

BILL ANALYSIS

Senate Research Center
85R5333 EES-F

S.B. 1518
By: Hancock
Business & Commerce
3/31/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1518 amends provisions in the Business Organizations Code (the Code) impacting the organization and operation of for-profit corporations and nonprofit corporations and associations. S.B. 1518 updates Texas corporate law, keeping it competitive with other leading business law states, including Delaware and the Delaware General Corporation Laws, and in sync with the Model Business Corporation Act.

The Code consolidates all of the state's business organizations laws to promote uniformity and efficiency. It was enacted by the legislature in 2003 pursuant to a joint drafting effort by the Business Law Section of the State Bar and the secretary of state, with assistance from the Legislative Council in editing and formatting. It took partial effect on January 1, 2006, with full application on January 1, 2010. To continually improve the Code's effectiveness, packages of both substantive and technical amendments have been enacted during each legislative session since its initial adoption.

S.B. 1518 contains five general categories of modifications: for-profit corporation specific, nonprofit specific, director voting, mergers and conversions, and notice uniformity.

As proposed, S.B. 1518 amends current law relating to corporations, associations, real estate investment trusts, and related entities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4.152, Business Organizations Code, as follows:

Sec. 4.152. **FILING FEES: FOR-PROFIT CORPORATIONS.** Requires the secretary of state (SOS), for a filing by or for a for-profit corporation, to impose the following fees:

(1) to (14) makes no changes to these subdivisions;

(15) for filing a certificate of validation, \$15, plus the filing fee imposed for filing each new filing instrument that is attached as an exhibit to the certificate of validation under Section 21.908(b)(3)(C); and

(16) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 2. Amends Section 4.159, Business Organizations Code, as follows:

Sec. 4.159. **FILING FEES: NONPROFIT ASSOCIATIONS.** Requires SOS, for a filing by or for a nonprofit association, to impose the following fees:

(1) to (3) makes no changes to these subdivisions;

(4) for filing a certificate of merger or conversion, regardless of whether the surviving or new nonprofit organization is a domestic or foreign entity, \$50; and

(5) for filing any instrument of a nonprofit association as provided by this code for which this section does not expressly provide a fee, \$5.

SECTION 3. Amends Subchapter D, Chapter 6, Business Organizations Code, by adding Section 6.157, as follows:

Sec. 6.157. VOTING OF JOINTLY HELD OWNERSHIP INTERESTS. (a) Defines "jointly held ownership interest."

(b) Authorizes a jointly held ownership interest to be voted by:

(1) for a jointly held ownership interest as defined by Subsection (a)(1) (relating to defining "jointly held ownership" as an interest held of record in the names of two or more persons), any one of the record owners; or

(2) for a jointly held ownership interest as defined by Subsection (a)(2) (relating to defining "jointly held ownership" as an interest for which two or more persons have the right to vote), any one of the persons having the right to vote the interest, as described by Section 6.154 (Voting of Interests in an Estate or Trust).

(c) Provides that, if a jointly held ownership interest is voted by more than one person as described by Subsection (b), the act of a majority of the persons voting binds all of the record owners or persons having the right to vote the interest.

(d) Authorizes each faction, if a jointly held ownership interest is voted by more than one person as described by Subsection (b), and the votes of the persons are evenly split on any particular matter, to vote the interest proportionately.

(e) Provides that Subsection (b), (c), or (d) does not apply if the secretary or other person tabulating votes on the entity's behalf has a good faith belief, based on written information the person received regarding rights or obligations with respect to voting the jointly held ownership interest, that reliance on Subsection (b), (c), or (d), as applicable, is unwarranted.

SECTION 4. Amends Section 10.010, Business Organizations Code, as follows:

Sec. 10.010. New heading: SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION MERGERS. (a) Prohibits a domestic nonprofit corporation or nonprofit association, rather than nonprofit corporation, from merging into another entity under certain conditions. Makes a conforming change.

(b) through (d) Makes conforming changes.

SECTION 5. Amends Section 10.108, Business Organizations Code, as follows:

Sec. 10.108. New heading: SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION CONVERSIONS. Makes a conforming change and makes no further changes to this section.

