

BILL ANALYSIS

C.S.H.B. 3606
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that domestic nonprofit corporations would benefit from the ability to ratify defective corporate acts. C.S.H.B. 3606 seeks to establish procedures for the ratification of void or voidable acts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3606 amends the Business Organizations Code to set out provisions providing for the ratification of a defective corporate act taken by a domestic nonprofit corporation. "Defective corporate act" is defined by the bill as an election or appointment of directors that is void or voidable due to a failure of authorization or any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time the act or transaction was purportedly taken would have been, within the power of a corporation to take under the corporate statute, but is void or voidable due to such a failure.

C.S.H.B. 3606 establishes that a defective corporate act is not void or voidable solely as a result of a failure of authorization if the act is ratified in accordance with the bill's provisions or validated by the district court in a proceeding brought under the bill's provisions. To ratify one or more defective corporate acts, the corporation's board of directors or its members, as applicable, must adopt resolutions stating the defective corporate act or acts to be ratified, the date of each defective corporate act, the nature of the failure of authorization with respect to each defective corporate act to be ratified, and that the board or the members approve the ratification of the defective corporate act or acts. The bill provides certain additional information the resolutions may contain if the corporation has members with voting rights. The bill sets out quorum and voting requirements for the adoption of such resolutions.

C.S.H.B. 3606 requires each defective corporate act ratified by a corporation whose members have voting rights to be submitted to the members for approval, with certain exceptions. The bill sets out certain notice requirements with respect to a ratified act submitted for member approval, as well as related quorum and voting requirements for approval.

C.S.H.B. 3606 requires a corporation who, under the applicable corporate statute, would have otherwise required the filing of a filing instrument or other document with the filing officer for a

defective corporate act ratified under the bill's provisions to file a certificate of validation with respect to the defective corporate act in accordance with applicable state law, regardless of whether a filing instrument or other document was previously filed with respect to the act. The filing of another filing instrument or document is not required. The bill establishes that a separate certificate of validation is required for each defective corporate act for which a certificate of validation is required, except that two or more acts may be included in a single certificate under certain circumstances. The bill sets out content requirements for a certificate of validation and provisions relating to a certain filing instrument. The bill requires the secretary of state to impose a \$5 filing fee for a certificate of validation, plus the filing fee imposed for filing each new filing instrument that is attached as an exhibit to the certificate.

C.S.H.B. 3606 prohibits each defective corporate act ratified in accordance with the bill's provisions from being considered void, on or after the validation effective time, as a result of the failure of authorization described by the adopted resolutions unless determined otherwise in an action brought under the bill's provisions and requires the effect to be retroactive to the time of the defective corporate act. The bill sets out certain notice requirements for a corporation whose management of the affairs of a corporation is vested in its members or whose members have voting rights following the ratification of a defective corporate act.

C.S.H.B. 3606 authorizes an action to be brought in an applicable district court regarding the validity of a defective corporate act by certain affected persons, as prescribed by the bill, and sets out provisions relating to such an action, including provisions regarding court proceedings and the jurisdiction to hear and determine the action. The bill provides a statute of limitations on bringing such an action. An action brought by a charitable entity that receives tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 is considered "a proceeding involving a charitable trust" to which Property Code provisions governing attorney general participation in such a proceeding apply.

C.S.H.B. 3606 establishes that ratification of an act or transaction under the bill's provisions or validation of an act or transaction through a court proceeding is not the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act, or of adopting or endorsing any act or transaction taken by or in the name of the corporation before the corporation exists. The absence or failure of ratification of an act or transaction does not, of itself, affect the validity or effectiveness of any act or transaction properly ratified under common law or otherwise, nor does it create a presumption that any such act or transaction is or was a defective corporate act.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3606 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the list of persons authorized to bring an action regarding the validity of a defective corporate act under the bill's provisions.

The substitute includes a provision regarding attorney general participation in an action brought by a charitable entity.

The substitute includes a requirement for the secretary of state to impose a \$5 filing fee for a certificate of validation.