

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Business Organizations Code, adopted in 2003 by the 78th Texas Legislature, was a joint project of the Business Law Section of the State Bar of Texas and the Office of the Texas Secretary of State, with assistance in editing and drafting coming from the Texas Legislative Council. The 79th and 80th Texas Legislatures passed several amendments to the Business Organizations Code.

The Business Organizations Code codified the provisions of prior law found in the Texas Business Corporation Act, the Texas Nonprofit Corporation Act, the Texas Miscellaneous Corporation Laws Act, the Texas Limited Liability Company Act, the Texas Revised Limited Partnership Act (TRLPA), the Texas Real Estate Investment Trust Act, the Texas Uniform Unincorporated Nonprofit Associations Act, the Texas Professional Corporation Act, the Texas Professional Associations Act (TPAA), the Texas Revised Partnership Act, the Cooperative Associations Act, and other existing provisions of Texas statutes governing domestic entities.

As proposed, S.B. 1442 amends, technically and substantially, the Business Organizations Code, TPAA, TRLPA, and the Business & Commerce Code.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, by amending Subdivisions (10), (11), (12), and (81) and adding Subdivisions (56-a) and (56-b), as follows:

- (10) Redefines "conversion."
- (11) Redefines "converted entity."
- (12) Redefines "converting entity."
- (56-a) Defines "non-United States entity."
- (56-b) Defines "non-United States jurisdiction."
- (81) Redefines "shareholder" or "holder of shares."

SECTION 2. Amends Section 2.003, Business Organizations Code, to delete existing text prohibiting a domestic entity from operating as a railroad company and to make conforming changes.

SECTION 3. Amends Section 3.202, Business Organizations Code, by adding Subsection (f), to prohibit a certificate representing ownership interests from being issued in bearer form.

SECTION 4. Amends Chapter 3, Business Organizations Code, by adding Subchapter (F), as follows:

SUBCHAPTER F. EMERGENCY GOVERNANCE

Sec. 3.251. EMERGENCY DEFINED. Provides that an emergency exists, for purposes of this subchapter, if a majority of a domestic entity's governing persons cannot readily participate in a meeting because of the occurrence of a catastrophic event.

Sec. 3.252. PROVISIONS IN GOVERNING DOCUMENTS. (a) Authorizes the governing persons, owners, or members of a domestic entity, except as otherwise provided by the entity's governing documents, to adopt provisions in the entity's governing documents regarding the management of the entity during an emergency, including certain provisions.

(b) Requires that the emergency provisions be adopted in accordance with the requirements of the governing documents and the applicable provisions of this code.

Sec. 3.253. EFFECT OF EMERGENCY PROVISIONS. Provides that the emergency provisions adopted under Section 3.252 take effect only in the event of an emergency and that the emergency provisions will no longer be effective after the emergency ends.

Sec. 3.254. EFFECT OF OTHER PROVISIONS IN GOVERNING DOCUMENTS DURING EMERGENCY. Provides that a provision of an entity's governing documents that is consistent with the emergency provisions adopted under Section 3.252 remains in effect during an emergency.

Sec. 3.255. EFFECT OF ACTION TAKEN. Provides that an action of a domestic entity taken in good faith in accordance with the emergency provisions is binding on the entity and is prohibited from being used to impose liability on a managerial official, employee, or agent of the entity.

SECTION 5. Amends Section 4.005, Business Organizations Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes a certificate, subject to any qualification stated in the certificate, issued by the secretary of state stating that a domestic filing entity is in existence, to be relied on as conclusive evidence of the entity's existence.

(e) Authorizes a certificate, subject to any qualification stated in the certificate, issued by the secretary of state stating that a foreign filing entity is in existence or registered, to be relied on as conclusive evidence that the foreign filing entity is registered and authorized to transact business in this state.

SECTION 6. Amends Section 4.101(b), Business Organizations Code, to require that a certificate of correction be signed by the person authorized by this code to sign the filing instrument to be corrected, rather than authorized to act on behalf of the entity.

