

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 138
Judiciary Committee Substitute Adopted 3/9/21

Short Title: Allow Remote Shareholder Meetings.

(Public)

Sponsors:

Referred to:

February 24, 2021

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE SHAREHOLDER MEETINGS HELD SOLELY BY MEANS OF
REMOTE COMMUNICATION AND TO MAKE RELATED MODIFICATIONS TO THE
BUSINESS CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-7-01 reads as rewritten:

"§ 55-7-01. Annual meeting.

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) ~~Annual~~ Unless the board of directors determines to hold the meeting solely by means of remote communication in accordance with G.S. 55-7-09(c), annual shareholders' meetings may be held (i) in or out of this State at the place stated in or fixed in accordance with the bylaws. If bylaws, or (ii) if no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

...."

SECTION 2. G.S. 55-7-02 reads as rewritten:

"§ 55-7-02. Special meeting.

...

(c) ~~Special~~ Unless the board of directors determines to hold the meeting solely by means of remote communication in accordance with G.S. 55-7-09(c), special shareholders' meetings may be held (i) in or out of this State at the place stated in or fixed in accordance with the bylaws. If bylaws, or (ii) if no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

...."

SECTION 3. G.S. 55-7-05 reads as rewritten:

"§ 55-7-05. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time, and ~~place~~ place, if any, of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to G.S. 55-7-09 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless this Chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

...

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, if any, notice need not be given of the new date,



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time, or ~~place~~ place, if any, if the new date, time, or place is following are announced at the meeting before ~~adjournment~~ adjournment:

(1) The new date, time, or place, if any.

(2) If the meeting is to be continued solely by means of remote communication, a description of the means of remote communication.

If a new record date for the adjourned meeting is or must be fixed under G.S. 55-7-07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

(f) After a public corporation has notified shareholders of the date, time, and place of an annual or special shareholders' meeting in accordance with subsection (a) of this section, further notification in accordance with subsection (a) of this section is not required if all of the following apply:

(1) A governmental order restricting travel or group gatherings applicable to the place of the shareholders' meeting or public corporation's principal office is in effect and is anticipated in good faith by the board of directors to be in effect at the date and time set forth in the initial notification, including by an anticipated extension of an existing order.

(2) The public corporation's board of directors determines that the shareholders' meeting is instead to be held solely by means of remote communication in accordance with G.S. 55-7-09(c) at the same date and time set forth in the initial notification or at a different date and time.

(3) The public corporation (i) promptly issues a press release for national dissemination announcing the determination of its board of directors that the shareholders' meeting is to be held solely by means of remote communication and describing the means of remote communication to be used and providing the date and time of the shareholders' meeting to be held solely by means of remote communication and (ii) files the press release with the Securities and Exchange Commission as close to the time the press release is issued as practicable and approximately contemporaneously posts such press release to its corporate website."

SECTION 4. G.S. 55-7-09 reads as rewritten:

"§ 55-7-09. Remote participation in ~~meetings~~ meetings; meetings held solely by remote participation.

(a) To the extent authorized by a corporation's board of directors, shareholders of any class or series designated by the board of directors may participate in any meeting of shareholders by means of remote communication. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication ~~shall be~~ are deemed present and may vote at ~~such a~~ the meeting if the corporation has implemented reasonable measures to do all of the following:

(1) Verify that each person participating remotely is a shareholder.

(2) Provide each shareholder participating remotely a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

(c) Unless shareholders' meetings held solely by means of remote communication are prohibited by the articles of incorporation or the bylaws, the board of directors may, in its sole discretion, determine that any meeting of shareholders shall not be held at any place and shall instead be held solely by means of remote communication, but only if the corporation implements the measures specified in subsection (b) of this section."

SECTION 5. G.S. 55-7-20 reads as rewritten:

"§ 55-7-20. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list ~~must~~ shall be arranged by voting group ~~(and within each voting group group,~~ by class or series of ~~shares)~~ shares within each voting group, and shall show the address of and number of shares held by each shareholder.

(b) The shareholders' list ~~must~~ shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, (i) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held, held or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to the list is provided with the notice of the meeting. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. A shareholder, personally or by or with his ~~the shareholder's~~ representative, is entitled on written demand to inspect and, subject to the requirements of G.S. 55-16-02(c), to copy the list, during regular business hours and at ~~his~~ the shareholder's expense, during the period it is available for inspection.

(c) ~~The~~ If the meeting is to be held at a place, the corporation shall make the shareholders' list available at the meeting, and any shareholder, personally or by or with ~~his~~ the shareholder's representative, is entitled to inspect the list at any time during the meeting or any adjournment. ~~The~~ If the meeting is to be held at a place, the corporation is not required to make the list available through electronic or other means of remote communication to a shareholder or proxy attending the meeting by remote communication pursuant to G.S. 55-7-09. If the meeting is to be held solely by means of remote communication, then the list shall also be open to inspection during the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

(d) If the corporation refuses to allow a shareholder or ~~his~~ the shareholder's representative to inspect the shareholders' list before or at the ~~meeting (or meeting,~~ or copy the list as permitted by subsection ~~(b))~~ (b), the superior court of the county where a corporation's principal office ~~(or, if none in this State, its registered office)~~ is located, or, if the corporation has no principal office in this State, the superior court of the county where the corporation's registered office is located, on application of the shareholder, after notice is given to the corporation, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting."

SECTION 6. G.S. 55-10-22 reads as rewritten:

"§ 55-10-22. Bylaw increasing quorum or voting requirement for directors, directors or prohibiting a meeting of shareholders solely by remote participation.

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors or that prohibits a meeting of shareholders solely by means of remote communication may be amended or ~~repealed~~ repealed as follows:

(1) If originally adopted by the shareholders, only by the shareholders, unless amendment or repeal by the board of directors is permitted pursuant to subsection ~~(b))~~ (b) of this section.

(2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) ~~A~~The following applies to a bylaw referred to in subsection ~~(a)-(a)~~ of this section.

(1) ~~May-It shall~~ not be adopted by the board of directors by a vote less than a majority of the directors then in ~~office, and~~office.

(2) ~~May-It shall~~ not itself be amended by a quorum or vote of the directors less than the quorum or vote therein prescribed or prescribed by the shareholders pursuant to subsection ~~(b)-(b)~~ of this section."

SECTION 7. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Revised Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 8. This act is effective when it becomes law and applies to shareholder meetings noticed on or after that date.