§ 55-7-04. Action without meeting.

(a) Any action required or permitted by this Chapter to be taken at a shareholders' meeting may be taken without a meeting and without prior notice except as required by subsection (d) of this section, if the action is taken by all the shareholders entitled to vote on the action or if the action is taken by either of the following:

(1) For corporations incorporated prior to October 1, 2023, subject to subsection (a1) of this section, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted.

(2) For corporations incorporated on or after October 1, 2023, subject to subsection (a1) of this section, if not prohibited by the articles of incorporation of a corporation that is not a public corporation at the time the action is taken, by shareholders having not less than the minimum number of votes that would be necessary to take the action at a meeting at which all shareholders entitled to vote were present and voted.

The action must be evidenced by one or more unrevoked written consents signed by shareholders sufficient to take the action without a meeting, before or after the action, describing the action taken and delivered to the corporation for inclusion in the minutes or filing with the corporate records. To the extent the corporation has agreed pursuant to G.S. 55-1-50, a shareholder's consent or revocation of consent to action taken without meeting may be in electronic form and delivered by electronic means.

(a1) Notwithstanding subsection (a) of this section, the following actions may be taken without a meeting only by all the shareholders entitled to vote on the action:

(1) If cumulative voting is not authorized, the election of directors at the annual meeting.

(2) If cumulative voting is authorized, the election of directors and the removal of a director unless the entire board of directors is to be removed. If G.S. 55-7-28(e) applies to the corporation, an amendment to the articles of incorporation to deny or limit the right of shareholders to vote cumulatively and an amendment to the articles of incorporation or bylaws to decrease the number of directors.

(b) A shareholder's written consent to action to be taken without a meeting shall not be effective to take the corporate action referred to in the consent unless the corporation has, within 60 days following the first date on which a consent for that action is received by the corporation, received unrevoked written consents sufficient under subsection (a) of this section to take the action without meeting. If not otherwise fixed under G.S. 55-7-03 or G.S. 55-7-07, the record date for determining shareholders entitled to take action without a meeting is the earliest date that any consent that is to be counted in satisfying the requirements of subsection (a) of this section is received by the corporation. A shareholder may only revoke a written consent if the shareholder delivers to the corporation a written revocation prior to the corporation's receipt of unrevoked written consents sufficient under subsection (a) of this section to take the action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) Unless the articles of incorporation otherwise provide, if shareholder approval is required by this Chapter for (i) an amendment to the articles of incorporation pursuant to Article 10 of this Chapter, (ii) a plan of merger or share exchange pursuant to Article 11 of this Chapter, (iii) a plan of conversion pursuant to Part 2 of Article 11A of this Chapter, (iv) the sale, lease, exchange, or other disposition of all, or substantially all, of the corporation's property pursuant to

Article 12 of this Chapter, or (v) a proposal for dissolution pursuant to Article 14 of this Chapter, and the approval is to be obtained through action without meeting, the corporation must give its shareholders, other than shareholders who consent to the action, written notice of the proposed action at least 10 days before the action is taken. The notice shall contain or be accompanied by the same material that, under this Chapter, would have been required to be sent to shareholders not entitled to vote on the action in a notice of meeting at which the proposed action would have been submitted to shareholders for action.

(e) If action is taken without a meeting by fewer than all shareholders entitled to vote on the action, the corporation shall give written notice to all shareholders who have not consented to the action and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting with the same record date as the action taken without a meeting, within 10 days after the action is taken. The notice shall describe the action and indicate that the action has been taken without a meeting of shareholders. Failure to comply with the requirements of this subsection does not invalidate any action taken that otherwise complies with this section. (1955, c. 1371, s. 1; 1969, c. 751, s. 33; 1989, c. 265, s. 1; 2001-387, s. 11; 2001-487, ss. 62(b), 62(c); 2005-268, ss. 2, 3; 2023-130, s. 2(a).)