

By: Martinez Fischer

H.B. No. 3602

Substitute the following for H.B. No. 3602:

By: Darby

C.S.H.B. No. 3602

A BILL TO BE ENTITLED

AN ACT

relating to domestic corporations and other domestic entities.

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

SECTION 1. Section 6.252, Business Organizations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (c-1), (c-2), (c-3), (c-4), and (g) to read as follows:

(a) Except as provided by this code or the governing documents, any number of owners of a domestic entity, or any number of owners of the domestic entity and the domestic entity itself, may enter into a written voting agreement that is not set forth in the domestic entity's governing documents to provide the manner of voting of the ownership interests of the domestic entity. A voting agreement entered into under this subsection is not part of the governing documents of the domestic entity.

(b) A copy of a voting agreement entered into under Subsection (a):

(1) may ~~shall~~ be deposited with the domestic entity at the domestic entity's principal executive office or registered office; and

(2) if deposited as provided by Subdivision (1), is subject to examination by an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the domestic entity.

(c) A voting agreement entered into under Subsection (a) is

1 specifically enforceable against the owner [~~holder~~] of an ownership
2 interest that is the subject of the agreement if the owner executes
3 the voting agreement or acknowledges in writing that the owner or
4 the ownership interest is bound by the agreement [~~, and any~~
5 ~~successor or transferee of the holder, if:~~

6 ~~[(1) the voting agreement is noted conspicuously on~~
7 ~~the certificate representing the ownership interests; or~~

8 ~~[(2) a notation of the voting agreement is contained~~
9 ~~in a notice sent by or on behalf of the domestic entity in~~
10 ~~accordance with Section 3.205, if the ownership interest is not~~
11 ~~represented by a certificate].~~

12 (c-1) A voting agreement entered into under Subsection (a)
13 is specifically enforceable against any subsequent owner of the
14 ownership interest subject to the voting agreement if the
15 subsequent owner:

16 (1) has notice or actual knowledge of the voting
17 agreement at or before the time of transfer to the subsequent owner;

18 (2) is not a transferee for value and receives notice
19 or obtains actual knowledge of the voting agreement; or

20 (3) acknowledges in writing that the subsequent owner
21 or the ownership interest is bound by the voting agreement.

22 (c-2) A subsequent owner is considered to have notice of a
23 voting agreement for purposes of Subsection (c-1)(1) if, at the
24 time of transfer, the existence of the voting agreement is noted
25 conspicuously on any certificate representing the ownership
26 interest held by the transferor owner. The notice described by this
27 subsection is not the exclusive method by which notice of the voting

1 agreement may be received by a subsequent owner for purposes of
2 Subsection (c-1)(1).

3 (c-3) A voting agreement that becomes specifically
4 enforceable against a subsequent owner under Subsection (c-1)(2) is
5 specifically enforceable from the time the subsequent owner first
6 receives notice or obtains actual knowledge of the voting
7 agreement.

8 (c-4) A voting agreement that becomes specifically
9 enforceable against a subsequent owner under Subsection (c-1)(3) is
10 specifically enforceable from the time of the written
11 acknowledgment by the subsequent owner.

12 (g) This section does not impair the right of the domestic
13 entity to treat an owner of record as entitled to vote the ownership
14 interest standing in the owner's name or to accept that owner's vote
15 of the ownership interest.

16 SECTION 2. Sections 10.354(b) and (c), Business
17 Organizations Code, are amended to read as follows:

18 (b) Notwithstanding Subsection (a), subject to Subsection
19 (c), an owner may not dissent from a plan of merger or conversion in
20 which there is a single surviving or new domestic entity or non-code
21 organization, or from a plan of exchange, if:

22 (1) the ownership interest, or a depository receipt in
23 respect of the ownership interest, held by the owner:

24 (A) in the case of a plan of merger, conversion,
25 or exchange, other than a plan of merger pursuant to Section
26 21.459(c), is part of a class or series of ownership interests, or
27 depository receipts in respect of ownership interests, that ~~are~~,

