

Date of Hearing: March 20, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 231 (Chen) – As Introduced January 12, 2023

SUBJECT: Shareholders' meetings: remote communication

SUMMARY: Modifies the method of remote shareholder meetings to allow additional audio-only participation methods and extends existing shareholder remote participation methods to other types of corporations, including nonprofit corporations.

Specifically, **this bill:**

- 1) Authorizes a for-profit corporation to offer, in addition to a remote audiovisual feed, an audio-only means by which a shareholder or proxyholder may participate, so long as the choice to participate via audio-only means is made by the person and not the corporation and the corporation does not impose any barriers to either mode of participation.
- 2) Authorizes, until 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 above.
- 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.

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.

FISCAL EFFECT: None. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS:

1) **Purpose**

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 require 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 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) **Background**

Shareholder or member meetings, which are required by state law, are a key mechanism for shareholders or members to express themselves to the organization's leadership. For for-profit corporations, buying a share of a company grants a shareholder, in certain cases, voting power on major decisions affecting the future of the corporation. A shareholder meeting often includes an election of board members, approval of key hiring or selection decisions such as an auditor, votes on compensation plans, as well as any proposals that shareholders may put forward. Prior to recent policy changes, state law required corporations to hold their annual shareholder meetings at a physical location unless the corporation received unanimous consent from all shareholders to conduct a remote-only meeting.

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 could be conducted fully remotely if the board determined it was necessary or appropriate because of an emergency, as defined.

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 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.

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

The legislative history in Comment #2 highlights how the Legislature has adopted a conservative approach to softening the 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 climate activists have still staged protests outside company headquarters on the days of remote shareholder meetings, even if there was nobody physically nearby.⁵

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

AB 231 contains three major changes to remote annual meeting participation. Importantly, the existing December 31, 2025 sunset date for current law’s flexibility remains in place.

First, this bill allows for a call-in option for a corporation’s remote shareholder meeting. This “audio only” 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 entities 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, and AB 231’s provisions create 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 or proxyholder. In contrast, for a for-profit corporation must verify this for a person who has voted. AB 231 extends this approach to these nonprofit entities.

4) **Support.**

The California Credit Union League writes in support of this bill, arguing that “as we move forward and beyond the COVID-19 pandemic in this increasingly digital world, AB 231 will allow credit unions to continue operating with greater efficiency and practicality by extending the option for virtual meetings.”

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 “Activists protest AIG’s Support for Fossil Fuels During Company Shareholder Meeting,” Public Citizen (May 12, 2021), available at <https://www.citizen.org/news/activists-protest-aigs-support-for-fossil-fuels-during-company-shareholder-meeting/>.

REGISTERED SUPPORT / OPPOSITION:

Support

California Credit Union League

Opposition

None on file.

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