



SENATE BILL 138: Allow Remote Shareholder Meetings.

2021-2022 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	March 9, 2021
Introduced by:	Sens. Newton, Galey	Prepared by:	Bill Patterson
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 138 would permit business corporations to conduct shareholders' meetings solely by remote communication and would make conforming changes to the Business Corporation Act.*

CURRENT LAW: The Business Corporation Act currently does not authorize holding an annual or special meeting of shareholders solely 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.

To the extent authorized by a corporation's board of directors, shareholders may participate in annual or special shareholders' meetings by means of remote communication, provided that the corporation is reasonably able to verify the shareholder status of each remote participant and provide them with a reasonable opportunity to participate in the meeting and vote on matters submitted to them.

If an adjourned shareholders' meeting is to be continued at a new date, time, or place that is announced at the meeting before adjournment, then unless the bylaws require otherwise, further notice to the shareholders is not required.

After a shareholders' meeting date is set, the corporation must prepare a list of the names of all shareholders entitled to the meeting notice. The list must be available for shareholders to inspect at the corporation's principal office or at a place identified in the notice in the city where the meeting is to be held. The shareholders' list must also be made available where the meeting is held for inspection by shareholders or their representatives at any time during the meeting or any adjournment.

BILL ANALYSIS:

Sections 1 and 2 of the bill would exempt shareholders' meetings held solely by means of remote communication from provisions in G.S. 55-7-01 and G.S. 55-7-02 prescribing the places where shareholders' meetings are to be held.

Section 3 of the bill would amend G.S. 55-7-05 to provide 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 its adjournment.
- After a public corporation has notified its shareholders of the date, time, and place of an annual or special shareholders' meeting, further notice to the shareholders is not required if all the following apply:
 - A governmental order is in effect that restricts travel or group gatherings applicable to the place of the shareholders' meeting or public corporation, and the board of directors

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anticipates in good faith that the order will be in effect at the date and time of the noticed meeting.

- The board of directors determines to hold the meeting solely by means of remote communication.
- The public corporation:
 - 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 4 of the bill would amend G.S. 55-7-09 to provide that unless the articles of incorporation or bylaws prohibit the holding of shareholders' meetings solely by means of remote communication, the corporation's board of directors has the sole discretion to decide that a shareholders' meeting shall be held solely by means of remote communication, but only if the corporation has implemented reasonable measures 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 5 of the bill would amend G.S. 55-7-20 to provide that when a shareholders' meeting is to be held at a place, the corporation must make a list of all shareholders entitled to notice of the meeting available for inspection by any shareholder:

- 1) at the corporation's principal place of business or place designated in the 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 corporation must make the list available for inspection during the meeting by posting it on a reasonably accessible electronic network and the meeting notice must include the information required to access the list.

Section 6 of the bill would amend G.S. 55-10-22 to provide that a bylaw prohibiting shareholders' meetings held solely by means of remote communication can be repealed only by the shareholders if it originally was adopted by the shareholders and that it can be repealed either by the shareholders or by the board of directors if it originally was adopted by the board of directors.

Section 7 of the bill would direct 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.

EFFECTIVE DATE: This act would be effective when it becomes law and would apply to shareholders' meetings noticed on or after that date.

BACKGROUND: Senate Bill 138's proposed changes to the Business Corporation Act are largely based on substantially identical revisions to the Model Business Corporation Act approved in 2019 by the Committee on Corporate Laws of the Business Law Section of the American Bar Association.