

By: Martinez Fischer

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 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) is part of a class or series of ownership
25 interests, or depository receipts in respect of ownership
26 interests, that ~~are~~, on the record date set for purposes of
27 determining which owners are entitled to vote on the plan of merger,

1 other than a merger pursuant to Section 21.459(c), conversion, or
2 exchange, as appropriate, are either:

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

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

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

13 (i) listed on a national securities
14 exchange; or

15 (ii) held of record by at least 2,000
16 owners;

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

25 (3) the owner is not required by the terms of the plan
26 of merger, conversion, or exchange, as appropriate, to accept for
27 the owner's ownership interest any consideration other than:

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

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

11 (ii) held of record by at least 2,000
12 owners;

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

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

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

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

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

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

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

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

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

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

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

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

17 (f) If the notice given under Subsection (b-1) did not
18 include a statement of the effective date of the merger, the
19 responsible organization shall, not later than the 10th day after
20 the effective date, give a second notice to the shareholders
21 notifying them of the merger's effective date. If the second notice
22 is given after the later of the date on which the ~~[tender or~~
23 ~~exchange]~~ offer described by Section 21.459(c)(2) is consummated or
24 the 20th day after the date notice under Subsection (b-1) is given,
25 then the second notice is required to be given to only those
26 shareholders who have made a demand under Section 10.356(b)(3).

27 SECTION 4. Section 10.356(b), Business Organizations Code,

1 is amended to read as follows:

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

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

7 (A) is addressed to the entity's president and
8 secretary;

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

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

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

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

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

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

22 (3) must give to the responsible organization a demand
23 in writing that:

24 (A) is addressed to the president and secretary
25 of the responsible organization;

26 (B) demands payment of the fair value of the
27 ownership interests for which the rights of dissent and appraisal

1 are sought;

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

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

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

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

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

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

22 (iv) not later than the 20th day after the
23 date the responsible organization gives to the shareholder the
24 notice required by Section 10.355(b-1) or the date of the
25 consummation of the [~~tender or exchange~~] offer described by Section
26 21.459(c)(2), whichever is later, if the action is a merger
27 effected under Section 21.459(c).

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

3 (10-a) "Share transfer records" means one or more
4 records maintained by or on behalf of a corporation in accordance
5 with Section 3.151 in which the names of all of the corporation's
6 shareholders of record, the address of and number of shares
7 registered in the name of each shareholder of record, and all
8 issuances and transfers of shares of the corporation are recorded.

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

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

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

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

24 The list of shareholders must:

25 (1) state:

26 (A) the address of each shareholder;

27 (B) the type of shares held by each shareholder;

1 (C) the number of shares held by each
2 shareholder; and

3 (D) the number of votes that each shareholder is
4 entitled to if the number of votes is different from the number of
5 shares stated under Paragraph (C); and

6 (2) be kept on file at the registered office or
7 principal executive office of the corporation for at least 10 days
8 before the date of the meeting.

9 (a-1) Instead of being kept on file, the list required by
10 Subsection (a) may be kept on a reasonably accessible electronic
11 data system [~~network~~] if the information required to gain access to
12 the list is provided with notice of the meeting. Section 21.353(c),
13 Section 21.354(a-1), and this subsection may not be construed to
14 require a corporation to include any electronic contact information
15 of a shareholder on the list. A corporation that elects to make the
16 list available on an electronic data system [~~network~~] must take
17 reasonable measures to ensure the information is available only to
18 shareholders of the corporation.

19 SECTION 8. Section 21.459, Business Organizations Code, is
20 amended by amending Subsections (c), (d), and (e) and adding
21 Subsection (f) to read as follows:

22 (c) This subsection applies only to a corporation that is a
23 party to the merger and has a class or series of [~~whose~~] shares that
24 are, immediately before the date its board of directors approves
25 the plan of merger, either listed on a national securities exchange
26 or held of record by at least 2,000 shareholders. Unless required
27 by the corporation's certificate of formation, a plan of merger is

1 not required to be approved by the shareholders of the corporation
2 if:

3 (1) the plan of merger expressly:

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

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

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

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

17 (B) the offer may exclude any excluded shares;
18 and

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

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

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

24 [~~(C) any person who owns, directly or indirectly,~~
25 ~~all of the ownership interests in the organization making the~~
26 ~~offer, or~~

27 [~~(D) any direct or indirect wholly owned~~

1 ~~subsidiary of a person described by Paragraph (A), (B), or (C)];~~

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

12 (A) Section 21.457 and, if applicable, Section
13 21.458; and

14 (B) the certificate of formation of the
15 corporation;

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

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

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

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

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

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

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

13 (1) "Excluded shares" means:

14 (A) shares of the corporation that are owned at
15 the commencement of the offer by:

16 (i) the corporation;

17 (ii) the organization consummating the
18 offer;

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

22 (iv) any direct or indirect wholly owned
23 subsidiary of any corporation, organization, or other person
24 described by Subparagraphs (i)-(iii); and

25 (B) rollover shares.

