

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 410
Judiciary Committee Substitute Adopted 4/20/21

Short Title: Nonprofit Electronic Business/Remote Meetings.

(Public)

Sponsors:

Referred to:

March 31, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO CONDUCT BUSINESS
3 ELECTRONICALLY AND HOLD REMOTE MEETINGS, EXCEPT AS LIMITED BY
4 THE NONPROFIT, AND TO MAKE TECHNICAL CHANGES IN THE SURROUNDING
5 LANGUAGE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 55A-1-40(26) reads as rewritten:

8 **"§ 55A-1-40. Chapter definitions.**

9 In this Chapter unless otherwise specifically provided:

10 ...

11 (26) "Vote" includes authorization by written ballot and written consent, including
12 through an electronic voting system or electronic ballot and electronic
13 consent."

14 **SECTION 2.** G.S. 55A-1-70 reads as rewritten:

15 **"§ 55A-1-70. Electronic transactions.**

16 (a) A corporation may conduct a transaction by electronic means, except as limited by its
17 articles of incorporation or bylaws or by action of its board of directors.

18 (b) Members who wish to communicate and conduct business with a corporation by
19 electronic means shall first designate the email address to be used for communication and
20 business between the member and the corporation and shall provide any other information
21 required by the corporation to facilitate communication and business conducted between the
22 member and the corporation. The corporation shall inform the members on how to designate an
23 email address, of any additional information the corporation requires and how to provide it, and
24 on how to update an email address and other required information previously provided.

25 (c) For purposes of applying Article 40 of Chapter 66 of the General Statutes to
26 transactions under this Chapter, a corporation ~~may agree that conducts an electronic transaction~~
27 in accordance with this section is deemed to have agreed to conduct a the transaction by electronic
28 ~~means through provision in its articles of incorporation or bylaws or by action of its board of~~
29 ~~directors means."~~

30 **SECTION 3.(a)** G.S. 55A-2-07 reads as rewritten:

31 **"§ 55A-2-07. Emergency bylaws.**

32 ...

33 (d) An emergency exists for purposes of this section if ~~a quorum of the corporation's~~
34 ~~directors cannot readily be assembled because of some catastrophic event.~~ a natural or man-made
35 disaster impedes the ability of the corporation's board of directors or members to comply with
36 one or more provisions of the corporation's bylaws."



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1 **SECTION 3.(b)** G.S. 55A-3-03(d) reads as rewritten:

2 "**§ 55A-3-03. Emergency powers.**

3 ...

4 (d) An emergency exists for purposes of this section if a ~~quorum of the corporation's~~
5 ~~directors cannot readily be assembled because of some catastrophic event, natural or man-made~~
6 ~~disaster impedes the ability of the corporation's board of directors or members to comply with~~
7 ~~one or more provisions of the corporation's bylaws.~~"

8 **SECTION 4.** G.S. 55A-7-01 reads as rewritten:

9 "**§ 55A-7-01. Annual and regular meetings.**

10 (a) A corporation having members with the right to vote for directors shall hold a meeting
11 of ~~such the~~ members annually.

12 (b) A corporation with members may hold regular membership meetings at the times
13 stated in or fixed in accordance with the bylaws.

14 (c) ~~Annual~~ Unless the board of directors determines to hold the meeting solely by means
15 of remote communication in accordance with G.S. 55A-7-09(c), annual and regular membership
16 meetings may be held in or out of this State at the place stated in or fixed in accordance with the
17 bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular
18 meetings shall be held at the corporation's principal office.

19 "

20 **SECTION 5.** G.S. 55A-7-02 reads as rewritten:

21 "**§ 55A-7-02. Special meeting.**

22 (a) A corporation with members shall hold a special meeting of ~~members;~~ members in
23 any of the following circumstances:

24 (1) On call of its board of directors or the person or persons authorized to do so
25 by the articles of incorporation or ~~bylaws; or~~ bylaws.

26 (2) Within 30 days after the holders of at least ten percent (10%) of all the votes
27 entitled to be cast on any issue proposed to be considered at the proposed
28 special meeting sign, date, and deliver to the corporation's secretary one or
29 more written demands for the meeting describing the purpose or purposes for
30 which it is to be held.

31 ...

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

37 "

38 **SECTION 6.** G.S. 55A-7-04 reads as rewritten:

39 "**§ 55A-7-04. Action by written consent.**

40 (a) Action required or permitted by this Chapter to be taken at a meeting of members may
41 be taken without a meeting if the action is taken by all members entitled to vote on the action.
42 The action shall be evidenced by one or more written consents describing the action taken, signed
43 before or after such action by all members entitled to vote ~~thereon, on the action,~~ and delivered
44 to the corporation for inclusion in the minutes or filing with the corporate records. ~~To the extent~~
45 ~~the corporation has agreed pursuant to G.S. 55A-1-70, Except as limited by the articles of~~
46 incorporation or bylaws, a member's consent to action taken without a meeting may be in
47 electronic form and delivered by electronic means.

