ENGROSSED HOUSE
BILL NO. 1646 By: Jordan of the House

and

Bingman of the Senate

An Act relating to corporations; amending 18 O.S. 2011, Section 1027, as amended by Section 1, Chapter 1, O.S.L. 2012 (18 O.S. Supp. 2012, Section 1027), which relates to the Oklahoma General Corporation Act; deleting mandate of dividing board of directors into classes for certain type of corporation; removing exception for certain corporation; deleting resolution process for certain election; and declaring an emergency.

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

SECTION 1. AMENDATORY 18 O.S. 2011, Section 1027, as amended by Section 1, Chapter 1, O.S.L. 2012 (18 O.S. Supp. 2012, Section 1027), is amended to read as follows:

SECTION 1027.

BOARD OF DIRECTORS; POWERS; NUMBER; QUALIFICATIONS; TERMS AND QUORAM; COMMITTEES; CLASSES OF DIRECTORS; NOT FOR PROFIT CORPORATIONS; RELIANCE UPON BOOKS; ACTION WITHOUT MEETING; ETC.

A. The business and affairs of every corporation organized in accordance with the provisions of the Oklahoma General Corporation

Act shall be managed by or under the direction of a board of directors, except as may be otherwise provided for in this act or in the corporation's certificate of incorporation. If any provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of this act shall be exercised or performed to the extent and by the person or persons stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members, each of whom shall be a natural person. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Except as provided in subsection G of this section, neither the certificate of incorporation nor the bylaws may provide that a quorum may be less than one-third (1/3) of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. 1. The board of directors may designate one or more committees consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no committee shall have the power or authority to:

a. approve, adopt, or recommend to the shareholders any action or matter, other than the election or removal of directors, expressly required by this act to be submitted to shareholders for approval, or

b. adopt, amend, or repeal any bylaw of the corporation.

2. Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

D. ~~1. Subject to the requirements set forth in paragraphs 2 and 3 of this subsection,~~ The directors of any corporation organized under this act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by the board of directors and approved by a vote of the shareholders, may be divided into one, two, or three classes; the term of office of those of the first class to expire at the first annual meeting held after the classification becomes effective; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after the classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board then in office to such classes when the classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for the term, and have voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon one or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of the directors.

~~2.~~ ~~a.~~ ~~Except as provided in paragraph 3 of this subsection, any domestic corporation with both:~~

~~(1) 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, and~~

~~(2) one thousand (1,000) or more shareholders of record,~~

~~shall have a board of directors that is divided into two or three classes, as set forth in the certificate of incorporation or bylaws of such corporation, the term of office of each such class to expire as provided in paragraph 1 of this subsection. If such a domestic corporation does not have a certificate of incorporation or bylaw dividing its board of directors pursuant to this paragraph, the board shall automatically be divided into three classes consisting of a number of directors as nearly equal in number as possible, with the directors of such corporation placed sequentially one at a time into each class beginning with the first class, alphabetically by last name.~~

~~b. This paragraph shall cease to apply to any domestic corporation after such corporation either:~~

~~(1) ceases to have any 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, or~~

~~(2) ceases to have one thousand (1,000) or more shareholders of record on the last business day of each month for a consecutive twelve-month period.~~

~~3. If prior to September 1, 2010, the shareholders of a domestic corporation have approved the annual election of directors, incorporated the approval into the certificate of incorporation or bylaws of the corporation and the approval was still incorporated in the certificate of incorporation or bylaws on August 31, 2010, then paragraph 2 of this subsection shall not apply to the corporation in any event and the terms of office of any director of the corporation, regardless of whether elected before or after September 1, 2010, shall be determined by the bylaws or certificate of incorporation of the corporation as if paragraph 2 of this subsection was never enacted.~~

~~4. On or after January 1, 2015, an election not to be governed by paragraph 2 of this subsection may be made by a resolution adopted by the board of directors and approved by a vote of the shareholders at a special or annual meeting. Approval by~~

~~shareholders shall require the favorable vote of a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, or such greater number or proportion required to amend a provision in the corporation's certificate of incorporation or bylaws that divides the board of directors into classes.~~

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the

board or committee; and the filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form;

2. The board of directors of any corporation organized in accordance with the provisions of this act may hold its meetings, and have an office or offices, outside of this state;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of the board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other. Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at the meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of this act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a

corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this section, shareholders may effect such removal only for cause, or

b. in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the director’s removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of

incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

I. A corporation may agree to submit a matter to a vote of its shareholders regardless of whether the board of directors determines at any time subsequent to approving the matter that the matter is no longer advisable and recommends that the shareholders reject or vote against the matter.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 12th day of February, 2013.

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Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2013.

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Presiding Officer of the Senate