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S.B. No. 1518

A BILL TO BE ENTITLED

AN ACT

relating to corporations, associations, real estate investment trusts, and related entities; authorizing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall impose the following fees:

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

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

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

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

Sec. 6.157. VOTING OF JOINTLY HELD OWNERSHIP INTERESTS.

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

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

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

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

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

(2) for a jointly held ownership interest as defined 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
12 of 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

amended to read as follows:

Sec. 21.414. DISSENT TO OR ABSTENTION FROM ACTION. (a) 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 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 ~~[a written dissent by registered mail]~~ to the secretary of the corporation, within a reasonable time [immediately] after the meeting has been adjourned, a written dissent or abstention by:

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

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

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

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

(a) 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

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

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

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

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

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

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

(A) the defective corporate act to be ratified ~~[either]~~ at the time of that defective corporate ~~[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 ~~[when the resolution]~~

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

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

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

Sec. 21.906. NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE CORPORATE ACT ~~[RESOLUTION]~~ SUBMITTED FOR SHAREHOLDER APPROVAL.

(a) If the ratification of a defective corporate act is required to be submitted to the shareholders for approval under Section 21.905 ~~[requires that the resolution be submitted to the shareholders for approval]~~, notice of the time, place, if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to:

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

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

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

1 board of directors under Section 21.903 or the information required
2 by Sections 21.903(a)(1)-(5) [~~resolution~~]; and

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

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

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

23 Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING.

24 (a) At the shareholder meeting, the quorum and voting requirements
25 applicable to the approval of the ratification [~~adoption~~] of a
26 defective corporate act [~~the resolution~~] under Section 21.905 are
27 [~~shall be~~] the same as the quorum and voting requirements

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

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

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

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

(e) 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. Section 21.908, Business Organizations Code, is amended to read as follows:

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If a ~~the~~ defective corporate act ratified under this subchapter would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, the corporation~~[, instead of filing the filing instrument or other document otherwise required by this code,~~] shall file a certificate of validation with respect to the defective corporate act in accordance with Chapter 4, regardless of whether a filing

1 instrument or other document was previously filed with respect to
2 the defective corporate act. The filing of another filing
3 instrument or document is not required.

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

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

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

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

27 (a-2) An amendment effected by a certificate of validation

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

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

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

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

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

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

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

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

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

25 (3) as appropriate:

26 (A) if a filing instrument ~~[or document]~~ was
27 previously filed with a filing officer under the corporate statute

1 with ~~[in]~~ respect to ~~[of]~~ the defective corporate act and no change
2 to the filing instrument is required to give effect to the defective
3 corporate act as ratified in accordance with this subchapter:

4 (i) the name, ~~[the]~~ title, and filing date
5 ~~[of filing]~~ of the previously filed ~~[prior]~~ filing instrument and
6 of any certificate of correction to the filing instrument; and

7 (ii) a statement that a copy of the
8 previously filed filing instrument, together with ~~[or document and]~~
9 any ~~[articles or]~~ certificate of correction to the filing
10 instrument, is attached as an exhibit to the certificate of
11 validation ~~[filing instrument]~~; ~~[and]~~

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

18 (i) the name, title, and filing date of the
19 previously filed filing instrument and of any certificate of
20 correction to the filing instrument;

21 (ii) a statement that a filing instrument
22 containing all the information required to be included under the
23 applicable provisions of this code to give effect to the ratified
24 defective corporate act is attached as an exhibit to the
25 certificate of validation; and

26 (iii) the date and time that the attached
27 filing instrument is considered to have become effective under this

1 subchapter; or

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

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

15 (ii) the date and time that the attached
16 filing instrument is considered to have become effective under this
17 subchapter

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

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

27 SECTION 22. Section 21.909, Business Organizations Code, is

amended to read as follows:

Sec. 21.909. ADOPTION OF RESOLUTIONS [~~RESOLUTION~~]; EFFECT ON DEFECTIVE CORPORATE ACT. 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), each defective corporate act ratified in accordance with this subchapter [~~set forth in the resolution adopted under Sections 21.903 and 21.904~~] may not be considered void or voidable as a result of the [~~a~~] failure of authorization described by [~~identified in~~] the resolutions adopted under Sections 21.903 and 21.904 [~~resolution~~], and the effect shall be retroactive to the time of the defective corporate act.

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

Sec. 21.910. ADOPTION OF RESOLUTIONS [~~RESOLUTION~~]; EFFECT ON PUTATIVE SHARES. 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), each putative share or fraction of a putative share issued or purportedly issued pursuant to a [~~the~~] defective corporate act ratified in accordance with this subchapter and described by [~~identified in~~] the resolutions [~~resolution~~] adopted under Sections 21.903 and 21.904 may not be 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,~~] is considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued.

