

1-1 By: Hancock S.B. No. 1971
1-2 (In the Senate - Filed March 7, 2019; March 19, 2019, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 April 24, 2019, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 24, 2019,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1971 By: Hancock

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to domestic corporations and other domestic entities.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Section 6.252, Business Organizations Code, is
1-24 amended by amending Subsections (a), (b), and (c) and adding
1-25 Subsections (c-1), (c-2), (c-3), (c-4), and (g) to read as follows:
1-26 (a) Except as provided by this code or the governing
1-27 documents, any number of owners of a domestic entity, or any number
1-28 of owners of the domestic entity and the domestic entity itself, may
1-29 enter into a written voting agreement that is not set forth in the
1-30 domestic entity's governing documents to provide the manner of
1-31 voting of the ownership interests of the domestic entity. A voting
1-32 agreement entered into under this subsection is not part of the
1-33 governing documents of the domestic entity.
1-34 (b) A copy of a voting agreement entered into under
1-35 Subsection (a):
1-36 (1) may ~~shall~~ be deposited with the domestic entity
1-37 at the domestic entity's principal executive office or registered
1-38 office; and
1-39 (2) if deposited as provided by Subdivision (1), is
1-40 subject to examination by an owner, whether in person or by the
1-41 owner's agent or attorney, in the same manner as the owner is
1-42 entitled to examine the books and records of the domestic entity.
1-43 (c) A voting agreement entered into under Subsection (a) is
1-44 specifically enforceable against the owner ~~holder~~ of an ownership
1-45 interest that is the subject of the agreement if the owner executes
1-46 the voting agreement or acknowledges in writing that the owner or
1-47 the ownership interest is bound by the agreement, ~~and any~~
1-48 ~~successor or transferee of the holder, if:~~
1-49 ~~[(1) the voting agreement is noted conspicuously on~~
1-50 ~~the certificate representing the ownership interests, or~~
1-51 ~~[(2) a notation of the voting agreement is contained~~
1-52 ~~in a notice sent by or on behalf of the domestic entity in~~
1-53 ~~accordance with Section 3.205, if the ownership interest is not~~
1-54 ~~represented by a certificate].~~
1-55 (c-1) A voting agreement entered into under Subsection (a)
1-56 is specifically enforceable against any subsequent owner of the
1-57 ownership interest subject to the voting agreement if the
1-58 subsequent owner:
1-59 (1) has notice or actual knowledge of the voting
1-60 agreement at or before the time of transfer to the subsequent owner;

2-1 (2) is not a transferee for value and receives notice
 2-2 or obtains actual knowledge of the voting agreement; or
 2-3 (3) acknowledges in writing that the subsequent owner
 2-4 or the ownership interest is bound by the voting agreement.

2-5 (c-2) A subsequent owner is considered to have notice of a
 2-6 voting agreement for purposes of Subsection (c-1)(1) if, at the
 2-7 time of transfer, the existence of the voting agreement is noted
 2-8 conspicuously on any certificate representing the ownership
 2-9 interest held by the transferor owner. The notice described by this
 2-10 subsection is not the exclusive method by which notice of the voting
 2-11 agreement may be received by a subsequent owner for purposes of
 2-12 Subsection (c-1)(1).

2-13 (c-3) A voting agreement that becomes specifically
 2-14 enforceable against a subsequent owner under Subsection (c-1)(2) is
 2-15 specifically enforceable from the time the subsequent owner first
 2-16 receives notice or obtains actual knowledge of the voting
 2-17 agreement.

2-18 (c-4) A voting agreement that becomes specifically
 2-19 enforceable against a subsequent owner under Subsection (c-1)(3) is
 2-20 specifically enforceable from the time of the written
 2-21 acknowledgment by the subsequent owner.

2-22 (g) This section does not impair the right of the domestic
 2-23 entity to treat an owner of record as entitled to vote the ownership
 2-24 interest standing in the owner's name or to accept that owner's vote
 2-25 of the ownership interest.

