



# SENATE BILL 410: Nonprofit Electronic Business/Remote Meetings.

2021-2022 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 19, 2021
<b>Introduced by:</b>	Sens. Galey, Perry, Lazzara	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	PCS to First Edition S410-CSTG-16		Committee Co-Counsel

**OVERVIEW:** *The Proposed Committee Substitute for Senate Bill 410 would authorize nonprofit corporations to conduct business electronically and would make conforming changes to the Nonprofit Corporation Act. The PCS makes a number of substantive and technical changes to the original bill.*

### CURRENT LAW AND BILL ANALYSIS:

Through its articles of incorporation or by action of its board of directors, a nonprofit corporation can agree to conduct a transaction by electronic means. A nonprofit corporation member's consent to action taken without a meeting may be in electronic form and delivered by electronic means if the corporation has agreed to conduct that transaction by electronic means.

**Section 1** of the Proposed Committee Substitute for Senate Bill 410 would amend the definition of "vote" to include authorization by written ballot and written consent conducted through an electronic voting system.

**Section 2** would permit a corporation to conduct a transaction by electronic means except as limited by its articles of incorporation or its bylaws or by action of its board of directors. Members wishing to communicate and conduct business with a corporation by electronic means would be required to first designate the email address to be used, and provide any other information required by the corporation. The corporation would be required to inform members how to designate or update an email address or other information previously provided.

Under current law a corporation's board of directors is authorized to adopt, amend, or repeal emergency bylaws, and to exercise emergency powers, if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. **Section 3** of the bill would provide that for these purposes, an emergency exists 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 corporation is not authorized to hold an annual, regular, or special meeting of its members 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. **Sections 4 and 5** would exempt annual, regular, and special meetings of members held solely by means of remote communication from the statutory provisions prescribing the places where such meetings must be held.

**Section 6** would provide that a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means except as limited by the articles of incorporation or bylaws.

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**Section 7** would provide that a description of the means of remote communication to be used in a meeting must be included in:

- A notice of a meeting that is to be held solely by means of remote communication.
- A notice of a meeting sent to any class of members that has been authorized to participate in that meeting by means of remote communication.
- An announcement made before a meeting is adjourned to a different date or time if the meeting is to be continued solely by means of remote communication without issuing a new notice of meeting.

Under current law action may be taken by members without a meeting by the corporation delivering a written ballot to every member entitled to vote on the matter. **Section 8** would provide that for members who have complied with requirements to conduct business with the corporation by electronic means the corporation may provide 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 would have to indicate the deadline for submission to the corporation and the deadline would have to be the same for the return of written and electronic ballots and for casting electronic votes on any proposed action.

**Section 9** would provide that to the extent authorized by a corporation's board of directors, members may participate in any meeting of members by means of remote communication, and that members participating remotely are deemed present and qualified to vote if the corporation is reasonably able to verify the member status of each remote participant and provide them with a reasonable opportunity to participate in the meeting and vote on matters submitted to them. Section 9 would also provide that unless the articles of incorporation or bylaws prohibit the holding of member meetings solely by means of remote communication, the board of directors has the sole discretion to decide to hold a meeting solely by means of remote communication. In that case, the notice of the meeting must notify members that the meeting will be held solely by means of remote communication and must sufficiently instruct members how to join the meeting remotely.

**Section 10** would authorize a corporation to make the list of members available for inspection after giving notice of a meeting on a reasonably accessible electronic network, provided that the meeting notice contains the information required to gain access to the list. If the meeting is to be held solely by means of remote electronic communication, the corporation would have to make the list available for inspection during the meeting by posting it on a reasonably accessible electronic network and the meeting notice would have to include the information required to access the list.

**Section 11** would make conforming and technical changes to the law governing proxies.

**Section 12** would provide that a board of directors meeting may be held by any means of communication by which all participating directors may simultaneously hear *and be heard by* each other during the meeting.

**Section 13** would provide that a director's consent to action taken without a meeting may be in electronic form and delivered by electronic means except as limited by the articles of incorporation or bylaws.

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