SECTION 6. Amends Section 21.157, Business Organizations Code, by adding Subsection (d), as follows:

(d) Authorizes the authorization by the board of directors for the issuance of shares to provide that any shares to be issued under the authorization be issued:

(1) in one or more transactions in the numbers and at the times as stated in or determined by the authorization; or

(2) in the manner stated in the authorization, which may include a determination or action by any person or persons, including the corporation, if the authorization states the maximum number of shares that may be issued under the authorization, the period during which the shares may be issued, and the minimum amount of consideration for which the shares may be issued.

SECTION 7. Amends Section 21.160(d), Business Organizations Code, as follows:

(d) Authorizes the amount of the consideration to be received for shares to be determined in accordance with Subsection (a) (relating to certain methods determining consideration to be received for shares) by the approval of a minimum amount of consideration or a formula to determine that amount, rather than in accordance with Subsection (a) by the approval of a formula to determine that amount. Authorizes the formula to include or be made dependent on facts ascertainable outside the formula, if the manner in which those facts operate on the formula is clearly or expressly set forth in the formula or in the authorization approving the formula.

SECTION 8. Amends Section 21.168(c), Business Organizations Code, to authorize a formula by which the consideration may be determined to include or be made dependent on facts ascertainable outside the formula, if the manner in which those facts operate on the formula is clearly or expressly set forth in the formula or in the authorization approving the formula.

SECTION 9. Amends Section 21.218(b), Business Organizations Code, as follows:

(b) Provides that, on written demand stating a proper purpose, rather than subject to the governing documents and on written demand stating a proper purpose, certain holders of shares of a corporation are entitled to examine and copy, at a reasonable time, the corporation's books, records of account, minutes, and share transfer records relating to the stated purpose, rather than the corporation's relevant books, records of account, minutes, and share transfer records.

SECTION 10. Amends Section 21.302, Business Organizations Code, as follows:

Sec. 21.302. **AUTHORITY FOR DISTRIBUTIONS.** (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes the board of directors to authorize a distribution by determining the maximum amount that may be distributed and the period during which the maximum amount may be distributed, including by setting a formula to determine the amount to be distributed. Authorizes the authorization by the board of directors for a distribution to provide that the distribution be paid:

(1) in the amounts and at the times as stated in the authorization; or

(2) in the manner stated in the authorization, which may include a determination or action by any person or persons, including the corporation, if the authorization states the maximum amount that may be distributed under the authorization and the period during which the maximum amount may be distributed.

SECTION 11. Amends Section 21.414, Business Organizations Code, as follows:

Sec. 21.414. **New heading: DISSENT TO OR ABSTENTION FROM ACTION.** (a) Provides that a director of a corporation who is present at a meeting of the board of directors at which action has been taken is presumed to have assented to the action taken unless:

(1) the director's dissent or abstention, rather than the director's dissent, has been entered in the minutes of the meeting;

(2) the director has filed a written dissent or abstention with respect to the action with the person acting as the secretary of the meeting before the meeting is adjourned; or

(3) the director has sent to the secretary of the corporation, within a reasonable time after the meeting has been adjourned, a written dissent or abstention by certified or registered mail, return receipt requested or by other means specified in the corporation's governing documents, rather than the director has sent a written dissent by registered mail to the secretary of the corporation immediately after the meeting has been adjourned.

(b) Prohibits a director who voted in favor of an action from dissenting or abstaining with respect to the action.

SECTION 12. Amends Section 21.458(a), Business Organizations Code, as follows:

(a) Provides that separate voting by a class or series of shares of a corporation is required for approval of a plan of merger or conversion if:

(1) that class or series of shares is, under the plan of merger or conversion, to be converted into or exchanged for other securities, interests, obligations, rights to acquire shares, cash, property, or any combination of the items described by this subdivision;

(2) creates this subdivision from existing text and makes no further changes to this subdivision; or

(3) redesignates existing Subdivision (2) as Subdivision (3) and makes no further changes to this subdivision.