1 on the record date set for purposes of determining which owners are
2 entitled to vote on the plan of merger, conversion, or exchange, as
3 appropriate, are either:

4 (i) [~~A~~] listed on a national securities
5 exchange; or

6 (ii) [~~B~~] held of record by at least 2,000
7 owners; or

8 (B) in the case of a plan of merger pursuant to
9 Section 21.459(c), is part of a class or series of ownership
10 interests, or depository receipts in respect of ownership
11 interests, that, immediately before the date the board of directors
12 of the corporation that issued the ownership interest held,
13 directly or indirectly, by the owner approves the plan of merger,
14 are either:

15 (i) listed on a national securities
16 exchange; or

17 (ii) held of record by at least 2,000
18 owners;

19 (2) the owner is not required by the terms of the plan
20 of merger, conversion, or exchange, as appropriate, to accept for
21 the owner's ownership interest any consideration that is different
22 from the consideration to be provided to any other holder of an
23 ownership interest of the same class or series as the ownership
24 interest held by the owner, other than cash instead of fractional
25 shares or interests the owner would otherwise be entitled to
26 receive; and

27 (3) the owner is not required by the terms of the plan

1 of merger, conversion, or exchange, as appropriate, to accept for
2 the owner's ownership interest any consideration other than:

3 (A) ownership interests, or depository receipts
4 in respect of ownership interests, of a domestic entity or non-code
5 organization of the same general organizational type that,
6 immediately after the effective date of the merger, conversion, or
7 exchange, as appropriate, will be part of a class or series of
8 ownership interests, or depository receipts in respect of ownership
9 interests, that are:

10 (i) listed on a national securities
11 exchange or authorized for listing on the exchange on official
12 notice of issuance; or

13 (ii) held of record by at least 2,000
14 owners;

15 (B) cash instead of fractional ownership
16 interests, or fractional depository receipts in respect of
17 ownership interests, the owner would otherwise be entitled to
18 receive; or

19 (C) any combination of the ownership interests,
20 or fractional depository receipts in respect of ownership
21 interests, and cash described by Paragraphs (A) and (B).

22 (c) Subsection (b) shall not apply [~~either~~] to a domestic
23 entity that is a subsidiary with respect to a merger under Section
24 [10.006](#) [~~or to a corporation with respect to a merger under Section~~
25 ~~[21.459\(c\)](#)].~~

26 SECTION 3. Sections [10.355\(d\)](#) and (f), Business
27 Organizations Code, are amended to read as follows:

1 (d) In addition to the requirements prescribed by
2 Subsection (c), a notice required to be provided:

3 (1) under Subsection (a)(1) must accompany the notice
4 of the meeting to consider the action;

5 (2) under Subsection (a)(2) must be provided to:

6 (A) each owner who consents in writing to the
7 action before the owner delivers the written consent; and

8 (B) each owner who is entitled to vote on the
9 action and does not consent in writing to the action before the 11th
10 day after the date the action takes effect; and

11 (3) under Subsection (b-1) must be provided:

12 (A) if given before the consummation of the
13 [~~tender or exchange~~] offer described by Section 21.459(c)(2), to
14 each shareholder to whom that offer is made; or

15 (B) if given after the consummation of the
16 [~~tender or exchange~~] offer described by Section 21.459(c)(2), to
17 each shareholder who did not tender the shareholder's shares in
18 that offer.

19 (f) If the notice given under Subsection (b-1) did not
20 include a statement of the effective date of the merger, the
21 responsible organization shall, not later than the 10th day after
22 the effective date, give a second notice to the shareholders
23 notifying them of the merger's effective date. If the second notice
24 is given after the later of the date on which the [~~tender or~~
25 ~~exchange~~] offer described by Section 21.459(c)(2) is consummated or
26 the 20th day after the date notice under Subsection (b-1) is given,
27 then the second notice is required to be given to only those

1 shareholders who have made a demand under Section 10.356(b)(3).

