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Bill Analysis
Legislative Service Commission

H.B. 305

125th General Assembly
(As Introduced)

Reps. Schaffer, Schmidt, Niehaus, McGregor, Seitz, Gilb, Collier

BILL SUMMARY

- Expands the permissible contents of regulations of nonprofit corporations to include any right to vote by electronic or telephonic transmission if permitted by the Nonprofit Corporation Law, specifies that the regulations may provide for the use of electronic or telephonic transmissions if permitted by that Law, and permits the articles or regulations to provide that voting by members may also be conducted by electronic or telephonic transmission described in, and subject to the same condition as in, the following dot point.
- Generally authorizes the amendment of regulations or adoption of new regulations of, or the fixing or changing of the number of directors of, a nonprofit corporation by the affirmative vote of a majority of the voting members present at the specified meeting in person or, if permitted, by mail or by proxy (current law) or by electronic mail, telephone call, or any other means of electronic or telephonic transmission permitted by the regulations if any of those means of transmission sets forth or is submitted with information from which it can be determined that the particular transmission was authorized and accurately reflects the member's intention.
- Provides that a member or director is considered in attendance at a meeting of voting members or directors of a nonprofit corporation if the member or director is present in person or, if permitted by the regulations, present by any means of electronic or telephonic transmission described in the preceding dot point if information is submitted from which the identity of the member or director can be verified.

- Authorizes meetings of voting members of nonprofit corporations to be conducted solely by means of electronic or telephonic transmission if so provided by the articles or regulations and provides that, generally, the voting members present at any meeting of voting members in person or, if permitted, by mail or by proxy (current law) or by any electronic or telephonic transmission described in the second dot point, above, constitute a quorum for the meeting, subject to the same condition described in that dot point.
- Modifies the number of votes required for approval by incorporators, members, or directors of a nonprofit corporation of the authorization or taking of any action without a meeting.
- Generally permits meetings of directors and meetings of committees of nonprofit corporations to be held by any means of electronic or telephonic transmission permitted by the articles or regulations.

CONTENT AND OPERATION

Contents of regulations

Existing law provides that without limiting the generality of such authority, the regulations, whether designated a constitution or rules, or by some other term, may include provisions with respect to specified matters, including the rights of members or classes of members, or of their elected representatives or delegates, to vote; the manner of conducting votes of members on matters, including any right to vote by mail or by proxy; the specification of the relative rights and privileges among members and in the property of the corporation; and limitations upon or regulations governing the right of members to examine the books and records of the corporation (R.C. 1702.11(A)(4)).

The bill expands the contents of the regulations as described in the preceding paragraph by including any right to vote by mail, *by electronic or telephonic transmission, where permitted by the Nonprofit Corporation Law*, or by proxy. The bill also specifically provides that the regulations may include provisions with respect to providing for the use of electronic or telephonic transmissions where permitted by the Nonprofit Corporation Law, including the scheduling and participation in meetings of members, directors, or committees; in determining attendance of members or directors at certain meetings; in determining a quorum at meetings of voting members; and in electing directors for a corporation. (R.C. 1702.11(A)(4) and (12).)

Amendment of regulations or adoption of new regulations

Existing law provides that in the absence of provisions in the articles or the regulations with respect to the method of changing the regulations, the regulations may be amended, or new regulations may be adopted, by the voting members at a meeting held for such purpose, by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail or by proxy, if a quorum is present (R.C. 1702.11(B)).

The bill modifies existing law by providing that in the absence of provisions in the articles or the regulations with respect to the method of changing the regulations, the regulations may be amended, or new regulations may be adopted, by the voting members at a meeting held for such purpose, if a quorum is present, by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, *by electronic mail, telephone call, or any other means of electronic or telephonic transmission permitted by the regulations*, or by proxy, *provided that any such mail, electronic mail, telephone call, or other means of electronic or telephonic transmission sets forth or is submitted with information from which it can be determined that the mail, electronic mail, telephone call, or other means of electronic or telephonic transmission was authorized and accurately reflects the intentions of the member.* (R.C. 1702.11(B)(1).)

The bill further provides that for purposes of the provision described in the preceding paragraph, participation by a member in a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that member at the meeting for purposes of determining a quorum (R.C. 1702.11(B)(2)).