48 "

49 **SECTION 7.** G.S. 55A-7-05 reads as rewritten:

50 "**§ 55A-7-05. Notice of meeting.**

(a) A corporation shall give notice of meetings of members by any means that is fair and reasonable and consistent with its bylaws.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are ~~considered; provided, however, that~~ considered. However, notice of matters referred to in subdivision (c)(2) of this section shall be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable ~~if~~ if it conforms to all of the following:

(1) The corporation gives notice to all members entitled to vote at the meeting of the ~~place, place, if any, date, and time of each annual, regular, and special meeting of members no fewer than 10, or, if notice is mailed by other than first class, registered or certified mail, no fewer than 30, nor more than 60 days before the meeting date;~~ date.

(2) Notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members under G.S. 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or ~~55A-14-02; and~~ 55A-14-02.

(3) Notice of special meeting includes a description of the matter or matters for which the meeting is called.

(c1) If the board of directors has authorized participation by means of remote communication pursuant to G.S. 55A-7-09 for members of any class, the notice to the members of that class shall describe the means of remote communication to be used. For meetings to be held solely by means of remote communication pursuant to G.S. 55A-7-09(c), the notice to all members entitled to vote at the meeting shall describe the means of remote communication to be used.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or ~~place, place, if any,~~ notice need not be given of the new date, 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 or partly 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. 55A-7-07, however, notice of the adjourned meeting shall be given under this section to the members of record entitled to vote at the meeting as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting ~~if~~ if all of the following apply:

(1) ~~Requested~~ The corporation is requested in writing to do so by a person or persons entitled to call a special meeting pursuant to ~~G.S. 55A-7-02; and~~ G.S. 55A-7-02.

(2) The request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting."

SECTION 8. G.S. 55A-7-08 reads as rewritten:

"§ 55A-7-08. ~~Action~~ Member action by written ballot, ballot or electronic voting without a meeting.

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting ~~if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either~~

~~set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy by written ballots or electronic voting as follows:~~

(1) Written ballots. – The corporation may deliver a written ballot to members entitled to vote on the matter that sets forth each proposed action and provides an opportunity to vote for or against each proposed action. Unless secret balloting is required on the proposed action, the ballot shall contain or request information sufficient to identify the member or the member's proxy submitting the ballot. Written ballots may be submitted to the corporation by any reasonable means specified by the corporation, including email.

(2) Electronic voting. – For members who have complied with G.S. 55A-1-70, the corporation may provide an electronic ballot or electronic notice that sets forth each proposed action and provides an opportunity and instructions on how to vote for or against each proposed action using the electronic ballot or an electronic voting system.

~~(b) A written ballot shall:~~

~~(1) Set forth each proposed action; and~~

~~(2) Provide an opportunity to vote for or against each proposed action.~~

(c) All members entitled to vote on the matter shall be given the opportunity to vote on the proposed action by written ballot or electronic voting, or both. The board of directors may determine, in its discretion, whether votes shall be cast by written ballots or by electronic voting, or by both, provided that votes may be cast solely by electronic voting only if all members entitled to vote on the proposed action have complied with G.S. 55A-1-70(b). Approval by written ballot or electronic voting, or both, pursuant to this section shall be valid only when the number of votes cast by written ballot or electronic voting, or both, equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All written ballots or solicitations for votes by written ballot, all electronic ballots or solicitations for votes by electronic ballot, and all electronic voting notices shall indicate the time by which a written or electronic ballot shall be received by the corporation or by which electronic votes shall be cast in order to be counted. The deadline for the return of written ballots and electronic ballots and for the casting of electronic votes on any proposed action shall be identical.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot, any written ballot, electronic ballot, or electronic vote that is submitted shall not be revoked."

SECTION 9. Article 7 of Chapter 55A of the General Statutes is amended by adding a new section to read:

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

(a) Members of any class may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes the participation for that class. Participation as a member by means of remote communication is subject to any guidelines and procedures the board of directors adopts and the requirements of subsection (b) of this section.

(b) Members participating by means of remote communication are deemed present and may vote at the meeting if the corporation has implemented reasonable measures to do all of the following:

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

(2) Provide the members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members to the same extent they could

1 participate and vote if present in person, including an opportunity to
2 communicate and to read or hear the proceedings of the meeting, substantially
3 concurrently with the proceedings.

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

9 (d) In addition to the information required by G.S. 55A-7-05, notice of a meeting held
10 solely by means of remote communication shall include notice that the meeting will be held
11 solely by means of remote communication and sufficient instruction and information on how
12 members may join the meeting remotely."

13 **SECTION 10.** G.S. 55A-7-20 reads as rewritten:

14 "**§ 55A-7-20. Members' list for meeting.**

15 ...

