

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

AB 1780 (Chen)
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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. This analysis contains proposed amendments clarifying that the provisions requiring a shareholder to opt into electronic transmissions do not apply to a remote shareholder meeting held in compliance with this bill's requirements and requiring 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

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).

corporations to conduct fully remote shareholder meetings without shareholder consent 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. Remote meetings conducted under this bill must be conducted through audiovisual means that provide a live feed to shareholders, and the corporation must provide means through which shareholders can participate in the meeting and record votes.

The bill's provisions will sunset on January 1, 2026. This measure would add 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. The amendments would continue to allow an audio-only option if there is also an in-person option or if all of the shareholders consent.

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

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

⁶ Corp. Code, § 600.

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.

4. Amendments

As noted above, this analysis contains proposed amendments to strengthen the bill in two key ways. First, the analysis proposes amendments to clarify that a remote shareholder meeting is not an electronic transmission by the corporation, to avoid disturbing the current law that requires a shareholder to opt into, rather than opt out of, email and other electronic communication from the shareholders. Second, the proposed amendments would require fully remote meetings, when opted for by the directors, to be conducted via audiovisual means. The proposed amendments are as follows, subject to any nonsubstantive changes Legislative Council may make:

Amendment 1

On page 3, modify lines 3-27 and add below line 27 as follows:

20. (a) (1)“Electronic transmission by the corporation” means 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 that 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) ~~delivered~~ to a recipient who has **provided an unrevoked consent not provided a written objection** 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. However, an electronic transmission by a corporation to an individual shareholder or member of the corporation who is a natural person, and if an officer or director of the corporation, only if communicated to the recipient in that person's capacity as a shareholder or member, is not authorized unless, in addition to satisfying the requirements of this section, 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) and** the procedures the recipient must use to **withdraw consent provide a written objection**.

(2) "Electronic transmission by the corporation" does not include a transmission of a meeting of shareholders held by remote means of communication pursuant to Section 600.

Amendment 2

Modify page 6, line 15, to page 7, line 37, as follows:

600. (a) (1) Meetings of shareholders may be held at any place within or without this state, or unless expressly prohibited by the articles of incorporation or bylaws, ~~at no place,~~ through remote audiovisual communication means as set forth in subdivision (e), in each case as may be stated in or fixed in accordance with the articles of incorporation or bylaws, or if not so stated or fixed, as determined by the board of directors. **Subject to any limitations in the articles or bylaws of the corporation, the board of directors may, in its sole discretion, determine that the meeting may be conducted, in whole or in part, by any one of the following methods:**

(A) Notwithstanding any written objection pursuant to subdivision (b) of Section 20, electronic transmission by and to the corporation (Sections 20 and 21).

(B) Electronic video screen communication, conference telephone, or other means of remote communication.

(2) Regardless of the method used, the meeting shall be subject to subdivision (e) and any guidelines and procedures that the board of directors may adopt.

(b) An annual meeting of shareholders shall be held for the election of directors on a date and at a time stated in or fixed in accordance with the bylaws. However, if the corporation is a regulated management company, a meeting of shareholders shall be held as required by the Federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). Any other proper business may be transacted at the annual meeting. For purposes of this subdivision, "regulated management company" means a regulated investment company as defined in Section 851 of the federal Internal Revenue Code.

(c) If there is a failure to hold the annual meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the organization of the corporation or after its last annual meeting, the superior court of the proper county may summarily order a meeting to be held upon the application of any shareholder after notice to the corporation giving it an opportunity to be heard. The shares represented at the meeting, either in person or by proxy, and entitled to vote thereat shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the articles or bylaws or in this division to the contrary. The court may issue any orders as may be appropriate, including, without limitation, orders designating the time **of the meeting, the and** place **of the meeting**, if any, **the remote**

means of communication for conducting the meeting, if any of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

(d) Special meetings of the shareholders may be called by the board, the chairperson of the board, the president, the holders of shares entitled to cast not less than 10 percent of the votes at the meeting, or any additional persons as may be provided in the articles or bylaws.

