



**H.B. 42\***

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(As Reported by S. Judiciary on Civil Justice)

**Reps. Schaffer, McGregor, Reidelbach, Hoops, Taylor, Seitz, Raussen, J. Stewart, C. Evans, Beatty, Carano, D. Evans, Hartnett, Perry, Willamowski, Gilb, Allen, Hagan, Buehrer, Harwood, Mason, Wagoner, Coley, Latta, Oelslager, Book, Barrett, Brown, Bulp, Calvert, Cassell, Collier, Combs, Core, Daniels, DeBose, DeGeeter, Distel, Dolan, Domenick, Faber, Fende, Flowers, Garrison, Gibbs, Hughes, Kearns, Key, Law, Martin, Miller, Otterman, S. Patton, T. Patton, Sayre, Schlichter, Schneider, Seaver, Setzer, Skindell, G. Smith, S. Smith, D. Stewart, Strahorn, Sykes**

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**BILL SUMMARY**

- Expands the permissible contents of regulations of nonprofit corporations to include any right to vote by the use of authorized communications equipment and specifies that the regulations may provide for the use of authorized communications equipment.
- Generally defines "authorized communications equipment" for purposes of the Nonprofit Corporation Law as any communications equipment to which both of the following apply: (1) the articles, regulations, or bylaws (or regulations, constitution, or other fundamental agreement when dealing with the incorporation of an unincorporated society or association) permit its use for the purpose of giving notice of meetings or any required notice, attending and participating in meetings, giving a copy of any document or transmitting any writing, or voting and (2) the communications equipment provides a transmission, including by telephone, telecopy, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention of, the member or director involved and allows all

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\* *This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

persons participating in a meeting to contemporaneously communicate with each other.

- Permits the articles or regulations to provide that voting by members may also be conducted by authorized communications equipment and authorizes the directors to adopt procedures and guidelines for the use of the equipment to permit the corporation to verify that a person is a voting member and to maintain a record of any vote.
- Generally authorizes the amendment of regulations or adoption of new regulations, the fixing or changing of the number of directors, the amendment of articles, or the adoption of a resolution of dissolution, 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 the use of authorized communications equipment and provides that participation by a member in a meeting through the use of any of those means of communication constitutes presence in person of that member at the meeting for purposes of determining a quorum.
- If the regulations are amended or new regulations are adopted without a meeting of the voting members, requires the secretary of the corporation to send by mail (current law), overnight delivery service, or authorized communications equipment a copy of the amendment or new regulations to each voting member who would have been entitled to vote on the amendment or new regulations and did not participate in their adoption.
- Generally authorizes the incorporation of an unincorporated society or association by a specified or majority vote of the voting members present in person or, if permitted, by mail or by proxy (current law) or by the use of authorized communications equipment.
- 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 the use of authorized communications equipment.
- Authorizes meetings of voting members of nonprofit corporations to be conducted solely by means of authorized communications equipment 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 the use of authorized communications equipment constitute a quorum for the meeting.

- Specifies that if authorized by the directors, voting members and proxyholders who are not physically present at a meeting of voting members may attend the meeting by the use of authorized communications equipment subject to certain conditions and authorizes the directors to adopt procedures and guidelines for the use of the equipment to permit verification that a person is a voting member or proxyholder and to maintain a record of any vote or action taken.
- Requires the notice of a meeting of voting members to include the means, if any, by which the voting members can be present and vote at the meeting through the use of authorized communications equipment.
- Provides that any transmission by authorized communications equipment that contains an affirmative vote or approval of the incorporators, members, or directors of a nonprofit corporation of the authorization or taking of any action without a meeting, is a signed writing for purposes of authorizing or taking any such action.
- Generally permits meetings of directors and meetings of committees of nonprofit corporations to be held by means of authorized communications equipment.
- Generally requires that a transaction for the disposition of all or substantially all of the assets of a mutual benefit corporation or the disposition of the assets of a public benefit corporation be approved by the affirmative vote of a majority of voting members present in person at a meeting held for that purpose or, if permitted, by proxy (current law), by mail, or by the use of authorized communications equipment and provides that a voting member's participation by any of those means of communication constitutes presence in person for purposes of determining a quorum.
- Generally requires an agreement of merger or consolidation to be approved by the affirmative vote of a majority of the voting members of each constituent corporation present at a meeting in person or, if permitted, by mail or by proxy (current law) or by the use of authorized communications equipment and provides that a voting member's

participation by any of those means of communication constitutes presence in person for purposes of determining a quorum.

