

By: Oliveira

H.B. No. 2827

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to corporations, associations, real estate investment  
3 trusts, and related entities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 4.152, Business Organizations Code, is  
6 amended to read as follows:

7 Sec. 4.152. FILING FEES: FOR-PROFIT CORPORATIONS. For a  
8 filing by or for a for-profit corporation, the secretary of state  
9 shall impose the following fees:

- 10 (1) for filing a certificate of formation, \$300;
- 11 (2) for filing a certificate of amendment, \$150;
- 12 (3) for filing an application of a foreign corporation  
13 for registration to transact business in this state, \$750;
- 14 (4) for filing an application of a foreign corporation  
15 for an amended registration to transact business in this state,  
16 \$150;
- 17 (5) for filing a restated certificate of formation and  
18 accompanying statement, \$300;
- 19 (6) for filing a statement of change of registered  
20 office, registered agent, or both, \$15;
- 21 (7) for filing a statement of change of name or address  
22 of a registered agent, \$15, except that the maximum fee for  
23 simultaneous filings by a registered agent for more than one  
24 corporation may not exceed \$750;

1           (8) for filing a statement of resolution establishing  
2 one or more series of shares, \$15;

3           (9) for filing a certificate of termination, \$40;

4           (10) for filing a certificate of withdrawal of a  
5 foreign corporation, \$15;

6           (11) for filing a certificate from the home state of a  
7 foreign corporation that the corporation no longer exists in that  
8 state, \$15;

9           (12) for filing a bylaw or agreement restricting  
10 transfer of shares or securities other than as an amendment to the  
11 certificate of formation, \$15;

12           (13) for filing an application for reinstatement of a  
13 certificate of formation or registration as a foreign corporation  
14 following forfeiture under the Tax Code, \$75;

15           (14) for filing an application for reinstatement of a  
16 corporation or registration as a foreign corporation after  
17 involuntary termination or revocation, \$75; ~~and~~

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

22           (16) for filing any instrument as provided by this  
23 code for which this section does not expressly provide a fee, \$15.

24           SECTION 2. Section 4.159, Business Organizations Code, is  
25 amended to read as follows:

26           Sec. 4.159. FILING FEES: NONPROFIT ASSOCIATIONS. For a  
27 filing by or for a nonprofit association, the secretary of state

1 shall impose the following fees:

2 (1) for filing a statement appointing an agent to  
3 receive service of process, \$25;

4 (2) for filing an amendment of a statement appointing  
5 an agent, \$5; ~~and~~

6 (3) for filing a cancellation of a statement  
7 appointing an agent, \$5;

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

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

14 SECTION 3. Subchapter D, Chapter 6, Business Organizations  
15 Code, is amended by adding Section 6.157 to read as follows:

16 Sec. 6.157. VOTING OF JOINTLY HELD OWNERSHIP INTERESTS.

17 (a) In this section, "jointly held ownership interest" means:

18 (1) an ownership interest that is held of record in the  
19 names of two or more persons, whether fiduciaries, joint tenants,  
20 tenants in common, or otherwise; or

21 (2) an ownership interest for which two or more  
22 persons have the right to vote the interest under Section 6.154.

23 (b) A jointly held ownership interest may be voted by:

24 (1) for a jointly held ownership interest as defined  
25 by Subsection (a)(1), any one of the record owners; or

26 (2) for a jointly held ownership interest as defined  
27 by Subsection (a)(2), any one of the persons having the right to

1 vote the interest, as described by Section 6.154.

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

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

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

16 SECTION 4. Section 10.010, Business Organizations Code, is  
17 amended to read as follows:

18 Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT  
19 CORPORATION AND NONPROFIT ASSOCIATION MERGERS. (a) A domestic  
20 nonprofit corporation or nonprofit association may not merge into  
21 another entity if the domestic nonprofit corporation or nonprofit  
22 association would, because of the merger, lose or impair its  
23 charitable status.

24 (b) One or more domestic or foreign for-profit entities or  
25 non-code organizations may merge into one or more domestic  
26 nonprofit corporations or nonprofit associations that continue as  
27 the surviving entity or entities.

1 (c) A domestic nonprofit corporation or nonprofit  
2 association may not merge with a foreign for-profit entity if the  
3 domestic nonprofit corporation or nonprofit association does not  
4 continue as the surviving entity.

5 (d) One or more domestic nonprofit corporations or  
6 nonprofit associations and non-code organizations may merge into  
7 one or more foreign nonprofit entities that continue as the  
8 surviving entity or entities.

9 SECTION 5. Section 10.108, Business Organizations Code, is  
10 amended to read as follows:

11 Sec. 10.108. SPECIAL PROVISIONS APPLYING TO NONPROFIT  
12 CORPORATION AND NONPROFIT ASSOCIATION CONVERSIONS. A domestic  
13 nonprofit corporation or nonprofit association may not convert into  
14 a for-profit entity.

15 SECTION 6. Section 21.157, Business Organizations Code, is  
16 amended by adding Subsection (d) to read as follows:

17 (d) The authorization by the board of directors for the  
18 issuance of shares may provide that any shares to be issued under  
19 the authorization may be issued:

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

22 (2) in the manner stated in the authorization, which  
23 may include a determination or action by any person or persons,  
24 including the corporation, if the authorization states:

25 (A) the maximum number of shares that may be  
26 issued under the authorization;

27 (B) the period during which the shares may be

1 issued; and

2 (C) the minimum amount of consideration for which  
3 the shares may be issued.