Attendance at meetings

Continuing law provides that notice of the time, place, and purposes of any meeting of voting members or directors, as the case may be, whether required by law, the articles, the regulations, or, in the case of directors, the bylaws, may be waived in writing, either before or after the holding of such meeting, by any member, or by any director. That writing must be filed with or entered upon the records of the meeting. Under existing law, the attendance of any member or any director at any such meeting, without protesting, prior to or at the commencement of the meeting, the lack of proper notice is deemed to be a waiver by the member or director of notice of such meeting. (R.C. 1702.19.)

The bill restructures current law to provide that *if a member or director attends a meeting of voting members or directors without protesting prior to or at the commencement of the meeting, then the lack of proper notice is deemed to be a waiver by the member or director of notice of the meeting.* The bill further

provides that a member or director is considered in attendance at a meeting of voting members or directors, if the member or director is present in person or, if permitted by the regulations, present by telephone call or any other means of electronic or telephonic transmission that is permitted by the regulations, provided that information is submitted from which the identity of the member or director can be verified. (R.C. 1702.19(B) and (C).)

Meetings of voting members

Current law provides that meetings of voting members may be called by the lesser of 10% of the voting members or 25 of *such* members, unless the articles or the regulations specify for such purpose a smaller or larger proportion or number, but not in excess of 50% of *such* members, or by such other officers or persons as the articles or the regulations authorize to call such meetings. Meetings of voting members may be held either within or without Ohio if so provided in the articles or the regulations. In the absence of any such provision, all meetings must be held at the principal office of the corporation in Ohio. (R.C. 1702.17(A)(3) and (4) and (B).)

The bill makes technical changes in current law by providing that meetings of voting members may be called by the lesser of 10% of the voting members or 25 *voting* members, unless the articles or the regulations specify for such purpose a smaller or larger proportion or number, but not in excess of 50% of *voting* members, or by *any* other officers or persons *that* the articles or the regulations authorize to call such meetings (R.C. 1702.11(A)(3) and (4)).

The bill further modifies existing law by providing that if so provided in the articles or the regulations, meetings of voting members may be held either within or without Ohio *or solely by means of electronic or telephonic transmission*. In the absence of any such provision in the articles or the regulations, all meetings must be held at the principal office of the corporation in Ohio. (R.C. 1702.17(B).)

Quorum

Existing law provides that unless the articles or the regulations otherwise provide, the voting members present in person or, if permitted, by mail or by proxy, at any meeting of voting members constitute a quorum for such meeting (R.C. 1702.22(A)).

The bill provides that unless the articles or the regulations otherwise provide, the voting members present in person or, if permitted, by mail, *by electronic mail, telephone call, or any other means of electronic or telephonic transmission permitted by the regulations*, or by proxy, at any meeting of voting members constitute a quorum for the meeting, *provided that any such mail,*

electronic mail, telephone call, or other means of electronic or telephonic transmission sets forth or is submitted with information from which it can be determined that the mail, electronic mail, telephone call, or other means of electronic or telephonic transmission was authorized and accurately reflects the intentions of the member. (R.C. 1702.22(A)(1).)

Voting by members

Continuing law provides that except as otherwise provided in the articles or the regulations, each member, regardless of class, is entitled to one vote on each matter properly submitted to the members for their vote, consent, waiver, release, or other action. The articles or the regulations may provide that voting at elections and votes on other matters may be conducted by mail. Unless the articles or the regulations otherwise provide, no member who is a natural person may vote or act by proxy. (R.C. 1702.20.)

Under the bill, the articles or the regulations may provide that voting at elections and votes on other matters may be conducted by mail, *electronic mail, telephone call, or any other means of electronic or telephonic transmission permitted by the regulations, provided that any such mail, electronic mail, telephone call, or other means of electronic or telephonic transmission sets forth or is submitted with information from which it can be determined that the mail, electronic mail, telephone call, or other means of electronic or telephonic transmission was authorized and accurately reflects the intentions of the member.* The bill provides that participation by a member in a meeting through the use of any of the means of communication described in this paragraph constitutes presence in person of that member at the meeting. (R.C. 1702.20(B) and (C).)

Action without a meeting

Under existing law, unless the articles or the regulations prohibit the authorization or taking of any action of the incorporators, the members, or the directors without a meeting, any action that may be authorized or taken at a meeting of the incorporators, the members, or the directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, *all of the incorporators, all of the members, or all of the directors, as the case may be, who would be entitled to notice of a meeting for such purpose, or, in the case of members, such other proportion or number of voting members, not less than a majority, as the articles or the regulations permit.* Continuing law requires any such writing to be filed with or entered upon the records of the corporation. (R.C. 1702.25.)