2 SECTION 4. Section 10.356(b), Business Organizations Code,
3 is amended to read as follows:

4 (b) To perfect the owner's rights of dissent and appraisal
5 under Section 10.354, an owner:

6 (1) if the proposed action is to be submitted to a vote
7 of the owners at a meeting, must give to the domestic entity a
8 written notice of objection to the action that:

9 (A) is addressed to the entity's president and
10 secretary;

11 (B) states that the owner's right to dissent will
12 be exercised if the action takes effect;

13 (C) provides an address to which notice of
14 effectiveness of the action should be delivered or mailed; and

15 (D) is delivered to the entity's principal
16 executive offices before the meeting;

17 (2) with respect to the ownership interest for which
18 the rights of dissent and appraisal are sought:

19 (A) must vote against the action if the owner is
20 entitled to vote on the action and the action is approved at a
21 meeting of the owners; and

22 (B) may not consent to the action if the action is
23 approved by written consent; and

24 (3) must give to the responsible organization a demand
25 in writing that:

26 (A) is addressed to the president and secretary
27 of the responsible organization;

1 (B) demands payment of the fair value of the
2 ownership interests for which the rights of dissent and appraisal
3 are sought;

4 (C) provides to the responsible organization an
5 address to which a notice relating to the dissent and appraisal
6 procedures under this subchapter may be sent;

7 (D) states the number and class of the ownership
8 interests of the domestic entity owned by the owner and the fair
9 value of the ownership interests as estimated by the owner; and

10 (E) is delivered to the responsible organization
11 at its principal executive offices at the following time:

12 (i) not later than the 20th day after the
13 date the responsible organization sends to the owner the notice
14 required by Section 10.355(e) that the action has taken effect, if
15 the action was approved by a vote of the owners at a meeting;

16 (ii) not later than the 20th day after the
17 date the responsible organization sends to the owner the notice
18 required by Section 10.355(d)(2) that the action has taken effect,
19 if the action was approved by the written consent of the owners;

20 (iii) not later than the 20th day after the
21 date the responsible organization sends to the owner a notice that
22 the merger was effected, if the action is a merger effected under
23 Section 10.006; or

24 (iv) not later than the 20th day after the
25 date the responsible organization gives to the shareholder the
26 notice required by Section 10.355(b-1) or the date of the
27 consummation of the [~~tender or exchange~~] offer described by Section

1 21.459(c)(2), whichever is later, if the action is a merger
2 effected under Section 21.459(c).

3 SECTION 5. Section 21.002, Business Organizations Code, is
4 amended by adding Subdivision (10-a) to read as follows:

5 (10-a) "Share transfer records" means one or more
6 records maintained by or on behalf of a corporation in accordance
7 with Section 3.151 in which the names of all of the corporation's
8 shareholders of record, the address of and number of shares
9 registered in the name of each shareholder of record, and all
10 issuances and transfers of shares of the corporation are recorded.

11 SECTION 6. Section 21.305(b), Business Organizations Code,
12 is amended to read as follows:

13 (b) The notice of redemption shall be sent to each holder of
14 redeemable shares being called not later than the 21st day or
15 earlier than the 60th day before the date set for redemption, unless
16 otherwise provided by the terms of the class or series of shares
17 contained in the certificate of formation.

18 SECTION 7. Sections 21.372(a) and (a-1), Business
19 Organizations Code, are amended to read as follows:

20 (a) Not later than the 11th day before the date of each
21 meeting of the shareholders of a corporation, [~~an officer or agent~~
22 ~~of the corporation who is in charge of the corporation's share~~
23 ~~transfer records shall prepare]~~ an alphabetical list of the
24 shareholders entitled to vote at the meeting or at any adjournment
25 of the meeting shall be prepared by or on behalf of the corporation.

26 The list of shareholders must:

27 (1) state:

- 1 (A) the address of each shareholder;
- 2 (B) the type of shares held by each shareholder;
- 3 (C) the number of shares held by each
- 4 shareholder; and
- 5 (D) the number of votes that each shareholder is
- 6 entitled to if the number of votes is different from the number of
- 7 shares stated under Paragraph (C); and

8 (2) be kept on file at the registered office or

9 principal executive office of the corporation for at least 10 days

10 before the date of the meeting.

