

BILL ANALYSIS

S.B. 1518
By: Hancock
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert the importance of updating the Business Organizations Code biennially to keep Texas competitive with other leading business law states and synchronized with the Model Business Corporation Act. S.B. 1518 seeks to provide for this biennial update.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1518 amends the Business Organizations Code to make certain revisions to statutory provisions governing the proceedings involved in the ratification of defective corporate acts or shares, including the process by which the board of directors of a for-profit corporation ratifies one or more defective corporate acts by resolution, the quorum and voting requirements for the adoption of such a resolution, the exception to the requirement that shareholders approve a ratified defective act following such adoption, the notice requirements for the shareholder meeting at which shareholder approval for a ratified defective corporate act will be decided and the quorum and voting requirements for such a meeting, the required filing of a certificate of validation for certain ratified defective corporate acts, the retroactive effect the ratification of a defective corporate act has on the act, the effect the ratification of such an act has on putative shares issued or purportedly issued, the required notice to shareholders following the ratification of a defective corporate act, the non-exclusivity of statutory ratification or judicial validation of a defective corporate act as a means of adopting or endorsing any act or transaction taken by or in the name of a corporation before the corporation exists, and the statute of limitations for actions relating to the ratification of defective corporate acts.

S.B. 1518 requires the secretary of state to impose a fee of \$15 for a filing by or for a for-profit corporation of a certificate of validation for a ratification of a defective corporate act plus the filing fee imposed for filing each new filing instrument that is attached as an exhibit to the certificate of validation. The bill requires the secretary of state to impose a fee of \$50 for a filing by or for a nonprofit association of a certificate of merger or conversion, regardless of whether the surviving or new nonprofit organization is a domestic or foreign entity, and to impose a fee of \$5 for a filing by or for a nonprofit association of any instrument of such an association for which a statutory fee is not expressly provided.

S.B. 1518 authorizes an ownership interest that is held of record in the names of two or more

persons to be voted by any one of the record owners. The bill authorizes an ownership interest for which two or more persons have the right to vote the interest under statutory provisions relating to the voting of interests in estates or trusts to be voted by any one of the persons having the right to vote the interest. The bill establishes, if either such jointly held ownership interest is so voted by more than one person, that the act of a majority of the persons voting binds all of the record owners or persons having the right to vote the interest unless the votes of the persons are evenly split on any particular matter, in which case the bill authorizes each faction to vote the interest proportionately. The bill establishes that such provisions do 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 such a jointly held ownership interest, that reliance on such provisions, as applicable, is unwarranted.

S.B. 1518 provides that the authorization by the board of directors of a for-profit corporation for the issuance of shares may provide that any shares to be issued under the authorization may be issued in one or more transactions in the numbers and at the times as stated in or determined by the authorization or issued in the manner stated in the authorization if certain specified conditions apply.

S.B. 1518 authorizes, for purposes of a determination of consideration for shares and in addition to such a determination made by an approved formula, the amount of the consideration to be received for shares to be determined by a for-profit corporation's board of directors under a plan of conversion or merger, as applicable, by the approval of a minimum amount of consideration. The bill authorizes such a 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. The bill authorizes a formula by which the consideration for stock rights, options, and convertible indebtedness for a for-profit corporation may be determined to include or be made dependent on such outside facts provided such manner is so set forth.

S.B. 1518 authorizes the board of directors of a for-profit corporation 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. The bill provides that such an authorization may provide that the distribution be paid either in the amounts and at the times stated in the authorization or in the manner stated in the authorization if certain conditions apply.

S.B. 1518 requires separate voting by a class or series of shares of a for-profit corporation for approval of a plan of merger or conversion if 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, interests, or other securities, cash, property, or any combination of such items.

S.B. 1518 establishes that, for purposes of the presumption that a director of a for-profit or nonprofit corporation who is present at a meeting of the board of directors at which action has been taken is presumed to have assented unless the director takes certain actions in regard to the director's dissent in the case of such a director's abstention, the abstention has been entered in the minutes of the meeting, such a director has filed a written abstention with respect to the action with the person acting as the secretary of the meeting before the meeting is adjourned, or such a director has sent a written abstention to the secretary of the corporation within a reasonable time after the meeting has been adjourned. The bill revises the methods for delivery of a shareholder's dissent to the secretary of a close corporation for purposes of proving such dissent in order to limit such shareholder's liability, of a written demand sent by a member of a nonprofit corporation or a real estate investment trust that an annual meeting be held within a reasonable time if such meeting is not called as required, of a written dissent or abstention by a director of a for-profit or nonprofit corporation, and of written notice sent to a cooperative association by the secretary of state regarding the association's failure to file a certain report.

S.B. 1518 makes statutory provisions governing mergers, interest exchanges, conversions, and sales of assets applicable to a nonprofit association and authorizes a nonprofit association to effect a merger or conversion by complying with such provisions as applicable and with the nonprofit association's governing documents.

S.B. 1518 sets out provisions relating to the perpetual duration of a domestic for-profit corporation formed before September 6, 1955, and a domestic nonprofit corporation formed before August 10, 1959.

EFFECTIVE DATE

September 1, 2017.