SECTION 13. Amends Section 21.607, Business Organizations Code, as follows:

Sec. 21.607. APPLICATION OF MORATORIUM. Provides that Section 21.606 (Three-Year Moratorium on Certain Business Combinations) does not apply to:

(1) a business combination of an issuing public corporation if:

(A) the original articles of incorporation or certificate of formation, as applicable, or the original bylaws of the corporation contain a provision expressly electing not to be governed by this subchapter (Affiliated Business Combinations);

(B) makes no changes to this paragraph; or

(C) makes conforming and nonsubstantive changes to this paragraph.

(2) through (5) makes no changes to these subdivisions.

SECTION 14. Amends Section 21.729(c), Business Organizations Code, as follows:

(c) Authorizes the dissent of a shareholder to be proven by:

(1) and (2) makes no changes to these subdivisions;

(3) a written dissent that is sent to the secretary of the close corporation, rather than a written dissent sent by registered mail to the secretary of the close corporation:

(A) creates this paragraph from existing text and makes no further changes to this paragraph; and

(B) by certified or registered mail, return receipt requested, or by other means specified in the corporation's governing documents; or

(4) makes no changes to this subdivision.

SECTION 15. Amends Sections 21.901(4), (5), and (8), Business Organizations Code, to redefine "failure of authorization," "overissue," and "validation effective time" or "effective time of the validation."

SECTION 16. Amends Section 21.903, Business Organizations Code, as follows:

Sec. 21.903. New heading: RATIFICATION OF DEFECTIVE CORPORATE ACT; ADOPTION OF RESOLUTIONS. (a) Requires the board of directors of the corporation, to ratify one or more defective corporate acts, rather than to ratify a defective corporate act, to adopt resolutions, rather than a resolution, stating:

(1) makes a conforming change;

(2) the date of each defective corporate act, rather than the time of the defective corporate act;

(3) makes a conforming change;

(4) the nature of the failure of authorization with respect to each defective corporate act, rather than with respect to the defective corporate act, to be ratified; and

(5) makes a conforming change.

(b) Authorizes a resolution to, notwithstanding shareholder approval of the ratification of a defective corporate act that is a subject of the resolution, state that the board of directors may, with respect to the defective corporate act, abandon the ratification of the defective corporate act at any time before the validation effective time without further shareholder action, rather than authorizes the resolution to, notwithstanding the adoption of the resolution by the shareholders, state that the board of directors may, at any time before the validation effective time, abandon the resolution without further shareholder action.

SECTION 17. Amends Section 21.904, Business Organizations Code, as follows:

Sec. 21.904. New heading: QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF RESOLUTIONS. (a) Provides that the quorum and voting requirements applicable to the adoption of the resolutions to ratify a defective corporate act, rather than applicable to the adoption of a resolution, under Section 21.903 are the same as the quorum and voting requirements applicable at the time of the adoption of the resolutions, rather than a resolution, for the type of defective corporate act proposed to be ratified.

(b) and (c) makes conforming changes to these subsections.

SECTION 18. Amends Section 21.905, Business Organizations Code, as follows:

Sec. 21.905. New heading: SHAREHOLDER APPROVAL OF RATIFIED DEFECTIVE CORPORATE ACT REQUIRED; EXCEPTION. Requires that each defective corporate

act ratified under Section 21.903 be submitted to shareholders for approval, rather than requires that the resolution adopted under Section 21.903 be submitted to shareholders for adoption, as provided by Sections 21.906 and 21.907, unless:

(1) no other provision of certain documents would have required shareholder approval of:

(A) creates this paragraph from existing text. The defective corporate act to be ratified at the time of that defective corporate act, rather than the defective corporate act to be ratified, either at the time of the act; or

(B) the type of defective corporate act to be ratified at the time the board of directors adopts the resolutions ratifying that defective corporate act under Section 21.903, rather than at the time when the resolution required by Section 21.903 is adopted; and

(2) makes no changes to this subdivision.