11 (a-1) Instead of being kept on file, the list required by

12 Subsection (a) may be kept on a reasonably accessible electronic

13 data system [~~network~~] if the information required to gain access to

14 the list is provided with notice of the meeting. Section 21.353(c),

15 Section 21.354(a-1), and this subsection may not be construed to

16 require a corporation to include any electronic contact information

17 of a shareholder on the list. A corporation that elects to make the

18 list available on an electronic data system [~~network~~] must take

19 reasonable measures to ensure the information is available only to

20 shareholders of the corporation.

21 SECTION 8. Section 21.459, Business Organizations Code, is

22 amended by amending Subsections (c), (d), and (e) and adding

23 Subsection (f) to read as follows:

24 (c) This subsection applies only to a corporation that is a

25 party to the merger and has a class or series of [~~whose~~] shares that

26 are, immediately before the date its board of directors approves

27 the plan of merger, either listed on a national securities exchange

1 or held of record by at least 2,000 shareholders. Unless required
2 by the corporation's certificate of formation, a plan of merger is
3 not required to be approved by the shareholders of the corporation
4 if:

5 (1) the plan of merger expressly:

6 (A) permits or requires the merger to be effected
7 under this subsection; and

8 (B) provides that any merger effected under this
9 subsection shall be effected as soon as practicable following the
10 consummation of the offer [~~described by Subdivision (2)~~];

11 (2) an organization consummates an [~~a tender or~~
12 ~~exchange~~] offer for all of the outstanding shares of the
13 corporation on the terms provided in the plan of merger that, absent
14 this subsection, would be entitled to vote on the approval of the
15 plan of merger, except that:

16 (A) the offer may be conditioned on the tender of
17 a minimum number or percentage of shares of the corporation or of
18 any class or series of shares of the corporation;

19 (B) the offer may exclude any excluded shares;
20 and

21 (C) the organization may consummate separate
22 offers for separate classes or series of shares of the corporation
23 [~~owned at the time of the commencement of the offer by:~~

24 [~~(A) the corporation,~~

25 [~~(B) the organization making the offer,~~

26 [~~(C) any person who owns, directly or indirectly,~~

27 ~~all of the ownership interests in the organization making the~~

1 offer, or

2 [~~(D) any direct or indirect wholly owned~~
3 ~~subsidiary of a person described by Paragraph (A), (B), or (C)];~~

4 (3) immediately following the consummation of the
5 offer, shares that are irrevocably accepted for purchase or
6 exchange pursuant to the consummation of the offer [~~described by~~
7 ~~Subdivision (2)~~] and that are received by the depository before the
8 expiration of the offer, together with [~~in addition to~~] the shares
9 that are otherwise owned by the consummating organization or its
10 qualified affiliates and any rollover shares, equal at least the
11 percentage of the shares of the corporation, and of each class or
12 series of those shares [~~, of the corporation~~] that, absent this
13 subsection, would be required to approve the plan of merger by:

14 (A) Section 21.457 and, if applicable, Section
15 21.458; and

16 (B) the certificate of formation of the
17 corporation;

18 (4) the organization consummating the offer or one of
19 its qualified affiliates [~~described by Subdivision (2)~~] merges with
20 or into the corporation pursuant to the plan of merger; and

21 (5) each outstanding share, other than excluded
22 shares, of each class or series of the corporation that is the
23 subject of and is not irrevocably accepted for purchase or exchange
24 in the offer [~~described by Subdivision (2)~~] is to be converted or
25 exchanged in the merger into, or into the right to receive, the same
26 amount and kind of consideration, as described by Section
27 10.002(a)(5), as to be paid or delivered for shares of such class or

1 series of the corporation irrevocably accepted for purchase or
2 exchange in the offer.

