ENROLLED SENATE
BILL NO. 441

BY: FISHER of the SENATE

and

VAUGHN (Ray), JOHNSON (Glen) and BENSON of the HOUSE

AN ACT RELATING TO CORPORATIONS; AMENDING SECTION 73, CHAPTER 292, O.S.L. 1986, AS AMENDED BY SECTION 12, CHAPTER 323, O.S.L. 1988, SECTION 15, CHAPTER 146, O.S.L. 1987, SECTIONS 16 AND 17, CHAPTER 146, O.S.L. 1987, AS AMENDED BY SECTIONS 7 AND 8, CHAPTER 328, O.S.L. 1990, SECTION 18, CHAPTER 146, O.S.L. 1987, AS LAST AMENDED BY SECTION 9, CHAPTER 328, O.S.L. 1990, SECTION 19, CHAPTER 146, O.S.L. 1987, AS AMENDED BY SECTION 10, CHAPTER 328, O.S.L. 1990, SECTION 20, CHAPTER 146, O.S.L. 1987 AND SECTION 23, CHAPTER 146, O.S.L. 1987, AS AMENDED BY SECTION 11, CHAPTER 328, O.S.L. 1990 (18 O.S. SUPP. 1990, SECTIONS 1073, 1145, 1146, 1147, 1148, 1149, 1150 AND 1153), WHICH RELATE TO SHAREHOLDER CONSENT AND CONTROLLED SHARES; REQUIRING SHAREHOLDERS OF CERTAIN DOMESTIC CORPORATIONS OBTAIN WRITTEN CONSENT OF HOLDERS OF ALL OUTSTANDING STOCK FOR CERTAIN ACTIONS; REQUIRING CERTAIN DELIVERY OF WRITTEN CONSENT; MAKING PROVISION APPLICABLE TO CORPORATE ACTIONS EXECUTED OR SOLICITED AFTER CERTAIN DATE; DELETING OBSOLETE LANGUAGE; PROHIBITING BUSINESS COMBINATION WITH INTERESTED SHAREHOLDER DURING CERTAIN PERIOD EXCEPT UNDER CERTAIN CONDITIONS; MAKING RESTRICTIONS INAPPLICABLE TO CERTAIN SITUATIONS; ALLOWING CORPORATION TO ELECT TO BE GOVERNED BY CERTAIN PROVISION UNDER CERTAIN CONDITIONS; DEFINING TERMS; PROHIBITING CERTIFICATE OF INCORPORATION OR BYLAWS FROM REQUIRING GREATER VOTE THAN SPECIFIED BY LAW; MODIFYING DEFINITION OF CONTROL SHARES; MODIFYING DEFINITION OF CONTROL SHARE ACQUISITION; MODIFYING DEFINITION OF INTERESTED SHARES; MODIFYING DEFINITION OF ISSUING PUBLIC CORPORATION; LIMITING VOTING RIGHTS OF CERTAIN SHARES; ALLOWING CERTAIN CORPORATIONS TO ELECT TO BE SUBJECT TO CERTAIN LAW BY CERTAIN ACTION; ALLOWING CERTAIN CORPORATIONS TO ELECT NOT TO BE SUBJECT TO CERTAIN LAW BY CERTAIN ACTIONS; ADDING DEFINITIONS; CONFORMING LANGUAGE; REQUIRING ACQUIRING PERSON STATEMENT FOR PERSON MAKING CERTAIN ACQUISITION; REQUIRING ADDITIONAL INFORMATION IN STATEMENT; DELETING REQUIREMENT OF CERTAIN RESOLUTION GRANTING CERTAIN RIGHTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 73, Chapter 292, O.S.L. 1986, as amended by Section 12, Chapter 323, O.S.L. 1988 (18 O.S. Supp. 1990, Section 1073), is amended to read as follows:

Section 1073.

CONSENT OF SHAREHOLDERS IN LIEU OF MEETING

A. ~~Unless~~ Except as provided in subsection B of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at any annual or special meeting of shareholders of such corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after September 1, 1991.

~~B.~~ C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Oklahoma General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by

delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

~~C.~~ D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

~~D.~~ E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section, and that written notice has been given as provided for in this section.

