

Date of Hearing: January 10, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 769 (Grayson) – As Amended January 4, 2022

SUBJECT: Corporations: meetings and filings

SUMMARY: Clarifies the conditions under which a corporation may hold an all-remote shareholder meeting and makes assorted technical changes in the Corporations Code.

Specifically, **this bill:**

- 1) Allows a meeting of the shareholders to be conducted, in whole or in part, by electronic transmission if the meeting is conducted during a state of emergency related to an epidemic, pandemic, or disease outbreak, provided all other required conditions are met.
- 2) Changes the required timing of a renewal statement of information for finders, from 30 days following the anniversary of the finder's initial statement to on, or before, December 31 following the anniversary of the finding of the finder's initial statement of information.

EXISTING LAW:

- 1) Prohibits a corporation from conducting a shareholder meeting solely by electronic transmission unless either all of the shareholders consent or the board determines it is necessary or appropriate because of an emergency, as defined. (Section 600 of the Corporations Code)
- 2) Defines an emergency as any of the following events or circumstances as a result of which, and only so long, a quorum of the corporation's board of directors cannot be readily convened for action:
 - (A) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, epidemic, pandemic, or disease outbreak, or, regardless of cause, any fire, flood, or explosion.
 - (B) An attack on or within this state or on the public security of its residents by an enemy of this state or on the nation by an enemy of the United States of America, or upon receipt by this state of a warning from the federal government indicating that any such enemy attack is probable or imminent.
 - (C) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations.
 - (D) A state of emergency proclaimed by the Governor of this state, including any person serving as Governor in accordance with Section 10 of Article V of the California Constitution and Section 12058 of the Government Code, or by the President of the United States of America. (Section 207 of the Corporations Code.)

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

COMMENTS:

1) PURPOSE

This bill is an author-sponsored measure to make assorted changes in the Corporations Code. The most substantive of these changes is to more easily allow remote shareholder meetings during a pandemic.

2) BACKGROUND

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. 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 can now be conducted fully remotely if the board determines it is necessary or appropriate because of an emergency, as defined. In such emergency situations, a shareholder meeting can be held remotely even if one shareholder withholds consent.

3) MORE CLARIFICATION IS NEEDED

While AB 663 provided much-needed flexibility for a corporation seeking to hold its annual shareholder meeting remotely during an emergency, the nature of the COVID-19 pandemic continues to generate confusion. Under current law, a qualified “emergency” that triggers the possibility of an all-remote shareholder meeting is an emergency (such as a fire, pandemic, terrorist attack, or other specified event) that, as a result of which, a quorum of the corporation’s board of directors “cannot be readily convened for action.” In the current stage of the pandemic, it may be possible to readily convene a board, even if it may not be appropriate or safe to do so.

In response to this concern, the Governor issued Executive Order (EO) N-23-21 on December 16, 2021. That EO, among other things, allows for additional remote shareholder meetings, ordering that:

To the extent that Corporations Code section 207(i)(5) requires that a quorum of a corporation's board of directors cannot be readily convened in order for there to exist an emergency as defined therein, that requirement is waived, from the date of this Order until March 31, 2022, as to any corporation conducting shareholder meetings using remote technology pursuant to Corporations Code section 600(e), as amended by Assembly Bill 663, in -reliance on the proclaimed State of Emergency related to the COVID-19 pandemic.

This bill further clarifies the issue by specifying that a pandemic-related emergency is a qualifying event that allows a company to conduct a remote shareholder meeting, regardless of whether the board can be readily convened for action or not.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

Analysis Prepared by: Luke Reidenbach / B. & F. / (916) 319-3081