

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

AB 769 (Grayson)
Version: March 10, 2022
Hearing Date: March 21, 2022
Fiscal: No
Urgency: Yes
AWM

SUBJECT

Corporations: meetings: state of emergency

DIGEST

This bill authorizes specified corporations incorporated in California to hold fully remote shareholder meetings on or before June 30, 2022.

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. Now, however, it appears that the pandemic is waning in many parts of the state, allowing a slow return to normalcy.

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. This bill would effectively extend the executive order, by allowing specified California corporations to hold fully remote shareholder meetings until June 30, 2022.

This bill is sponsored by the author and supported by the Sempra Energy Utilities (San Diego Gas & Electric and Southern California Gas Company). This bill is scheduled to be heard by the Senate Banking and Financial Institutions Committee immediately prior to being heard by this Committee. This bill contains an urgency clause

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the General Corporation Law, the Nonprofit Public Benefit Corporation Law, Nonprofit Mutual Benefit Corporations Law, the Nonprofit Religious Corporation Law, and the Cooperative Corporation Law to regulate select types of corporations incorporated in California (collectively, the Corporations Laws). (Corp. Code, div. 1, §§ 100 et seq.; *id.*, div. 2, §§ 5000 et seq.; *id.*, div. 3, part 2, §§ 12200 et seq.)
- 2) Authorizes a corporation incorporated under the Corporations Laws (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, 5510, 7150, 9411, 12460.)
- 3) Authorizes a corporation to hold a shareholder meeting exclusively through electronic remote means only when:
 - a) All shareholders consent to the remote meeting; or
 - b) The board determines it is necessary or appropriate because of an emergency, as defined. (Corp. Code, §§ 600(e), 5510(f), 7510(f), 9411(f), 12460(f).)
- 4) Defines an “emergency,” for purposes of allowing the board to determine whether it may hold a fully remote shareholder meeting, to mean any of the following events or circumstances as a result of which, and only as long as, 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, or drought, or, regardless of cause, any fire, flood, or explosion.
 - b) An attack on this state or 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 an 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 a governor or by the President. (Corp. Code, §§ 207(i)(5), 5140(n)(5), 7140(m)(5).)

Existing Executive Orders:

- 1) In light of the evolving pandemic and the emergence of new COVID-19 variants, waive the requirement that a quorum of the board of directors be unable to convene

as a result of an emergency in order for there to be an emergency that allows a fully remote corporate meeting, until March 31, 2022. (Governor’s Exec. Order No. N-23-21 (Dec. 16, 2021).)

This bill:

- 1) Authorizes corporations to hold fully remote shareholder meetings, without shareholder consent or the inability for a quorum of the board of directors to convene as the result of an emergency, through June 30, 2022.
- 2) Includes an urgency clause.

COMMENTS

1. Author’s comment

According to the author:

AB 769 protects public health by extending the state’s current authorization of remote shareholder meetings until June 30, 2022. Over the past two years, both the Legislature and the Newsom Administration have taken action to give companies the much-needed flexibility to conduct their shareholder meetings remotely in the midst of the COVID-19 pandemic. The most recent Executive Order will expire on March 31, 2022, but additional caution is warranted in the aftermath of the Omicron-related spike in cases. Moreover, existing rules meant to protect shareholders, such as that a company must provide members a reasonable opportunity to participate and to vote on matters, will remain in place. AB 769 is a prudent and tailored approach that promotes good public health practices.

2. Current law and executive orders authorize a California corporation to hold a fully remote shareholder meeting with consent of the shareholders, during an emergency that prevents a quorum of directors from convening in person, or until March 31, 2022

Prior to the COVID-19 pandemic, California corporations¹ were not authorized to hold annual shareholder meetings entirely through remote electronic means absent consent from all of their shareholders. The Corporations Laws did (and do), however, authorize hybrid meetings – meetings wherein the board of directors had to convene a quorum at

¹ “California corporations” refers to corporations incorporated under the General Corporation Law (Corp. Code, div. 1, §§ 100 et seq.), the Nonprofit Benefit Corporation Law (*id.*, div. 2, pt. 2, § 5110 et seq.), the Nonprofit Mutual Benefit Corporations Law (*id.*, div. 2, pt. 3, §§ 7110 et seq.), the Nonprofit Religious Corporation Law (*id.*, div. 2, pt. 4, §§ 9110 et seq.), and the Cooperative Corporation Law (*id.*, div. 3, pt. 2, §§ 12200 et seq.).

an in-person location, but shareholders had the option to attend remotely, subject to certain technical and recordkeeping requirements.²

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.³ The executive orders were allowed to expire on September 30, 2021, in light of what appeared to be the waning pandemic.⁴ 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.⁵

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 corporations to conduct fully remote shareholder meetings without shareholder consent until March 31, 2022.⁶ The executive order is set to expire on that date.

