



# HOUSE BILL 320: Modernize Remote Business Access.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	January 28, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Bill Patterson Staff Attorney
<b>Analysis of:</b>	S.L. 2021-162		

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**OVERVIEW:** *S.L. 2021-162 does the following:*

- *Authorizes remote meetings of corporation shareholders, nonprofit corporation members, and mutual insurance company policy holders.*
- *Authorizes nonprofit corporations to conduct all business electronically.*
- *Makes technical and conforming changes to related statutory provisions.*
- *Exempts certain corporations not for profit formed prior to July 1, 1989, from being required to have at least one class of shares with unlimited voting rights.*

*This act became effective September 20, 2021, and the act's changes relating to meetings of members and shareholders apply to meetings held on or after that date.*

*Remote meetings noticed before that date as a result of the State of Emergency declared by Executive Order No. 116 and complying with any subsequent executive orders authorizing such meetings, are deemed to be in compliance with this act.*

*The act's exemption from the requirement of having at least one class of shares with unlimited voting rights applies to corporations not for profit formed for religious, charitable, nonprofit, social or literary purposes prior to July 1, 1989, and existing as of September 20, 2021.*

## **CURRENT LAW AND BILL ANALYSIS:**

### **Part I. Corporation Shareholder Meetings**

The Business Corporation Act ("BCA") currently authorizes remote shareholder participation in any meeting of shareholders to the extent authorized by a corporation's board of directors. In order to permit remote participation, the corporation is required, among other things, to verify that each remote participant is a shareholder and to provide each remote participant a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders. The BCA does not currently authorize holding an annual or special meeting of shareholders *solely* by means of remote communication. These meetings must be held at a *place* stated or fixed in accordance with the bylaws or, if the bylaws are silent on the meeting location, at the corporation's principal place of business.

**Sections 1.(a) and 1.(b)** exempt shareholders' meetings held solely by means of remote communication from statutory requirements specifying the places where such meetings must be held.

**Section 1.(c)** provides that:

- If a shareholders' meeting is adjourned to a different date or time and is to be continued solely by means of remote communication, a description of the means of remote communication must be announced at the meeting before it is adjourned.

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- If, after a public corporation has notified its shareholders of the date, time, and place of an annual or special shareholders' meeting, the board of directors determines to hold the meeting solely by means of remote communication, no further notice is required if all of the following conditions are met:
  - A governmental order is in effect that restricts travel or group gatherings applicable to the place of the shareholders' meeting or public corporation's principal office.
  - The board of directors anticipates in good faith that the order will be in effect at the date and time of the meeting's initial notification.
  - The public corporation does both of the following:
    - Promptly issues a press release for national dissemination announcing the determination to hold the meeting solely by remote communication and stating the date and time of the meeting.
    - Files the press release with the Securities and Exchange Commission as close in time as practicable to its release and approximately contemporaneously posts it on its corporate website.

**Section 1.(d)** authorizes the board of directors to hold a shareholders' meeting solely by means of remote communication unless prohibited by the articles of incorporation or bylaws, and provided that the corporation has taken reasonable steps to verify each participant's shareholder status and to provide each shareholder with a reasonable opportunity to participate in and vote on matters submitted to shareholders at the meeting.

**Section 1.(e)** provides that a list of all shareholders entitled to notice of the meeting must be made available for inspection by any shareholder either: 1) at the corporation's principal place of business or at a place designated in the meeting notice in the city where the meeting will be held; or 2) on a reasonably accessible electronic network, provided that the meeting notice contains the information required to gain access to the list. If the shareholders' meeting is to be held solely by means of remote electronic communication, the list must be made available for inspection during the meeting by posting it on a reasonably accessible electronic network and the meeting notice must include the information needed to access the list.

**Section 1.(f)** provides the following requirements for repealing a bylaw prohibiting the holding of shareholders' meetings solely by means of remote communication:

- If the bylaw was originally adopted by the shareholders, it can only be repealed by the shareholders.
- If the bylaw was originally adopted by the board of directors, it can be repealed by either the shareholders or the board of directors.

**Section 1.(g)** directs the Revisor of Statutes to print as statutory annotations the relevant portions of the Official Comments to the Revised Model Business Corporation Act and all explanatory comments of the drafters as the Revisor deems appropriate.