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## CONTENT AND OPERATION

### *Contents of regulations; definition of "authorized communications equipment"*

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: (1) 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 and (2) the time and *place* for holding meetings of members or their elected representatives or delegates, and the time and *place* for holding meetings of the directors (R.C. 1702.11(A)(1), (4), and (7)).

The bill expands the contents of the regulations as described in (1) in the preceding paragraph by including, in the manner of conducting votes of members, any right to vote *by the use of authorized communications equipment, if permitted by the Nonprofit Corporation Law*. The bill specifically provides that the regulations may include provisions providing for the use of authorized communications equipment. (The bill defines "authorized communications equipment," as used in the Nonprofit Corporation Law, as any communications equipment to which both of the following apply: (1) the articles, regulations, or bylaws, or the regulations, constitution, or other fundamental agreement if R.C. 1702.08 (incorporation of an unincorporated society or association) applies, permit the use of the communications equipment for the purpose of giving notice of meetings or any notice required by the Nonprofit Corporation Law, attending and participating in meetings, giving a copy of any document or transmitting any writing required or permitted under that Law, or voting and (2) the communications equipment provides a transmission, including, but not limited to, by telephone, telecopy, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention of, the member or director involved and, with respect to meetings, allows all persons participating in the meeting to contemporaneously communicate with each other. (R.C. 1702.01(Q) and 1702.11(A)(4) and (12).)

The bill replaces the provisions described in (2) in the second preceding paragraph with *the place, if any*, and time for holding meetings of members, or their elected representatives or delegates, and *the place, if any*, and time for holding meetings of the directors (R.C. 1702.11(A)(1) and (7)).

#### **Amendment of regulations or adoption of new regulations; sending copy**

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.

If, pursuant to the regulations, such regulations are amended or new regulations adopted without a meeting of the voting members, the secretary of the corporation must mail a copy of the amendment or the new regulations to each voting member who would have been entitled to vote on the amendment or new regulations and did not participate in their adoption. (R.C. 1702.11(B) and (E).)

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 the use of authorized communications equipment*, or by proxy. *For purposes of this provision, participation by a member in a meeting through the use of any of the means of communication described in the provision constitutes presence in person of that member at the meeting for purposes of determining a quorum.* (R.C. 1702.11(B).)

The bill further modifies existing law by providing that if the regulations are amended or new regulations adopted without a meeting of the voting members, the secretary of the corporation must *send by mail, overnight delivery service, or authorized communications equipment* a copy of the amendment or the new regulations to each voting member who would have been entitled to vote on the amendment or new regulations and did not participate in their adoption. *If the secretary of the corporation mails the copy or sends it by overnight delivery service, the secretary must send the copy of the amendment or the new regulations to the voting member at the voting member's address as it appears on the corporation's records. If the secretary sends the copy by means of authorized communications equipment, the secretary must send the copy of the amendment or the new regulations to the address provided by the voting member for transmissions by authorized communications equipment.* (R.C. 1702.11(E).)

### **Sending of required notice**

Under the existing Nonprofit Corporation Law, unless another form of notice is required by the articles, regulations, bylaws, or applicable law, any notice required by that Law must be in writing and delivered personally or sent by telegram, *teletype, or electronic mail transmission* or by United States mail, express mail, or courier service, with postage or fees prepaid. If notice is given by personal delivery or transmitted by telegram, *teletype, or electronic mail*, the notice is deemed to have been given when delivered or transmitted. If notice is sent by United States mail, express mail, or courier service, the notice is deemed to have been given when deposited in the mail or with the courier service. (R.C. 1702.02(A) and (B).)

The bill modifies existing law described in the first two sentences, above. It provides that unless another form of notice is required by the articles, regulations, bylaws, or applicable law, any notice required by the Nonprofit Corporation Law must be in writing and delivered personally or sent by telegram, *by the use of authorized communications equipment*, or by United States mail, express mail, or courier service, with postage or fees prepaid. If notice is given by personal delivery or transmitted by telegram or *by the use of authorized communications equipment*, the notice is deemed to have been given when delivered or transmitted. (R.C. 1702.02(A) and (B).)