4 SECTION 7. Section 21.160(d), Business Organizations Code,  
5 is amended to read as follows:

6 (d) The amount of the consideration to be received for  
7 shares may be determined in accordance with Subsection (a) by the  
8 approval of a minimum amount of consideration or a formula to  
9 determine that amount. The formula may include or be made dependent  
10 on facts ascertainable outside the formula, if the manner in which  
11 those facts operate on the formula is clearly or expressly set forth  
12 in the formula or in the authorization approving the formula.

13 SECTION 8. Section 21.168(c), Business Organizations Code,  
14 is amended to read as follows:

15 (c) Subject to the certificate of formation, a right or  
16 option described by this section must state the terms on which, the  
17 time within which, and any consideration, including a formula by  
18 which the consideration may be determined, for which the shares may  
19 be purchased or received from the corporation on the exercise of the  
20 right or option. A formula by which the consideration may be  
21 determined may include or be made dependent on facts ascertainable  
22 outside the formula, if the manner in which those facts operate on  
23 the formula is clearly or expressly set forth in the formula or in  
24 the authorization approving the formula.

25 SECTION 9. Section 21.218(b), Business Organizations Code,  
26 is amended to read as follows:

27 (b) On [~~Subject to the governing documents and on~~] written

1 demand stating a proper purpose, a holder of shares of a corporation  
2 for at least six months immediately preceding the holder's demand,  
3 or a holder of at least five percent of all of the outstanding  
4 shares of a corporation, is entitled to examine and copy, at a  
5 reasonable time, the corporation's [~~relevant~~] books, records of  
6 account, minutes, and share transfer records relating to the stated  
7 purpose. The examination may be conducted in person or through an  
8 agent, accountant, or attorney.

9 SECTION 10. Section 21.302, Business Organizations Code, is  
10 amended to read as follows:

11 Sec. 21.302. AUTHORITY FOR DISTRIBUTIONS. (a) The board of  
12 directors of a corporation may authorize a distribution and the  
13 corporation may make a distribution, subject to Section 21.303.

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

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

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

27 SECTION 11. Section 21.414, Business Organizations Code, is

1 amended to read as follows:

2           Sec. 21.414. DISSENT TO OR ABSTENTION FROM ACTION. (a) A  
3 director of a corporation who is present at a meeting of the board  
4 of directors at which action has been taken is presumed to have  
5 assented to the action taken unless:

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

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

11           (3) the director has sent [~~a written dissent by~~  
12 ~~registered mail~~] to the secretary of the corporation, within a  
13 reasonable time [~~immediately~~] after the meeting has been adjourned,  
14 a written dissent or abstention by:

15                   (A) certified or registered mail, return receipt  
16 requested; or

17                   (B) other means specified in the corporation's  
18 governing documents.

19           (b) A director who voted in favor of an action may not  
20 dissent or abstain with respect to the action.

21           SECTION 12. Section 21.458(a), Business Organizations  
22 Code, is amended to read as follows:

23           (a) Separate voting by a class or series of shares of a  
24 corporation is required for approval of a plan of merger or  
25 conversion if:

26           (1) that class or series of shares is, under the plan  
27 of merger or conversion, to be converted into or exchanged for other



1 securities, interests, obligations, rights to acquire shares,  
2 cash, property, or any combination of the items described by this  
3 subdivision;

4           (2) the plan of merger or conversion contains a  
5 provision that would require approval by that class or series of  
6 shares under Section 21.364 if the provision was contained in a  
7 proposed amendment to the corporation's certificate of formation;  
8 or

9           (3) [~~(2)~~] that class or series of shares is entitled  
10 under the certificate of formation to vote as a class or series on  
11 the plan of merger or conversion.

12           SECTION 13. Section 21.607, Business Organizations Code, is  
13 amended to read as follows:

14           Sec. 21.607. APPLICATION OF MORATORIUM. Section 21.606  
15 does not apply to:

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

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

22                   (B) before December 31, 1997, the corporation  
23 adopted an amendment to the articles of incorporation or bylaws of  
24 the corporation expressly electing not to be governed by this  
25 subchapter; or

26                   (C) after December 31, 1997, the corporation  
27 adopts an amendment to the articles of incorporation or certificate

1 of formation, as applicable, or the bylaws of the corporation,  
2 approved by the affirmative vote of the holders, other than an  
3 affiliated shareholder or an affiliate or associate of the  
4 affiliated shareholder, of at least two-thirds of the outstanding  
5 voting shares of the issuing public corporation, expressly electing  
6 not to be governed by this subchapter, except that the amendment to  
7 the articles of incorporation or certificate of formation, as  
8 applicable, or the bylaws takes effect 18 months after the date of  
9 the vote and does not apply to a business combination of the issuing  
10 public corporation with an affiliated shareholder whose share  
11 acquisition date is on or before the effective date of the  
12 amendment;

13 (2) a business combination of an issuing public  
14 corporation with an affiliated shareholder who became an affiliated  
15 shareholder inadvertently, if the affiliated shareholder:

16 (A) as soon as practicable divests itself of a  
17 sufficient number of the voting shares of the issuing public  
18 corporation so that the affiliated shareholder no longer is the  
19 beneficial owner, directly or indirectly, of 20 percent or more of  
20 the outstanding voting shares of the issuing public corporation;  
21 and

22 (B) would not at any time within the three-year  
23 period preceding the announcement date of the business combination  
24 have been an affiliated shareholder except for the inadvertent  
25 acquisition;

26 (3) a business combination with an affiliated  
27 shareholder who was the beneficial owner of 20 percent or more of

1 the outstanding voting shares of the issuing public corporation on  
2 December 31, 1996, and continuously until the announcement date of  
3 the business combination;

4 (4) a business combination with an affiliated  
5 shareholder who became an affiliated shareholder through a transfer  
6 of shares of the issuing public corporation by will or intestate  
7 succession and continuously was an affiliated shareholder until the  
8 announcement date of the business combination; or

9 (5) a business combination of an issuing public  
10 corporation with a domestic wholly owned subsidiary if the domestic  
11 subsidiary is not an affiliate or associate of the affiliated  
12 shareholder for a reason other than the affiliated shareholder's  
13 beneficial ownership of voting shares in the issuing public  
14 corporation.

15 SECTION 14. Section 21.729(c), Business Organizations  
16 Code, is amended to read as follows:

17 (c) The dissent of a shareholder may be proven by:

18 (1) an entry in the minutes of the meeting of  
19 shareholders;

20 (2) a written dissent filed with the secretary of the  
21 meeting before the adjournment of the meeting;

22 (3) a written dissent that is sent [~~by registered~~  
23 ~~mail~~] to the secretary of the close corporation:

24 (A) promptly after the meeting or after a written  
25 consent was obtained from the other shareholders; and

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

1 governing documents; or

2 (4) any other means reasonably evidencing the dissent.

3 SECTION 15. Sections 21.901(4), (5), and (8), Business  
4 Organizations Code, are amended to read as follows:

5 (4) "Failure of authorization" means:

6 (A) the failure to authorize or effect an act or  
7 transaction in compliance with the provisions of the corporate  
8 statute, the governing documents of the corporation, or any plan or  
9 agreement to which the corporation is a party, if and to the extent  
10 the failure would render the act or transaction void or voidable; or

11 (B) the failure of the board of directors or an  
12 officer of the corporation to authorize or approve an act or  
13 transaction taken by or on behalf of the corporation that required  
14 the prior authorization or approval of the board of directors or the  
15 officer.

16 (5) "Overissue" means the purported issuance of:

17 (A) shares of a class or series in excess of the  
18 number of shares of that class or series that the corporation has  
19 the power to issue under the governing documents of the corporation  
20 and the corporate statute at the time of issuance; or

21 (B) shares of any class or series that are not at  
22 the time of issuance authorized for issuance by the governing  
23 documents of the corporation.

24 (8) "Validation effective time" or "effective time of  
25 the validation," with respect to any defective corporate act  
26 ratified under this subchapter, means the latest [~~later~~] of:

27 (A) the time at which the defective corporate act

1 ~~[resolution]~~ submitted to the shareholders for approval ~~[adoption]~~  
2 under Section 21.905 is approved ~~[adopted]~~ by the shareholders or,  
3 if no shareholder approval is required ~~[for adoption]~~, the time at  
4 which the board of directors adopts the resolutions ~~[notice]~~  
5 required by Section 21.903 ~~[21.911 is given]~~; ~~[or]~~

6 (B) if a certificate of validation is not  
7 required to be filed under Section 21.908, the time, if any,  
8 specified by the board of directors in the resolutions adopted  
9 under Section 21.903, which may not precede the time at which the  
10 resolutions are adopted; or

11 (C) the time at which any certificate of  
12 validation filed under Section 21.908 takes effect in accordance  
13 with Chapter 4.

14 SECTION 16. Section 21.903, Business Organizations Code, is  
15 amended to read as follows:

16 Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT;  
17 ADOPTION OF RESOLUTIONS ~~[RESOLUTION]~~. (a) To ratify one or more  
18 ~~[a]~~ defective corporate acts ~~[act]~~, the board of directors of the  
19 corporation shall adopt resolutions ~~[a resolution]~~ stating:

20 (1) the defective corporate act or acts to be  
21 ratified;

22 (2) the date ~~[time]~~ of each ~~[the]~~ defective corporate  
23 act;

24 (3) if the defective corporate act or acts involved  
25 the issuance of putative shares, the number and type of putative  
26 shares issued and the date or dates on which the putative shares  
27 were purportedly issued;

1 (4) the nature of the failure of authorization with  
2 respect to each ~~[the]~~ defective corporate act to be ratified; and

3 (5) that the board of directors approves the  
4 ratification of the defective corporate act or acts.

5 (b) A ~~[The]~~ resolution may also state that, notwithstanding  
6 shareholder approval of the ratification of a defective corporate  
7 act that is a subject of the resolution ~~[the adoption of the~~  
8 ~~resolution by the shareholders]~~, the board of directors may, with  
9 respect to the defective corporate act ~~[at any time before the~~  
10 ~~validation effective time]~~, abandon the ratification of the  
11 defective corporate act at any time before the validation effective  
12 time ~~[resolution]~~ without further shareholder action.