3 (d) In Subsection (c) and this subsection and, as
4 applicable, in Sections 10.355(d)(3)(B), 10.355(f), and
5 10.356(b)(3)(E)(iv):

6 (1) "Consummates," "consummation," or "consummating"
7 means irrevocably accepts for purchase or exchange shares tendered
8 pursuant to an [~~a tender or exchange~~] offer.

9 (2) "Depository" means an agent appointed to
10 facilitate consummation of an [~~the~~] offer [~~described by Subsection~~
11 ~~(c)(2)~~].

12 (3) "Offer" means a tender offer or an exchange offer
13 that satisfies the requirements of Subsection (c)(2).

14 (e) For purposes of Subsection (c) and this subsection:

15 (1) "Excluded shares" means:

16 (A) shares of the corporation that are owned at
17 the commencement of the offer by:

18 (i) the corporation;

19 (ii) the organization consummating the
20 offer;

21 (iii) any person that owns, directly or
22 indirectly, all of the outstanding ownership interests of the
23 organization consummating the offer; or

24 (iv) any direct or indirect wholly owned
25 subsidiary of the corporation, the organization consummating the
26 offer, or any person described by Subparagraph (iii); and

27 (B) rollover shares.

1 (2) "Qualified affiliate" means, with respect to the
2 organization consummating an offer, any person that:

3 (A) owns, directly or indirectly, all of the
4 outstanding ownership interests of the organization consummating
5 the offer; or

6 (B) is a direct or indirect wholly owned
7 subsidiary of the organization consummating the offer or of any
8 person described by Paragraph (A).

9 (3) "Received" means:

10 (A) [~~(c)(3), "received,"~~] with respect to
11 certificated shares, [~~means:~~

12 [~~(1)~~] physical receipt of a certificate representing
13 shares accompanied by an executed letter of transmittal [~~, in the~~
14 case of certificated shares]; [~~and~~

15 (B) [~~(2)~~] transfer into the depository's account
16 by means of [~~or~~] an agent's message; and

17 (C) with respect to uncertificated shares held of
18 record by a person other than a clearing corporation as nominee,
19 physical receipt of an executed letter of transmittal by the
20 depository [~~being received by the depository, in the case of~~
21 uncertificated shares].

22 (4) "Rollover shares" means any shares of the
23 corporation that are the subject of a written agreement, separate
24 from the offer, requiring the shares to be transferred,
25 contributed, or delivered to the organization consummating the
26 offer or any of the organization's qualified affiliates in exchange
27 for ownership interests in the organization consummating the offer

1 or a qualified affiliate of that organization. The term does not
2 include shares of a corporation described by this subdivision that,
3 immediately before the time a merger described by Subsection (c)
4 becomes effective, have not been transferred, contributed, or
5 delivered to the organization consummating the offer or any of the
6 organization's qualified affiliates pursuant to the written
7 agreement.

8 (f) For purposes of Subsections (c) and (e), shares cease to
9 be "received":

10 (1) with respect to certificated shares, if the
11 certificate representing the shares was canceled before
12 consummation of the offer; and

13 (2) with respect to uncertificated shares, to the
14 extent the uncertificated shares have been reduced or eliminated
15 due to any sale of those shares before the consummation of the
16 offer.

17 SECTION 9. Section 21.701, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 21.701. DEFINITIONS. In this subchapter and
20 Subchapter P:

21 (1) "Close corporation" means a domestic corporation
22 formed under this subchapter or governed by this subchapter because
23 of Section 21.705, 21.706, or 21.707.

24 (2) "Close corporation provision" means a provision in
25 the certificate of formation of a close corporation or in a
26 shareholders' agreement of a close corporation.

27 (3) "Ordinary corporation" means a domestic

1 corporation that is not a close corporation.

2 (4) "Shareholders' agreement" means a written
3 agreement regulating an aspect of the business and affairs of or the
4 relationship among the shareholders of a close corporation that has
5 been executed under this subchapter.