2-26 SECTION 2. Sections 10.354(b) and (c), Business
 2-27 Organizations Code, are amended to read as follows:

2-28 (b) Notwithstanding Subsection (a), subject to Subsection
 2-29 (c), an owner may not dissent from a plan of merger or conversion in
 2-30 which there is a single surviving or new domestic entity or non-code
 2-31 organization, or from a plan of exchange, if:

2-32 (1) the ownership interest, or a depository receipt in
 2-33 respect of the ownership interest, held by the owner:

2-34 (A) in the case of a plan of merger, conversion,
 2-35 or exchange, other than a plan of merger pursuant to Section
 2-36 21.459(c), is part of a class or series of ownership interests, or
 2-37 depository receipts in respect of ownership interests, that ~~are~~,
 2-38 on the record date set for purposes of determining which owners are
 2-39 entitled to vote on the plan of merger, conversion, or exchange, as
 2-40 appropriate, are either:

2-41 (i) ~~(A)~~ listed on a national securities
 2-42 exchange; or

2-43 (ii) ~~(B)~~ held of record by at least 2,000
 2-44 owners; or

2-45 (B) in the case of a plan of merger pursuant to
 2-46 Section 21.459(c), is part of a class or series of ownership
 2-47 interests, or depository receipts in respect of ownership
 2-48 interests, that, immediately before the date the board of directors
 2-49 of the corporation that issued the ownership interest held,
 2-50 directly or indirectly, by the owner approves the plan of merger,
 2-51 are either:

2-52 (i) listed on a national securities
 2-53 exchange; or

2-54 (ii) held of record by at least 2,000
 2-55 owners;

2-56 (2) the owner is not required by the terms of the plan
 2-57 of merger, conversion, or exchange, as appropriate, to accept for
 2-58 the owner's ownership interest any consideration that is different
 2-59 from the consideration to be provided to any other holder of an
 2-60 ownership interest of the same class or series as the ownership
 2-61 interest held by the owner, other than cash instead of fractional
 2-62 shares or interests the owner would otherwise be entitled to
 2-63 receive; and

2-64 (3) the owner is not required by the terms of the plan
 2-65 of merger, conversion, or exchange, as appropriate, to accept for
 2-66 the owner's ownership interest any consideration other than:

2-67 (A) ownership interests, or depository receipts
 2-68 in respect of ownership interests, of a domestic entity or non-code
 2-69 organization of the same general organizational type that,

3-1 immediately after the effective date of the merger, conversion, or
3-2 exchange, as appropriate, will be part of a class or series of
3-3 ownership interests, or depository receipts in respect of ownership
3-4 interests, that are:

3-5 (i) listed on a national securities
3-6 exchange or authorized for listing on the exchange on official
3-7 notice of issuance; or

3-8 (ii) held of record by at least 2,000
3-9 owners;

3-10 (B) cash instead of fractional ownership
3-11 interests, or fractional depository receipts in respect of
3-12 ownership interests, the owner would otherwise be entitled to
3-13 receive; or

3-14 (C) any combination of the ownership interests,
3-15 or fractional depository receipts in respect of ownership
3-16 interests, and cash described by Paragraphs (A) and (B).

3-17 (c) Subsection (b) shall not apply [~~either~~] to a domestic
3-18 entity that is a subsidiary with respect to a merger under Section
3-19 10.006 [~~or to a corporation with respect to a merger under Section~~
3-20 ~~21.459(c)~~].

3-21 SECTION 3. Sections 10.355(d) and (f), Business
3-22 Organizations Code, are amended to read as follows:

3-23 (d) In addition to the requirements prescribed by
3-24 Subsection (c), a notice required to be provided:

3-25 (1) under Subsection (a)(1) must accompany the notice
3-26 of the meeting to consider the action;

3-27 (2) under Subsection (a)(2) must be provided to:

3-28 (A) each owner who consents in writing to the
3-29 action before the owner delivers the written consent; and

3-30 (B) each owner who is entitled to vote on the
3-31 action and does not consent in writing to the action before the 11th
3-32 day after the date the action takes effect; and

3-33 (3) under Subsection (b-1) must be provided:

3-34 (A) if given before the consummation of the
3-35 [~~tender or exchange~~] offer described by Section 21.459(c)(2), to
3-36 each shareholder to whom that offer is made; or

3-37 (B) if given after the consummation of the
3-38 [~~tender or exchange~~] offer described by Section 21.459(c)(2), to
3-39 each shareholder who did not tender the shareholder's shares in
3-40 that offer.