~~E. The provisions of subsections A, B and C of this section shall be effective with respect to corporate actions taken by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after November 1, 1988.~~

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1090.3 of Title 18, unless there is created a duplication in numbering, reads as follows:

BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS

A. Notwithstanding any other provisions of Title 18 of the Oklahoma Statutes, a corporation shall not engage in any business combination with any interested shareholder for a period of three (3) years following the date that such person became an interested shareholder, unless:

1. prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially capital stock having at least eighty-five percent (85%) of all voting power of the corporation at the time the transaction commenced, excluding for purposes of determining such voting power the votes attributable to those shares owned of record or beneficially by:

a. persons who are directors and also officers, and

b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of all voting power which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. the corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. the corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. the corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of all voting power of a corporation. An amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of such amendment and shall not apply to any business combination between such corporation and any person who became an interested shareholder of such corporation on or prior to such adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. the corporation does not have a class of voting stock that is:

a. listed on a national securities exchange,

b. authorized for quotation on an inter-dealer quotation system of a registered national securities association, or

c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;

5. a person becomes an interested shareholder inadvertently and:

a. as soon as practicable divests sufficient shares so that the person ceases to be an interested shareholder, and

b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and such person, have been an interested shareholder but for the inadvertent acquisition; or

6. a. the business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which:

(1) constitutes one of the transactions described in subparagraph b of this paragraph,

(2) is with or by a person who either was not an interested shareholder during the previous three (3) years or who became an interested shareholder

with the approval of the corporation's board of directors, and

(3) is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or were recommended for election or elected to succeed such directors by a majority of such directors;

b. the proposed transactions referred to in subparagraph a of this paragraph are limited to:

(1) a share acquisition pursuant to Section 1090.1 of Title 18 of the Oklahoma Statutes, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to subsection F of Section 1081 of Title 18 of the Oklahoma Statutes, no vote of the shareholders of the corporation is required,

(2) a sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or

(3) a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of all voting power of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (1) or (2) of this subparagraph.

C. Notwithstanding paragraphs 1, 2, 3 and 4 of subsection B of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section, provided that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

D. As used in this section only:

1. "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. "all voting power" means the aggregate number of votes which the holders of all classes of capital stock of the corporation would be entitled to cast in an election of directors generally;

3. "associate", when used to indicate a relationship with any person, means:

a. any corporation or organization of which such person is a director, officer or partner or is, of record or beneficially, the owner of outstanding stock of the

corporation having twenty percent (20%) or more of all voting power of the corporation,

b. any trust or other estate in which such person has at least a twenty-percent beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person;

4. "beneficial ownership" shall have the meaning ascribed to such term by Rule 13d-3 under the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, except that a person shall be deemed to be the owner or beneficial owner of securities of which he has the right to acquire ownership either immediately or only after the passage of any time or the giving of notice or both; provided, however, that a person shall not be deemed the owner or beneficial owner of any stock if:

a. the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to more than ten persons, or

b. the stock is tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates, until such tendered stock is accepted for purchase or exchange;

5. "business combination", when used in reference to any corporation and any interested shareholder of such corporation, means:

a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

(1) the interested shareholder, or

(2) any other corporation if the merger or consolidation is caused by the interested shareholder and as a result of such merger or consolidation subsection A of this section is not applicable to the surviving corporation,

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except:

(1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which securities were

outstanding prior to the time that the interested shareholder became such,

(2) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of such corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of such corporation subsequent to the time the interested shareholder became such, or

(3) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of said stock; provided, however, that in no case under divisions (2) and (3) of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of all voting power of the corporation,

d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or all voting power, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,

e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or

f. any share acquisition by the interested shareholder from the corporation or any direct or indirect majority-owned subsidiary of the corporation pursuant to Section 1090.1 of Title 18 of the Oklahoma Statutes;

6. "control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who owns, of record or beneficially, outstanding stock of the corporation having twenty percent (20%) or more of all voting power of the corporation shall be presumed to have control of such corporation, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such corporation;

7. "group" means two or more persons who agree to act together for the purpose of acquiring, holding, voting or disposing of securities of the corporation;

8. a. "interested shareholder" means:

(1) any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) owns of record or beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation, or

(b) is an affiliate or associate of the corporation and owned of record or beneficially outstanding stock of the corporation having fifteen percent (15%) or more of all voting power of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and