13 SECTION 17. Section 21.904, Business Organizations Code, is  
14 amended to read as follows:

15 Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF  
16 RESOLUTIONS ~~[RESOLUTION]~~. (a) The quorum and voting requirements  
17 applicable to the adoption of the resolutions to ratify a defective  
18 corporate act ~~[a resolution]~~ under Section 21.903 are the same as  
19 the quorum and voting requirements applicable at the time of the  
20 adoption of the resolutions ~~[a resolution]~~ for the type of  
21 defective corporate act proposed to be ratified.

22 (b) Notwithstanding Subsection (a) and except as provided  
23 by Subsection (c), if in order for a quorum to be present or to  
24 approve the defective corporate act, the presence or approval of a  
25 larger number or portion of directors or of specified directors  
26 would have been required by the governing documents of the  
27 corporation, any plan or agreement to which the corporation was a

1 party, or any provision of the corporate statute, each as in effect  
 2 at the time of the defective corporate act, then the presence or  
 3 approval of the larger number or portion of such directors or of  
 4 such specified directors must be required for a quorum to be present  
 5 or to adopt the resolutions to ratify the defective corporate act  
 6 ~~[resolution]~~, as applicable.

7 (c) The presence or approval of any director elected,  
 8 appointed, or nominated by holders of any class or series of which  
 9 no shares are then outstanding, or by any person that is no longer a  
 10 shareholder, shall not be required for a quorum to be present or to  
 11 adopt the resolutions ~~[resolution]~~.

12 SECTION 18. Section 21.905, Business Organizations Code, is  
 13 amended to read as follows:

14 Sec. 21.905. SHAREHOLDER APPROVAL ~~[ADOPTION]~~ OF RATIFIED  
 15 DEFECTIVE CORPORATE ACT ~~[RESOLUTION]~~ REQUIRED; EXCEPTION. Each  
 16 defective corporate act ratified ~~[The resolution adopted]~~ under  
 17 Section 21.903 must be submitted to shareholders for approval  
 18 ~~[adoption]~~ as provided by Sections 21.906 and 21.907, unless:

19 (1) no other provision of the corporate statute, no  
 20 provision of the corporation's governing documents, and no  
 21 provision of any plan or agreement to which the corporation is a  
 22 party would have required shareholder approval of:

23 (A) the defective corporate act to be ratified~~—~~  
 24 ~~either~~ at the time of that defective corporate ~~[the]~~ act; or

25 (B) the type of defective corporate act to be  
 26 ratified at the time the board of directors adopts the resolutions  
 27 ratifying that defective corporate act under ~~[when the resolution~~

1 ~~required by~~ Section 21.903 ~~[is adopted]~~; and

2 (2) the defective corporate act to be ratified did not  
3 result from a failure to comply with Subchapter M.

4 SECTION 19. Section 21.906, Business Organizations Code, is  
5 amended to read as follows:

6 Sec. 21.906. NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE  
7 CORPORATE ACT ~~[RESOLUTION]~~ SUBMITTED FOR SHAREHOLDER APPROVAL. (a)  
8 If the ratification of a defective corporate act is required to be  
9 submitted to the shareholders for approval under Section 21.905  
10 ~~[requires that the resolution be submitted to the shareholders for~~  
11 ~~approval]~~, notice of the time, place, if any, and purpose of the  
12 meeting shall be given at least 20 days before the date of the  
13 meeting to:

14 (1) each holder of record, as of the record date of the  
15 meeting, of valid shares and putative shares, regardless of whether  
16 the shares are voting or nonvoting, at the address of the holder as  
17 it appears or most recently appeared, as appropriate, on the  
18 corporation's records; and

19 (2) ~~[-~~  
20 ~~[(b) Notice under this section shall be given to]~~ each  
21 holder of record of valid shares and putative shares, regardless of  
22 whether the shares are voting or nonvoting, as of the time of the  
23 defective corporate act, except that notice is not required to be  
24 given to a holder whose identity or address cannot be ascertained  
25 from the corporation's records.

26 (b) ~~[-(c)]~~ The notice must contain:

27 (1) copies ~~[a copy]~~ of the resolutions adopted by the



1 board of directors under Section 21.903 or the information  
2 contained in those resolutions as required by that section  
3 [resolution]; and

4 (2) a statement that, on shareholder approval of the  
5 ratification of the defective corporate act or putative shares made  
6 in accordance with this subchapter, the holder's rights to  
7 challenge the defective corporate act or putative shares are  
8 limited to an action claiming ~~[the following must be brought not~~  
9 ~~later than the 120th day of the validation effective time:~~

10 ~~[(A) any claim that the defective corporate act~~  
11 ~~or putative shares ratified under this subchapter are void or~~  
12 ~~voidable due to the identified failure of authorization; or~~

13 ~~[(B) any claim]~~ that a [the district] court of  
14 appropriate jurisdiction, in its discretion, should declare:

15 (A) that the [a] ratification [made in accordance  
16 with this subchapter] not take effect or that it take effect only on  
17 certain conditions, if that action is filed with the court not later  
18 than the 120th day after the applicable validation effective time;  
19 or

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

22 SECTION 20. Section 21.907, Business Organizations Code, is  
23 amended to read as follows:

24 Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a)  
25 At the shareholder meeting, the quorum and voting requirements  
26 applicable to the approval of the ratification ~~[adoption]~~ of a  
27 defective corporate act ~~[the resolution]~~ under Section 21.905 are

1 ~~[shall be]~~ the same as the quorum and voting requirements  
2 applicable at the time of the approval ~~[such adoption]~~ by the  
3 shareholders of the ratification for the type of ratified defective  
4 corporate act proposed to be approved ~~[ratified]~~, except as  
5 provided by this section.