3-41 (f) If the notice given under Subsection (b-1) did not
3-42 include a statement of the effective date of the merger, the
3-43 responsible organization shall, not later than the 10th day after
3-44 the effective date, give a second notice to the shareholders
3-45 notifying them of the merger's effective date. If the second notice
3-46 is given after the later of the date on which the [~~tender or~~
3-47 ~~exchange~~] offer described by Section 21.459(c)(2) is consummated or
3-48 the 20th day after the date notice under Subsection (b-1) is given,
3-49 then the second notice is required to be given to only those
3-50 shareholders who have made a demand under Section 10.356(b)(3).

3-51 SECTION 4. Section 10.356(b), Business Organizations Code,
3-52 is amended to read as follows:

3-53 (b) To perfect the owner's rights of dissent and appraisal
3-54 under Section 10.354, an owner:

3-55 (1) if the proposed action is to be submitted to a vote
3-56 of the owners at a meeting, must give to the domestic entity a
3-57 written notice of objection to the action that:

3-58 (A) is addressed to the entity's president and
3-59 secretary;

3-60 (B) states that the owner's right to dissent will
3-61 be exercised if the action takes effect;

3-62 (C) provides an address to which notice of
3-63 effectiveness of the action should be delivered or mailed; and

3-64 (D) is delivered to the entity's principal
3-65 executive offices before the meeting;

3-66 (2) with respect to the ownership interest for which
3-67 the rights of dissent and appraisal are sought:

3-68 (A) must vote against the action if the owner is
3-69 entitled to vote on the action and the action is approved at a

4-1 meeting of the owners; and
 4-2 (B) may not consent to the action if the action is
 4-3 approved by written consent; and
 4-4 (3) must give to the responsible organization a demand
 4-5 in writing that:
 4-6 (A) is addressed to the president and secretary
 4-7 of the responsible organization;
 4-8 (B) demands payment of the fair value of the
 4-9 ownership interests for which the rights of dissent and appraisal
 4-10 are sought;
 4-11 (C) provides to the responsible organization an
 4-12 address to which a notice relating to the dissent and appraisal
 4-13 procedures under this subchapter may be sent;
 4-14 (D) states the number and class of the ownership
 4-15 interests of the domestic entity owned by the owner and the fair
 4-16 value of the ownership interests as estimated by the owner; and
 4-17 (E) is delivered to the responsible organization
 4-18 at its principal executive offices at the following time:
 4-19 (i) not later than the 20th day after the
 4-20 date the responsible organization sends to the owner the notice
 4-21 required by Section 10.355(e) that the action has taken effect, if
 4-22 the action was approved by a vote of the owners at a meeting;
 4-23 (ii) not later than the 20th day after the
 4-24 date the responsible organization sends to the owner the notice
 4-25 required by Section 10.355(d)(2) that the action has taken effect,
 4-26 if the action was approved by the written consent of the owners;
 4-27 (iii) not later than the 20th day after the
 4-28 date the responsible organization sends to the owner a notice that
 4-29 the merger was effected, if the action is a merger effected under
 4-30 Section 10.006; or
 4-31 (iv) not later than the 20th day after the
 4-32 date the responsible organization gives to the shareholder the
 4-33 notice required by Section 10.355(b-1) or the date of the
 4-34 consummation of the ~~[tender or exchange]~~ offer described by Section
 4-35 21.459(c)(2), whichever is later, if the action is a merger
 4-36 effected under Section 21.459(c).
 4-37 SECTION 5. Section 21.002, Business Organizations Code, is
 4-38 amended by adding Subdivision (10-a) to read as follows:
 4-39 (10-a) "Share transfer records" means one or more
 4-40 records maintained by or on behalf of a corporation in accordance
 4-41 with Section 3.151 in which the names of all of the corporation's
 4-42 shareholders of record, the address of and number of shares
 4-43 registered in the name of each shareholder of record, and all
 4-44 issuances and transfers of shares of the corporation are recorded.
 4-45 SECTION 6. Section 21.305(b), Business Organizations Code,
 4-46 is amended to read as follows:
 4-47 (b) The notice of redemption shall be sent to each holder of
 4-48 redeemable shares being called not later than the 21st day or
 4-49 earlier than the 60th day before the date set for redemption, unless
 4-50 otherwise provided by the terms of the class or series of shares
 4-51 contained in the certificate of formation.
 4-52 SECTION 7. Sections 21.372(a) and (a-1), Business
 4-53 Organizations Code, are amended to read as follows:
 4-54 (a) Not later than the 11th day before the date of each
 4-55 meeting of the shareholders of a corporation, ~~[an officer or agent~~
 4-56 ~~of the corporation who is in charge of the corporation's share~~
 4-57 ~~transfer records shall prepare]~~ an alphabetical list of the
 4-58 shareholders entitled to vote at the meeting or at any adjournment
 4-59 of the meeting shall be prepared by or on behalf of the corporation.
 4-60 The list of shareholders must:
 4-61 (1) state:
 4-62 (A) the address of each shareholder;
 4-63 (B) the type of shares held by each shareholder;
 4-64 (C) the number of shares held by each
 4-65 shareholder; and
 4-66 (D) the number of votes that each shareholder is
 4-67 entitled to if the number of votes is different from the number of
 4-68 shares stated under Paragraph (C); and
 4-69 (2) be kept on file at the registered office or