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

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

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

7 (3) "Received" means:

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

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

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

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

20 (4) "Rollover shares" means any shares of the
21 corporation that are the subject of a written agreement, separate
22 from the offer, requiring the shares to be transferred,
23 contributed, or delivered to the organization consummating the
24 offer or any of the organization's qualified affiliates in exchange
25 for ownership interests in the organization consummating the offer
26 or a qualified affiliate of that organization. The term does not
27 include shares of a corporation described by this subdivision that,

1 immediately before the time a merger described by Subsection (c)
2 becomes effective, have not been transferred, contributed, or
3 delivered to the organization consummating the offer or any of the
4 organization's qualified affiliates pursuant to the written
5 agreement.

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

8 (A) with respect to certificated shares, if the
9 certificate representing the shares was canceled before
10 consummation of the offer; and

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

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

17 Sec. 21.701. DEFINITIONS. In this subchapter and
18 Subchapter P:

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

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

25 (3) "Ordinary corporation" means a domestic
26 corporation that is not a close corporation.

27 (4) "Shareholders' agreement" means a written

1 agreement regulating an aspect of the business and affairs of or the
2 relationship among the shareholders of a close corporation that has
3 been executed under this subchapter.

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

7 (2) "Defective corporate act" means:

8 (A) an overissue;

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

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

18 (4) "Failure of authorization" means:

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

26 (B) the failure of the board of directors or an
27 officer of the corporation to authorize or approve an act or

1 transaction taken by or on behalf of the corporation that required
2 the prior authorization or approval of the board of directors or the
3 officer.

4 (5-a) "Putative record date" means, with respect to
5 any defective corporate act that involved the establishment of a
6 record date for a meeting of or action by shareholders or any other
7 purpose, that record date.

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

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

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

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

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

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

27 (2) as of the record date for determining the

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

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

7 (a) If the ratification of a defective corporate act is
8 required to be submitted to the shareholders for approval under
9 Section 21.905, notice of the time, place, if any, and purpose of
10 the meeting shall be given at least 20 days before the date of the
11 meeting to:

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

17 (2) each holder of record of valid shares and putative
18 shares, regardless of whether the shares are voting or nonvoting,
19 other than to a holder whose identity or address cannot be
20 ascertained from the corporation's records:

21 (A) as of the time of the defective corporate
22 act; or

23 (B) in the case of any defective corporate act
24 that involved the establishment of a putative record date, as of
25 that putative record date [~~except that notice is not required to~~
26 ~~be given to a holder whose identity or address cannot be ascertained~~
27 ~~from the corporation's records]~~.

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

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

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

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

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

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

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

1 (2) who acquires the treasury shares.

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

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

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

10 (3-a) "Director" means a person who is a member of the
11 board of directors, regardless of the name or title used to
12 designate the person. The term does not include a person designated
13 as a director of the corporation, or as an ex officio, honorary, or
14 other type of director of the corporation if the person is not
15 entitled to vote as a director.

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

18 Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.
19 A [~~Subject to the provisions of this code and the certificate of~~
20 ~~formation and bylaws of a corporation, a~~] meeting of the members of
21 a corporation, the board of directors of a corporation, or any
22 committee designated by the board of directors of a corporation may
23 be held by means of a conference telephone or similar
24 communications equipment, another suitable [~~remote~~] electronic
25 communications system, including videoconferencing technology or
26 the Internet, or any combination of those means, in accordance with
27 Section 6.002 [~~only if:~~

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

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

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

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

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

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

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

26 (b) The books and records of a corporation other than a bona
27 fide alumni association are subject to audit at the discretion of

1 the state auditor if:

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

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

8 SECTION 20. Sections 6.252(d) and (e), Business
9 Organizations Code, are repealed.

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