6 (b) If the presence or approval of a larger number or  
7 portion of shares or of any class or series of shares or of  
8 specified shareholders would have been required for a quorum to be  
9 present or to approve the defective corporate act, as applicable,  
10 by the corporation's governing documents, any plan or agreement to  
11 which the corporation was a party, or any provision of the corporate  
12 statute, each as in effect at the time of the defective corporate  
13 act, then the presence or approval of the larger number or portion  
14 of shares or of the class or series of shares or of such specified  
15 shareholders shall be required for a quorum to be present or to  
16 approve the ratification of the defective corporate act ~~[adopt the~~  
17 ~~resolution]~~, as applicable, except that the presence or approval of  
18 shares of any class or series of which no shares are then  
19 outstanding, or of any person that is no longer a shareholder, is  
20 ~~[shall]~~ not ~~[be]~~ required.

21 (c) The approval by the shareholders of the ratification of  
22 ~~[adoption of a resolution to ratify]~~ the election of a director  
23 requires the affirmative vote of the majority of shares present at  
24 the meeting and entitled to vote on the election of the director at  
25 the time of the approval, unless the governing documents of the  
26 corporation then in effect or in effect at the time of the defective  
27 election require or required a larger number or portion of shares or

1 of any class or series of shares or of specified shareholders to  
2 elect the director, in which case the affirmative vote of the larger  
3 number or portion of shares or of the class or series of shares or of  
4 the specified shareholders is required to ratify the election of  
5 the director, except that the presence or approval of shares of any  
6 class or series of which no shares are then outstanding, or of any  
7 person that is no longer a shareholder, is not required.

8 (d) If a failure of authorization results from the failure  
9 to comply with Subchapter M, the approval of the ratification of the  
10 defective corporate act requires the vote set forth by Section  
11 21.606(2), regardless of whether that vote would have otherwise  
12 been required.

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

19 SECTION 21. Section 21.908, Business Organizations Code, is  
20 amended to read as follows:

21 Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If a [~~the~~]  
22 defective corporate act ratified under this subchapter would have  
23 required under any other provision of the corporate statute the  
24 filing of a filing instrument or other document with the filing  
25 officer, the corporation [~~, instead of filing the filing instrument~~  
26 ~~or other document otherwise required by this code,~~] shall file a  
27 certificate of validation with respect to the defective corporate

1 act in accordance with Chapter 4, regardless of whether a filing  
2 instrument or other document was previously filed with respect to  
3 the defective corporate act. The filing of another filing  
4 instrument or document is not required.

5 (a-1) A separate certificate of validation is required for  
6 each defective corporate act for which a certificate of validation  
7 is required under this section, except that:

8 (1) two or more defective corporate acts may be  
9 included in a single certificate of validation if the corporation  
10 filed, or to comply with the applicable provisions of this code  
11 could have filed, a single filing instrument or other document  
12 under another provision of this code to effect the acts;

13 (2) a single certificate of validation may be filed to  
14 amend the certificate of formation of the corporation to establish  
15 a new class or series of shares or to increase the number of  
16 authorized shares of any class or series of shares, in order to cure  
17 multiple previous overissues of the shares of the class or series;  
18 and

19 (3) a single certificate of validation may be filed to  
20 amend the corporation's certificate of formation to establish two  
21 or more new classes or series of shares, to increase the number of  
22 authorized shares of two or more classes or series of shares, or to  
23 establish one or more new classes or series of shares and increase  
24 the number of authorized shares of one or more classes or series of  
25 shares, in order to cure multiple previous overissues of the shares  
26 of all the classes and series that are the subjects of the  
27 certificate of validation.

1        (a-2) A certificate of validation described by Subsection  
2 (a-1)(2) is effective as of the first overissue of the shares of the  
3 class or series that is the subject of the certificate of  
4 validation.

5        (a-3) A certificate of validation described by Subsection  
6 (a-1)(3) is effective as to each class or series that is a subject  
7 of the certificate of validation as of the first overissue of the  
8 shares of the class or series.