5-1 principal executive office of the corporation for at least 10 days
5-2 before the date of the meeting.

5-3 (a-1) Instead of being kept on file, the list required by
5-4 Subsection (a) may be kept on a reasonably accessible electronic
5-5 data system [network] if the information required to gain access to
5-6 the list is provided with notice of the meeting. Section 21.353(c),
5-7 Section 21.354(a-1), and this subsection may not be construed to
5-8 require a corporation to include any electronic contact information
5-9 of a shareholder on the list. A corporation that elects to make the
5-10 list available on an electronic data system [network] must take
5-11 reasonable measures to ensure the information is available only to
5-12 shareholders of the corporation.

5-13 SECTION 8. Section 21.459, Business Organizations Code, is
5-14 amended by amending Subsections (c), (d), and (e) and adding
5-15 Subsection (f) to read as follows:

5-16 (c) This subsection applies only to a corporation that is a
5-17 party to the merger and has a class or series of [whose] shares that
5-18 are, immediately before the date its board of directors approves
5-19 the plan of merger, either listed on a national securities exchange
5-20 or held of record by at least 2,000 shareholders. Unless required
5-21 by the corporation's certificate of formation, a plan of merger is
5-22 not required to be approved by the shareholders of the corporation
5-23 if:

5-24 (1) the plan of merger expressly:

5-25 (A) permits or requires the merger to be effected
5-26 under this subsection; and

5-27 (B) provides that any merger effected under this
5-28 subsection shall be effected as soon as practicable following the
5-29 consummation of the offer [~~described by Subdivision (2)~~];

5-30 (2) an organization consummates an [a tender or
5-31 exchange] offer for all of the outstanding shares of the
5-32 corporation on the terms provided in the plan of merger that, absent
5-33 this subsection, would be entitled to vote on the approval of the
5-34 plan of merger, except that:

5-35 (A) the offer may be conditioned on the tender of
5-36 a minimum number or percentage of shares of the corporation or of
5-37 any class or series of shares of the corporation;

5-38 (B) the offer may exclude any excluded shares;
5-39 and

5-40 (C) the organization may consummate separate
5-41 offers for separate classes or series of shares of the corporation
5-42 [owned at the time of the commencement of the offer by:

5-43 [~~(A) the corporation,~~

5-44 [~~(B) the organization making the offer,~~

5-45 [~~(C) any person who owns, directly or indirectly,~~
5-46 all of the ownership interests in the organization making the
5-47 offer, or

5-48 [~~(D) any direct or indirect wholly owned~~
5-49 subsidiary of a person described by Paragraph (A), (B), or (C)];

5-50 (3) immediately following the consummation of the
5-51 offer, shares that are irrevocably accepted for purchase or
5-52 exchange pursuant to the consummation of the offer [~~described by~~
5-53 Subdivision (2)] and that are received by the depository before the
5-54 expiration of the offer, together with [in addition to] the shares
5-55 that are otherwise owned by the consummating organization or its
5-56 qualified affiliates and any rollover shares, equal at least the
5-57 percentage of the shares of the corporation, and of each class or
5-58 series of those shares[, of the corporation] that, absent this
5-59 subsection, would be required to approve the plan of merger by:

5-60 (A) Section 21.457 and, if applicable, Section
5-61 21.458; and

5-62 (B) the certificate of formation of the
5-63 corporation;

5-64 (4) the organization consummating the offer or one of
5-65 its qualified affiliates [~~described by Subdivision (2)] merges with~~
5-66 or into the corporation pursuant to the plan of merger; and

5-67 (5) each outstanding share, other than excluded
5-68 shares, of each class or series of the corporation that is the
5-69 subject of and is not irrevocably accepted for purchase or exchange

6-1 in the offer [~~described by Subdivision (2)~~] is to be converted or
 6-2 exchanged in the merger into, or into the right to receive, the same
 6-3 amount and kind of consideration, as described by Section
 6-4 10.002(a)(5), as to be paid or delivered for shares of such class or
 6-5 series of the corporation irrevocably accepted for purchase or
 6-6 exchange in the offer.

6-7 (d) In Subsection (c) and this subsection and, as
 6-8 applicable, in Sections 10.355(d)(3)(B), 10.355(f), and
 6-9 10.356(b)(3)(E)(iv):

6-10 (1) "Consummates," "consummation," or "consummating"
 6-11 means irrevocably accepts for purchase or exchange shares tendered
 6-12 pursuant to an [a tender or exchange] offer.

6-13 (2) "Depository" means an agent appointed to
 6-14 facilitate consummation of an [the] offer [~~described by Subsection~~
 6-15 (c)(2)].

6-16 (3) "Offer" means a tender offer or an exchange offer
 6-17 that satisfies the requirements of Subsection (c)(2).

6-18 (e) For purposes of Subsection (c) and this subsection:

6-19 (1) "Excluded shares" means:

6-20 (A) shares of the corporation that are owned at
 6-21 the commencement of the offer by:

6-22 (i) the corporation;

6-23 (ii) the organization consummating the
 6-24 offer;

6-25 (iii) any person that owns, directly or
 6-26 indirectly, all of the outstanding ownership interests of the
 6-27 organization consummating the offer; or

6-28 (iv) any direct or indirect wholly owned
 6-29 subsidiary of the corporation, the organization consummating the
 6-30 offer, or any person described by Subparagraph (iii); and

6-31 (B) rollover shares.

6-32 (2) "Qualified affiliate" means, with respect to the
 6-33 organization consummating an offer, any person that:

6-34 (A) owns, directly or indirectly, all of the
 6-35 outstanding ownership interests of the organization consummating
 6-36 the offer; or

6-37 (B) is a direct or indirect wholly owned
 6-38 subsidiary of the organization consummating the offer or of any
 6-39 person described by Paragraph (A).