(e) (1) At the discretion of the board of directors, except where prohibited by the articles of incorporation or the bylaws, a meeting of the shareholders may be conducted, in whole or in part, by remote audiovisual means of communication. The means of communication must provide, at a minimum, a live audiovisual feed of the entire meeting, and the any of the following methods:

~~(A) Notwithstanding any written objection pursuant to subdivision (b) of Section 20, electronic transmission by and to the corporation (Sections 20 and 21).~~

~~(B) Electronic video screen communication, conference telephone, or other means of remote communication.~~

~~(2) Regardless of the method used, the corporation~~ shall implement reasonable measures that accomplish all of the following:

(A) 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.

(B) 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, electronic or telephonic means,~~ maintain a record of that vote or action in its books and records.

(C) Verify that each person participating remotely is a shareholder or proxyholder.

(f) (1) A meeting of the shareholders may be conducted by conference call or other means of audio-only communication to and from the corporation only if:

(A) The telephonic option is in addition to an in-person meeting; or

(B) All the shareholders consent to the audio-only meeting.

(2) A corporation holding an audio-only shareholder meeting pursuant to subdivision (e) must implement 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 conference telephone or other means audio-only communication, to maintain a record of that vote or action in its books and records, and (3) to verify that each person participating remotely is a shareholder or proxyholder.

(~~fg~~) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Amendment 3

Modify page 10, line 33, through page 7, line 14, as follows:

601. (a) Whenever shareholders are required or permitted to take any action at a meeting a written notice of the meeting shall be given not less than 10 (or, if sent by third-class mail, 30) nor more than 60 days before the date of the meeting to each shareholder entitled to vote thereat. That notice shall state the place **of the meeting, if any, the remote means of communication for conducting the meeting,** if any, ~~the~~ date and hour of the meeting, ~~the means of electronic transmission by and to the corporation (Sections 20 and 21), electronic video screen communication, conference telephone, or other means of remote communication, if any, by which shareholders may participate in that meeting,~~ and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the annual meeting, those matters that the board, at the time of the mailing of the notice, intends to present for action by the shareholders, but subject to the provisions of subdivision (f) any proper matter may be presented at the meeting for that action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the board for election.

(b) (1) Notice of a shareholders' meeting or any report shall be given personally, by electronic transmission by the corporation ~~(Section 20)~~, or by first-class mail, or, in the case of a corporation

Amendment 4

Modify page 12, line 12 through page 13, line 18 as follows:

(3) (A) Notice given by electronic transmission by the corporation under this subdivision shall be valid **only** if it complies with Section 20. Notwithstanding the

foregoing, notice shall not be given by electronic transmission by the corporation to a particular shareholder under this subdivision if both after either of the following **apply**:

(i) The corporation is unable to deliver two consecutive notices to the shareholder by that means.

(ii) The ~~corporation's~~ inability to so deliver those notices to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice provided, however, that the inadvertent failure to discover the inability shall not invalidate any meeting or other action.

(B) This paragraph shall not apply if notices are provided by electronic communication or other means of remote communication as permitted because of an emergency.

(c) Upon request in writing to the corporation addressed to the attention of the chairperson of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of shareholders, the officer forthwith shall cause notice to be given to the shareholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to that application. The court may issue orders as may be appropriate, including, without limitation, orders designating the time of the meeting, the and place of the meeting, if any, the remote means of conducting of the meeting, if any, the record date for determination of shareholders entitled to vote, and the form of notice.

(d) When a shareholders' meeting is adjourned to another time or place or remote means of communication pursuant to Section 600, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time of the meeting, the and place of the meeting, if any, and the remote means of conducting the meeting, if any, (and the means of electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication, if any, by which the shareholders may participate) are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

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)