9        (b) The certificate of validation must include ~~[set forth]~~:

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

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

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

17                (C) the nature of the failure of authorization  
18 with respect to the defective corporate act ~~[a copy of the~~  
19 ~~resolution adopted in accordance with Sections 21.903 and 21.904,~~  
20 ~~the date of adoption of the resolution by the board of directors~~  
21 ~~and, if applicable, the date of adoption by the shareholders, and a~~  
22 ~~statement that the resolution was adopted in accordance with this~~  
23 ~~subchapter];~~

24        (2) a statement that each defective corporate act was  
25 ratified in accordance with this subchapter, including:

26                (A) the date on which the board of directors  
27 ratified each defective corporate act; and

1           (B) the date, if any, on which the shareholders  
2 approved the ratification of each defective corporate act; and

3           (3) as appropriate:

4           (A) if a filing instrument [~~or document~~] was  
5 previously filed with a filing officer under the corporate statute  
6 with [~~in~~] respect to [~~of~~] the defective corporate act and no change  
7 to the filing instrument is required to give effect to the defective  
8 corporate act as ratified in accordance with this subchapter:

9                   (i) the name, [~~the~~] title, and filing date  
10 [~~of filing~~] of the previously filed [~~prior~~] filing instrument and  
11 of any certificate of correction to the filing instrument; and

12                   (ii) a statement that a copy of the  
13 previously filed filing instrument, together with [~~or document and~~]  
14 any [~~articles or~~] certificate of correction to the filing  
15 instrument, is attached as an exhibit to the certificate of  
16 validation [~~filing instrument~~]; [~~and~~]

17           (B) if a filing instrument was previously filed  
18 with a filing officer under the corporate statute with respect to  
19 the defective corporate act and the filing instrument requires any  
20 change to give effect to the defective corporate act as ratified in  
21 accordance with this subchapter, including a change to the date and  
22 time of the effectiveness of the filing instrument:

23                   (i) the name, title, and filing date of the  
24 previously filed filing instrument and of any certificate of  
25 correction to the filing instrument;

26                   (ii) a statement that a filing instrument  
27 containing all the information required to be included under the

1 applicable provisions of this code to give effect to the ratified  
2 defective corporate act is attached as an exhibit to the  
3 certificate of validation; and

4 (iii) the date and time that the attached  
5 filing instrument is considered to have become effective under this  
6 subchapter; or

7 (C) if a filing instrument was not previously  
8 filed with a filing officer under the corporate statute with  
9 respect to the defective corporate act and the defective corporate  
10 act as ratified under this subchapter would have required under the  
11 other applicable provisions of this code the filing of a filing  
12 instrument in accordance with Chapter 4, if the defective corporate  
13 act had occurred when this code was in effect:

14 (i) a statement that a filing instrument  
15 containing all the information required to be included under the  
16 applicable provisions of this code to give effect to the defective  
17 corporate act, as if the defective corporate act had occurred when  
18 this code was in effect, is attached as an exhibit to the  
19 certificate of validation; and

20 (ii) the date and time that the attached  
21 filing instrument is considered to have become effective under this  
22 subchapter

23 ~~[(3) the provisions that would be required under any~~  
24 ~~other section of this code to be included in the filing instrument~~  
25 ~~that otherwise would have been required to be filed with respect to~~  
26 ~~the defective corporate act under this code].~~

27 (c) A filing instrument attached to a certificate of

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

5 SECTION 22. Section 21.909, Business Organizations Code, is  
6 amended to read as follows:

7 Sec. 21.909. ADOPTION OF RESOLUTIONS [~~RESOLUTION~~]; EFFECT  
8 ON DEFECTIVE CORPORATE ACT. On or after the validation effective  
9 time, unless determined otherwise in an action brought under  
10 Section 21.914 and subject to Section 21.907(e), each defective  
11 corporate act ratified in accordance with this subchapter [~~set~~  
12 ~~forth in the resolution adopted under Sections 21.903 and 21.904~~]  
13 may not be considered void or voidable as a result of the [~~a~~]  
14 failure of authorization described by [~~identified in~~] the  
15 resolutions adopted under Sections 21.903 and 21.904 [~~resolution~~],  
16 and the effect shall be retroactive to the time of the defective  
17 corporate act.

18 SECTION 23. Section 21.910, Business Organizations Code, is  
19 amended to read as follows:

20 Sec. 21.910. ADOPTION OF RESOLUTIONS [~~RESOLUTION~~]; EFFECT  
21 ON PUTATIVE SHARES. On or after the validation effective time,  
22 unless determined otherwise in an action brought under Section  
23 21.914 and subject to Section 21.907(e), each putative share or  
24 fraction of a putative share issued or purportedly issued pursuant  
25 to a [~~the~~] defective corporate act ratified in accordance with this  
26 subchapter and described by [~~identified in~~] the resolutions  
27 [~~resolution~~] adopted under Sections 21.903 and 21.904 may not be



1 considered void or voidable [~~as a result of a failure of~~  
2 ~~authorization identified in the resolution]~~ and [~~, in the absence~~  
3 ~~of any failure of authorization not ratified,~~] is considered to be  
4 an identical share or fraction of a share outstanding as of the time  
5 it was purportedly issued.

6 SECTION 24. The heading to Section 21.911, Business  
7 Organizations Code, is amended to read as follows:

8 Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING RATIFICATION  
9 OF DEFECTIVE CORPORATE ACT [~~ADOPTION OF RESOLUTION~~].

10 SECTION 25. Section 21.911, Business Organizations Code, is  
11 amended by amending Subsections (a), (d), (e), and (f) and adding  
12 Subsection (g) to read as follows:

13 (a) For each defective corporate act ratified by the board  
14 of directors under Sections 21.903 and 21.904, notice [~~Notice~~] of  
15 the ratification [~~adoption of a resolution under this subchapter~~]  
16 shall be given promptly to:

17 (1) each holder of valid shares and putative shares,  
18 regardless of whether the shares are voting or nonvoting, as of the  
19 date the board of directors adopted the resolutions ratifying the  
20 defective corporate act [~~resolution~~]; or

21 (2) each holder of valid shares and putative shares,  
22 regardless of whether the shares are voting or nonvoting, as of a  
23 date not later than the 60th day after the date of adoption [~~on~~  
24 ~~which the resolution is adopted~~], as established by the board of  
25 directors.

