

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

S

D

SENATE BILL 138  
PROPOSED COMMITTEE SUBSTITUTE S138-PCS45119-TG-4

Short Title: Allow Remote Shareholder Meetings.

(Public)

Sponsors:

Referred to:

February 24, 2021

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

5 The General Assembly of North Carolina enacts:

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

7 "§ 55-7-01. Annual meeting.

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

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

15 ...."

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

17 "§ 55-7-02. Special meeting.

18 ...

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

24 ...."

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

26 "§ 55-7-05. Notice of meeting.

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

34 ...

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



\* S 1 3 8 - P C S 4 5 1 1 9 - T G - 4 \*

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

- 3 (1) The new date, time, or place, if any.
- 4 (2) If the meeting is to be continued solely by means of remote communication,  
5 a description of the means of remote communication.

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

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

- 13 (1) A governmental order restricting travel or group gatherings applicable to the  
14 place of the shareholders' meeting or public corporation's principal office is in  
15 effect and is anticipated in good faith by the board of directors to be in effect  
16 at the date and time set forth in the initial notification, including by an  
17 anticipated extension of an existing order.
- 18 (2) The public corporation's board of directors determines that the shareholders'  
19 meeting is instead to be held solely by means of remote communication in  
20 accordance with G.S. 55-7-09(c) at the same date and time set forth in the  
21 initial notification or at a different date and time.
- 22 (3) The public corporation (i) promptly issues a press release for national  
23 dissemination announcing the determination of its board of directors that the  
24 shareholders' meeting is to be held solely by means of remote communication  
25 and describing the means of remote communication to be used and providing  
26 the date and time of the shareholders' meeting to be held solely by means of  
27 remote communication and (ii) files the press release with the Securities and  
28 Exchange Commission as close to the time the press release is issued as  
29 practicable and approximately contemporaneously posts such press release to  
30 its corporate website."

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

32 "**§ 55-7-09. Remote participation in ~~meetings~~ meetings; meetings held solely by remote**  
33 **participation.**

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

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

- 42 (1) Verify that each person participating remotely is a shareholder.
- 43 (2) Provide each shareholder participating remotely a reasonable opportunity to  
44 participate in the meeting and to vote on matters submitted to the shareholders,  
45 including an opportunity to communicate and read or hear the proceedings of  
46 the meeting, substantially concurrently with such proceedings.

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

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

2   "**§ 55-7-20. Shareholders' list for meeting.**

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

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

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

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

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

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

39   "**§ 55-10-22. Bylaw increasing quorum or voting requirement for ~~directors~~ directors or**  
40 **prohibiting a meeting of shareholders solely by remote participation.**

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

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

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

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

- 1 (c) ~~A~~The following applies to a bylaw referred to in subsection ~~(a)~~(a) of this section.
- 2 (1) ~~May~~It shall not be adopted by the board of directors by a vote less than a
- 3 majority of the directors then in ~~office, and~~office.
- 4 (2) ~~May~~It shall not itself be amended by a quorum or vote of the directors less
- 5 than the quorum or vote therein prescribed or prescribed by the shareholders
- 6 pursuant to subsection ~~(b)~~(b) of this section."

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

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