

CS FOR SENATE BILL NO. 24(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/22/21

Referred: Rules

Sponsor(s): SENATOR WILSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to holding corporate meetings by remote communication; allowing**
2 **voting by remote communication at corporate meetings; making shareholder lists**
3 **available electronically; relating to for-profit and nonprofit corporations; relating to**
4 **business and industrial development corporations; relating to Native corporations;**
5 **relating to the Alaska Banking Code; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 10.06.223 is amended to read:

8 **Sec. 10.06.223. Organizational meeting.** After the commencement of
9 corporate existence by the issuance of a certificate of incorporation, an organizational
10 meeting of either the incorporators or the board of directors named in the articles of
11 incorporation shall be held [, EITHER INSIDE OR OUTSIDE THE STATE,] at the
12 call of a majority of the incorporators or directors named in the articles of
13 incorporation [,] for the purpose of adopting bylaws, electing directors if none have

1 been named in the articles, electing officers, and transacting such other business as
 2 may come before the meeting. **The organizational meeting may be held at a**
 3 **designated place, by remote communication, or at a designated place and by**
 4 **remote communication. The designated place may be inside or outside the state.**
 5 Those calling the meeting shall give at least 20 **days'** [DAYS] notice of the meeting
 6 by mail to each incorporator or director named. The notice shall state the time and
 7 place, **if the meeting is to be held at a designated place,** of the meeting, **and**
 8 **whether the meeting will also be held by remote communication.**

9 * **Sec. 2.** AS 10.06.230(e) is amended to read:

10 (e) The bylaws may contain any provision, not in conflict with law or the
 11 articles of incorporation, for the management of the business of the corporation and
 12 for the conduct of the affairs of the corporation, including [BUT NOT LIMITED TO,]

13 (1) a provision referred to in AS 10.06.210(2), (3), or (4);

14 (2) the time, **for meetings held at a designated place, the** place, and
 15 **the manner, including by remote communication,** of calling, conducting, and giving
 16 notice of meetings of shareholders, directors, and committees;

17 (3) the manner of execution, revocation, and use of proxies;

18 (4) the qualifications, duties, and compensation of directors; the time
 19 of their annual election; and the requirements of a quorum for directors' and
 20 committee meetings;

21 (5) the appointment and authority of committees of the board;

22 (6) the appointment, duties, compensation, and tenure of officers;

23 (7) the mode of determination of holders of record of the shares of the
 24 corporation;

25 (8) the making of annual reports and financial statements to the
 26 shareholders.

27 * **Sec. 3.** AS 10.06.405(a) is amended to read:

28 (a) Meetings of shareholders shall be held at a place inside or outside **the**
 29 [THIS] state, **by remote communication, or at a place inside or outside the state**
 30 **and by remote communication,** as provided in the bylaws. In the absence of a
 31 provision in the bylaws, meetings shall be held at the **direction of the board or at the**

1 registered office of the corporation.

2 * **Sec. 4.** AS 10.06.405(b) is amended to read:

3 (b) An annual meeting of the shareholders shall be held at the time as provided
4 in the bylaws or, if the bylaws do not set a time, at a time determined by the
5 board. If the annual meeting is not held within any 13-month period, the superior
6 court may on the application of a shareholder summarily order a meeting to be held.

7 * **Sec. 5.** AS 10.06.410(a) is amended to read:

8 (a) Written or printed notice stating the place, if the meeting will be held at a
9 designated place, the manner, including holding the meeting by remote
10 communication, the day, and the hour of the meeting, and, in the case of a special
11 meeting, the purpose for which the meeting is called, shall be delivered not less than
12 20 or more than 60 days before the date of the meeting, either personally, by mail, or
13 by electronic transmission under (b) of this section, by or at the direction of the
14 president, the secretary, the officer, or persons calling the meeting, to each shareholder
15 of record entitled to vote at the meeting. If mailed, the notice is considered delivered
16 when deposited with postage prepaid in the United States mail addressed to the
17 shareholder at the address of the shareholder as it appears on the stock transfer books
18 of the corporation, or, if the shareholder has filed with the secretary of the corporation
19 a written request that notice be mailed to a different address, addressed to the
20 shareholder at the new address. An affidavit of the secretary or other person giving the
21 notice or of a transfer agent of the corporation that the notice required by this section
22 has been given is prima facie evidence of the facts stated in the affidavit. If
23 attendance of the meeting by remote communication is permitted, the notice must
24 state the method of remote communication by which a shareholder or a proxy
25 holder is considered present in person at the meeting and by which the
26 shareholder or proxy holder may vote.