6-40 (3) "Received" means:

6-41 (A) [~~(c)(3), "received,"~~] with respect to
 6-42 certificated shares, [means:

6-43 [~~(1)~~] physical receipt of a certificate representing
 6-44 shares accompanied by an executed letter of transmittal[, in the
 6-45 case of certificated shares]; [and]

6-46 (B) [~~(2)~~] transfer into the depository's account
 6-47 by means of [~~or~~] an agent's message; and

6-48 (C) with respect to uncertificated shares held of
 6-49 record by a person other than a clearing corporation as nominee,
 6-50 physical receipt of an executed letter of transmittal by the
 6-51 depository [being received by the depository, in the case of
 6-52 uncertificated shares].

6-53 (4) "Rollover shares" means any shares of the
 6-54 corporation that are the subject of a written agreement, separate
 6-55 from the offer, requiring the shares to be transferred,
 6-56 contributed, or delivered to the organization consummating the
 6-57 offer or any of the organization's qualified affiliates in exchange
 6-58 for ownership interests in the organization consummating the offer
 6-59 or a qualified affiliate of that organization. The term does not
 6-60 include shares of a corporation described by this subdivision that,
 6-61 immediately before the time a merger described by Subsection (c)
 6-62 becomes effective, have not been transferred, contributed, or
 6-63 delivered to the organization consummating the offer or any of the
 6-64 organization's qualified affiliates pursuant to the written
 6-65 agreement.

6-66 (f) For purposes of Subsections (c) and (e), shares cease to
 6-67 be "received":

6-68 (1) with respect to certificated shares, if the
 6-69 certificate representing the shares was canceled before

7-1 consummation of the offer; and
 7-2 (2) with respect to uncertificated shares, to the
 7-3 extent the uncertificated shares have been reduced or eliminated
 7-4 due to any sale of those shares before the consummation of the
 7-5 offer.

7-6 SECTION 9. Section 21.701, Business Organizations Code, is
 7-7 amended to read as follows:

7-8 Sec. 21.701. DEFINITIONS. In this subchapter and
 7-9 Subchapter P:

7-10 (1) "Close corporation" means a domestic corporation
 7-11 formed under this subchapter or governed by this subchapter because
 7-12 of Section 21.705, 21.706, or 21.707.

7-13 (2) "Close corporation provision" means a provision in
 7-14 the certificate of formation of a close corporation or in a
 7-15 shareholders' agreement of a close corporation.

7-16 (3) "Ordinary corporation" means a domestic
 7-17 corporation that is not a close corporation.

7-18 (4) "Shareholders' agreement" means a written
 7-19 agreement regulating an aspect of the business and affairs of or the
 7-20 relationship among the shareholders of a close corporation that has
 7-21 been executed under this subchapter.

7-22 SECTION 10. Section 21.901, Business Organizations Code, is
 7-23 amended by amending Subdivisions (2) and (4) and adding Subdivision
 7-24 (5-a) to read as follows:

7-25 (2) "Defective corporate act" means:

7-26 (A) an overissue;

7-27 (B) an election or appointment of directors that
 7-28 is void or voidable due to a failure of authorization; or

7-29 (C) any act or transaction purportedly taken by
 7-30 or on behalf of the corporation that is, and at the time the act or
 7-31 transaction was purportedly taken would have been, within the power
 7-32 of a corporation to take under the corporate statute, without
 7-33 regard to the failure of authorization identified in Section
 7-34 21.903(a)(4), but is void or voidable due to a failure of
 7-35 authorization.

7-36 (4) "Failure of authorization" means:

7-37 (A) the failure to authorize or effect an act or
 7-38 transaction in compliance with the provisions of the corporate
 7-39 statute, the governing documents of the corporation, ~~or~~ any plan
 7-40 or agreement to which the corporation is a party, or the disclosure
 7-41 set forth in any proxy or consent solicitation statement, if and to
 7-42 the extent the failure would render the act or transaction void or
 7-43 voidable; or

7-44 (B) the failure of the board of directors or an
 7-45 officer of the corporation to authorize or approve an act or
 7-46 transaction taken by or on behalf of the corporation that required
 7-47 the prior authorization or approval of the board of directors or the
 7-48 officer.

7-49 (5-a) "Putative record date" means, with respect to
 7-50 any defective corporate act that involved the establishment of a
 7-51 record date for a meeting of or action by shareholders or any other
 7-52 purpose, that record date.