SECTION 7. Amends Section 6.052, Business Organizations Code, by adding Subsection (d), to provide that the participation or attendance at a meeting of a person entitled to notice of the meeting constitutes a waiver by the person of notice of a particular matter at the meeting that is not included in the purposes or business of the meeting described in the notice unless the person objects to considering the matter when it is presented.

SECTION 8. Amends Section 6.205, Business Organizations Code, as follows:

Sec. 6.205. New heading: REPRODUCTION OR ELECTRONIC TRANSMISSION OF CONSENT. (a) Creates this subsection from existing text.

(b) Provides that, except as otherwise provided by an entity's governing documents, an electronic transmission of a consent by an owner, member, or governing person to the taking of an action by the entity is considered a signed writing if the transmission contains or is accompanied by information from which

it can be determined that the electronic transmission was transmitted by the owner, member, or governing person and the date on which the owner, member, or governing person transmitted the electronic transmission.

(c) Provides that unless the consent is otherwise dated, the date specified in Subsection (b)(2) is the date on which the consent is considered signed.

SECTION 9. Amends Subchapter A, Chapter 9, Business Organizations Code, by adding Section 9.005, as follows:

Sec. 9.005. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY COMPANY. (a) Provides that this section applies only to a foreign limited liability company governed by a company agreement that establishes or provides for the establishment of a designated series of members, managers, membership interests, or assets that has any of the characteristics described by Subsection (b).

(b) Requires that a foreign limited liability company state in its application for registration as a foreign limited liability company whether:

(1) the series has separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company or separate profits and losses associated with specified property or obligations of the foreign limited liability company;

(2) any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series are required to be enforceable against the assets of that series only, and not against the assets of the company generally or the assets of any other series; and

(3) any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series are required to be enforceable against the assets of that series.

SECTION 10. Amends Section 9.009(a), Business Organizations Code, to require a foreign filing entity to amend its registration to reflect a change to its name; a change in the business or activity stated in its application for registration; and, if the foreign filing entity is a limited partnership, the admission of a new general partner, the withdrawal of a general partner, and a change in the name of the general partner stated in its application for registration, rather than change the business or activity stated in its application or business if the business or activity has changed and to make a nonsubstantive change.

SECTION 11. Amends Section 9.011(c), Business Organizations Code, to require that a certificate from the comptroller of public accounts (comptroller) stating that all taxes, rather than franchise taxes, administered by the comptroller under Title 2 (State Taxation), Tax Code, have been paid, be filed with the certificate of withdrawal in accordance with Chapter 4 if the foreign filing entity is a taxable entity under Chapter 171 (Franchise Tax), Tax Code, other than a foreign nonprofit corporation, rather than professional corporation, foreign for-profit corporation, or foreign limited liability company.

SECTION 12. Amends Subchapter A, Chapter 9, Business Organizations Code, by adding Section 9.012, as follows:

Sec. 9.012. AUTOMATIC WITHDRAWAL ON CONVERSION TO DOMESTIC FILING ENTITY. Provides that a foreign filing entity or foreign limited liability partnership registered in this state that converts to a domestic filing entity is considered to have withdrawn its registration on the effective date of the conversion and that this section also applies to a conversion and continuance under Section 10.1025.

SECTION 13. Amends Section 9.104(d), Business Organizations Code, to require that a tax clearance letter, rather than a letter of eligibility, from the comptroller stating certain information

be filed with the certificate of reinstatement if the foreign filing entity is a taxable entity under Chapter 171, Tax Code, other than a foreign nonprofit corporation, rather than a professional corporation, for-profit corporation, or limited liability company.

SECTION 14. Amends Section 9.251, Business Organizations Code, to include owning, without more, real or personal property in this state among activities that do not constitute transaction of business in this state. Makes nonsubstantive changes.

SECTION 15. Amends Subchapter C, Chapter 10, Business Organizations Code, by adding Section 10.1025, as follows:

Sec. 10.1025. CONVERSION AND CONTINUANCE. (a) Authorizes a converting entity to elect to continue its existence in its current organizational form and jurisdiction of formation in connection with the entity's conversion under Section 10.101 (Conversion of Domestic Entities) as a domestic entity of one organizational form into a non-United States entity of the same organizational form or conversion under Section 10.102 (Conversion of Non-Code Organizations) as a non-United States entity of one organizational form into a domestic entity of the same organizational form.

