State of North Carolina

ROY COOPER

GOVERNOR

April 24, 2020

EXECUTIVE ORDER NO. 136

AUTHORIZING AND ENCOURAGING REMOTE NONPROFIT CORPORATION MEMBER AND BOARD MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117-122, 124-125, 129-131, and 133-135 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that annual and special meetings of a nonprofit corporation's members be held at a "place" stated in or fixed in accordance with the corporation's by-laws, pursuant to N.C. Gen. Stat. §§ 55A-7-01 and -02; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that "any action that may be taken at any annual, regular, or special meetings of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter," and that "[a]ny 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," pursuant to N.C. Gen. Stat. § 55A-7-08; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that a nonprofit corporation "may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting," pursuant to N.C. Gen. Stat. § 55A-8-20; and

WHEREAS, electronic devices or processes exist that allow members and directors to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, the undersigned has previously limited mass gatherings to ten (10) or fewer people in certain circumstances in Executive Order No. 121, promulgated on March 27, 2020; and

WHEREAS, nonprofit corporations have sought guidance as to the interaction between the mass gathering restriction and the North Carolina Nonprofit Corporation Act; and

WHERAS, for the protection of public health, the undersigned encourages North Carolina nonprofit corporations to hold members' and board of directors' meetings by remote participation and balloting, to the maximum extent practicable, to prevent members and directors from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Encouraging and Authorizing Nonprofit Corporation Members' and Directors' Meetings To Be Conducted by Means of Remote Communication and Electronic Balloting

For the reasons and pursuant to the authority set forth above, the undersigned states the following:

A nonprofit corporation incorporated under the laws of the State of North Carolina that holds, commences, or sends formal notice to its members of any meeting(s) of its members pursuant to N.C. Gen. Stat. § 55A-7-01 *et seq.* of the North Carolina Nonprofit Corporation Act during the State of Emergency is permitted to conduct such meeting(s) in accordance with the following conditions:

A. During the pendency of this State of Emergency, the board of directors of the nonprofit corporation may, in its sole discretion, determine that all or any part of the nonprofit corporation's annual, regular, or special members' meeting may be conducted solely by means of remote communication and remote balloting, provided the following conditions are met.

    1. The nonprofit corporation's members shall have the right to participate in any annual, regular, or special members' meeting by means of remote communication, including with respect to the conduct of the business of such members' meeting.

    2. The nonprofit corporation's members shall be given the opportunity to vote on any matters considered during the meeting by ballot submitted by electronic transmission in accordance with the provisions of N.C. Gen. Stat. § 55A-7-08.

B. Further, for a meeting carried out pursuant to this Executive Order:

    1. Any party authorized by the nonprofit corporation's board of directors to preside at or otherwise carry out any responsibility at such members' meeting shall be permitted to preside at or otherwise carry out such responsibilities by means of remote communication.

    2. For purposes of N.C. Gen. Stat. §§ 55A-7-01, -02, & -05 of the North Carolina Nonprofit Corporation Act, the place of the meeting of the members shall be deemed to include the method of remote communication and balloting through which members may participate in a meeting held solely by means of remote communication.

    3. To the extent that any such members' meeting, or any part thereof, is held at a physical location, the nonprofit corporation's board of directors may limit the number of in-person attendees at any such members' meeting in accordance with the restrictions on mass gatherings enacted by the undersigned during this State of Emergency.

C. The Secretary of State is directed that member meetings held by remote communication in accordance with this Executive Order do not, for the reason that they were held by remote communication, fail to meet the requirements of the North Carolina Nonprofit Corporation Act.

D. This Executive Order shall not be construed or interpreted to mean that shareholder meetings held by remote communication would have failed to meet the requirements of the North Carolina Nonprofit Corporation Act in the absence of this Executive Order.

Section 2. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 3. Effective Date

This Executive Order is effective immediately and shall remain in effect for sixty (60) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 24th day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State