6 SECTION 10. Section 21.901, Business Organizations Code, is
7 amended by amending Subdivisions (2) and (4) and adding Subdivision
8 (5-a) to read as follows:

9 (2) "Defective corporate act" means:

10 (A) an overissue;

11 (B) an election or appointment of directors that
12 is void or voidable due to a failure of authorization; or

13 (C) any act or transaction purportedly taken by
14 or on behalf of the corporation that is, and at the time the act or
15 transaction was purportedly taken would have been, within the power
16 of a corporation to take under the corporate statute, without
17 regard to the failure of authorization identified in Section
18 21.903(a)(4), but is void or voidable due to a failure of
19 authorization.

20 (4) "Failure of authorization" means:

21 (A) the failure to authorize or effect an act or
22 transaction in compliance with the provisions of the corporate
23 statute, the governing documents of the corporation, ~~or~~ any plan
24 or agreement to which the corporation is a party, or the disclosure
25 set forth in any proxy or consent solicitation statement, if and to
26 the extent the failure would render the act or transaction void or
27 voidable; or

1 (B) the failure of the board of directors or an
2 officer of the corporation to authorize or approve an act or
3 transaction taken by or on behalf of the corporation that required
4 the prior authorization or approval of the board of directors or the
5 officer.

6 (5-a) "Putative record date" means, with respect to
7 any defective corporate act that involved the establishment of a
8 record date for a meeting of or action by shareholders or any other
9 purpose, that record date.

10 SECTION 11. Section 21.905, Business Organizations Code, is
11 amended to read as follows:

12 Sec. 21.905. SHAREHOLDER APPROVAL OF RATIFIED DEFECTIVE
13 CORPORATE ACT REQUIRED; EXCEPTION. Each defective corporate act
14 ratified under Section 21.903 must be submitted to shareholders for
15 approval as provided by Sections 21.906 and 21.907, unless:

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

20 (i) [~~(A)~~] the defective corporate act to be
21 ratified at the time of that defective corporate act; or

22 (ii) [~~(B)~~] the type of defective corporate
23 act to be ratified at the time the board of directors adopts the
24 resolutions ratifying that defective corporate act under Section
25 21.903; and

26 (B) [~~(2)~~] the defective corporate act to be
27 ratified did not result from a failure to comply with Subchapter M;

1 or

2 (2) as of the record date for determining the
3 shareholders entitled to vote on the ratification of the defective
4 corporate act, there are no valid shares outstanding and entitled
5 to vote on the ratification, regardless of whether as of that record
6 date there exist any putative shares.

7 SECTION 12. Section 21.906(a), Business Organizations
8 Code, is amended to read as follows:

9 (a) If the ratification of a defective corporate act is
10 required to be submitted to the shareholders for approval under
11 Section 21.905, notice of the time, place, if any, and purpose of
12 the 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) each holder of record of valid shares and putative
20 shares, regardless of whether the shares are voting or nonvoting,
21 other than to a holder whose identity or address cannot be
22 ascertained from the corporation's records:

23 (A) as of the time of the defective corporate
24 act; or

25 (B) in the case of any defective corporate act
26 that involved the establishment of a putative record date, as of
27 that putative record date [~~except that notice is not required to~~

1 ~~be given to a holder whose identity or address cannot be ascertained~~
2 ~~from the corporation's records].~~

3 SECTION 13. Section 21.911(e), Business Organizations
4 Code, is amended to read as follows:

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

6 (1) notice is not required to be given under this
7 section to a person if notice of the ratification of the defective
8 corporate act is given to that person in accordance with Section
9 21.906; and

10 (2) for a corporation that has a class of stock listed
11 on a national securities exchange, the notice required by this
12 section and Section 21.906(a)(2) may be considered given if the
13 information contained in the notice is disclosed in a document
14 publicly filed by the corporation with the Securities and Exchange
15 Commission under Section 13, 14, or 15(d), Securities Exchange Act
16 of 1934 (15 U.S.C. Section 78m, 78n, or 78o(d)), and any rules
17 promulgated under that Act.