## **Part II. Nonprofit Corporation Member Meetings**

Currently the Nonprofit Corporation Act ("NCA") authorizes a nonprofit corporation, through its articles of incorporation or by action of its board of directors, to agree to conduct a transaction by electronic means.

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**Section 2.(c)** permits a nonprofit corporation to conduct all business electronically unless this is prohibited by its articles of incorporation, bylaws, or by action of its board of directors. Members wishing to communicate and conduct business with a corporation by electronic means must be required to designate the email address to be used for such purposes. The corporation must inform members how to designate or update an email address or other information previously provided.

Under current law, if a quorum of a corporation's directors cannot readily be assembled because of some catastrophic event, the board of directors is authorized to adopt, amend, or repeal emergency bylaws and to exercise emergency powers.

**Sections 2.(d) and 2.(e)** authorize a board of directors to adopt, amend, or repeal emergency bylaws, and to exercise emergency powers, if a natural or manmade disaster impedes the ability of the corporation's board of directors or members to comply with one or more provisions of the bylaws.

Under current law a nonprofit corporation is not authorized to hold an annual, regular, or special meeting of its members by means of remote communication. Such meetings must be held at a place stated or fixed in accordance with the bylaws, or at the corporation's principal place of business if the bylaws are silent on the meeting location.

**Sections 2.(f) and 2.(g)** exempt nonprofit corporation members meetings held solely by means of remote communication from statutory provisions prescribing the places where such meetings must be held.

Under current law members of a corporation may act without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

**Section 2.(l)** provides that members who have complied with requirements to conduct business with the corporation by electronic means may be provided with an electronic ballot or electronic notice setting forth each proposed action and providing instructions for how to vote for or against each proposed action using the electronic ballot or an electronic voting system. All electronic ballots must indicate the deadline for submission to the corporation and the same deadline must apply to both the return of written and electronic ballots and to the casting of electronic votes on any proposed action.

Under current law a nonprofit corporation is not authorized to hold an annual, regular, or special meeting of its members by means of remote communication.

**Section 2.(m)** provides that to the extent authorized by its board of directors, meetings of members of a nonprofit corporation may be held by means of remote communication, and if not prohibited by the articles of incorporation or bylaws, such meetings may be held *solely* by means of remote communication; in either case, members must be given the same opportunity to participate and vote as they would be given if participating in person, and the corporation must take reasonable steps to verify that each remote participant is either a member or a member's proxy.

The remaining sections of Part II of the bill make conforming and technical changes to the following provisions of the NCA:

- Section 2.(a) – Chapter definitions
- Section 2.(b) – Notice
- Section 2.(h) – Court-ordered meeting (members)
- Section 2.(i) – Action by written consent
- Section 2.(j) – Notice of meeting
- Section 2.(k) – Waiver of notice
- Section 2.(n) – Members' list for meeting
- Section 2.(o) – Proxies

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- Section 2.(p) – Regular and special meetings (board of directors)
- Section 2.(q) – Action without meeting

## **Part III. Insurance Policyholder Meetings**

**Section 3** authorizes the board of directors of a mutual insurance company, in its sole discretion, to hold meetings of its members remotely, provided that the company has taken reasonable steps to verify that each remote participant is a member and to give each remote participant a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members.

## **Part IV. Corporations Not for Profit Having Capital Stock and Formed Prior to July 1, 1989**

The BCA is applicable to corporations not for profit having capital stock, unless expressly excepted by the Act. Currently, the BCA requires a corporation's articles of incorporation to provide one or more classes of shares that together have unlimited voting rights.

**Section 4** provides an exemption from this requirement for corporations not for profit formed for religious, charitable, nonprofit, social or literary purposes prior to July 1, 1989.

**Section 5** is a severability clause.

**EFFECTIVE DATE:** The act became effective September 20, 2021. Sections 1, 2, and 3 apply to meetings noticed on or after that date. Remote meetings noticed before that date as a result of the State of Emergency declared by Executive Order No. 116 on March 10, 2020, and complying with any subsequent executive orders authorizing such meetings, are deemed to be in compliance with this act. Section 4 applies to corporations not for profit formed for religious, charitable, nonprofit, social or literary purposes prior to July 1, 1989, and existing as of September 20, 2021.

*Former LAD Staff Attorney Tawanda Artis substantially contributed to this summary.*