(2) the affiliates and associates of such person;

b. the term "interested shareholder" shall not include:

(1) any person who:

(a) owned of record or beneficially shares in excess of the fifteen-percent limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and continued to own shares in excess of such fifteen-percent limitation or would have but for action by the corporation, or

(b) acquired such shares from a person described in subdivision (a) of this division by gift, inheritance or in a transaction in which no consideration was exchanged, or

(2) any person whose ownership of shares in excess of the fifteen-percent limitation set forth herein is the result of action taken solely by the corporation provided that such person shall be an interested shareholder if thereafter he acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person;

c. for the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock owned of record or beneficially by such person, but shall not include any other unissued stock of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

9. "person" means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this

section, a greater vote of shareholders than that specified in this section.

SECTION 3. AMENDATORY Section 15, Chapter 146, O.S.L. 1987 (18 O.S. Supp. 1990, Section 1145), is amended to read as follows:

Section 1145.

CONTROL SHARES; DEFINITION

As used in ~~this section and~~ Sections ~~16~~ 1145 through ~~25~~ 1155 of this ~~act~~ title, "control shares" means issued and outstanding shares of an issuing public corporation that, except for Sections ~~15~~ 1145 through ~~25~~ 1155 of this ~~act~~ title, would have voting power ~~with respect to shares of an issuing public corporation that~~, when added to all other shares of the issuing public corporation owned of record or beneficially by ~~a~~ an acquiring person or in respect to which that acquiring person may exercise or direct the exercise of voting power, that would entitle ~~that~~ the acquiring person, immediately after acquisition of the shares, ~~(~~directly or indirectly~~, alone or as a part of a group)~~, to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

1. One-fifth (1/5) or more but less than one-third (1/3) of all voting power;

2. One-third (1/3) or more but less than a majority of all voting power; or

3. A majority or more of all voting power.

SECTION 4. AMENDATORY Section 16, Chapter 146, O.S.L. 1987, as amended by Section 7, Chapter 328, O.S.L. 1990 (18 O.S. Supp. 1990, Section 1146), is amended to read as follows:

Section 1146.

CONTROL SHARE ACQUISITION; DEFINITION

A. As used in Sections 1145 through 1155 of this title, "control share acquisition" means ~~the~~ acquisition~~, directly or indirectly,~~ by any person of ownership of, or the power to direct the exercise of voting power with respect to, ~~issued and outstanding~~ control shares.

B. ~~For purposes of this section, shares acquired within ninety (90) days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.~~

~~C. For purposes of this section, a~~ A person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing Sections 1145 through 1155 of this title has ~~voting power only~~ not made a control share acquisition of shares in respect of which that person ~~would be~~ is able to exercise or direct the exercise of votes ~~without~~ only after requesting further instruction from others.

~~D.~~ C. The acquisition of any control shares ~~of an issuing public corporation~~ does not constitute a control share acquisition if the acquisition is ~~consummated~~ made in good faith and not for the purpose of circumventing Sections 1145 through 1155 of this title in any of the following circumstances:

1. ~~Before June 24, 1987~~ At a time when the corporation was not subject to Sections 1145 through 1155 of this title;

2. Pursuant to a contract ~~existing before June 24, 1987~~ entered into at a time when the corporation was not subject to Sections 1145 through 1155 of this title;

3. Pursuant to the laws of descent and distribution;

4. Pursuant to the satisfaction of a pledge or other security interest ~~created in good faith and not for the purpose of circumventing Sections 1145 through 1155 of this title~~;

5. Pursuant to a merger, consolidation, or share acquisition effected ~~on or after June 24, 1987,~~ in compliance with Section 1081, 1082, 1083 ~~or 1091.1~~, 1090.1 or 1090.2 of this title ~~or Section 12 of this act~~, if the issuing public corporation is a party to the agreement of merger, consolidation, or share acquisition;

6. By a donee receiving the shares pursuant to an inter vivos gift ~~received on or after June 24, 1987~~;

7. By a person of additional shares ~~acquired on or after June 24, 1987, that are~~ within the range of voting power for which such person has received approval pursuant to Section 1153 of this title or within the range of voting power resulting from shares acquired in a transaction described in this subsection;