26 (d) The notice must contain:

27 (1) copies [~~a copy~~] of the resolutions adopted by the

1 board of directors under Section 21.903 or the information  
2 contained in those resolutions [~~resolution~~]; and

3 (2) a statement that, on ratification of the defective  
4 corporate act or putative shares made in accordance with this  
5 subchapter, the holder's rights to challenge the defective  
6 corporate act or putative shares are limited to an action claiming  
7 ~~[the following must be brought not later than the 120th day of the~~  
8 ~~validation effective time.~~

9 [~~(A) any claim that the defective corporate act~~  
10 ~~or putative shares ratified under this subchapter are void or~~  
11 ~~voidable due to the identified failure of authorization; or~~

12 [~~(B) any claim~~] that a [the district] court of  
13 appropriate jurisdiction, in its discretion, should declare:

14 (A) that the [a] ratification [~~made in accordance~~  
15 ~~with this subchapter~~] not take effect or that it take effect only on  
16 certain conditions, if the action is filed not later than the 120th  
17 day after the later of the applicable validation effective time or  
18 the time at which the notice required by this section is given; or

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

21 (e) Notwithstanding Subsections (a)-(d):

22 (1) [7] notice is not required to be given under this  
23 section to a person if notice of the ratification of the defective  
24 corporate act [~~resolution~~] is given to that person in accordance  
25 with Section 21.906; and

26 (2) for a corporation that has a class of stock listed  
27 on a national securities exchange, the notice required by this

1 section may be considered given if the information contained in the  
2 notice is disclosed in a document publicly filed by the corporation  
3 with the Securities and Exchange Commission under Section 13, 14,  
4 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m,  
5 78n, or 78o(d)), and any rules promulgated under that Act.

6 (f) For purposes of Sections 21.905, [Section] 21.906, and  
7 21.907 and this section, notice to holders of putative shares and  
8 notice to holders of valid shares and putative shares as of the time  
9 of the defective corporate act shall be treated as notice to holders  
10 of valid shares for purposes of Sections 6.051, 6.052, 6.053,  
11 6.201, 6.202, 6.203, 6.204, 6.205, 21.353, and 21.3531.

12 (g) If the ratification of a defective corporate act has  
13 been approved by shareholders acting under Section 6.202, the  
14 notice required by this section may be included in any notice  
15 required to be given under Section 6.202(d) and, if included:

16 (1) shall be sent to the shareholders entitled to the  
17 notice under Section 6.202(d); and

18 (2) is not required to be sent to shareholders who  
19 signed a consent described by Section 6.202(b).

20 SECTION 26. Section 21.913(a), Business Organizations  
21 Code, is amended to read as follows:

22 (a) Ratification of an act or transaction under this  
23 subchapter or validation of an act or transaction as provided by  
24 Sections 21.914 through 21.917 is not the exclusive means of  
25 ratifying or validating any act or transaction taken by or on behalf  
26 of the corporation, including any defective corporate act or any  
27 issuance of putative shares or other shares, or of adopting or

1 endorsing any act or transaction taken by or in the name of the  
2 corporation before the corporation exists.

3 SECTION 27. Section 21.917, Business Organizations Code, is  
4 amended by amending Subsection (b) and adding Subsection (c) to  
5 read as follows:

6 (b) Notwithstanding any other provision of this  
7 subchapter [~~, the following may not be brought after the expiration~~  
8 ~~of the 120th day of the validation effective time]~~:

9 (1) an action claiming [~~asserting~~] that a defective  
10 corporate act or putative shares [~~ratified in accordance with this~~  
11 ~~subchapter~~] are void or voidable due to a failure of authorization  
12 identified in the resolutions [~~resolution~~] adopted in accordance  
13 with Section 21.903 may not be filed in or must be dismissed by any  
14 court after the applicable validation effective time; and [~~or~~]

15 (2) an action claiming [~~asserting~~] that a [~~the~~  
16 ~~district~~] court of appropriate jurisdiction, in its discretion,  
17 should declare that a ratification in accordance with this  
18 subchapter not take effect or that the ratification take effect  
19 only on certain conditions may not be filed with the court after the  
20 expiration of the 120th day after the later of the validation  
21 effective time or the time that any notice required to be given  
22 under Section 21.911 is given with respect to the ratification.

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

26 (1) mailed is considered to be given on the date the  
27 notice is deposited in the United States mail with postage paid in

1 an envelope addressed to the holder at the holder's address  
2 appearing or most recently appearing, as appropriate, in the  
3 records of the corporation; and

4 (2) transmitted by facsimile or electronic message is  
5 considered to be given when the facsimile or electronic message is  
6 transmitted to a facsimile number or an electronic message address  
7 provided by the holder, or to which the holder consents, for the  
8 purpose of receiving notice.