### **Incorporation of society or association**

Current law provides that when an unincorporated society or association, organized for any of the purposes for which a corporation could be formed under the Nonprofit Corporation Law, authorizes the incorporation of that society or association, by the same procedure and affirmative vote of its voting members as the regulations, constitution, or other fundamental agreement of the society or association requires for an amendment to that fundamental agreement or, if no such vote is specified, by a majority vote of the voting members present in person or, if permitted, by mail or by proxy, at a duly convened meeting the purpose of which is stated in the notice of the meeting, then upon the filing of the articles setting forth those facts and that the required vote has been obtained, that society or association becomes a corporation, and its members become members of that corporation in accordance with provisions in the articles to that effect (R.C. 1702.08(A)).

The bill modifies the part of current law, above, that provides if no vote is specified in the regulations, constitution, or other fundamental agreement of the society or association for an amendment to that fundamental agreement, the incorporation of the society or association must be authorized by a majority vote of the voting members present in person or, if permitted, by mail, by proxy, *or by the use of authorized communications equipment*, at a duly convened meeting the purpose of which is stated in the notice of the meeting (R.C. 1702.08(A)).

### **Notice of and attendance at meetings of voting members or directors**

Existing 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. 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 replaces the provision regarding notice of the place of any meeting of voting members or directors with a provision that the notice be of the place, *if any*, of any such meeting. It adds the provision that a transmission by authorized communications equipment that contains a waiver (of the notice) is a writing for purposes of the provision described in the preceding paragraph. 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, is present by the use of authorized communications equipment. (R.C. 1702.19.)

### **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 of the *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 the *voting* members, or by *any* other officers or persons *that* the articles or the regulations authorize to call such meetings (R.C. 1702.17(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 authorized communications equipment*. It removes the provision that in the absence of any provision in the articles or the regulations regarding the location of meetings, all meetings must be held at the principal office of the corporation in Ohio. (R.C. 1702.17(B).)

The bill additionally provides that if authorized by the directors, the voting members and proxyholders who are not physically present at a meeting of voting members may attend the meeting by the use of authorized communications equipment that enables the voting members and proxyholders an opportunity to participate in the meeting and to vote on matters submitted to the voting members, including an opportunity to read or hear the proceedings of the meeting, participate in the proceedings, and contemporaneously communicate with the persons who are physically present at the meeting. Any voting member who uses authorized communications equipment under this provision is deemed to be present in person at the meeting whether the meeting is held at a designated place or solely by means of authorized communications equipment. The directors may adopt procedures and guidelines for the use of authorized communications



equipment in connection with a meeting of voting members to permit the corporation to verify that a person is a voting member or proxyholder and to maintain a record of any vote or other action taken at the meeting. (R.C. 1702.17(C).)

### **Notice**

Under existing law, unless the articles or the regulations provide for notice of meetings otherwise than as provided in this provision, written notice stating the time and *place* of a meeting of the voting members, and in case of a special meeting, the purpose or purposes for which the meeting is called, must be given in the manner described above in "**Sending of required notice**," not less than ten or not more than 60 days before the date of the meeting to each member entitled to notice of the meeting, by or at the direction of the president or the secretary or any other person required or permitted by the regulations to give notice or the officers or persons calling the meeting. If mailed, the notice must be addressed to the member at the member's address as it appears on the records of the corporation. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at such meeting. (R.C. 1702.18.)

The bill modifies the part of existing law specifying the contents of the written notice of a meeting of voting members other than a special meeting. It provides that unless the articles or the regulations provide for notice of meetings otherwise than as provided in this provision, written notice stating the place, *if any*, and the time of a meeting *and the means, if any, by which* the voting members *can be present and vote at the meeting through the use of authorized communications equipment*, must be given as described in the preceding paragraph. If mailed *or sent by overnight delivery service*, that notice must be addressed to the member at the member's address as it appears on the corporation's records. *If sent by means of authorized communications equipment, that notice must be sent to the address furnished by the voting member for transmissions by authorized communications equipment.* Notice of adjournment of a meeting need not be given if the place, *if any*, and the time to which it is adjourned *and the procedure by which the voting members can be present and vote at the adjourned meeting through the use of authorized communications equipment* are fixed and announced at the meeting. (R.C. 1702.18.)