27 * **Sec. 6.** AS 10.06.413(a) is amended to read:

28 (a) At least 20 days before each meeting of shareholders, the officer or agent
29 having charge of the stock transfer books for shares of a corporation shall make a list
30 of the shareholders entitled to vote at the meeting or an adjournment of the meeting
31 arranged in alphabetical order, with the address of and the number of shares held by

each shareholder. The list shall be kept on file at the registered office of the corporation and is subject to inspection by a shareholder or the agent or attorney of a shareholder at any time during usual business hours for a period of 20 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and [SHALL BE] subject to the inspection of a shareholder during the meeting, or the list shall be kept available for the meeting on a reasonably accessible electronic network where the information required to gain access to the list is provided with the notice of the meeting. If the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. The original stock transfer books are prima facie evidence as to the shareholders who are entitled to examine the list or transfer books or to vote at a meeting of shareholders.

* **Sec. 7.** AS 10.06.415(a) is amended to read:

(a) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person, by remote communication, or by proxy, constitutes a quorum at a meeting of shareholders, but in no event may a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter, the articles of incorporation, or the bylaws.

* **Sec. 8.** AS 10.06.418(b) is amended to read:

(b) A proxy is not valid after the expiration of 11 months from the date of the proxy unless it qualifies as an irrevocable proxy under (e) of this section. A proxy continues in full force and effect until revoked by the person executing it, except as provided in this section. A person may revoke a proxy by a writing delivered to the corporation stating that the proxy is revoked, by a subsequent proxy executed by the person executing the prior proxy and delivered to the corporation, or by attendance at the meeting and voting in person, or by remote communication, by the person executing the proxy. The dates contained on the forms of proxy presumptively

determine the order of execution, regardless of the postmark dates on the envelopes in which the proxies are mailed.

* **Sec. 9.** AS 10.06.420(c) is amended to read:

(c) A shareholder may vote in person, **by remote communication**, by proxy executed in writing by the shareholder or by the authorized attorney-in-fact of the shareholder, or by proxy executed by electronic transmission by the shareholder or by the authorized attorney-in-fact of the shareholder. A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the shareholder authorized the transmission.

* **Sec. 10.** AS 10.06.420(d) is amended to read:

(d) Unless the articles of incorporation provide otherwise, at an election for directors, each shareholder entitled to vote at the election may vote, in person, **by remote communication**, or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate votes by giving one candidate votes equal to the number of directors multiplied by the number of shares of the shareholder, or by distributing votes on the same principle among any number of candidates. The rights created by this subsection may not be limited by amendment to the articles when the votes cast against the amendment would be sufficient to elect one director if voted cumulatively at an election of the entire board.

* **Sec. 11.** AS 10.06.420(f) is amended to read:

(f) Shares held by an administrator, executor, guardian, or conservator may be voted by that person, [EITHER] in person, **by remote communication**, or by proxy, without a transfer of the shares into the name of that person. Shares standing in the name of a trustee may be voted by the trustee, [EITHER] in person, **by remote communication**, or by proxy, but a trustee is not entitled to vote shares held by the

trustee without a transfer of the shares into the name of the trustee.

* **Sec. 12.** AS 10.06.420(j) is amended to read:

(j) If a corporation adopts rules to provide for voting by proxy executed by electronic transmission **or by a ballot cast by electronic transmission**, the rules must provide that all legally qualified proxies **and ballots cast by electronic transmission** may be voted in the same manner as the corporation's proxy **or ballot**.

* **Sec. 13.** AS 10.06.420 is amended by adding a new subsection to read:

(k) The board may permit shareholders and shareholders' proxy holders to participate in meetings of the shareholders by remote communication using one or more methods of remote communication, whether the meetings are held at a designated place, by remote communication, or at a designated place and by remote communication. The board may adopt guidelines and procedures that apply to participation in shareholder meetings by remote communication and that the board considers appropriate. The board may limit participation to specified locations or means of communication. A shareholder participating in a meeting by remote communication permitted by the board is considered to be present in person at the meeting.