9 SECTION 28. Section 22.154(a), Business Organizations  
10 Code, is amended to read as follows:

11 (a) If the board of directors of a corporation fails to call  
12 the annual meeting of members when required, a member of the  
13 corporation may demand that the meeting be held within a reasonable  
14 time. The demand must be made in writing and sent to an officer of  
15 the corporation by certified or registered mail, return receipt  
16 requested, or by other means specified in the corporation's  
17 governing documents.

18 SECTION 29. Section 22.214, Business Organizations Code, is  
19 amended to read as follows:

20 Sec. 22.214. ACTION BY DIRECTORS. The act of a majority of  
21 the directors present in person or by proxy at a meeting at which a  
22 quorum is present at the time of the act is the act of the board of  
23 directors of a corporation, unless the act of a greater number is  
24 required by the certificate of formation or bylaws of the  
25 corporation.

26 SECTION 30. Section 22.227, Business Organizations Code, is  
27 amended to read as follows:

1           Sec. 22.227. DISSENT TO OR ABSTENTION FROM ACTION. (a) A  
2 director of a corporation who is present at a meeting of the board  
3 of directors at which action is taken on a corporate matter  
4 described by Section 22.226(a) is presumed to have assented to the  
5 action unless:

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

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

11           (3) the director has sent [~~a written dissent by~~  
12 ~~registered mail~~] to the secretary of the corporation, within a  
13 reasonable time [~~immediately~~] after the meeting has been adjourned,  
14 a written dissent or abstention by:

15                   (A) certified or registered mail, return receipt  
16 requested; or

17                   (B) other means specified in the corporation's  
18 governing documents.

19           (b) The right to dissent or abstain under this section does  
20 not apply to a director who voted in favor of the action.

21           SECTION 31. Section 200.251, Business Organizations Code,  
22 is amended by amending Subsection (b) and adding Subsection (b-1)  
23 to read as follows:

24           (b) If the annual meeting is not held at the designated  
25 time, a shareholder may [~~by certified or registered mail~~] make a  
26 written request to an officer or trust manager of the real estate  
27 investment trust that the meeting be held within a reasonable time.

1 The request calling for the meeting must be made by:

2 (1) certified or registered mail, return receipt  
3 requested; or

4 (2) other means specified in the real estate  
5 investment trust's governing documents.

6 (b-1) If the annual meeting is not called before the 61st  
7 day after the date the written request calling for a meeting is made  
8 under Subsection (b), any shareholder may bring suit at law or in  
9 equity to compel the meeting to be held.

10 SECTION 32. Sections 251.354(a) and (b), Business  
11 Organizations Code, are amended to read as follows:

12 (a) If a cooperative association required by Section  
13 251.353 to file a copy of a report with the secretary of state does  
14 not file the report within the prescribed time, the secretary of  
15 state shall send written notice of the requirement [~~by registered~~  
16 ~~mail~~] to the cooperative association at [~~. The notice must be sent~~  
17 ~~to~~] the cooperative association's principal office not later than  
18 the 60th day after the date the report becomes due.

19 (b) If a cooperative association [~~is~~] required by Section  
20 251.353 to file a report at the cooperative association's [~~its~~]  
21 registered office, but not with the secretary of state, [~~and~~] fails  
22 to file the report within the prescribed time, the secretary of  
23 state or any member of the cooperative association may send written  
24 notice of the requirement [~~by registered mail~~] to the cooperative  
25 association's principal office.

26 SECTION 33. Section 252.017(b), Business Organizations  
27 Code, is amended to read as follows:

1 (b) Chapters 1, [~~and~~] 4, and 10 and, if a nonprofit  
2 association designates an agent for service of process, Subchapter  
3 E, Chapter 5, apply to a nonprofit association.

4 SECTION 34. Chapter 252, Business Organizations Code, is  
5 amended by adding Section 252.018 to read as follows:

6 Sec. 252.018. MERGERS AND CONVERSIONS. A nonprofit  
7 association may effect a merger or conversion by complying with the  
8 applicable provisions of Chapter 10 and the nonprofit association's  
9 governing documents.

10 SECTION 35. Chapter 402, Business Organizations Code, is  
11 amended by adding Section 402.015 to read as follows:

12 Sec. 402.015. PERPETUAL DURATION OF OLD CORPORATIONS. (a)  
13 Notwithstanding any provision in the articles of incorporation  
14 limiting the period of duration of a domestic for-profit  
15 corporation formed before September 6, 1955, the period of duration  
16 of the corporation became perpetual on May 2, 1979, if the  
17 corporation was in existence according to the records of the  
18 secretary of state on May 2, 1979. A corporation described by this  
19 subsection may amend the corporation's articles of incorporation or  
20 certificate of formation, as applicable, to limit the corporation's  
21 period of duration after May 2, 1979.

22 (b) Notwithstanding a provision in the articles of  
23 incorporation limiting the period of duration of a domestic  
24 nonprofit corporation formed before August 10, 1959, the period of  
25 duration of the corporation became perpetual on May 2, 1979, if the  
26 corporation was in existence according to the records of the  
27 secretary of state on May 2, 1979. A corporation described by this



1 subsection may amend the corporation's articles of incorporation or  
2 certificate of formation, as applicable, to limit the corporation's  
3 period of duration after May 2, 1979.

4 SECTION 36. This Act takes effect September 1, 2017.