18 SECTION 14. Section 21.953(c), Business Organizations
19 Code, is amended to read as follows:

20 (c) The name of the public benefit corporation specified in
21 its certificate of formation may contain the words "public benefit
22 corporation," the abbreviation "P.B.C.," or the designation "PBC."
23 If the name does not contain those words or that abbreviation or
24 designation, ~~[the corporation must]~~ before the issuance of
25 ~~[issuing]~~ unissued shares or the disposition ~~[disposing]~~ of
26 treasury shares and except as provided by Subsection (d), ~~[provide]~~
27 notice that the corporation is a public benefit corporation shall

1 be given to any person:

2 (1) to whom the unissued shares are issued; or

3 (2) who acquires the treasury shares.

4 SECTION 15. Section 21.955(b), Business Organizations
5 Code, is amended to read as follows:

6 (b) A notice sent to any person [~~by a public benefit~~
7 ~~corporation~~] under Section 3.205 must state conspicuously that the
8 corporation is a public benefit corporation governed by this
9 subchapter.

10 SECTION 16. Section 22.001, Business Organizations Code, is
11 amended by adding Subdivision (3-a) to read as follows:

12 (3-a) "Director" means a person who is a member of the
13 board of directors, regardless of the name or title used to
14 designate the person. The term does not include a person designated
15 as a director of the corporation, or as an ex officio, honorary, or
16 other type of director of the corporation if the person is not
17 entitled to vote as a director.

18 SECTION 17. Section 22.002, Business Organizations Code, is
19 amended to read as follows:

20 Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.
21 A [~~Subject to the provisions of this code and the certificate of~~
22 ~~formation and bylaws of a corporation, a~~] meeting of the members of
23 a corporation, the board of directors of a corporation, or any
24 committee designated by the board of directors of a corporation may
25 be held by means of a conference telephone or similar
26 communications equipment, another suitable [~~remote~~] electronic
27 communications system, including videoconferencing technology or

1 the Internet, or any combination of those means, in accordance with
2 Section 6.002 ~~[only if:~~

3 ~~[(1) each person entitled to participate in the~~
4 ~~meeting consents to the meeting being held by means of that system,~~
5 ~~and~~

6 ~~[(2) the system provides access to the meeting in a~~
7 ~~manner or using a method by which each person participating in the~~
8 ~~meeting can communicate concurrently with each other participant].~~

9 SECTION 18. Section 22.210, Business Organizations Code, is
10 amended to read as follows:

11 Sec. 22.210. NON-DIRECTOR RIGHTS AND LIMITATIONS ~~[EX~~
12 ~~OFFICIO MEMBER OF BOARD]~~. ~~[(a)]~~ The certificate of formation or
13 bylaws of a corporation may provide that a person who is not a
14 director ~~[may be an ex officio member of the board of directors of~~
15 ~~the corporation.~~

16 ~~[(b) A person designated as an ex officio member of the~~
17 ~~board]~~ is entitled to receive notice of and to attend ~~[board]~~
18 meetings of the board of directors. By having those rights, the
19 person does not have the authority, duties, or liabilities of a
20 director and is not a governing person of the corporation.

21 ~~[(c) An ex officio member is not entitled to vote unless the~~
22 ~~certificate of formation or bylaws authorize the member to vote. An~~
23 ~~ex officio member of the board who is not entitled to vote does not~~
24 ~~have the duties or liabilities of a director provided by this~~
25 ~~chapter.]~~

26 SECTION 19. Section 22.356(b), Business Organizations
27 Code, is amended to read as follows:

1 (b) The books and records of a corporation other than a bona
2 fide alumni association are subject to audit at the discretion of
3 the state auditor if:

4 (1) the corporation's certificate of formation
5 [~~charter~~] specifically dedicates the corporation's activities to
6 the benefit of a particular state agency; and

7 (2) a board member, officer, or employee of that state
8 agency is a director [~~sits on the board of directors~~] of the
9 corporation [~~in other than an ex officio capacity~~].

10 SECTION 20. Sections [6.252\(d\)](#) and (e), Business
11 Organizations Code, are repealed.

12 SECTION 21. This Act takes effect September 1, 2019.