8. An increase in voting power resulting from any action taken ~~on or after June 24, 1987,~~ by the issuing public corporation, provided the person whose voting power is thereby affected is not an affiliate of the corporation;

9. Pursuant to the solicitation of proxies ~~on or after June 24, 1987,~~ subject to Regulation 14A ~~of~~ under the Securities Exchange Act of 1934 ~~or the Oklahoma General Corporation Act~~, 15 U.S.C. Section 78a et seq., as amended, or in the case of an issuing public corporation which is not subject to such Regulation 14A, the solicitation of proxies in accordance with the laws of the State of Oklahoma; ~~or~~

10. Pursuant to a transfer ~~on or after June 24, 1987,~~ between or among immediate family members, or between or among persons under direct common control. An "immediate family member" is any relative or spouse of a person, or any relative of such spouse, who has the same home as such person~~.~~; or

~~E. The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing Sections 1145 through 1155 of this title by or from:~~

~~1. Any person whose voting rights had previously been authorized by shareholders in compliance with Sections 1145 through 1155 of this title; or~~

~~2.~~ ~~Any~~ 11. From any person whose previous acquisition of shares ~~of an issuing public corporation~~ would have constituted a control share acquisition but for paragraphs 1 through 10 of this subsection ~~D of this section;~~, provided the acquisition does not result in the acquiring person holding voting power within a higher range of voting power than that of the person from whom the control shares were acquired.

~~does not constitute a control share acquisition, unless the acquisition entitles any person, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.~~

SECTION 5. AMENDATORY Section 17, Chapter 146, O.S.L. 1987, as amended by Section 8, Chapter 328, O.S.L. 1990 (18 O.S. Supp. 1990, Section 1147), is amended to read as follows:

Section 1147.

INTERESTED SHARES; DEFINITION

As used in Sections 1145 through 1155 of this title "interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise, as of the applicable record date, of the voting power of the corporation in the election of directors other than solely by the authority of a revocable proxy:

1. ~~An~~ The acquiring person ~~or member of a group with respect to a control share acquisition~~; ~~or~~

2. Any officer of the issuing public corporation; or

3. Any employee of the issuing public corporation who is also a director of the corporation.

SECTION 6. AMENDATORY Section 18, Chapter 146, O.S.L. 1987, as last amended by Section 9, Chapter 328, O.S.L. 1990 (18 O.S. Supp. 1990, Section 1148), is amended to read as follows:

Section 1148.

ISSUING PUBLIC CORPORATION; DEFINITION

A. As used in Sections 1145 through 1155 of this title, "issuing public corporation" means a domestic corporation ~~or a foreign corporation qualified to do business in this state~~ that has:

1. Any class of securities registered pursuant to Section 12 ~~of the Securities Exchange Act of 1934~~ or is subject to Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended;

2. One thousand (1,000) or more shareholders; and

~~3. Its principal place of business, its principal office, or substantial assets within Oklahoma; and~~

~~4.~~ 3. Either:

a. more than ten percent (10%) of its shareholders resident in Oklahoma,

b. more than ten percent (10%) of its shares owned by Oklahoma residents, or

c. ten thousand (10,000) shareholders resident in Oklahoma.

B. The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

C. Shares held by banks ~~(~~except as trustee or guardian~~)~~, brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.

D. A domestic corporation that is not an issuing public corporation but that has one hundred (100) or more shareholders of record and meets one of the requirements set forth in subsection A of this section, or an issuing public corporation to which Sections 1145 through 1155 of this title do not apply, may elect to be subject to Sections 1145 through 1155 of this title as an issuing public corporation by amending its certificate of incorporation to provide that Sections 1145 through 1155 of this title shall apply to the corporation as of a specified date and filing the amendment with the Secretary of State on or before such date.