3. This bill extends the time in which a California corporation may hold a fully remote shareholder meeting, without shareholder consent or the inability to convene a quorum of directors due to an emergency, until June 30, 2022

This bill authorizes a California corporation to hold a fully remote shareholder meeting at the election of the board, without consent of the shareholders, until June 30, 2022. The bill contains an urgency clause, allowing it to take effect immediately if and when it is signed by the Governor.

By providing this short-term extension for California corporations, AB 769 adds to the patchwork approach toward requiring institutions to resume in-person proceedings. Most of California’s schools returned to at least part-time in-person instruction in the spring of 2021 – encouraged by legislation that created funding incentives for returning in-person by April 1, 2021.⁷ And while local public bodies covered by the Brown Act⁸ may continue meeting remotely until 2024, as long as there is a state of emergency or a

² Corp. Code, §§ 600, 5510, 7150, 9411, 12460.

³ See Governor’s Exec. Order No. N-40-20 (Mar. 30, 2021); Governor’s Exec. Order No. N-80-20 (Sept. 23, 2020).

⁴ See Governor’s Exec. Order No. N-08-21 (June 11, 2021).

⁵ AB 663 (Chen, Ch. 523, Stats. 2021).

⁶ See Governor’s Exec. Order No. N-23-21 (Dec. 21, 2021).

⁷ See AB 86 (Committee on Budget, Ch. 10, Stats. 2021).

⁸ Gov. Code, tit. 5, div. 2, pt. 1, ch. 9, §§ 54950 et seq.

recommendation for social distancing,⁹ state public bodies covered by the Bagley-Keene Open Meeting Act¹⁰ and state university bodies covered by the Gloria Romero Open Meetings Act of 2000¹¹ will be required to return to in-person or hybrid meetings on April 1, 2022.¹² Within the state judiciary, Chief Justice Tani G. Cantil-Sakauye recently rescinded her remaining emergency orders effective April 30, 2022, and the Judicial Council of California voted on March 11, 2022, to sunset its emergency rules on June 30, 2022.¹³

4. Arguments in support

According to bill supporter Sempra Energy Utilities:

[T]he Governor’s COVID-19 emergency executive order that allows remote shareholder meetings to occur for safety reasons without obtaining the written consent of each individual shareholder, which is a near impossibility for public companies, expired March 13, 2022 [*sic*]. Sempra Energy’s [the parent company of Sempra Energy Utilities] next annual shareholder meeting is scheduled for mid-May 2022. Given the unpredictable nature of this pandemic and society’s readjustment to in-person work and meetings, it is prudent to allow remote shareholder meetings to occur for a period of time after the executive order expires.

SUPPORT

Sempra Energy Utilities

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1780 (Chen, 2022) authorizes California general corporations to hold fully remote shareholder meetings at the election of the board and removes the requirements for either shareholder consent or an emergency. AB 1780 is pending before the Assembly Banking and Finance Committee.

⁹ *Id.*, § 54953; see AB 361 (Robert Rivas, Ch. 165, Stats. 2021).

¹⁰ Gov. Code, tit. 2, div. 3, art. 9, §§ 11120 et seq.

¹¹ Ed. Code, tit. 3, div. 8, pt. 55, ch. 3, art. 1.5, §§ 89305 et seq.

¹² Governor’s Exec. Order No. N-1-22 (Jan. 5, 2022).

¹³ Corren, California Courts Newsroom, Press Release: Judicial Council Votes to Retire Remaining Emergency Rules (Mar. 11, 2022), <https://newsroom.courts.ca.gov/news/judicial-council-votes-retire-remaining-emergency-rules> (last visited Mar. 16, 2022).

Prior Legislation:

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 (vote unknown as of the publication of this analysis)

Assembly Floor (Ayes 61, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Banking and Finance Committee (Ayes 11, Noes 0)