The bill provides that unless the articles or the regulations prohibit the authorization or taking of any action of the incorporators, the members, or the

directors without a meeting, any action that may be authorized or taken at a meeting of the incorporators, the members, or the directors, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by, the members, incorporators, or directors, as the case may be, *having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all the members, incorporators, or directors, as the case may be, having a right to vote were present and voted.* (R.C. 1702.25(A).)

Fixing or changing number of directors

Continuing law generally requires that the number of directors as fixed by the articles or the regulations be not less than three or, if not so fixed, the number must be three, except that if there are only one or two members of the corporation, the number of directors may be less than three but not less than the number of members. Existing law provides that unless the articles or the regulations fix the number of directors or provide the manner in which such number may be fixed or changed by the voting members, the number may be fixed or changed at a meeting of the voting members called for the purpose of electing directors, by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail or by proxy, if a quorum is present. However, under continuing law, no reduction in the number of directors may of itself have the effect of shortening the term of any incumbent director. (R.C. 1702.27(A)(1) and (2).)

The bill modifies existing law by providing that *subject to the provision described in the last sentence in the preceding paragraph*, unless the articles or the regulations fix the number of directors or provide the manner in which such number may be fixed or changed by the voting members, the number may be fixed or changed at a meeting of the voting members called for the purpose of electing directors, if a quorum is present, by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, *by electronic mail, telephone call, or any other means of electronic or telephonic transmission permitted by the regulations*, or by proxy, *provided that any such mail, electronic mail, telephone call, or other means of electronic or telephonic transmission sets forth or is submitted with information from which it can be determined that the mail, electronic mail, telephone call, or other means of electronic or telephonic transmission was authorized and accurately reflects the intentions of the member.* The bill provides that for purposes of the above provision, participation by a member in a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that member at the meeting for purposes of determining a quorum. (R.C. 1702.27(A)(2)(a) and (b).)

Meetings of directors

Unless otherwise provided in the articles, regulations, or bylaws, and subject to the exceptions applicable during an emergency for which provision is made in statute, existing law permits meetings of the directors to be held at any place within or without Ohio and, unless the articles or regulations prohibit participation by directors at a meeting by means of communications equipment, permits meetings of the directors to be held through any communications equipment if all persons participating can hear each other and participation in a meeting pursuant to this provision constitutes presence at such meeting. Written notice of the time and place of each meeting of the directors must be given to each director either by personal delivery or by mail, telegram, or cablegram at least two days before the meeting, which notice need not specify the purposes of the meeting. (R.C. 1702.31(B) and (C).)

The bill modifies existing law by providing that unless otherwise provided in the articles, regulations, or bylaws, and subject to the exceptions applicable during an emergency for which provision is made in statute, meetings of the directors may be held at any place within or without Ohio, *including by any means of electronic or telephonic transmission permitted by provisions in the articles or regulations. However, in the absence of provisions in the articles or regulations described in this provision and* unless the articles or regulations prohibit participation by directors at a meeting by means of communications equipment, meetings of the directors may be held through any communications equipment if all persons participating can hear each other. Participation in a meeting pursuant to this provision constitutes presence at such meeting. Written notice of the time and place of each meeting of the directors must be given to each director either by personal delivery or by mail, *electronic mail*, telegram, or cablegram at least two days before the meeting, which notice need not specify the purposes of the meeting. (R.C. 1702.31(B) and (C).)

Meetings of committees

Continuing law permits the regulations to provide for the creation by the directors of an executive committee or any other committee of the directors, to consist of one or more directors, and to authorize the delegation to any such committee of any of the authority of the directors, however conferred. Existing law provides that unless participation by members of any such committee at a meeting by means of communications equipment is prohibited by the articles, the regulations, or an order of the directors, meetings of the particular committee may be held through any communications equipment if all persons participating can hear each other. Participation in a meeting pursuant to this provision constitutes presence at the meeting. (R.C. 1702.33(A) and (E).)

Under the bill, *meetings of committees described in continuing law in the preceding paragraph may be held by any means of electronic or telephonic transmission permitted by provisions in the articles or regulations. However, in the absence of provisions in the articles or regulations described in this provision and unless participation by members of the committee at a meeting by means of communications equipment is prohibited by the articles, the regulations, or an order of the directors, meetings of the particular committee may be held through any communications equipment if all persons participating can hear each other. Participation in a meeting pursuant to this provision constitutes presence at the meeting. (R.C. 1702.33(E).)*

HISTORY

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