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

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

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

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

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

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

21 (d) The notice must contain:

22 (1) copies [~~a copy~~] of the resolutions adopted by the
23 board of directors under Section 21.903 or the information required
24 by Sections 21.903(a)(1)-(5) [~~resolution~~]; and

25 (2) a statement that, on ratification of the defective
26 corporate act or putative shares made in accordance with this
27 subchapter, the holder's rights to challenge the defective

1 corporate act or putative shares are limited to an action claiming
2 ~~[the following must be brought not later than the 120th day of the~~
3 ~~validation effective time.~~

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

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

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

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

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

17 (1) [7] notice is not required to be given under this
18 section to a person if notice of the ratification of the defective
19 corporate act [resolution] is given to that person in accordance
20 with Section 21.906; and

21 (2) for a corporation that has a class of stock listed
22 on a national securities exchange, the notice required by this
23 section may be considered given if the information contained in the
24 notice is disclosed in a document publicly filed by the corporation
25 with the Securities and Exchange Commission under Section 13, 14,
26 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m,
27 78n, or 78o(d)), and any rules promulgated under that Act.

1 (f) For purposes of Sections 21.905, [Section] 21.906, and
2 21.907 and this section, notice to holders of putative shares and
3 notice to holders of valid shares and putative shares as of the time
4 of the defective corporate act shall be treated as notice to holders
5 of valid shares for purposes of Sections 6.051, 6.052, 6.053,
6 6.201, 6.202, 6.203, 6.204, 6.205, 21.353, and 21.3531.

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

11 (1) shall be sent to the shareholders entitled to the
12 notice under Section 6.202(d) and all other holders of valid shares
13 and putative shares otherwise entitled to the notice under
14 Subsection (a) of this section; and

15 (2) is not required to be sent to shareholders or
16 holders of valid shares or putative shares who signed a consent
17 described by Section 6.202(b).

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

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

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

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

(1) an action claiming ~~[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 ~~[resolution]~~ adopted in accordance with Section 21.903 may not be filed in or must be dismissed by any court after the applicable validation effective time; and ~~[or]~~

(2) an action claiming ~~[asserting]~~ that a ~~[the district]~~ court of appropriate jurisdiction, 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 may not be 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) 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 United States mail with postage paid in an envelope addressed to the holder at the holder's address appearing or most recently appearing, as appropriate, in the

1 records of the corporation; and

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

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

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

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

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

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

26 Sec. 22.227. DISSENT TO OR ABSTENTION FROM ACTION. (a) A
27 director of a corporation who is present at a meeting of the board

1 of directors at which action is taken on a corporate matter
2 described by Section 22.226(a) is presumed to have assented to the
3 action unless:

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

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

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

13 (A) certified or registered mail, return receipt
14 requested; or

15 (B) other means specified in the corporation's
16 governing documents.

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

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

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

27 (1) certified or registered mail, return receipt

1 requested; or

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

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

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

10 (a) If a cooperative association required by Section
11 251.353 to file a copy of a report with the secretary of state does
12 not file the report within the prescribed time, the secretary of
13 state shall send written notice of the requirement ~~[by registered~~
14 ~~mail]~~ to the cooperative association at ~~[. The notice must be sent~~
15 ~~to]~~ the cooperative association's principal office not later than
16 the 60th day after the date the report becomes due.

17 (b) If a cooperative association ~~[is]~~ required by Section
18 251.353 to file a report at the cooperative association's ~~[its]~~
19 registered office, but not with the secretary of state, ~~[and]~~ fails
20 to file the report within the prescribed time, the secretary of
21 state or any member of the cooperative association may send written
22 notice of the requirement ~~[by registered mail]~~ to the cooperative
23 association's principal office.

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

26 (b) Chapters 1, ~~[and]~~ 4, and 10 and, if a nonprofit
27 association designates an agent for service of process, Subchapter

1 E, Chapter 5, apply to a nonprofit association.

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

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

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

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

20 (b) Notwithstanding a provision in the articles of
21 incorporation limiting the period of duration of a domestic
22 nonprofit corporation formed before August 10, 1959, the period of
23 duration of the corporation became perpetual on May 2, 1979, if the
24 corporation was in existence according to the records of the
25 secretary of state on May 2, 1979. A corporation described by this
26 subsection may amend the corporation's articles of incorporation or
27 certificate of formation, as applicable, to limit the corporation's

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1 period of duration after May 2, 1979.

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