HOUSE BILL 320:
Modernize Remote Business Access.

2021-2022 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules and Operations of the Senate	**Date:**	August 15, 2021
Introduced by:	Reps. D. Hall, Bradford, Paré, Howard	**Prepared by:**	Bill Patterson Committee Co-Counsel
Analysis of:	Third Edition		

OVERVIEW: House Bill 320 would: authorize remote meetings of corporation shareholders, nonprofit corporation members, and mutual insurance company policy holders; authorize nonprofit corporations to conduct all business electronically; and make technical and conforming changes.

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 at the corporation's principal place of business if the bylaws are silent on the meeting location.

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

Section 1.(c) would 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 it is adjourned.
- After a public corporation has notified its shareholders of the date, time, and place of an annual or special shareholders' meeting, 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 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 board of directors determines to hold the meeting solely by means of remote communication.

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- 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) would provide that unless the articles of incorporation or bylaws prohibit holding shareholders' meetings solely by means of remote communication, the board of directors has the sole discretion to decide that a shareholders' meeting shall be held solely by means of remote communication, provided that 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 1.(e) would provide 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 would have to be made 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 1.(f) would provide the following requirements for repealing a bylaw prohibiting shareholders' meetings held 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 the shareholders or by the board of directors.

Section 1.(g) 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.

Part II. Nonprofit Corporation Member Meetings

Under current law, a nonprofit corporation can, through its articles of incorporation or by action of its board of directors, agree to conduct a transaction by electronic means.

Section 2.(b) would permit all nonprofit corporation business to be conducted electronically unless this is prohibited by its articles of incorporation, bylaws, or by action of its board of directors. In the event of any conflict between the NCA and the Uniform Electronic Transactions Act, the NCA would prevail. Members wishing to communicate and conduct business with a corporation by electronic means would be required to designate the email address to be used for such purposes. 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 1.(c) 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 2.(d) and 2.(e) 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.

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 2.(j) 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 2.(k) would authorize meetings of members of a nonprofit corporation to be held by means of remote communication unless prohibited by its articles of incorporation or bylaws, and provided that members are given the opportunity to participate and vote to the same extent as they could if participating in person and the corporation has taken reasonable steps to verify that each remote participant is a member or a member's proxy.

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

- Section 2.(a) – Notice
- Section 2.(f) – Court-ordered meeting (members)
- Section 2.(g) – Action by written consent
- Section 2.(h) - Notice of meeting
- Section 2.(i) – Waiver of notice
- Section 2.(l) – Proxies
- Section 2.(m) – Members' list for meeting
- Section 2.(n) – Regular and special meetings (board of directors)
- Section 2.(o) – Action without meeting

Part III. Insurance Policyholder Meetings

Section 3 would authorize meetings of members of a mutual insurance company to be held remotely, in the sole discretion of the board of directors, provided that the company has taken reasonable steps to verify that each remote participant is a member, and to provide each remote participant a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members.

Section 4 is a severability clause.

EFFECTIVE DATE: This act would be effective when it becomes law and would apply to meetings noticed on or after that date. Remote shareholder meetings noticed before the effective date of this act as a result of the State of Emergency declared by Executive Order 116 on March 10, 2020 and complying with any subsequent executive orders authorizing remote shareholder meetings issued by Governor Roy A. Cooper, would be deemed in compliance with this Act.

Former Staff Attorney Tawanda Artis substantially contributed to this summary.