SECTION 19. Amends Section 21.906, Business Organizations Code, as follows:

Sec. 21.906. New heading: NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE CORPORATE ACT SUBMITTED FOR SHAREHOLDER APPROVAL. (a) Requires notice of the time, place, if any, and purpose of the meeting, if the ratification of a defective corporate act is required to be submitted to the shareholders for approval under Section 21.905, to be given at least 20 days before the date of the meeting to:

(1) creates this subdivision from existing text to include each holder of record, as of the record date of the meeting, of valid and putative shares, regardless of whether the shares are voting or nonvoting, rather than each holder of valid and putative shares, whether voting or nonvoting, at the address of the holder as it appears or most recently appeared, as appropriate, on the corporation's records; and

(2) redesignates existing Subsection (b) as Subdivision (2) and makes a conforming change.

(b) Redesignates existing Subsection (c) as Subsection (b). Requires that the notice contain:

(1) copies of the resolutions adopted by the board of directors under Section 21.903 or the information contained in those resolutions as required by that section, rather than a copy of the resolution; and

(2) a statement that, on shareholder approval of the ratification of the defective corporate act or putative shares made in accordance with this subchapter (Ratification of Defective Corporate Acts or Shares; Proceedings), the holder's rights to challenge the defective corporate act or putative shares are limited to an action claiming that a court of appropriate jurisdiction, in its discretion, should declare, rather than requiring certain claims to be brought not later than the 120th day of the validation effective time:

(A) deletes existing Paragraph (A) and redesignates existing text of Paragraph (B) as Paragraph (A). Provides that the ratification not take effect, rather than that a ratification made in accordance with this subchapter not take effect, or that it take effect only on certain conditions, if that action is filed with the court not later than the 120th day after the applicable validation effective time; or

(B) that the ratification was not accomplished in accordance with this subchapter.

SECTION 20. Amends Section 21.907, Business Organizations Code, as follows:

Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a) Provides that the quorum and voting requirements applicable to the approval of the ratification of a defective corporate act under Section 21.905, at the shareholder meeting, are the same as the quorum and voting requirements applicable at the time of the approval by the shareholders of the ratification for the type of ratified defective corporate act proposed to be approved, except as provided by this section, rather than requires that the quorum and voting requirements applicable to the adoption of the resolution under Section 21.905, at the shareholder meeting, be the same as the quorum and voting requirements applicable at the time of such adoption by the shareholders for the type of defective corporate act to be ratified, except as provided by this section.

(b) Requires that the presence or approval of the larger number or portion of shares or of the class or series of shares or of such specified shareholders is required, if certain conditions are met, for a quorum to be present or to approve the ratification of the defective corporate act, rather than be required for a quorum to be present or to adopt the resolution, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a shareholder, is not required, rather than shall not be required.

(c) Provides that the approval by the shareholders of the ratification of the election of a director requires the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of the director at the time of the approval, unless the governing documents of the corporation require or required a larger number or portion of shares or of any class or series of shares or of specified shareholders to elect the director, in which case the affirmative vote of the larger number or portion of shares or of the class or series of shares or of the specified shareholders is required to ratify the election of the director, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a shareholder, is not required, rather than provides that the adoption of a resolution to ratify the election of a director requires the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of the director, unless the governing documents of the corporation require or required a larger number or portion of shares to elect the director, in which case the affirmative vote of the larger number or portion of shares is required to ratify the election of the director.

(d) Provides that, if a failure of authorization results from the failure to comply with Subchapter M, the approval of the ratification, rather than the ratification, of the defective corporate act requires the vote set forth by Section 21.606(2) (relating to prohibiting an issuing public corporation from entering into or engaging in a business combination with certain entities with a certain exception), regardless of whether that vote would have otherwise been required.

(e) Provides that putative shares on the record date for determining shareholders entitled to vote on any matter submitted to shareholders under Section 21.905 are not entitled to be counted for voting or quorum purposes in any vote to approve the ratification of any defective corporate act, regardless of any ratification that becomes effective after the record date.

SECTION 21. Amends Section 21.908, Business Organizations Code, as follows:

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) Requires a corporation, if a ratified defective corporate act would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, to file a

certificate of validation with respect to the defective corporate act, rather than requires a corporation, if a ratified defective corporate act would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, instead of filing the filing instrument or other document otherwise required by this code, to file a certificate of validation, in accordance with Chapter 4 (Filings), regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act. Provides that the filing of another filing instrument or document is not required.