* **Sec. 14.** AS 10.06.470(a) is amended to read:

(a) A regular or special meeting of the board or a committee of the board may be called by the **chair** [CHAIRMAN] of the board, the president, a vice-president, the secretary, or a director and may be held at any place **designated under the bylaws** inside or outside **the** [THIS] state, **by remote communication, or at a designated place inside or outside the state and by remote communication. A member of the board or of a committee of the board participating in a meeting by remote communication is considered to be present in person at the meeting for the purposes of reaching a quorum under AS 10.06.473 and for voting at the meeting.**

* **Sec. 15.** AS 10.06.960(n) is amended to read:

(n) Notwithstanding AS 10.06.504(d), an amendment to the articles of incorporation of a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) and incorporated under former AS 10.05.005 to add a provision eliminating or limiting the personal liability of a director to the corporation

1 or its stockholders for monetary damages under AS 10.06.210(1)(M) may be adopted
 2 by the affirmative vote of a majority of the shares represented at the regular or special
 3 meeting at which a quorum is present in person, [OR] by proxy, or by remote
 4 communication.

5 * **Sec. 16.** AS 10.06.960(o) is amended to read:

6 (o) Notwithstanding AS 10.06.455(b) and 10.06.504(d), an amendment to the
 7 articles of incorporation of a village corporation organized under 43 U.S.C. 1601 et
 8 seq. (Alaska Native Claims Settlement Act) and incorporated under former
 9 AS 10.05.005 to add a provision authorizing the classification of directors under
 10 AS 10.06.455 may be adopted by the affirmative vote of a majority of the shares
 11 represented at a regular or special meeting at which a quorum is present in person,
 12 [OR] by proxy, or by remote communication.

13 * **Sec. 17.** AS 10.06.960(p) is amended to read:

14 (p) Notwithstanding AS 10.06.504(d), a Native corporation incorporated
 15 under former AS 10.05 before July 1, 1989, may amend its articles under this
 16 subsection to reduce the quorum necessary to hold a meeting of shareholders to one-
 17 third of the outstanding shares entitled to vote at a meeting, represented in person, by
 18 remote communication, or by proxy. An amendment under this subsection is
 19 approved if it receives an affirmative vote of two-thirds of the shares represented in
 20 person, by remote communication, or by proxy at an annual meeting. The Native
 21 corporation may not use the reduced quorum established under this subsection to
 22 adopt other amendments of the articles or to adopt resolutions to which 43 U.S.C.
 23 1629b applies. AS 10.06.504(d) continues to apply to the adoption of other
 24 amendments of the articles.

25 * **Sec. 18.** AS 10.06.990 is amended by adding a new paragraph to read:

26 (51) "remote communication" means communication by means of
 27 electronic communication, conference telephone, videoconference, the Internet,
 28 electronic transmission, or other means by which persons not physically present in the
 29 same location may communicate with each other on a substantially simultaneous
 30 basis.

31 * **Sec. 19.** AS 10.10.100(b) is amended to read:

(b) Each stockholder shall have one vote, in person, by remote communication, or by proxy, for each share of capital stock held by that stockholder, and each member shall have one vote, in person, by remote communication, or by proxy, except that a member having a loan limit of more than \$1,000 shall have one additional vote, in person, by remote communication, or by proxy, for each additional \$1,000 which the member is authorized to have outstanding on loans to the corporation at any one time as determined under AS 10.10.070(a)(3)(B).

* **Sec. 20.** AS 10.10.100 is amended by adding new subsections to read:

(c) A proxy may be executed in writing by a stockholder or by the authorized attorney-in-fact of the stockholder, or executed by electronic transmission by the stockholder or by the authorized attorney-in-fact of the stockholder. A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation person, including a proxy support service organization or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the stockholder authorized the transmission.

(d) In this section, "electronic transmission" and "remote communication" have the meanings given in AS 10.06.990.

* **Sec. 21.** AS 10.20.066 is amended to read:

Sec. 10.20.066. Notice of meetings. Unless otherwise provided in the articles of incorporation or bylaws, written notice stating the manner, place, if the meeting is to be held at a designated place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be considered to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage prepaid.