E. A corporation which would be an issuing public corporation under subsection A of this section may elect not to be subject to Sections 1145 through 1155 of this title before a control share acquisition occurs or an acquiring person statement is delivered:

1. By amending its certificate of incorporation to provide that Sections 1145 through 1155 of this title shall not apply to the corporation as of a specified date and filing the amendment with the Secretary of State before such date; or

2. By action of its board of directors adopting an amendment to its bylaws within ninety (90) days of the effective date of this act expressly providing that Sections 1145 through 1155 of this title shall not apply to the corporation, which amendment shall not be further amended by the board of directors.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1148A of Title 18, unless there is created a duplication in numbering, reads as follows:

OTHER DEFINITIONS

As used in Sections 1145 through 1155 of Title 18 of the Oklahoma Statutes:

1. "Acquiring person" means a person who makes or proposes to make, or persons acting as a "group" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78a et seq., as amended, who make or propose to make, a control share acquisition; provided, "acquiring person" does not include the issuing public corporation;

2. "Affiliate" means a person who directly or indirectly controls the corporation. For the purpose of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the corporation, whether through the ownership of voting securities, by contract, or otherwise. A person's beneficial ownership of ten percent (10%) or more of all voting power of a corporation, except a person holding voting power in good faith as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group control the corporation, creates a presumption that the person controls the corporation;

3. "All voting power" means the aggregate voting power that the shareholders of an issuing public corporation would have in the election of directors generally, except for Sections 1145 through 1155 of Title 18 of the Oklahoma Statutes;

4. "Beneficial ownership" shall have the same meaning ascribed to such term by Rule 13d-3 under the Securities Exchange Act of 1934, 15 U.S.C., Section 78a et seq., as amended; and

5. "Person" means any individual, corporation, partnership, unincorporated association or other entity.

SECTION 8. AMENDATORY Section 19, Chapter 146, O.S.L. 1987, as amended by Section 10, Chapter 328, O.S.L. 1990 (18 O.S. Supp. 1990, Section 1149), is amended to read as follows:

Section 1149.

LAW GOVERNING CONTROL SHARE VOTING RIGHTS

~~A. Unless the corporation's certificate of incorporation or bylaws provide that the provisions of Sections 1145 through 1155 of this title do not apply to control share acquisitions of shares of the corporation before the control share acquisition~~ After a control share acquisition occurs, control shares ~~of an issuing public corporation acquired in a control share acquisition~~ of the acquiring person have only such voting rights as are conferred by ~~Section 1153 of~~ this ~~title~~ section.

~~B.~~ 1. Subject to the provisions of ~~subsections C~~ paragraphs 2 through ~~E~~ 4 of this section, the voting power of control shares having voting power of one-fifth (1/5) or more of all voting power is reduced to zero unless the ~~shareholder~~ shareholders of the issuing public corporation approve a resolution pursuant to the procedure set forth in Section 1153 of this title according the shares the same voting rights as they had before they became control shares.

~~C.~~ 2. Except as provided in subsection ~~B~~ A of Section 1153 of this title, the voting power of control shares representing voting power of less than one-fifth (1/5) of all voting power is not affected by ~~this section~~ Sections 1145 through 1155 of this title.

~~D.~~ 3. If control shares of the acquiring person previously have been accorded, pursuant to the procedure set forth in Section 1153 of this title, the same voting rights they had before they became control shares, or if such control shares were acquired in a transaction excluded from the definition of "control share acquisition", then only the voting power of control shares acquired

in a subsequent control share acquisition by such acquiring person within a higher range of voting power shall be reduced to zero.

~~E.~~ 4. The voting rights of control shares are restored to those accorded such shares prior to the control share acquisition in any of the following circumstances:

~~(1)~~ (a) if, by reason of subsequent issuances of shares or other transactions by the issuing public corporation, the voting power of those control shares is reduced to a range of voting power for which approval has been granted or is not required; or

~~(2)~~ (b) upon transfer to a person other than an acquiring person; or

~~(3)~~ (c) the expiration of three (3) years after the date of a vote of shareholders, pursuant to Section 1153 of this title, failing to approve the resolution according voting rights to those control shares.

~~F. A domestic corporation that is not an issuing public corporation but that has one hundred (100) or more shareholders of record and meets one of the requirements set forth in subsection A of Section 1148 of this title, or an issuing public corporation to which Sections 1145 through 1155 of this title do not apply, may elect to be subject to Sections 1145 through 1155 of this title as an issuing public corporation by amending its certificate of incorporation to provide that Sections 1145 through 1155 of this title shall apply to the corporation as of a specified date and filing the amendment with the Secretary of State on or before such date.~~

SECTION 9. AMENDATORY Section 20, Chapter 146, O.S.L. 1987 (18 O.S. Supp. 1990, Section 1150), is amended to read as follows:

Section 1150.