(a-1) Provides that a separate certificate of validation is required for each defective corporate act for which a certificate of validation is required, except for certain circumstances.

(a-2) Provides that a certificate of validation described by Subsection (a-1)(2) (relating to authorizing filing of a single certificate of validation under certain circumstances) is effective as of the first overissue of the shares of the class or series that is the subject of the certificate of validation.

(a-3) Provides that a certificate of validation described by Subsection (a-1)(3) (relating to authorizing the filing of a single certificate of validation under certain circumstances) is effective as to each class or series that is a subject of the certificate of validation as of the first overissue of the shares of the class or series.

(b) Requires that the certificate of validation include, rather than set forth:

(1) each defect corporate act that is a subject of the certificate of validation, including:

(A) for a defective corporate act involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(B) the date of the defective corporate act; and

(C) the nature of the failure of authorization with respect to the defective corporate act, rather than a copy of certain resolutions, the date of adoption of the resolution by the board of directors and, if applicable, the date of adoption by the shareholders, and a statement that the resolution was adopted in accordance with this subchapter;

(2) a statement that each defective corporate act was ratified in accordance with this subchapter, including the date on which the board of directors ratified each defective corporate act and the date, if any, on which the shareholders approved the ratification of each defective corporate act; and

(3) as appropriate:

(A) creates this paragraph from existing text. If a filing instrument was previously filed with a filing officer under the corporate statute with respect to the defective corporate act and no change to the filing instrument is required to give effect to the defective corporate act as ratified in accordance with this subchapter, certain information related to the filing instrument and certificates of correction and validation, rather than if a filing instrument or document was previously filed with a filing officer under the corporate statute in respect of the defective corporate act, certain information relating to the filing instrument or document;

(B) if a filing instrument was previously filed with a filing officer under the corporate statute with respect to the defective corporate act and the filing instrument requires any change to give effect to the defective corporate act as ratified in accordance with this subchapter, including a change to the date and time of the effectiveness of the filing instrument, certain information relating to the previously filed filing instrument, certificates of correction and validation to the filing instrument, and the attached filing instrument;

(C) if a filing instrument was not previously filed with a filing officer under the corporate statute with respect to the defective corporate act and the defective corporate act as ratified would have required under the other applicable provisions of this code the filing of a filing instrument in accordance with Chapter 4, if the defective corporate act had occurred when this code was in effect certain information relating to the filing instrument and attached filing instrument.

Deletes existing Subdivision (3) relating to provisions that would be required under any other section of this Code be included in a certain filing instrument.

(c) Provides that a filing instrument attached to a certificate of validation under Subsection (b)(3)(B) or (b)(3)(C) does not need to be executed separately and does not need to include any statement required by any other provision of this code that the instrument has been approved and adopted in accordance with that provision.

SECTION 22. Amends Section 21.909, Business Organizations Code, as follows:

Sec. 21.909. New heading: ADOPTION OF RESOLUTIONS; EFFECT ON DEFECTIVE CORPORATE ACT. Prohibits each defective corporate act ratified in accordance with this subchapter, on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914 (Proceeding Regarding Validity of Defective Corporate Acts and Shares; Proceedings) and subject to Section 21.907(e), from being considered void or voidable as a result of the failure of authorization described by the resolutions adopted under Sections 21.903 and 21.904, rather than prohibits each defective corporate act set forth in the resolution adopted under Sections 21.903 and 21.904, on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914, from being considered void or voidable as a result of a failure of authorization identified in the resolution, and requires that the effect be retroactive to the time of the defective corporate act.

SECTION 23. Amends Section 21.910, Business Organizations Code, as follows:

Sec. 21.910. New heading: ADOPTION OF RESOLUTIONS; EFFECT ON PUTATIVE SHARES. Prohibits each putative share or fraction of a putative share issued or purportedly issued pursuant to a defective corporate act ratified in accordance with this subchapter and described by the resolutions adopted under Sections 21.903 and 21.904, on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914 and subject to Section 21.907(e), from being considered void or voidable and provides that this putative share is considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued, rather than prohibits each putative share or fraction of a putative share issued or purportedly issued pursuant to the defective corporate act and identified in the resolution adopted under Sections 21.903 and 21.904, on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914, from being considered void or voidable as a result of a failure of authorization identified in the resolution and, in the absence of any failure of authorization not ratified, provides that this putative share is

considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued.

