

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

AB 231 (Chen)
Version: January 12, 2023
Hearing Date: July 6, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Shareholders' meetings: remote communication

DIGEST

This bill permits 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 extends existing shareholder remote meeting methods to other types of corporations, including nonprofit corporations

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. And in 2022, the Legislature enacted AB 789 (Grayson, Ch. 12, Stats. 2022), which allowed California for-profit, nonprofit, and cooperative corporations to hold fully remote shareholder meetings without shareholder consent until June 30, 2022; in the same year, the Legislature enacted AB 1780 (Chen, Ch. 951, Stats. 2022), which extended – for for-profit corporations only – the authorization to hold a fully remote shareholder meeting without shareholder consent through December 31, 2025.

This bill permits specified nonprofit and cooperative corporations to hold fully remote shareholder meetings under the same terms as a for-profit corporation, subject to the same December 31, 2025, sunset. The bill also allows for-profit, nonprofit, and cooperative corporations to provide an audio-only means of participating in a remote meeting in addition to the required live audiovisual feed, provided that shareholders

retain the right to choose which means of participation they use and the corporation does not attempt to encourage one or the other.

This bill is sponsored by the Nonprofit Organizations Committee and the Corporations Committee of the Business Law Section of the California Lawyers Association, and is supported by the Anaheim Chamber of Commerce and the California Credit Union League. There is no known opposition. This bill was passed out by the Senate Banking and Financial Institutions Committee with a vote of 7-0.

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) Authorizes a corporation incorporated under the General Corporation Law to conduct a shareholder meeting in whole or in part through remote electronic means provided that the corporation implements specified measures to provide shareholders and proxyholders a reasonable opportunity to participate and vote on matters considered at the meeting. A de minimis disruption of the audiovisual feed does not require a corporation to end the meeting or render the corporation out of compliance with the law. (Corp. Code, § 600(e).)
- 3) Permits a corporation incorporated under the General Corporation Law to conduct a shareholder meeting pursuant to 2) solely through remote means only if one of the following is satisfied:
 - a) All of the shareholders consent to the remote meeting;
 - b) The board determines the remote meeting is necessary or appropriate because of emergency circumstances, as defined; or
 - c) The meeting is conducted on or before December 21, 2025, and includes a live audiovisual feed for the duration of the meeting. (Corp. Code, § 600(e).)
- 4) Establishes the Nonprofit Corporation Law, which authorizes the formation of a corporation for a range of purposes, including public, charitable, and religious purposes, on a not-for-profit basis. (Corp. Code, tit. 1, div. 2., §§ 5002 et seq.)
- 5) 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.)
- 6) Authorizes a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, and a cooperative corporation to conduct a

shareholder meeting in whole or in part under the same terms as 2); and to conduct its shareholder meeting solely through remote means only if one of the following is satisfied:

- a) All of the shareholders, members, or patrons consent to the remote meeting;
or
- b) The board determines the remote meeting is necessary or appropriate because of emergency circumstances, as defined. (Corp. Code, §§ 5510, 7510, 9411, 12460.)

This bill:

- 1) Authorizes a corporation incorporated under the General Corporation Law to provide for a shareholder meeting, in addition to a live audiovisual feed for remote participation, an audio-only means for a shareholder or proxyholder to participate, provided that the choice to participate via the audio-only means is made by the person, not the corporation, and the corporation does not impose any barriers to either mode of participation.
- 2) Authorizes, through December 31, 2025, a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, and a cooperative corporation to conduct an annual meeting remotely, including via the audio and audiovisual methods described in 1).
- 3) Requires a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, or a cooperative corporation to verify that a person who has voted – rather than participated – remotely is a member or proxyholder.

COMMENTS

1. Author's comment

According to the author:

This bill would allow for fully remote non-emergency member meetings for California nonprofit public benefit, mutual benefit and religious corporations and cooperative corporations, as is currently provided for non-emergency shareholder meetings for California for-profit corporations.

This bill would also permit for-profit corporations, nonprofit public benefit, mutual benefit and religious corporations, and cooperative associations to offer remote audiovisual and audio-only means of participation to shareholders, members and proxyholders and, if audio-only means is provided, grant each shareholder, member or proxyholder the right to choose whether to participate in the solely virtual audiovisual meeting via audiovisual or audio-only means,

and would prohibit the corporation from imposing any barriers on either mode of participation.

This bill would also require nonprofit and cooperative corporations to verify that a person who has voted remotely is a member or proxyholder, thereby aligning those corporations with the parallel shareholder requirement set forth in the General Corporation Law.

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. California corporations were unsure whether the omicron variant constituted an “emergency” under AB 663, so the order re-authorized California 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. Later that year, the Legislature passed AB 1780 (Chen, Ch. 951, Stats. 2022), which extended the

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).

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

right of a corporation incorporated under the General Corporation Law to hold a fully remote shareholder meeting for any reason through December 31, 2022.

3. This bill allows nonprofit and cooperative corporations to hold remote-only shareholder meetings under the same terms as a for-profit corporation and allows an audio-only meeting participation method to be provided in addition to an audiovisual method

AB 231 contains three major changes to remote annual meeting participation, while maintaining the existing December 31, 2025, sunset date on the authorization for fully remote shareholder meetings at the discretion of the board.

First, this bill allows for an audio-only option (such as a call-in option) for a corporation's remote shareholder meeting. This method of participation cannot be in lieu of any audio-visual component, and a participant's use of audio participation must be their choice and not the corporation's.

Second, AB 231 extends to nonprofit and cooperative corporations all of the remote shareholder flexibility that AB 1780 and this bill provide to for-profit corporations. Nonprofit public benefit corporations, nonprofit mutual benefit corporations, and cooperative corporations all have annual member meetings, so this bill creates consistency across corporation types.

Finally, under current law, a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, or a cooperative corporation conducting a remote member meeting must verify that a person who is participating is a member of proxyholder. By contrast, a for-profit corporation must verify this information only for a person who has voted. AB 231 extends this approach to these nonprofit entities.

4. Arguments in support

According to the sponsors of the bill:

Challenges in accessibility that arose as a result of the COVID-19 pandemic demonstrated that provisions providing some flexibility for meetings of members of a California nonprofit or cooperative corporation during an emergency do not adequately recognize the need for such flexibility outside the context of an emergency. Such non-emergency flexibility is, however, currently provided for fully remote shareholder meetings of California for-profit corporations...

This bill treats member meetings of nonprofit and cooperative corporations the same way that it (and current law) treats shareholder meetings of for-profit corporations. The bill also clarifies that, notwithstanding the absence of consent

from shareholders or members, as applicable, if the meeting is conducted on or before December 31, 2025, a corporation may offer, in addition to a remote audiovisual feed, an audio-only means by which a shareholder, member, or proxyholder may participate, provided that the choice between participating via audiovisual or via audio-only means is made by the shareholder, member, or proxyholder and the corporation does not impose any barriers to either mode of participation.

SUPPORT

California Lawyers Association, Business Law Section, Nonprofit Organizations Committee and Corporations Committee (sponsors)
Anaheim Chamber of Commerce
California Credit Union League

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

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.

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 7, Noes 0)
Assembly Floor (Ayes 76, Noes 0)
Assembly Banking and Finance Committee (Ayes 12, Noes 0)
