

Date of Hearing: April 1, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2908 (Chen) – As Introduced February 15, 2024

SUBJECT: Shareholders' meetings: remote communication

SUMMARY: Makes permanent the authority for corporations to conduct their annual shareholder or member meetings remotely.

Specifically, **this bill:**

- 1) Removes the December 31, 2025 sunset date for the authority of a corporation to conduct its annual shareholder meeting entirely by electronic transmission.
- 2) Removes the December 31, 2025 sunset date for similar authority granted to a nonprofit mutual benefit corporation, nonprofit religious corporation, and cooperative corporation

EXISTING LAW:

- 1) Establishes formation and governance requirements related to corporations pursuant to the General Corporation Law.
- 2) Authorizes a corporation (Corp. Code Section 600) to conduct its annual meeting, in whole or in part, by electronic transmission by and to the corporation, electric video screen communication, conference telephone, or other means or remote communication if the corporation implements specified reasonable measures to provide shareholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders. Prohibits a corporation from conducting a shareholder meeting solely by electronic transmission unless one or more of the following conditions apply:
 - a) All of the shareholders consent.
 - b) The board determines it is necessary or appropriate because of an emergency, as defined.
 - c) The meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the direction of the meeting.
- 3) Authorizes a nonprofit corporation (Corp. Code Section 5510), a nonprofit mutual benefit corporation (Corp. Code Sec. 7510), a nonprofit religious corporation (Corp. Code Sec. 9411), and a cooperative corporation (Corp. Code Sec. 12460) to conduct its annual meeting, in whole or in part, by electronic transmission by and to the corporation, electric video screen communication, conference telephone, or other means or remote communication if the corporation implements specified reasonable measures. Prohibits a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, and a cooperative corporation from conducting a shareholder or member meeting solely by electronic transmission unless one or more of the following conditions apply:
 - a) All of the shareholders consent.

- b) The board determines it is necessary or appropriate because of an emergency, as defined.
- c) The meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the direction of the meeting.

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) Purpose

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 and some recent history

Shareholder meetings, mandated by state law, serve as a vital conduit for shareholders to communicate with the leadership of an organization. In the case of for-profit corporations, owning a share of a company confers upon a shareholder the right to vote on significant decisions that shape the future of the corporation. Annual shareholder meetings can cover the election of board members, approval of crucial hiring or selection decisions such as appointing an auditor, voting on compensation plans, and consideration of any proposals put forth by shareholders. Prior to recent policy changes, state law required corporations to hold their annual shareholder meetings at a physical venue unless all shareholders unanimously consented to a remote-only meeting, a hurdle that was, practically speaking, nearly impossible to clear.

In response to the COVID-19 pandemic and concerns about public health, 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. And, AB 663 (Chen), Chapter 523, Statutes of 2020, loosened the rules around when a shareholder meeting could be held remotely, especially during times of emergency. Among many of the changes enacted by AB 663, a shareholder meeting could now be conducted fully remotely if the board determined it was necessary because of an emergency, as defined.

While AB 663 provided much-needed flexibility for a corporation seeking to hold a remote shareholder meeting during an emergency, the nature of the COVID-19 pandemic continued to generate confusion for companies. Under AB 663, a qualified “emergency” that triggered the possibility of an all-remote shareholder meeting is one that would prevent a quorum of the corporation’s board of directors from readily convening. During the pandemic, corporations believed it was possible to readily convene a board, but doing so may not be appropriate or good public health practice.

In response to the above concern, the Governor issued Executive Order (EO) N-23-21 on December 16, 2021. That EO, among other things, allowed for additional remote shareholder meetings until March 31, 2022. In response to the March 31, 2022 expiration of remote shareholder meetings, as granted by the EO, the Legislature passed AB 769 (Grayson), Chapter 12, Statutes of 2022, to allow additional flexibility until June 30, 2022.

