

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-37
HOUSE BILL 2178**

AN ACT TO AUTHORIZE NONPROFIT CORPORATIONS TO ALLOW CERTAIN
VOTES BY ELECTRONIC TRANSMISSION, AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55A-1-40 reads as rewritten:

"§ 55A-1-40. Chapter definitions.

In this Chapter unless otherwise specifically provided:

- .. (9) "Effective date of notice" is defined in G.S. 55A-1-41.
- (9a) 'Electronic' has the same meaning as in G.S. 66-312.
- (9b) 'Electronic record' has the same meaning as in G.S. 66-312.
- (9c) 'Electronic signature' has the same meaning as in G.S. 66-312.
- (10) "Entity" includes:
 - a. Any domestic or foreign:
 - 1. Corporation; business corporation; professional corporation;
 - 2. Limited liability company;
 - 3. Profit and nonprofit unincorporated association, chapter or other organizational unit; and
 - 4. Business trust, estate, partnership, trust;
 - b. Two or more persons having a joint or common economic interest; and
 - c. The United States, and any state and foreign government.
- .. (26) "Vote" includes authorization by written ballot and written ~~consent.~~
consent, including electronic ballot and electronic consent."

SECTION 2. G.S. 55A-1-41 reads as rewritten:

"§ 55A-1-41. Notice.

(a) Notice under this Chapter shall be in writing unless oral notice is authorized in the corporation's articles of incorporation or bylaws and written notice is not specifically required by this Chapter.

(b) Notice may be communicated in person; by ~~telephone, telegraph, teletype, or other form of wire or wireless communication, or by facsimile transmission;~~ electronic means; or by mail or private carrier. If these forms of personal notice are impracticable as to one or more persons, notice may be communicated to such persons by publishing notice in a newspaper, or by radio, television, or other form of public broadcast communication, in the county where the corporation has its principal place of business in the State, or if it has no principal place of business in the State, the county where it has its registered office.

(c) Written notice by a domestic or foreign corporation to its member is effective when deposited in the United States mail with postage thereon prepaid and correctly addressed to the member's address shown in the corporation's current record of members. To the extent the corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic corporation to its member in the form of an electronic

record sent by electronic means is effective when it is sent as provided in G.S. 66-325. A member may terminate any such agreement at any time on a prospective basis effective upon written notice of termination to the corporation or upon such later date as may be specified in the notice.

(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State.

(e) Except as provided in subsection (c) of this section, written notice is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with at least first-class postage thereon prepaid and correctly addressed;
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;
- (4) If mailed with less than first-class postage, 30 days after its deposit in the United States mail, as evidenced by the postmark or otherwise, if mailed with postage thereon prepaid and correctly addressed;
- (5) When delivered to the member's address shown in the corporation's current list of members.

In the case of notice in the form of an electronic record sent by electronic means, the time of receipt shall be determined as provided in G.S. 66-325.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members. In the case of members who are residents of the same household and who have the same address, the corporation's bylaws may provide that a single notice may be given to such members jointly.

(g) Oral notice is effective when actually communicated to the person entitled to oral notice.

(h) If this Chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Chapter, those requirements govern.

(i) Written notice need not be provided in a separate document and may be included as part of a newsletter, magazine, or other publication regularly sent to members if conspicuously identified as a notice."

SECTION 3. Article 1 of Chapter 55A of the General Statutes is amended by adding a new Part to read:

"Part 7. Miscellaneous.

"§ 55A-1-70. Electronic transactions.

For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions under this Chapter, a corporation may agree to conduct a transaction by electronic means through provision in its articles of incorporation or bylaws or by action of its board of directors."

SECTION 4. G.S. 55A-7-04 reads as rewritten:

"§ 55A-7-04. Action by written consent.

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to

G.S. 55A-1-70, a member's consent to action taken without a meeting may be in electronic form and delivered by electronic means.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 5. G.S. 55A-7-08 reads as rewritten:

"§ 55A-7-08. Action by written ballot.

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked."

SECTION 6. G.S. 55A-7-24 reads as rewritten:

"§ 55A-7-24. Proxies.

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for ~~him~~ the member by signing an appointment form, either personally or by ~~his~~ the member's attorney-in-fact. ~~A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies. Without limiting G.S. 55A-1-70, an appointment in the form of an electronic record that bears the member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the member, or (ii) by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.~~

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for

value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

- (1) Attending any meeting and voting in person; or
- (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 7. G.S. 55A-8-21 reads as rewritten:

"§ 55A-8-21. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's consent to action taken without meeting may be in electronic form and delivered by electronic means.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document."

SECTION 8. This act becomes effective October 1, 2008.

In the General Assembly read three times and ratified this the 26th day of June, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:03 p.m. this 1st day of July, 2008