16 (b) Beginning two business days after notice is given of the meeting for which the list
17 was prepared and continuing through the meeting, the list of members shall be available for
18 inspection by any member for the purpose of communication with other members concerning the
19 meeting. The list shall be available (i) at the corporation's principal office or at a reasonable place
20 identified in the meeting notice in the city where the meeting will be held for inspection by any
21 member for the purpose of communication with other members concerning the meeting, or (ii)
22 on a reasonably accessible electronic network, provided that the information required to gain
23 access to the list is provided with the notice of the meeting. In the event that the corporation
24 determines to make the list available on an electronic network, the corporation may take
25 reasonable steps to ensure that the information is available only to shareholders of the
26 corporation. A member, personally or by or with his-the member's representatives, is entitled on
27 written demand to inspect and, subject to the limitations of G.S. 55A-16-02(c) and
28 G.S. 55A-16-05 and at his-the member's expense, to copy the list at a reasonable time during the
29 period it is available for inspection.

30 (c) ~~The~~ If the meeting is to be held at a place, the corporation shall make the list of
31 members available at the meeting, and any member, personally or by or with his-the member's
32 representatives, is entitled to inspect the list at any time during the meeting or any adjournment.
33 If the meeting is to be held solely by means of remote communication, then the list shall also be
34 open to inspection during the meeting on a reasonably accessible electronic network, and the
35 information required to access the list shall be provided with the notice of the meeting.

36 (d) If the corporation refuses to allow a member or his-the member's representative to
37 inspect or copy the list of members as permitted in subsections (b) and (c) of this section, the
38 superior court of the county where a corporation's principal office ~~(or, office, or, if there is none~~
39 ~~in this State, its registered office)-office,~~ is located, on application of the member, after notice is
40 given to the corporation and upon such further evidence, notice and opportunity to be heard, if
41 any, as the court may deem appropriate under the circumstances, may summarily order the
42 inspection or copying at the corporation's expense. The court may postpone the meeting for which
43 the list was prepared until the inspection or copying is complete and may order the corporation
44 to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.

45 "

46 **SECTION 11.** G.S. 55A-7-24 reads as rewritten:

47 "**§ 55A-7-24. Proxies.**

48 (a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a
49 member may vote in person or by proxy. A member may appoint one or more proxies to vote or
50 otherwise act for the member by signing an appointment form, either personally or by the
51 member's attorney-in-fact. ~~Without limiting G.S. 55A-1-70, an~~ An appointment in the form of an

1 electronic record submitted by a member who has agreed as provided in G.S. 55A-1-70 that either
2 bears the member's electronic signature or is sent from the member's designated email address
3 and that may be directly reproduced in paper form by an automated process shall be deemed a
4 valid appointment form within the meaning of this section. In addition, if and to the extent
5 permitted by the nonprofit corporation, a member may appoint one or more proxies by any kind
6 of telephonic transmission, even if not accompanied by written communication, under
7 circumstances or together with information from which the nonprofit corporation can reasonably
8 assume that the appointment was made or authorized by the member.

9 ...

10 (c) An appointment of a proxy is revocable by the member unless the appointment form
11 conspicuously states that it is irrevocable and the appointment is coupled with an interest. An
12 appointment made irrevocable under this subsection shall be revocable when the interest with
13 which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable
14 appointment may revoke the appointment if ~~he~~ the transferee did not have actual knowledge of
15 its irrevocability.

16 ...

17 (e) A revocable appointment of a proxy is revoked by the person appointing the
18 ~~proxy;~~ proxy doing any of the following:

- 19 (1) Attending any meeting and voting in ~~person;~~ or person.
20 (2) Signing and delivering to the secretary or other officer or agent authorized to
21 tabulate proxy votes either a writing stating that the appointment of the proxy
22 is revoked or a subsequent appointment form.

23"

24 **SECTION 12.** G.S. 55A-8-20 reads as rewritten:

25 **"§ 55A-8-20. Regular and special meetings.**

- 26 (a) The board of directors may hold regular or special meetings in or out of this State.
27 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of
28 directors may permit any or all directors to participate in a regular or special meeting by, or
29 conduct the meeting through the use of, any means of communication by which all directors
30 participating may simultaneously hear and be heard by each other during the meeting. A director
31 participating in a meeting by this means is deemed to be present in person at the meeting."

32 **SECTION 13.** G.S. 55A-8-21 reads as rewritten:

33 **"§ 55A-8-21. Action without meeting.**

- 34 (a) Unless the articles of incorporation or bylaws provide otherwise, action required or
35 permitted by this Chapter to be taken at a board of directors' meeting may be taken without a
36 meeting if the action is taken by all members of the board. The action shall be evidenced by one
37 or more written consents signed by each director before or after such action, describing the action
38 taken, and included in the minutes or filed with the corporate records reflecting the action taken.
39 ~~To the extent the corporation has agreed pursuant to G.S. 55A-1-70, Except as limited by the~~
40 articles of incorporation or bylaws, a director's consent to action taken without meeting may be
41 in electronic form and delivered by electronic means.

42"

43 **SECTION 14.** This act is effective when it becomes law and applies to meetings
44 noticed and transactions conducted on or after that date.