SECTION 24. Amends the heading to Section 21.911, Business Organizations Code, to read as follows:

Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING RATIFICATION OF DEFECTIVE CORPORATE ACT.

SECTION 25. Amends Section 21.911, Business Organizations Code, by amending Subsections (a), (d), (e), and (f) and adding Subsection (g), as follows:

(a) Requires that, for each defective corporate act ratified by the board of directors under Sections 21.903 and 21.904, notice of the ratification, rather than notice of the adoption of a resolution under this subchapter, be given promptly to:

(1) each holder of the valid and putative shares as of the date the board of directors adopted the resolutions ratifying the defective corporate act, rather than the resolution; or

(2) each holder of valid and putative shares as of a date not later than the 60th day after the date of adoption, rather than after the date on which the resolution is adopted, as established by the board of directors.

(d) Requires that the notice contain:

(1) copies of the resolutions adopted by the board of directors under Section 21.903 or the information contained in those resolutions, rather than a copy of the resolution; and

(2) a statement that, on ratification of the defective corporate act or putative shares made in accordance with this subchapter, the holder's rights to challenge the defective corporate act or putative shares are limited to an action claiming that a court of appropriate jurisdiction, in its discretion, should declare, rather than a statement that the following must be brought not later than the 120th day of the validation effective time:

(A) that the ratification not take effect or that it take effect only on certain conditions, if the action is filed not later than the 120th day after the later of certain times, rather than that a ratification made in accordance with this subchapter not take effect or that it take effect only on certain conditions. Deletes existing Paragraph (A) including any claim that the defective corporate act or putative shares ratified under this subchapter are void or voidable due to the identified failure of authorization. Creates this paragraph from existing text; or

(B) that the ratification was not accomplished in accordance with this subchapter.

(e) Provides that, notwithstanding Subsections (a)-(d):

(1) notice is not required to be given to a person if notice of the ratification of the defective corporate act is given to that person in accordance with Section 21.906, rather than notice is not required to be given if notice of the resolution is given in accordance with Section 21.906. Creates this subdivision from existing text; and

(2) for a corporation that has a class of stock listed on a national securities exchange, the required notice may be considered given if the information contained in the notice is disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission under Section 13, 14,

or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m, 78n, or 78o(d)), and any rules promulgated under that Act.

(f) Requires that, for purposes of Sections 21.905, 21.906, and 21.907 and this section, certain notices be treated as notice to holders of valid shares for purposes of certain sections, including Sections 6.201 (Unanimous Written Consent to Action), 6.202 (Action by Less Than Unanimous Written Consent), 6.203 (Delivery of Less Than Unanimous Written Consent), 6.204 (Advance Notice Not Required), 6.205 (Reproduction or Electronic Transmission of Consent) to which this subsection applies.

(g) Authorizes the required notice, if the ratification of a defective corporate act has been approved by shareholders acting under Section 6.202, to be included in any notice required to be given under Section 6.202(d) (relating to requiring the entity to promptly notify each owner or member who did not sign a consent of the action that is the subject of the consent) and, if included is required be sent to the shareholders entitled to the notice under Section 6.202(d), and is not required to be sent to shareholders who signed a consent described by Section 6.202(d).

SECTION 26. Amends Section 21.913(a), Business Organizations Code, to provide that ratification of an act or transaction under this subchapter or validation of an act or transaction as provided by Sections 21.914 (Proceeding Regarding Validity of Defective Corporate Acts and Shares) through 21.917 is not the exclusive means of adopting or endorsing any act or transaction taken by or in the name of the corporation before the corporation exists.

