

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2908 (Chen)
Version: February 15, 2024
Hearing Date: June 25, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Shareholders' meetings: remote communication

DIGEST

This bill eliminates the sunset on provisions authorizing certain California corporations to hold fully remote shareholder meetings without shareholder consent, making those provisions permanent.

EXECUTIVE SUMMARY

Prior to the COVID-19 pandemic, a corporation incorporated in California could hold a fully remote shareholder meeting only with the consent of all of the shareholders. Since then, however, the Legislature has enacted several measures allowing California corporations to hold fully remote meetings at the discretion of the board, provided that certain requirements are met. 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. Then in 2022 and 2023, the Legislature enacted bills permitting corporations – including for-profit, nonprofit, and cooperative corporations – to hold fully remote shareholder meetings under any circumstances, provided that the corporation provided a live audiovisual feed of the meeting for the duration. (AB 769 (Grayson, Ch. 12, Stats. 2022); AB 1780 (Chen, Ch. 951, Stats. 2022); AB 231 (Chen, Ch. 115, Stats. 2023).) The provisions allowing fully remote shareholder meetings without shareholder consent are set to sunset on December 31, 2025.

This bill removes the sunset provisions authorizing fully remote shareholder meetings with a live audiovisual feed, making those provisions permanent.

This bill is sponsored by the Nonprofit Organization and Corporations Committees of the Business Law Section of the California Lawyers Association and is supported by the California Water Association. The Committee has not received timely opposition to this

bill. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 6-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the General Corporation Law, which governs most corporations incorporated in this state, as specified. (Corp. Code, tit. 1, div. 1, §§ 100 et seq.)
- 2) Establishes the Nonprofit Corporation Law, which governs corporations incorporated in this state for specific purposes and on a nonprofit basis, as specified. (Corp. Code, tit. 1, div. 2, §§ 5000 et seq.)
- 3) Establishes the Cooperative Corporation Law, which authorizes the formation of a corporation for any lawful purpose provided that it is organized and conducts its business primarily for the mutual benefit of its members as “patrons” of the corporation. (Corp. Code, tit. 1, div. 3, pt. 2, §§ 12200 et seq.)
- 4) Authorizes a corporation incorporated under 1), nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations incorporated under 2), and cooperative corporations incorporated under 3) 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, 5510, 7510, 9411, 12460.)
- 5) Authorizes a corporation incorporated under 1), nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations incorporated under 2), and cooperative corporations incorporated under 3) 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, as defined; or
 - c) The meeting is conducted on or before December 31, 2025, and the meeting includes a live audiovisual feed for the duration of the meeting; the corporation may offer an audio-only option in addition to the audiovisual feed. (Corp. Code, §§ 600(e), 5510(f), 7510(f), 9411(f), 12460(f).)

This bill:

- 1) Removes the December 31, 2025, sunset on the provisions allowing specified corporations to hold fully remote shareholder meetings with an audiovisual feed without shareholder consent, making those provisions permanent.

COMMENTS

1. Author's comment

According to the author:

Restrictions imposed on group and travel activity as a result of the COVID-19 pandemic revealed that certain provisions of the Corporations Code relating to the governance of California corporations had not kept up with technological advances, even in the absence of an emergency. Challenges in accessibility that arose also demonstrated that existing provisions that provided some flexibility to the board of directors of a California for profit or nonprofit corporation during an emergency did not adequately recognize the need for such flexibility outside the context of an emergency. As a result, the Corporations Code was revised to authorize for-profit corporations and nonprofit public benefit, mutual benefit and religious corporations, as well as cooperative corporations, to conduct nonemergency virtual meetings of shareholders and members, as applicable, if the corporation implements reasonable measures to provide them a reasonable opportunity to participate and vote, among other conditions. However, all of these provisions have a sunset date of December 31, 2025.

This bill eliminates the December 31, 2025, sunset date. The existing provisions removed barriers to participation in corporate governance and have been beneficial. We are not aware of any problems due to the allowance of such nonemergency virtual meetings. This bill is a commonsense measure that is necessary to create a permanent solution.

2. Background on fully 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

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).

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, California corporations were unsure whether the omicron variant constituted an “emergency” under AB 663. As a result, Governor Newsom signed a new executive order re-authorizing California corporations to conduct fully remote shareholder meetings without shareholder consent until March 31, 2022.⁵

Shortly thereafter, 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. Later that year, the Legislature passed AB 1780 (Chen, Ch. 951, Stats. 2022), which extended the right of a corporation incorporated under the General Corporation Law to hold a fully remote shareholder meeting for any reason through December 31, 2025, provided that the board provided a continuous live audiovisual feed of the meeting. And in 2023, the Legislature passed AB 231 (Chen, Ch. 115, Stats. 2023), which gave corporations incorporated under the Nonprofit Corporations Law and the Cooperative Corporation law the same authorization to hold fully remote meetings as those incorporated under the General Corporation Law, with the same December 31, 2025, sunset.

3. This bill allows specified California corporations to hold fully remote shareholder meetings with a live audiovisual feed on a permanent basis

This bill removes the December 31, 2025, sunset on the provisions allowing certain corporations to hold fully remote shareholder meetings without shareholder consent. The requirement that the corporation provide a live audiovisual feed for the duration of the meeting will remain in place. According to the sponsors:

This bill eliminates the December 31, 2025, sunset date applicable to these provisions. These provisions removed barriers to participation in corporate governance and have been beneficial. We are not aware of any problems due to the allowance of nonemergency remote meetings. This bill is a commonsense measure that is necessary to create a permanent solution.

Moreover, this bill is needed to avoid a last-minute bill introduced later (2025, rather than 2024) for California corporations to continue to hold such

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

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

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

nonemergency remote meetings. If a bill is not introduced until 2025, California corporations might only have two months' notice of the change (if signed by the Governor in October 2025). However, these corporations schedule their annual shareholder or member meetings significantly in advance of such meetings. Thus, waiting until late 2025 to confirm the change would undermine efficiency and effectiveness in the practice of such corporations.

This is the fifth remote shareholder meeting bill this Committee has heard in four years, and the Committee has not received opposition to any of them. Accordingly, although the sunsets do not expire for another year, there does not appear to be a reason to hold off on making these provisions permanent.

SUPPORT

California Lawyers Association, Nonprofit Organizations & Corporations Committees of the Business Law Section (sponsor)
California Water Association

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 231 (Chen, Ch. 115, Stats. 2023) permitted a corporation incorporated under the General Corporation Law to, in addition to providing an audiovisual remote meeting option, provide an audio-only participation method; and extended the shareholder remote meeting options available to general corporations to other types of corporations, subject to the same December 31, 2025, sunset.

AB 1780 (Chen, Ch. 951, Stats. 2022) authorized a corporation to send communications to a shareholder via email unless the shareholder expressly opted out, and authorized a corporation to hold fully remote shareholder meetings unless specifically prohibited by its articles of incorporation or bylaws, until January 1, 2026.

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.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 73, Noes 0)

Assembly Banking and Finance Committee (Ayes 8, Noes 0)