(b) Requires that the election permitted by Subsection (a) for the converting entity to continue its existence in its current organizational form and jurisdiction of formation be adopted and approved as part of the plan of conversion for the converting entity as required by Section 10.101(b) or 10.102(b), as applicable and permitted by, or not prohibited by and inconsistent with, the laws of the applicable non-United States jurisdiction.

(c) Provides that Section 10.156(2) (relating to the required franchise taxes not being paid) does not apply in connection with the filing of the certificate of conversion if the converting entity is a domestic filing entity that elects to continue its existence in accordance with this section.

(d) Provides that Chapter 9 (Foreign Entities) does not apply to a non-United States entity that also exists as a domestic filing entity because of a conversion and election to continue its existence in accordance with this section.

SECTION 16. Amends Section 10.103(a), Business Organizations Code, as follows:

(a) Includes among the elements that a plan of conversion is required to include:

(5) if Sections 10.1025 and 10.109 do not apply, the manner and basis of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity; and

(8) if Section 10.1025 and 10.109 apply, a statement that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion takes effect. Makes a nonsubstantive change.

SECTION 17. Amends Subchapter C, Chapter 10, Business Organizations Code, by adding Section 10.109, as follows:

Sec. 10.109. SPECIAL PROVISIONS APPLYING TO CONVERSION AND CONTINUANCE. (a) Provides that this section applies only to a converting entity that elects to continue its existence in accordance with Section 10.1025.

(b) Provides that when the conversion of a converting entity to which this section applies takes effect:

(1) notwithstanding Section 10.106(1) (relating to the converting entity continuing to exist), the converting entity continues to exist both in its current organizational form and jurisdiction of formation and, as the

converted entity, in the same organizational form in the new jurisdiction of formation;

(2) the converting entity and the converted entity, for purposes of the laws of this state, constitute a single entity formed, incorporated, created, or otherwise having come into being, as applicable, and existing under laws of this state and the laws of the applicable non-United States jurisdiction, so long as the entity continues to exist as a domestic entity under the laws of this state following the conversion;

(3) if the converting entity is a domestic entity, this code and the other laws of this state apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(4) if the converting entity is a non-United States entity, the laws of the applicable non-United States jurisdiction apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(5) notwithstanding Section 10.106(2) (relating to all rights, title, and interests continuing to be owned), all rights, title, and interests in all property owned by the converting entity continue to be owned by the converted entity, subject to any existing liens or other encumbrances on the property, in both the organizational form of the converting entity and the organizational form of the converted entity without reversion or impairment, further act or deed, or the occurrence of a transfer or assignment; and

(6) notwithstanding Section 10.106(3) (relating to all liabilities and obligations continuing to be the same of the converted entity), all liabilities and obligations of the converting entity remain the liabilities and obligations of the converted entity in both the organizational form of the converting entity and the organizational form of the converted entity without impairment or diminution because of the conversion.

SECTION 18. Amends Section 10.154, Business Organizations Code, by adding Subsection (c), to require that the certificate of conversion required by this section, in addition to complying with the requirements of Subsections (a) (relating to the requirement that a certificate of conversion be filed) and (b) (relating to the requirement that a certificate of conversion be signed), if Sections 10.1025 and 10.109 apply to the conversion, be titled "Certificate of Conversion and Continuance" and include a statement certifying that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation.

SECTION 19. Amends Section 10.361, Business Organizations Code, by adding Subsection (g), as follows:

(g) Authorizes the beneficial owner of an ownership interest subject to dissenters' rights held in a voting trust or by a nominee on the beneficial owner's behalf to file a petition described by Subsection (a) (relating to the dissenting owner or responsible organization filing a petition) if no agreement between the dissenting owner of the ownership interest and the responsible organization has been reached within the period prescribed by Section 10.358(d) (at least 60 days from the date the offer is first delivered to the dissenting owner). Provides that when the beneficial owner files a petition described by Subsection (a):

(1) the beneficial owner is required at that time to be considered, for purposes of this subchapter, the owner, the dissenting owner, and the holder of the ownership interest subject to the petition; and

(2) the dissenting owner who demanded payment under Section 10.356 (Procedure for Dissent by Owners as to Actions; Perfection of Right of Dissent

and Appraisal) has no further rights regarding the ownership interest subject to the petition.