7-53 SECTION 11. Section 21.905, Business Organizations Code, is
 7-54 amended to read as follows:

7-55 Sec. 21.905. SHAREHOLDER APPROVAL OF RATIFIED DEFECTIVE
 7-56 CORPORATE ACT REQUIRED; EXCEPTION. Each defective corporate act
 7-57 ratified under Section 21.903 must be submitted to shareholders for
 7-58 approval as provided by Sections 21.906 and 21.907, unless:

7-59 (1) (A) no other provision of the corporate statute, no
 7-60 provision of the corporation's governing documents, and no
 7-61 provision of any plan or agreement to which the corporation is a
 7-62 party would have required shareholder approval of:

7-63 (i) ~~(A)~~ the defective corporate act to be
 7-64 ratified at the time of that defective corporate act; or

7-65 (ii) ~~(B)~~ the type of defective corporate
 7-66 act to be ratified at the time the board of directors adopts the
 7-67 resolutions ratifying that defective corporate act under Section
 7-68 21.903; and

7-69 (B) ~~(2)~~ the defective corporate act to be

8-1 ratified did not result from a failure to comply with Subchapter M;
8-2 or

8-3 (2) as of the record date for determining the
8-4 shareholders entitled to vote on the ratification of the defective
8-5 corporate act, there are no valid shares outstanding and entitled
8-6 to vote on the ratification, regardless of whether as of that record
8-7 date there exist any putative shares.

8-8 SECTION 12. Section 21.906(a), Business Organizations
8-9 Code, is amended to read as follows:

8-10 (a) If the ratification of a defective corporate act is
8-11 required to be submitted to the shareholders for approval under
8-12 Section 21.905, notice of the time, place, if any, and purpose of
8-13 the meeting shall be given at least 20 days before the date of the
8-14 meeting to:

8-15 (1) each holder of record, as of the record date of the
8-16 meeting, of valid shares and putative shares, regardless of whether
8-17 the shares are voting or nonvoting, at the address of the holder as
8-18 it appears or most recently appeared, as appropriate, on the
8-19 corporation's records; and

8-20 (2) each holder of record of valid shares and putative
8-21 shares, regardless of whether the shares are voting or nonvoting,
8-22 other than to a holder whose identity or address cannot be
8-23 ascertained from the corporation's records:

8-24 (A) as of the time of the defective corporate
8-25 act; or

8-26 (B) in the case of any defective corporate act
8-27 that involved the establishment of a putative record date, as of
8-28 that putative record date[, except that notice is not required to be
8-29 given to a holder whose identity or address cannot be ascertained
8-30 from the corporation's records].

8-31 SECTION 13. Section 21.911(e), Business Organizations
8-32 Code, is amended to read as follows:

8-33 (e) Notwithstanding Subsections (a)-(d):

8-34 (1) notice is not required to be given under this
8-35 section to a person if notice of the ratification of the defective
8-36 corporate act is given to that person in accordance with Section
8-37 21.906; and

8-38 (2) for a corporation that has a class of stock listed
8-39 on a national securities exchange, the notice required by this
8-40 section and Section 21.906(a)(2) may be considered given if the
8-41 information contained in the notice is disclosed in a document
8-42 publicly filed by the corporation with the Securities and Exchange
8-43 Commission under Section 13, 14, or 15(d), Securities Exchange Act
8-44 of 1934 (15 U.S.C. Section 78m, 78n, or 78o(d)), and any rules
8-45 promulgated under that Act.

8-46 SECTION 14. Section 21.953(c), Business Organizations
8-47 Code, is amended to read as follows:

8-48 (c) The name of the public benefit corporation specified in
8-49 its certificate of formation may contain the words "public benefit
8-50 corporation," the abbreviation "P.B.C.," or the designation "PBC."
8-51 If the name does not contain those words or that abbreviation or
8-52 designation, ~~[the corporation must,]~~ before the issuance of
8-53 [issuing] unissued shares or the disposition [disposing] of
8-54 treasury shares and except as provided by Subsection (d), [provide]
8-55 notice that the corporation is a public benefit corporation shall
8-56 be given to any person:

8-57 (1) to whom the unissued shares are issued; or

8-58 (2) who acquires the treasury shares.

