



CLIENT ALERT

Massachusetts Amends State Law to Permit Virtual Meetings of the Members of Nonprofit Corporations

On March 29, 2023, Governor Maura Healey signed into law a bill, H.58, relative to supplemental appropriations and making certain changes to state law. Among the changes is an update to the Massachusetts Nonprofit Corporations Statute, Chapter 180, permitting members of nonprofit corporations to meet remotely if certain requirements are met.

A Massachusetts nonprofit corporation may, but need not, have corporate members. If it does, the members generally have the power to vote on certain fundamental corporate matters, including amendments to articles of organization, mergers, and the sale of all or substantially all of the corporation's assets. Members may also have other powers as specified in the corporation's articles of organization or bylaws. Prior to enactment of the new law, Chapter 180 authorized directors, but not members, of Massachusetts nonprofit corporations to participate in meetings via remote participation.

The new law provides that, unless a corporation's articles of organization or bylaws provide otherwise, the board of directors may authorize member meetings to be held in-person at a physical location, by means of remote communication, or by a hybrid model combining in-person attendance and remote communication, and adopt guidelines or procedures for the conduct of such meetings. A corporation that authorizes remote and/or hybrid meetings of the members must implement reasonable measures to:

- (i) Verify that each person deemed present and authorized to vote at the meeting by means of remote communication is a member;
- (ii) Provide members a reasonable opportunity to participate in the meeting and vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and
- (iii) Maintain a record of any vote or other action a member takes at a meeting by means of remote communication.

Procedures necessary to verify that each voting participant is a member will vary depending on the nature of the corporation's membership. Corporations with a relatively small number of members who are easily identified may be able to confirm that all remote participants are members based on personal knowledge. Corporations with large memberships, or other challenges with identifying members like a broadly defined class of members, may need to adopt additional procedures to ensure only members have remote access, such as by identifying all members as of the date that notice of the meeting is distributed and limiting remote access through a link provided in the notice.

It is also worth noting that the new law requires members be able to hear or read the proceedings substantially concurrently with the meeting. This means that members need not be able to hear each other all at the same time (in contrast, this is a prerequisite for directors participating remotely in a meeting of the directors), but must be able to follow the proceedings substantially in real time.

In order to allow remote and/or hybrid member meetings, the board of directors must vote to authorize such meetings (or amend the corporation's bylaws to authorize such meetings), and adopt guidelines or procedures for such meetings that, at a minimum, implement measures which sufficiently meet the requirements described above.

The new law has its roots in emergency measures adopted during the COVID-19 pandemic, when the Massachusetts legislature enacted a temporary law that, among other things, authorized remote participation for members of Massachusetts nonprofit corporations. Initially intended to last for the duration of the Governor's March 10, 2020 declaration of a state of emergency and for 60 days thereafter, the temporary law was subsequently extended until March 31, 2023. Absent the adoption of H.58, members of nonprofit corporations would once again have lacked express statutory authorization for remote participation, as had been the case prior to the pandemic.

If you have any questions about remote participation by members or directors of Massachusetts nonprofit corporations, or the how to implement remote participation of members in accordance with the new law, please contact Attorneys Elka Sachs (esachs@kb-law.com) or Eric Reustle (ereustle@kb-law.com).