SECTION 20. Amends Section 10.366(b), Business Organizations Code, to make nonsubstantive changes.

SECTION 21. Amends Section 10.367(b), Business Organizations Code, as follows:

(b) Provides that on termination of the right of dissent under this section:

(3) the owner's status as an owner of those ownership interests is restored, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356 (Procedure for Dissent by Owners as to Actions; Perfection of Right of Dissent and Appraisal), rather than without prejudice to any interim proceeding, if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent action;

(4) the dissenting owner is entitled to receive the same cash, property, rights, and other consideration received by owners of the same class and series of ownership interests held by the owner, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were canceled, converted, or exchanged as a result of the action or a subsequent action;

(5) any action of the domestic entity taken after the date of the demand for payment by the owner under Section 10.356 will not be considered ineffective or invalid because of the restoration of the owner's ownership interests or the other rights or entitlements of the owner under this subsection; and

(6) the dissenting owner is entitled to receive dividends or other distributions made after the date of the owner's payment demand under Section 10.356, rather than in the interim, to owners of the same class and series of ownership interests held by the owner as if the demand had not been made, subject to any change in or adjustment to the ownership interests because of an action taken by the domestic entity, rather than the cancellation or exchange of the ownership interests, after the date of the demand, rather than a demand under Section 10.356 was made pursuant to a fundamental business transaction. Makes nonsubstantive changes.

SECTION 22. Amends Section 11.101(b), Business Organizations Code, to require that a certificate from the comptroller that all taxes administered by the comptroller under Title 2, Tax Code, have been paid, be filed with the certificate of termination, rather than in accordance with Chapter 4, if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation, rather than if the filing entity is a professional corporation, for-profit corporation, or limited liability company.

SECTION 23. Amends Section 11.202(e), Business Organizations Code, to require that a tax clearance letter, rather than a letter of eligibility, from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated, be filed with the certificate of reinstatement if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation, rather than a professional corporation, for-profit corporation, or limited liability company.

SECTION 24. Amends Section 11.253(c), Business Organizations Code, to require that a certificate of reinstatement be accompanied by a tax clearance letter from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated, if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation and to make nonsubstantive changes.

SECTION 25. Amends Section 11.314, Business Organizations Code, as follows:

Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF PARTNERSHIP OR LIMITED LIABILITY COMPANY. Provides that a district court in the county in which the registered office or principal place of business in this state of a domestic partnership or limited liability company is located has jurisdiction to order the winding up and termination of the domestic partnership or limited liability company on application by certain people.

SECTION 26. Amends Section 12.001, Business Organizations Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the secretary of state (SOS), on acceptance of the filing of an instrument authorized to be filed with SOS under this code, to issue a certificate that evidences the filing of the instrument, a letter that acknowledges the filing of the instrument, or a certificate that evidences the filing of the instrument and a letter that acknowledges the filing of the instrument.

(d) Provides that Sections 12.003 (Information Disclosed by Interrogatories) and 12.004 (Appeals from Secretary of State) do not apply to a domestic real estate investment trust.

SECTION 27. Amends Section 21.152, Business Organizations Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Requires that a corporation's certificate of formation, if more than one class or series of shares is authorized, designate each class and series of authorized shares to distinguish that class and series from any other class or series. Makes a nonsubstantive change.

(c) Requires that all shares of the same series be identical in all respects, rather than will be identical, if the shares of a class have been divided into one or more series.

(d) Requires that a corporation's certificate of formation authorize one of more classes or series of shares that together have unlimited voting rights, and one or more classes or series of shares, which may be the same class or series of shares as those with voting rights, that together are entitled to receive the net assets of the corporation on winding up and termination.

SECTION 28. Amends Section 21.153(a), Business Organizations Code, to make conforming changes.