### **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 proxy, *or by the use of authorized communications equipment* at any meeting of voting members constitute a quorum for the meeting. (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. Under existing law, 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 *or by the use of authorized communications equipment*. 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. It specifically authorizes the directors to adopt procedures and guidelines for the use of authorized communications equipment to permit the corporation to verify that a person is a voting member and to maintain a record of any vote. (R.C. 1702.20(B) and (C).)

### **Action without a meeting**

Under continuing 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 that purpose, or, in the case of members, any other proportion or number of voting members, not less than a majority, that the articles or the regulations permit. Any such writing must be filed with or entered upon the records of the corporation. (R.C. 1702.25.)

The bill provides that any transmission by authorized communications equipment that contains an affirmative vote or approval of an incorporator, member, or director is a signed writing for purposes of the provision described in the preceding paragraph. The date on which that transmission by authorized

communications equipment is sent is the date on which the writing is signed. (R.C. 1702.25(B).)

### **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 that 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 proxy, *or by the use of authorized communications equipment*. *For purposes of the above provision, participation by a voting member in a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting 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).)

Under the bill, 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 means of authorized communications equipment*, unless the articles or regulations prohibit participation by directors at a meeting by means of *authorized* communications equipment. Participation in a meeting pursuant to this provision constitutes presence at that meeting. Notice of the place, *if any, and time* of each meeting of the directors must be given to each director either by personal delivery or by mail, *by overnight delivery service, or by means of authorized communications equipment* at least two days before the meeting. That 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 authorized communications equipment* unless participation by members of the committee at a meeting by means of *authorized* communications equipment is prohibited by the articles, the regulations, or an order of the directors. Participation in a meeting pursuant to this provision constitutes presence at the meeting. (R.C. 1702.33(E).)

### **Amendment of articles**

Under continuing law, generally, the articles may be amended from time to time in any respect if the articles as amended set forth all the provisions that are required in, and only those provisions that may properly be in, original articles filed at the time of adopting the amendment, other than with respect to the initial directors. Existing law provides that the voting members present in person or, if permitted, by mail or by proxy, at a meeting held for that purpose may adopt an

amendment by the affirmative vote of a majority of the voting members present if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. (R.C. 1702.38(A) and (C).)

The bill modifies existing law by providing that the voting members present in person or, if permitted, by mail, by proxy, *or by use of authorized communications equipment*, at a meeting held for that purpose may adopt an amendment of the articles the affirmative vote of a majority of the voting members present if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. *For purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.* (R.C. 1702.38(A) and (C).)

#### **Disposition of assets of mutual benefit corporation**

Under existing law, unless the articles or the regulations, or the terms of any trust on which the corporation holds any particular property, otherwise provide, a lease, sale, exchange, transfer, or other disposition of any assets of a mutual benefit corporation may be made without the necessity of procuring authorization from the court under R.C. 1715.39, upon the terms and for the consideration, which may consist, in whole or in part, of money or other property, including shares or other securities or promissory obligations of any domestic or foreign business corporation, that may be authorized by the directors, except that a lease, sale, exchange, transfer, or other disposition of *all, or substantially all, the assets* may be made only when that transaction is also authorized (either before or after authorization by the directors) by the voting members present in person or, if permitted, by proxy, at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations.

The bill modifies the *exception* described in the preceding paragraph by providing that a lease, sale, exchange, transfer, or other disposition of *all, or substantially all, the assets* may be made only when that transaction is also authorized (either before or after authorization by the directors) by the voting members present in person or, if permitted, *by mail, by proxy, or by the use of*

*authorized communications equipment*, at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present *as described in this provision*, if a quorum is present, or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. *For purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.* (R.C. 1702.39(A).)

### **Disposition of assets of public benefit corporation**

Continuing law precludes a public benefit corporation from disposing of its assets with value equal to more than 50% of the fair market value of the net tangible and intangible assets, including goodwill, of the corporation over a period of 36 consecutive months in a transaction or series of transactions, including the lease, sale, exchange, transfer, or other disposition of those assets, that are outside the ordinary course of its business or that are not in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds such assets, unless one or more of specified conditions apply. One of these conditions under existing law is that the corporation has provided written notice of the proposed transaction, including a copy or summary of the terms of such transaction, at least 20 days before consummation of the lease, sale, exchange, transfer, or other disposition of the assets, to the Attorney General's Charitable Law Section and to the members of the corporation, and the proposed transaction has been approved by the voting members present in person or, if permitted, by proxy, at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present if a quorum is present, or, if the articles or regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and if the articles or regulations require, by the affirmative vote of the voting members of any particular class. (R.C. 1702.39(B)(1)(b).)