SECTION 27. Amends Section 21.917, Business Organizations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that, notwithstanding any other provision of this subchapter, rather than notwithstanding any other provision of this subchapter the following are prohibited from being brought after the expiration of the 120th day of the validation effective time:

(1) an action claiming that a defective corporate act or putative shares, rather than an action asserting that a defective corporate act or putative shares ratified in accordance with this subchapter, are void or voidable due to a failure of authorization identified in the resolutions adopted in accordance with Section 21.903 is prohibited from being filed in or is required to be dismissed by any court after the applicable validation effective time. Makes a nonsubstantive change; and

(2) an action claiming that a court of appropriate jurisdiction, rather than an action asserting that the district court, in its discretion, should declare that a ratification in accordance with this subchapter not take effect or that the ratification take effect only on certain conditions is prohibited from being filed with the court after the expiration of the 120th day after the later of the validation effective time or the time that any notice required to be given under Section 21.911 is given with respect to the ratification.

(c) Provides that, except as otherwise provided by a corporation's governing documents, for purposes of this section, notice under Section 21.911 that is:

(1) mailed is considered to be given on the date the notice is deposited in the U.S. mail with certain criteria; and

(2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message fulfills certain criteria.

SECTION 28. Amends Section 22.154(a), Business Organizations Code, to require that a certain demand be made in writing and sent to an officer of the corporation by certified or registered mail, return receipt requested, or by other means specified in the corporation's governing

documents, rather than requires the demand be made in writing and sent to an officer of the corporation by registered mail.

SECTION 29. Amends Section 22.214, Business Organizations Code, to provide that the act of a majority of the directors present in person or by proxy at a meeting at which a quorum is present at the time of the act is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation.

SECTION 30. Amends Section 22.227, Business Organizations Code, as follows:

Sec. 22.227. New heading: DISSENT TO OR ABSTENTION FROM ACTION. (a) Provides that a director of a corporation who is present at a board of directors meeting at which action is taken on a corporate matter is presumed to have assented to the action unless:

(1) the director's dissent or abstention has been entered in the minutes of the meeting;

(2) the director has filed a written dissent or abstention with respect to the action with the person acting as the secretary of the meeting before the meeting is adjourned; or

(3) the director has sent to the secretary of the corporation, within a reasonable time, rather than the director has sent a written dissent by registered mail to the secretary of the corporation immediately, after the meeting has been adjourned, a written dissent or abstention by certified or registered mail, return receipt requested or other means specified in the corporation's governing documents.

(b) Makes a conforming change.

SECTION 31. Amends Section 200.251, Business Organizations Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires that the request calling for the meeting be made by certified or registered mail, return receipt requested or other means specified in the real estate investment trust's governing documents. Makes a conforming change.

(b-1) Creates this subsection from existing text. Authorizes any shareholder, if the annual meeting is not called before the 61st day after the date the written request calling for a meeting is made under Subsection (b), to bring suit at law or in equity to compel the meeting to be held.

SECTION 32. Amends Sections 251.354(a) and (b), Business Organizations Code, as follows:

(a) Deletes existing text requiring the written notice of the requirement be sent by registered mail and makes nonsubstantive changes.

(b) Makes conforming and nonsubstantive changes.

SECTION 33. Amends Section 252.017(b), Business Organizations Code, to include Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets) in the list of chapters applying to a certain nonprofit association.

SECTION 34. Amends Chapter 252, Business Organizations Code, by adding Section 252.018, as follows:

Sec. 252.018. MERGERS AND CONVERSIONS. Authorizes a nonprofit association to effect a merger or conversion by complying with the applicable provisions of Chapter 10 and the nonprofit association's governing documents.

SECTION 35. Amends Chapter 402, Business Organizations Code, by adding Section 402.015, as follows:

Sec. 402.015. PERPETUAL DURATION OF OLD CORPORATIONS. (a) Provides that, notwithstanding any provision in the articles of incorporation limiting the period of duration of a domestic for-profit corporation formed before September 6, 1955, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the SOS on May 2, 1979. Authorizes a corporation described by this subsection to amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

(b) Provides that, notwithstanding a provision in the articles of incorporation limiting the period of duration of a domestic nonprofit corporation formed before August 10, 1959, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the SOS on May 2, 1979. Authorizes a corporation described by this subsection to amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

SECTION 36. Effective date: September 1, 2017.