SECTION 29. Amends Section 21.154(a), Business Organizations Code, to authorize a corporation, subject to Sections 21.152 and 21.153, if authorized by the corporation's certificate of formation, to issue certain shares and to make a nonsubstantive change.

SECTION 30. Amends Section 21.157. Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that this subsection applies only to shares issued in accordance with Subsections (a) (relating to the issuing of shares) and (b) (relating to the prohibition issuing shares) and Sections 21.160 (Determination of Consideration for Shares) and 21.161 (Amount of Consideration for Issuance of Certain Shares) for consideration consisting, wholly or partly, of a contract for future services or benefits or a promissory note. Authorizes a corporation to place the shares, although fully paid and nonassessable, in escrow, or make other arrangements to restrict the transfer of the shares, and to credit distributions made with respect to the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. Authorizes the corporation, if the services are not performed, the note is not paid, or the benefits are not received, to pursue remedies provided or afforded under law or in the contract or note, including causing the shares that are placed in escrow or restricted to be forfeited or returned to or reacquired by the corporation and the distributions that have been credited to be wholly or partly returned to the corporation.

SECTION 31. Amends Section 21.163(a), Business Organizations Code, to delete existing text that authorizes a corporation to issue scrip in bearer form.

SECTION 32. Amends Section 21.171, Business Organizations Code, as follows:

Sec. 21.171. New heading: **OUTSTANDING OR TREASURY SHARES**. (a) Provides that shares that are issued are outstanding shares unless the shares are treasury shares or are canceled.

(b) Requires that one or more shares, if there are outstanding shares, that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation on the winding up and termination of the corporation, be outstanding shares.

(c) Redesignates Subsection (a) as Subsection (c).

(d) Redesignates Subsection (b) as Subsection (d).

SECTION 33. Amends Section 21.201, Business Organizations Code, as follows:

Sec. 21.201. New heading: **REGISTERED HOLDERS AS OWNERS; SHARES HELD BY NOMINEES**. (a) Creates this subsection from existing text.

(b) Authorizes a corporation to establish a procedure by which the corporation recognizes as a shareholder the beneficial owner of shares registered in the name of a nominee.

(c) Requires that a procedure established under Subsection (b) determine the extent of the corporation's recognition of the beneficial owner as a shareholder and include the nominee's filing of a statement with the corporation that contains information regarding the beneficial owner.

(d) Authorizes a procedure established under Subsection (b) to set forth:

(1) the types of nominees to which the procedure applies;

(2) the rights or privileges that the corporation will recognize in a beneficial owner, to the extent that the rights or privileges are not inconsistent with Section 10.361(g);

(3) the manner in which the procedure is selected by the nominee;

(4) the information that must be provided when the procedure is selected;

(5) the period for which the selection of the procedure is effective; and

(6) any other aspect of the rights and duties to be established under the procedure.

SECTION 34. Amends Section 21.224, Business Organizations Code, to make a nonsubstantive change.

SECTION 35. Amends Section 21.361(a), Business Organizations Code, to entitle each shareholder entitled to vote at each election of directors of the corporation, if expressly authorized by a corporation's certificate of formation in general or with respect to a specified class or series of shares or group of classes or series of shares and subject to Subsections (b) (relating to cumulative voting being permitted in certain elections) and (c) (relating to all shareholders being authorized to cumulate their votes), to cumulate votes by certain methods. Makes a conforming change.

SECTION 36. Amends Section 21.406(a), Business Organizations Code, as follows:

(a) Authorizes the certificate of formation of a corporation to provide that directors, regardless of whether elected by the holders of a class or series of shares or by a group of classes or series of shares, rather than series of shares entitled to elect one or more directors, as provided by Section 21.405, are entitled to cast more or less than one vote on all matters or on specified matters. Provides that such a provision also applies to directors voting in any committee or subcommittee regarding all matters or the specified matters, as applicable, unless otherwise provided by the certificate of formation.

