

New options for electronic voting for boards and remote membership meetings

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David Heinen, Vice President for Public Policy and Advocacy, North Carolina Center for Nonprofits

On September 20, Governor Roy Cooper signed a [new law](#)  that modernizes the NC Nonprofit Corporation Act in two important ways:

1. It allows nonprofits with members to conduct membership meetings remotely rather than in person; and
2. It enables most nonprofit boards of directors to use email or other types of electronic communication to take action outside of meetings by unanimous consent.

The Center had recommended these changes to legislators based on input from many nonprofits and from attorneys who work with nonprofit organizations. Here is a brief explanation of the ways that nonprofit boards of directors and nonprofit members can take action remotely or electronically under the new law.

Nonprofit boards of directors

Under existing law, nonprofit boards can take action in two ways:

1. They can have a vote during a board meeting, which can take place in person or by conference call, Zoom, or any other technology that allows all board members participating in the meeting to hear each other simultaneously; or
2. They can vote outside of a meeting as long as all directors vote “yes” and provide written consent documenting their “yes” votes.

Before the new law was enacted, nonprofit boards could only use email or other types of electronic communication to take actions outside of board meetings ***if the nonprofit***

expressly allowed it in its articles of incorporation or bylaws or through a board resolution.

Practically, this meant that many nonprofit boards needed to have every director sign and mail a written consents to take action outside of a meeting. During the COVID-19 pandemic, when most nonprofit boards weren't able to meet in person, the Center heard from many organizations that discovered that their bylaws didn't allow their boards to use email for unanimous written consent votes. Under the new law, any nonprofit board can take action by a unanimous email vote of all directors, ***unless the nonprofit's articles of incorporation or bylaws prevent it.***

Even under the new law, nonprofit boards can only take action outside of a meeting if ***every board member votes and votes "yes."*** This limitation on board votes is consistent with board members' fiduciary duty of care, which requires them to be informed about decisions they make on behalf of the nonprofit. Under the fiduciary duty of care, board members need to have an opportunity to discuss issues where there may be differences of opinions among directors.

Nonprofit membership meetings

Every nonprofit has a board of directors, but some organizations also have ***members*** who have the right to select directors and officers and vote on significant organizational actions like bylaws amendments or major asset transfers. Nonprofits must identify in their articles of incorporation whether they have members. Examples nonprofits with members include some trade associations, membership associations (with individual, nonprofit, or corporate members), and nonprofits that provide membership rights to certain donors, clients, or other stakeholders.

Nonprofits with members with a right to vote on directors are required to have at least one meeting per year. Until the new remote meeting law passed, these meetings needed to be held in person, although Governor Cooper had issued a series of executive orders that temporarily allowed nonprofits with members to hold membership meetings remotely during much of the COVID-19 pandemic (from April 24, 2020 through June 1, 2021). Many nonprofits with members found that participation increased when they were able to hold meetings by Zoom or other electronic meeting platforms.

Under the new law, nonprofits with members have four options for meetings and voting:

1. Nonprofits can hold membership meetings in-person in the same way they did prior to the beginning of the pandemic.
2. Nonprofits can conduct meetings by remote participation. For remote meetings, nonprofits need to be able to verify that every person participating remotely is a member

and need to provide members with a reasonable opportunity to participate in the meeting, read or hear the proceedings of the meeting, and vote during the meeting.

3. Nonprofits can use written ballots – which can be in paper or electronic form – for voting. For example, a nonprofit could send a print or electronic ballot to each member for elections of new directors and officers.
4. Nonprofits can vote using electronic ballots, either during a meeting or separate from a meeting.

Individual nonprofits may choose to allow for any or all of these types of meetings and voting. The new law requires members to designate an email address for the nonprofit to use before voting or taking action by email. Nonprofits that will allow members to vote by email should put in place a simple process for members to notify the organization of their preferred email address or to update their email addresses. This is important for nonprofits with individual or corporate/organizational members.

With the recent changes in the member meeting and voting provisions in the NC Nonprofit Corporation Act, it is a good idea for nonprofits with members to consider amending their bylaws to be clear about the ways that their members can participate in meetings and votes.

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