The bill modifies the above described condition for the disposition of assets of a public benefit corporation by providing that the proposed transaction has been approved by the voting members present in person or, if permitted, *by mail*, by proxy, *or by the use of authorized communications equipment*, at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present *as described in this provision*, if a quorum is present, or, if the articles or regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and if the articles or regulations require, by the affirmative vote of the voting members of any particular class. *For*

*purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum. (R.C. 1702.39(B)(1)(b)(i) and (ii).)*

### **Meeting to vote on agreement of merger or consolidation**

Continuing law requires the directors of each constituent corporation, upon approving an agreement of merger or consolidation, to direct that the agreement be submitted to the voting members entitled to vote on it at a meeting of voting members of the corporation held for that purpose. At each meeting, a vote of the members must be taken on the proposed agreement. Existing law provides that in order to be adopted, the agreement (including any amendments or additions thereto proposed at each such meeting) must receive the affirmative vote of a majority of the voting members of each constituent corporation present in person or, if permitted, by mail or by proxy, at each such meeting if a quorum is present, or, if the articles or the regulations of that corporation provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the articles or the regulations of such corporation. (R.C. 1702.42(B).)

The bill modifies existing law by providing that in order to be adopted, the agreement, including any amendments or additions to the agreement proposed at each meeting, must receive the affirmative vote of a majority of the voting members of each constituent corporation present at that meeting in person or, if permitted, by mail, by proxy, *or by the use of authorized communications equipment*, if a quorum is present, or, if the articles or regulations of that corporation provide or permit, the affirmative vote of a greater or lesser proportion or number of the voting members, and the affirmative vote of the voting members of any particular class that is required by the articles or regulations of such corporation. *For purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum. (R.C. 1702.42(B).)*

### **Meeting to adopt resolution of dissolution**

Under current law, the voting members at a meeting held for that purpose may adopt a resolution of dissolution 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 or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations. Notice of the meeting of the members

must be *given* to all the members entitled to vote at the meeting. (R.C. 1702.47(D).)

Under the bill, the voting members at a meeting held for that purpose may adopt a resolution of dissolution by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, by proxy, *or by the use of authorized communications equipment*, if a quorum is present or, if the articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members *or the affirmative vote of the voting members* of any particular class that is required by the articles or the regulations. Notice of the meeting of the members must be *sent* to all the members who would be entitled to vote at the meeting *by mail, overnight delivery service, or any authorized communications equipment*. *For purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.* (R.C. 1702.47(D).)

#### **Meeting to accept provisions of Nonprofit Corporation Law**

Under current law, a corporation created before September 1, 1851, and actually carrying on its activities in Ohio, and which prior to October 11, 1955, has not taken specified action that would make it subject to the Ohio Constitution and laws passed under the Ohio Constitution, may accept the provisions of the Nonprofit Corporation Law (R.C. 1702.01 to 1702.58) at a meeting of voting members held for that purpose, by a resolution to that effect adopted 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, and by filing in the Office of the Secretary of State a copy of the resolution certified by any authorized officer of the corporation, for which filing the Secretary of State charges and collects a fee of \$5. Thereafter the corporation is deemed to exercise its corporate privileges under the Ohio Constitution and the laws passed in pursuance of the Ohio Constitution, and not otherwise. (R.C. 1702.58(E).)

The bill modifies current law pertaining to the adoption of a resolution at a meeting of voting members as described in the preceding paragraph. It provides that the resolution must be adopted by the affirmative vote of a majority of the voting members present in person or, if permitted, by mail, by proxy, *or by the use of authorized communications equipment*, if a quorum is present. *For purposes of the above provision, participation by a voting member at a meeting through the use of any of the means of communication described in that provision constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.* (R.C. 1702.58(E).)



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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-05	p. 184
Reported, H. Civil & Commercial Law	03-10-05	p. 306
Passed House (98-0)	03-16-05	pp. 340-341
Reported, S. Judiciary on Civil Justice	---	---

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