SECTION 37. Amends Section 21.418(b), Business Organizations Code, as follows:

(b) Provides that an otherwise valid contract or transaction described by Subsection (a) is valid notwithstanding that the director or officer having the relationship or interest described by Subsection (a), rather than a director or officer of the corporation, is present at or participates in the meeting of the board of directors, or of a committee of the board that authorizes the contract or transaction, or votes or signs, in the person's capacity as a director or committee member, a unanimous written consent of directors or committee members to authorize the contract or transaction, if the material facts as to the relationship or interest described by Subsection (a) and as to the contract or transaction are disclosed to or known by certain persons in good faith authorizes the contract or transaction by the approval, rather than affirmative vote, of the majority of the disinterested directors or committee members, regardless of whether the disinterested directors or committee members constitute a quorum.

SECTION 38. Amends Section 101.054(a), Business Organizations Code, to prohibit Section 101.101, rather than Section 101.101(b), from being waived or modified, except as provided by this section, in the company agreement of a limited liability company.

SECTION 39. Amends Section 101.106, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that Sections 9.406 (Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective) and 9.408 (Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective), Business & Commerce Code, do not apply to a membership interest in a limited liability company, including the rights, powers, and interests arising under the company's certificate of formation or company agreement or under this code. Provides that to the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. Provides that it is the express intent of this subsection to permit the enforcement, as a contract among the members of a limited liability company, of any provision of a company agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.

SECTION 40. Amends Section 101.112(c), Business Organizations Code, to prohibit the charging order lien from being foreclosed on under this code or any other law.

SECTION 41. Amends Section 101.206, Business Organizations Code, by amending Subsections (a) and (d) and adding Subsection (f), as follows:

(a) Prohibits a limited liability company, unless the distribution is made in compliance with Chapter 11 (Winding Up and Termination of Domestic Entity), from making a distribution to a member of the company in certain circumstances. Makes a nonsubstantive change.

(d) Provides that a member of a limited liability company who receives a distribution from the company in violation of this section is not required to return the distribution to the company unless, rather than if, the member had knowledge of the violation.

(f) Provides that for purposes of this section, "distribution" does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

SECTION 42. Amends Subchapter E, Chapter 101, Business Organizations Code, by adding Section 101.208, as follows:

Sec. 101.208. RECORD DATE. Authorizes a company agreement to establish or provide for the establishment of a record date with respect to allocations and distributions.

SECTION 43. Amends the heading to Section 101.251, Business Organizations Code, to read as follows:

Sec. 101.251. GOVERNING AUTHORITY.

SECTION 44. Amends Section 101.255(b), Business Organizations Code, as follows:

(b) Provides that an otherwise valid contract or transaction described by Subsection (a) (relating to the application of this section only to certain contract or transaction) is valid notwithstanding that the governing person or officer having the relationship or interest described by Subsection (a), rather than a governing person or officer of the company, is present at or participates in the meeting of the governing authority, or of a committee of the governing authority, rather than a committee of the governing person's authority, that authorizes the contract or transaction or votes or signs, in the person's capacity as a governing person or committee member, a written consent of governing persons or committee members to authorize the contract or transaction, if the material facts as to the relationship or interest described by Subsection (a) and as to the contract or transaction are disclosed to or known by certain entities and that entity in good faith authorizes the contract of transaction by the approval, rather than affirmative vote, of the majority of disinterested governing persons or committee members, regardless of whether the disinterested governing persons or committee members constitute a quorum.

SECTION 45. Amends Chapter 101, Business Organizations Code, by adding Subchapter M, as follows:

SUBCHAPTER M. SERIES LIMITED LIABILITY COMPANY

Sec. 101.601. SERIES OF MEMBERS, MANAGERS, MEMBERSHIP INTERESTS, OR ASSETS. (a) Authorizes a company agreement to establish or provide for the establishment of one or more designated series of members, managers, membership interests, or assets that has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations or has a separate business purpose or investment objective.

(b) Authorizes a series established in accordance with Subsection (a) to carry on any business, purpose, or activity, whether or not for profit, that is not prohibited by Section 2.003.

Sec. 101.602. ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF SERIES AGAINST ASSETS. (a) Requires that, notwithstanding any other provision of this chapter or any other law, but subject to Subsection (b) and any other provision of this subchapter:

(1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series be enforceable against the assets of that series only, and not be enforceable against the assets of the limited liability company generally or any other series; and

(2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series be enforceable against the assets of a particular series.