1 * **Sec. 22.** AS 10.20.071(b) is amended to read:

2 (b) A member entitled to vote may vote in person or, unless the articles of
3 incorporation or the bylaws otherwise provide, may vote by **remote communication,**
4 proxy executed in writing by the member or by the attorney-in-fact for the member, **or**
5 **by proxy executed by electronic transmission by the member or by the**
6 **authorized attorney-in-fact of the member.** A proxy is not valid after 11 months
7 from the date of its execution, unless otherwise provided in the proxy. If directors or
8 officers are to be elected by members, the bylaws may provide that the elections may
9 be conducted by mail.

10 * **Sec. 23.** AS 10.20.071(e) is amended to read:

11 (e) The articles of incorporation or the bylaws may provide the number or
12 percentage of members entitled to vote represented in person, **by remote**
13 **communication,** or by proxy, or the number or percentage of votes represented in
14 person, **by remote communication,** or by proxy, which constitute a quorum at a
15 meeting of members. In the absence of any such provision, members holding one-
16 tenth of the votes entitled to be cast on the matter to be voted **on** [UPON] represented
17 in person, **by remote communication,** or by proxy constitute a quorum. A majority of
18 the votes entitled to be cast on a matter to be voted **on** [UPON] by the members
19 present or represented by proxy at a meeting at which the quorum is present is
20 necessary for adoption unless a greater proportion is required by this chapter, the
21 articles of incorporation or the bylaws.

22 * **Sec. 24.** AS 10.20.071 is amended by adding new subsections to read:

23 (f) A proxy executed by electronic transmission must

24 (1) be directed to the person who will be the holder of the proxy or to a
25 proxy solicitation person, including a proxy support service organization or similar
26 agent that is authorized by the person who will be the holder of the proxy to receive
27 the transmission; and

28 (2) include information that demonstrates that the stockholder
29 authorized the transmission.

30 (g) In this section, "electronic transmission" has the meaning given in
31 AS 10.06.990.

1 * **Sec. 25.** AS 10.20.076 is amended to read:

2 **Sec. 10.20.076. Quorum of members.** Unless otherwise provided in the
3 articles of incorporation or the bylaws, members holding one-tenth of the votes
4 entitled to be cast, represented in person, by remote communication, or by proxy,
5 constitute a quorum at a meeting of members. However, in no event may a quorum
6 consist of less than one-tenth of the votes entitled to vote at a meeting. If a quorum is
7 present, the affirmative vote of a majority of the votes represented at the meeting and
8 entitled to vote on the subject matter is the act of the members, unless the vote of a
9 greater number is required by this chapter or the articles of incorporation or the
10 bylaws.

11 * **Sec. 26.** AS 10.20.116(a) is amended to read:

12 (a) Regular or special meetings of the board of directors may be held at a
13 designated place, by remote communication, or at a designated place and by
14 remote communication. The designated place may be [EITHER] inside or outside
15 the state.

16 * **Sec. 27.** AS 10.20.166(a) is amended to read:

17 (a) After the issuance of the certificate of incorporation an organizational
18 meeting of the board of directors named in the articles of incorporation shall be held at
19 a designated place, by remote communication, or at a designated place and by
20 remote communication [, EITHER INSIDE OR OUTSIDE THE STATE,] at the call
21 of a majority of the incorporators, for the purpose of adopting bylaws, electing
22 officers, and the transaction of other business as may come before the meeting. The
23 designated place may be inside or outside the state. The incorporators calling the
24 meeting shall give at least three days' notice of the meeting by mail to each director
25 named, and the notice must [WHICH SHALL] state the time and place of the
26 meeting.

27 * **Sec. 28.** AS 10.20.920 is amended by adding a new paragraph to read:

28 (10) "remote communication" has the meaning given in AS 10.06.990.

29 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 SAVING CLAUSE. This Act does not affect

1 (1) a court action or court proceeding begun before the effective date of this
2 Act; or

3 (2) a right accrued before the effective date of this Act.

4 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 RETROACTIVITY. This Act is retroactive to March 11, 2020.

7 * **Sec. 31.** This Act takes effect immediately under AS 01.10.070(c).