8-59 SECTION 15. Section 21.955(b), Business Organizations
8-60 Code, is amended to read as follows:

8-61 (b) A notice sent to any person ~~[by a public benefit~~
8-62 ~~corporation]~~ under Section 3.205 must state conspicuously that the
8-63 corporation is a public benefit corporation governed by this
8-64 subchapter.

8-65 SECTION 16. Section 22.001, Business Organizations Code, is
8-66 amended by adding Subdivision (3-a) to read as follows:

8-67 (3-a) "Director" means a person who is a member of the
8-68 board of directors, regardless of the name or title used to
8-69 designate the person. The term does not include a person designated

9-1 as a director of the corporation, or as an ex officio, honorary, or
9-2 other type of director of the corporation if the person is not
9-3 entitled to vote as a director.

9-4 SECTION 17. Section 22.002, Business Organizations Code, is
9-5 amended to read as follows:

9-6 Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.
9-7 ~~A [Subject to the provisions of this code and the certificate of~~
9-8 ~~formation and bylaws of a corporation, a]~~ meeting of the members of
9-9 a corporation, the board of directors of a corporation, or any
9-10 committee designated by the board of directors of a corporation may
9-11 be held by means of a conference telephone or similar
9-12 communications equipment, another suitable [remote] electronic
9-13 communications system, including videoconferencing technology or
9-14 the Internet, or any combination of those means, in accordance with
9-15 Section 6.002 [only if:

9-16 ~~[(1) each person entitled to participate in the~~
9-17 ~~meeting consents to the meeting being held by means of that system;~~
9-18 ~~and~~

9-19 ~~[(2) the system provides access to the meeting in a~~
9-20 ~~manner or using a method by which each person participating in the~~
9-21 ~~meeting can communicate concurrently with each other participant].~~

9-22 SECTION 18. Section 22.210, Business Organizations Code, is
9-23 amended to read as follows:

9-24 Sec. 22.210. NON-DIRECTOR RIGHTS AND LIMITATIONS [~~EX~~
9-25 ~~OFFICIO MEMBER OF BOARD~~]. [~~(a)~~] The certificate of formation or
9-26 bylaws of a corporation may provide that a person who is not a
9-27 director ~~[may be an ex officio member of the board of directors of~~
9-28 ~~the corporation.~~

9-29 ~~[(b) A person designated as an ex officio member of the~~
9-30 ~~board] is entitled to receive notice of and to attend [board]~~
9-31 ~~meetings of the board of directors. By having those rights, the~~
9-32 ~~person does not have the authority, duties, or liabilities of a~~
9-33 ~~director and is not a governing person of the corporation.~~

9-34 ~~[(c) An ex officio member is not entitled to vote unless the~~
9-35 ~~certificate of formation or bylaws authorize the member to vote. An~~
9-36 ~~ex officio member of the board who is not entitled to vote does not~~
9-37 ~~have the duties or liabilities of a director provided by this~~
9-38 ~~chapter.]~~

9-39 SECTION 19. Section 22.356(b), Business Organizations
9-40 Code, is amended to read as follows:

9-41 (b) The books and records of a corporation other than a bona
9-42 fide alumni association are subject to audit at the discretion of
9-43 the state auditor if:

9-44 (1) the corporation's certificate of formation
9-45 ~~[charter]~~ specifically dedicates the corporation's activities to
9-46 the benefit of a particular state agency; and

9-47 (2) a board member, officer, or employee of that state
9-48 agency is a director [sits on the board of directors] of the
9-49 corporation ~~[in other than an ex officio capacity].~~

9-50 SECTION 20. Sections 6.252(d) and (e), Business
9-51 Organizations Code, are repealed.

9-52 SECTION 21. This Act takes effect September 1, 2019.

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