State of North Carolina

ROY COOPER

GOVERNOR

April 1, 2020

EXECUTIVE ORDER NO. 125

AUTHORIZING AND ENCOURAGING REMOTE SHAREHOLDER 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 and 124 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 Business Corporation Act provides that annual and special meetings of a corporation's shareholders be held at a "place" stated in or fixed in accordance with a corporation's bylaws, N.C. Gen. Stat. § 55-7-01, and "shareholders of any class or series" may, upon the board of directors' authorization, "participate in any meeting of shareholders by means of remote communication" so long as the corporation has implemented certain "reasonable measures," N.C. Gen. Stat. § 55-7-09(b); and

WHEREAS, electronic devices or processes exist that allow shareholders 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 or fewer people in certain circumstances in Executive Order 121 on March 27, 2020; and

WHEREAS, corporations may have shareholder meetings where ten or more shareholders seek to participate; and

WHEREAS, many other states, including the State of Delaware, permit annual shareholders' meetings to be held by remote participation; and

WHEREAS, corporations have sought guidance as to interactions between the Mass Gathering restrictions and the North Carolina Business Corporation Act; and

WHEREAS, for the protection of the public health, the undersigned encourages North Carolina corporations to hold shareholders' meetings by remote participation, to the maximum extent practicable, to prevent shareholders 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, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; 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, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available State resources as reasonably necessary to cope with an emergency, including the direction of functions of State agencies for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(2), the undersigned may give to all participating State officers such directions as may be necessary to assure coordination among them; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 166A-19.30(c)(2) and 166A-19.31(b)(2), the undersigned may enact prohibitions and restrictions on the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

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 Shareholders' Meetings To Be Conducted by Means of Remote Communication

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

Corporations incorporated under the laws of the State of North Carolina that hold, commence or send formal notice to its shareholders of any meeting(s) of its shareholders pursuant to Section 55-7-01 et seq. of the North Carolina Business Corporation Act during the State of Emergency are permitted to conduct such meeting in accordance with the following conditions.

A. During the pendency of this State of Emergency, the board of directors of the corporation may, in its sole discretion, determine that all or any part of the shareholders' meeting may be held solely by means of remote communication, provided that the following conditions are met.

   1. Shareholders shall be given the opportunity to participate in, and vote at, such shareholders' meeting in accordance with the provisions of Section 55-7-09 of the North Carolina Business Corporation Act.

   2. The corporation's shareholders shall have the right to participate in such shareholders' meeting by means of remote communication, including with respect to the conduct of the business of such shareholders' meeting.

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

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

   2. For purposes of Section 55-7-05 of the North Carolina Business Corporation Act, the place of the meeting of shareholders shall be deemed to include the method of remote communication through which shareholders may participate in a meeting held solely by means of remote communication.

   3. To the extent that any such shareholders' meeting, or any part thereof, is held at a physical location, the corporation's board of directors may limit the number of in-person attendees at any such shareholders' 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 shareholder 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 Business 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 Business 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. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of a 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 1st day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State