear standard, potentially exposing a corporation to a lawsuit from shareholders if a remote-only meeting were convened, and (b) the risks of the Omicron variant were unclear and convening an in-person meeting could put shareholders, corporate officers, and board members in harm's way.

Due to the abovementioned concerns, the Governor included in Executive Order N-23-21 a provision that allowed for remote-only shareholder meetings even if a quorum of the board of directors could be readily convened for action. The executive order was in effect through March 31, 2022, after which the law as amended by AB 663 would have been effective.

In March 2022, Sempra Energy supported AB 769 (Grayson, Chapter 12, Statutes of 2022) that permitted a board of directors to hold a remote-only shareholder meeting for any reason, if the meeting was held prior to June 30, 2022. Sempra had a shareholder meeting scheduled for mid-May, and the corporation stated concerns about convening an in-person meeting under the evolving public health situation. AB 769 was approved by the Senate Banking and Financial Institutions Committee on March 21, 2022, signed by the Governor on March 25, 2022, and became effective immediately given the urgency clause contained in the bill.

Supporters of this bill desire to hold remote-only shareholder meetings in the future, irrespective of any public health risks or other emergencies that may be present. Supporters feel that remote-only meetings have worked well during the pandemic, and corporate boards should be permitted to decide whether shareholder meetings are held in-person or remotely. Supporters state that shareholder meetings are more accessible to shareholders when held remotely, though existing law already permits corporate boards to hold hybrid meetings

where those shareholders who want to participate remotely are provided a method to do so.

3) *Concerns about remote-only meetings*

Shareholder meetings are the primary forum through which the owners of corporations – the shareholders – exercise governance authority over the board of directors who have a fiduciary duty to those shareholders. These meetings provide shareholders the opportunity to vote on appointments to the board of directors, consider changes to corporate bylaws, approve executive compensation, and vote on shareholder proposals for how the corporation should be managed and operated. In summary, the annual meeting is where shareholders have an opportunity to voice how the board of directors and the executive management team should behave as stewards of the shareholders' money.

This bill allows the board of directors to determine the format of a shareholder meeting, which is analogous to the proverbial fox being able to design the henhouse. Corporate governance researchers cite that a large group of shareholders has voiced strong objections to remote-only meetings as interfering with their ability to exercise their rights to hold boards of directors accountable. The Rutgers Center for Corporate Law and Governance, the Council of Institutional Investors, and the Society for Corporate Governance issued on December, 10, 2020, their "Report of the 2020 Multi-Stakeholder Working Group on Practices for Virtual Shareholder Meetings."[1] Concerns raised by shareholders to the working group included the following:

- General sense that companies had much tighter control over the structure and flow of the Q&A sessions than at in-person meetings, including a feeling that some companies were "cherry picking" innocuous questions and favorable comments over difficult questions and critiques.

- Apprehension created by a lack of transparency about certain companies' use of discretion to combine or paraphrase similar questions or reword questions.

- Suspicion that some questions asked and answered during the Q&A sessions at certain companies were generated by the companies themselves, as opposed to verified shareholders, with rehearsed answers from the meeting

[1] https://cclg.rutgers.edu/wp-content/uploads/VSM-Working-Group-Report-12_10_2020.pdf

chairs as a way to avoid difficult questions and fill the time allotted for Q&A.

- Inability for shareholders to ask follow-up questions the way they could at in-person meetings.

- Loss of opportunities for shareholders to interact with eye contact, both formally and informally, with board members, company executives, and other shareholders.[2]

Not all shareholders held such unfavorable views of remote-only meetings. Some shareholders stated that they were able to attend meetings of more corporations than typical years and were able to ask more questions at some meetings. Despite these positive features, many shareholders held that remote-only meetings continue to be an inadequate replacement for an in-person meeting.

4) *Who should decide?*

The main question posed by this bill is: who should determine the format of shareholder meetings – the shareholders or corporate management? As stated above, existing law allows a corporation to provide a hybrid option where shareholders who prefer remote participation can do so, while those shareholders who prefer in-person attendance can exercise that option. This bill shifts the discretion solely into the hands of the people who are supposed to be accountable to shareholders. Supporters claim that remote participation increases access for some shareholders, and that is likely true. But if the Legislature wanted to take a shareholder-first perspective in this area of corporate governance, would requiring that corporations provide an option for hybrid meetings not be a better solution?

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/1/22)

Pacific Gas & Electric Company
Sempra Energy Utilities
Southern California Edison

[2] https://corpgov.law.harvard.edu/2021/01/11/report-on-practices-for-virtual-shareholder-meetings/

OPPOSITION: (Verified 7/1/22)

None received

ARGUMENTS IN SUPPORT: The Pacific Gas & Electric Company writes:

> 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 in the meeting. Currently, the Corporations Code only sanctions electronically enabled virtual meetings if every shareholder has consented, an impossibility for publicly traded corporations with widely dispersed shareholdings. Given this reality, it is prudent to allow shareholder meetings via remote communication.

ASSEMBLY FLOOR: 72-0, 4/18/22
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooper, Cunningham, Megan Dahle, Daly, Davies, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon
NO VOTE RECORDED: Cooley, Flora, Gray, Mayes, Voepel

Prepared by: Michael Burdick / B. & F.I. /
7/28/22 10:35:18

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