NOTICE OF CONTROL SHARE ACQUISITION

Any acquiring person who proposes to make ~~or has made~~ a control share acquisition may, at the person's election, and any acquiring person who has made a control share acquisition shall, deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

1. The identity of the acquiring person ~~and each other member of any group of which the person is a part for purposes of determining control shares~~; ~~and~~

2. A statement that the acquiring person statement is given pursuant to Sections ~~15~~ 1145 through ~~25~~ 1155 of this ~~act~~ title; ~~and~~

3. The number of shares of the issuing public corporation owned, directly or indirectly, by the acquiring person ~~and each other member of the group~~, the acquisition date and the prices at which such shares were acquired; ~~and~~

4. The ~~range of~~ voting power ~~under~~ to which the ~~control share acquisition falls or~~ acquiring person, except for Section 1149 of this title, would~~, if consummated, fall~~ be entitled; ~~and~~

5. A form of resolution to be considered by the shareholders pursuant to Section 1153 of this title; and

6. If the control share acquisition has not ~~taken place~~ yet occurred:

a. a description in reasonable detail of the terms of the proposed control share acquisition, and

b. representations of the acquiring person, together with a statement in reasonable detail of the facts upon

which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

SECTION 10. AMENDATORY Section 23, Chapter 146, O.S.L. 1987, as amended by Section 11, Chapter 328, O.S.L. 1990 (18 O.S. Supp. 1990, Section 1153), is amended to read as follows:

Section 1153.

RESOLUTION GRANTING CONTROL SHARE VOTING RIGHTS

A. ~~Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.~~

~~B.~~ All votes cast at the meeting for or against the resolution contained in the acquiring person statement ~~shall~~ must be identified as noninterested shares. To be approved, the resolution shall receive the affirmative votes of a majority of all voting power, excluding all interested shares. If the resolution is not approved, the acquiring person, not sooner than six (6) months after disapproval of the resolution, may present a new resolution for a vote of shareholders in accordance with this section at any subsequent shareholders meeting.

~~C.~~ B. A proxy relating to a meeting of shareholders to be held pursuant to Section 1151 of this title shall be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation.

~~D.~~ C. 1. For purposes of this subsection, "competing control share acquisition" means a control share acquisition or proposed control share acquisition that is the subject of an acquiring person statement delivered to the issuing public corporation pursuant to Section 1150 of this title not less than twenty-five (25) days prior to the scheduled annual or special meeting date~~,~~ which has been or is required to be established pursuant to Section 1151 of this title with respect to a pending control share acquisition.

2. In the event that a competing control share acquisition is made or proposed, the issuing public corporation shall, at the option of the acquiring person making the competing control share acquisition, call for a vote of shareholders to consider the resolution relating to the voting rights of the competing control share acquisition at the same meeting that has been or is to be called to consider the voting rights of the pending control share acquisition. In the event the acquiring person making the competing control share acquisition does not elect in writing to have the resolution relating to the voting rights of the competing control share acquisition considered at the same meeting, any vote shall be held as provided in Section 1153 of this title, except that in such case no vote shall be called on the competing control share acquisition prior to the earlier of the vote on the resolution relating to voting rights of the pending control share acquisition or fifty-one (51) days after receipt by the issuing public corporation of the request for a meeting by the acquiring person making the pending control share acquisition.

3. If more than one resolution relating to a control share acquisition is to be considered at any meeting or at meetings scheduled for or occurring on the same day, all such resolutions relating to the voting rights of acquiring persons shall be considered by shareholders in the order in which the initial acquiring person statements relating to such control share acquisitions were delivered to the issuing public corporation.

However, no resolution approved by shareholders shall become effective until midnight of the date on which the respective shareholder approval occurs.

4. If resolutions relating to two (2) or more control share acquisitions are subject to shareholder vote pursuant to Section 1153 of this title, shares held by an acquiring person are considered interested shares only for purposes of a vote on a resolution relating to a control share acquisition by that same acquiring person.

SECTION 11. This act shall become effective September 1, 1991.

Passed the Senate the 6th day of March, 1991.

President of the Senate

Passed the House of Representatives the 3d day of April, 1991.

Speaker of the House of Representatives