On April 14, 2020, Governor Murphy signed into law **P.L.2020, c.20**, which amends the New Jersey Nonprofit Corporation Act (Act) to allow nonprofit corporations to:

1. Hold membership meetings solely by remote communication, but only during a state of emergency declared by the governor.

2. Hold membership meetings at a designated physical location and allow members to participate by remote communication, regardless of whether there is a declared state of emergency.

These changes went into effect immediately.

The new law amends N.J.S.A. 15A:5-1, which previously did not permit membership meetings to be held in part or solely by means of remote communication. By contrast, since its enactment in 1983, the Act has allowed a nonprofit's board of trustees to hold board meetings in person and/or by “any means of communication by which all persons participating in the meeting are able to hear each other,” unless prohibited by the nonprofit's certificate of incorporation or the bylaws.¹

As a result of the amendments, during a governor-declared state of emergency, membership meetings can be held in part or solely by means of remote communication. When there is no state of emergency, membership meetings can be held in part by remote communication.²

In order to hold membership meetings solely by remote communication during a state of emergency, or to permit members to participate in membership meetings remotely, a board of trustees must authorize such arrangements and adopt guidelines and procedures governing the remote meetings or the members' remote participation, respectively. Once those steps are taken, a member participating in a meeting remotely is considered present at, and can vote during, the meeting.

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¹ N.J.S.A. 15A:6-10(c).

² Although it appears that the intent of the New Jersey Legislature was to limit totally remote membership meetings to governor-declared states of emergency, some of the language in newly added N.J.S.A. 15A:5-1(b) provides a basis to argue that totally remote membership meetings can also be held in the absence of a state of emergency. Nonetheless, Pro Bono Partnership does **not** recommend that nonprofits hold totally remote membership meetings when there is no governor-declared state of emergency because doing so would provide a member or trustee a basis for arguing that actions taken at such a meeting violate the Act and, thus, are void.
For all meetings where members participate remotely, the nonprofit must implement “reasonable measures” to:

- verify that anyone participating remotely is in fact a member or a proxy of a member;
- ensure that a member participating remotely can hear or read the meeting proceedings while the meetings are happening;
- provide a member participating remotely with a reasonable opportunity to participate in the proceedings, including the ability to vote; and
- accurately record votes or other actions taken by members participating remotely.

Nonprofit corporations that are planning to hold a membership meeting during the current COVID-19 state of emergency now have the option of allowing their members to participate remotely, provided that the nonprofit board acts quickly to adopt guidelines and procedures for the remote meeting. A nonprofit might also have to amend its bylaws to reflect any new guidelines and procedures for remote participation in membership meetings that are held at a designated physical location.

While the amendments do not specifically define the term “remote communication,” nonprofits should be able to utilize any conferencing system that will allow members to speak and hear each other, as is the case with board meetings at which some or all of the trustees might participate remotely. In choosing a method of communication, a nonprofit should consider, among other things, the ease of use and security of the service.

The new law also amends N.J.S.A. 15A:5-4, which now sets forth the notice requirements for membership meetings at which members will be allowed to participate remotely. The notice must describe the method of remote communication that will be used for the meeting.

Keep in mind that a nonprofit corporation has to provide a minimum of 10 days’ written notice to members for membership meetings. This requirement is not relaxed under the amended law.

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