

CONCURRENCE IN SENATE AMENDMENTS

AB 1780 (Chen)

As Amended August 15, 2022

Majority vote

SUMMARY

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.

Senate Amendments

- 1) Remove the urgency clause and move up the sunset date from January 1, 2028, to January 1, 2026.
- 2) Strike out portions of this bill related to the definition of "electronic transmission by the corporation" and streamline the remote work authorization provisions to be in line with the temporary authorization in current law.
- 3) Clarify that a de minimis disruption of audio, visual, or audiovisual feed does not require the corporation to end a shareholder meeting or render the corporation out of compliance with shareholder meeting requirements.
- 4) Make assorted technical and chaptering amendments.

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 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.

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 received.

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

ASSEMBLY FLOOR: 72-0-5

YES: 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

ABS, ABST OR NV: Cooley, Flora, Gray, Mayes, Voepel

SENATE FLOOR: 40-0-0

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

UPDATED

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