Even after the passage of AB 769, the Legislature was not done tinkering with this issue. AB 1780 (Chen), Chapter 951, Statutes of 2022, authorized 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. AB 231 (Chen), Chapter 115, Statutes of 2023, extended this temporary authority to other types of corporations, including nonprofit and cooperative corporations.

3) **What are the concerns with remote shareholder meetings?**

The legislative history reviewed above demonstrates the Legislature’s hesitant approach thus far in loosening rules around remote shareholder meetings. While companies have argued that remote shareholder meetings increase participation, reduce costs, and expand opportunities for those with disabilities, there remain concerns that remote-only meetings undermine a shareholder’s ability to exercise their rights to hold boards of directors accountable. It is generally assumed that in-person meetings allow for more accountability and spontaneity and that a shareholder’s success in confronting company leadership directly is made possible by being in the same room.

Moreover, shareholder meetings also provide other stakeholders a chance to use in-person events as a way to engage a corporation’s board. Whether it comes from students¹ or

¹ Ashley Smith, “Rally for Recognition,” Inside Higher Ed (July 28, 2015), available at <https://www.insidehighered.com/news/2015/07/28/student-advocacy-groups-protest-itt-tech-shareholders-hold-annual-meeting>.

environmental activists² or workers³, protests and displays of activism at the location of a shareholder meeting have become a key strategy to help ensure certain voices are heard.

Yet, there are some early indications that activism – from both shareholders and outside stakeholders – can still be successful in a remote environment. For example, in May 2021 activist shareholder and hedge fund Engine No. 1 unseated Exxon Mobil Corp board members at the company’s annual shareholder meeting, which was done in part to force the company to reckon with its climate change policies.⁴ Moreover, outside groups such as labor activists have still staged protests outside company headquarters on the days of remote shareholder meetings, even if there was nobody physically nearby. In May 2023, drivers for rideshare company Uber conducted nationwide protests over wage conditions, and these protests were timed to occur during Uber’s annual meeting.⁵

4) **What does this bill do?**

AB 2908 proposes to settle the multi-year debate over the validity of remote shareholder meetings by removing the December 31, 2025 sunset date for the existing authority to conduct these meetings entirely remotely, so long as the companies and organizations comply with the law’s procedural requirements. This would make this authority permanent and would allow companies to plan their 2025 meetings with a better understanding of the format and venue expectations. Despite the concerns outlined above, the committee has not received any negative feedback about how remote shareholder or member meetings have worked so far.

5) **Support**

AB 2908 is sponsored by the California Lawyers Association, Nonprofit Organizations Committee and Corporations Committee of the Business Law Section, who writes:

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 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

² Alex Ruppenthal, “Protestors Disrupt Chase Shareholder Meeting Over Financing of Controversial Pipeline,” WTTW (May 21, 2019), available at <https://news.wttw.com/2019/05/21/protesters-disrupt-chase-shareholder-meeting-over-financing-controversial-pipeline>.

³ Shirin Ghaffary, “Google employees protest at Alphabet’s shareholder meeting,” Vox (June 19, 2019), available at <https://www.vox.com/recode/2019/6/19/18691870/google-employees-activists-protest-alphabet-shareholder-meeting>.

⁴ Jennifer Hiller and Svea Herbst-Bayliss, “Exxon loses board seats to activist hedge fund in landmark climate vote,” Reuters (May 26, 2021), available at: <https://www.reuters.com/business/sustainable-business/shareholder-activism-reaches-milestone-exxon-board-vote-nears-end-2021-05-26/>.

⁵ <https://missionlocal.org/2023/05/hundreds-of-drivers-rally-ahead-of-uber-shareholder-meeting/>

Governor in October 2025). However, these corporations schedule their annual shareholder or member meetings significantly in advance of such meetings.

REGISTERED SUPPORT / OPPOSITION:

Support

California Lawyers Association, Business Law Section (Sponsor)
California Credit Union League
California Water Association

Opposition

None on file.

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