(b) Provides that Subsection (a) applies only if the records maintained for that particular series account for the assets associated with that series separately from the other assets of the company or any other series, the company agreement contains a statement to the effect of the limitations provided in Subsection (a), and the company's certificate of formation contains a notice of the limitations provided in Subsection (a).

Sec. 101.603. **ASSETS OF SERIES.** (a) Authorizes assets associated with a series to be held directly or indirectly, including being held in the name of the series, in the name of the limited liability company, through a nominee, or otherwise.

(b) Provides that if the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of Section 101.602(b)(1).

Sec. 101.604. **NOTICE OF LIMITATION ON LIABILITIES OF SERIES.** Provides that notice of the limitation on liabilities of a series required by Section 101.602 that is contained in a certificate of formation filed with SOS satisfies the requirements of Section 101.602(b)(3), regardless of whether the limited liability company has established any series under this subchapter when the notice is contained in the certificate of formation, and the notice makes a reference to a specific series of the limited liability company.

Sec. 101.605. **GENERAL POWERS OF SERIES.** Provides that a series established under this subchapter has the power and capacity, in the series' own name, to sue and be sued, contract, hold title to assets of the series, including real property, personal property, and intangible property, and grant liens and security interests in assets of the series.

Sec. 101.606. **LIABILITY OF MEMBER OR MANAGER FOR OBLIGATIONS; DUTIES.** (a) Provides that a member or manager associated with a series or a member or manager of the company, except as and to the extent the company agreement specifically provides otherwise, is not liable for a debt, obligation, or liability of a series, including a debt, obligation, or liability under a judgment, decree, or court order.

(b) Authorizes the company agreement to expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person associated with a series has to the series or the company, a member or manager associated with the series, or a member or manager of the company.

Sec. 101.607. **CLASS OR GROUP OF MEMBERS OR MANAGERS.** (a) Authorizes the company agreement to:

(1) establish classes or groups of one or more members or managers associated with a series each of which has certain express relative rights, powers, and duties, including voting rights; and

(2) provide for the manner of establishing additional classes or groups of one or more members or managers associated with the series each of which has certain express rights, powers, and duties, including providing for voting rights and rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.

(b) Authorizes the company agreement to provide for the taking of an action, including the amendment of the company agreement, without the vote or approval of any member or manager or class or group of members or managers, to create under the provisions of the company agreement a class or group of the series of membership interests that was not previously outstanding.

(c) Authorizes the company agreement to provide that:

(1) all or certain identified members or managers or a specified class or group of the members or managers associated with a series have the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series;

(2) any member or class or group of members associated with a series has no voting rights; and

(3) voting by members or managers associated with a series is on a per capita, number, financial interest, class, group, or any other basis.

Sec. 101.608. **GOVERNING AUTHORITY.** (a) Provides that notwithstanding any conflicting provision of the certificate of formation of a limited liability company, the governing authority of a series consists of the managers or members associated with the series as provided in the company agreement.

(b) Provides that if the company agreement does not provide for the governing authority of the series, the governing authority of the series consists of the managers associated with the series, if the company's certificate of formation states that the company will have one or more managers, or the members associated with the series, if the company's certificate of formation states that the company will not have managers.

Sec. 101.609. **APPLICABILITY OF OTHER PROVISIONS OF CHAPTER; SYNONYMOUS TERMS.** (a) Provides that to the extent not inconsistent with this subchapter, this chapter applies to a series and its associated members and managers.

(b) Provides that for purposes of the application of any other provision of this chapter to a provision of this subchapter, and as the context requires, a reference to "limited liability company" or "company" means the "series," a reference to "member" means "member associated with the series," and a reference to "manager" means "manager associated with the series."

Sec. 101.610. **EFFECT OF CERTAIN EVENT ON MANAGER OR MEMBER.** (a) Provides that an event that under this chapter or the company agreement causes a manager to cease to be a manager with respect to a series does not, in and of itself, cause the manager to cease to be a manager of the limited liability company or with respect to any other series of the company.

(b) Provides that an event that under this chapter or the company agreement causes a member to cease to be associated with a series does not, in and of itself, cause the member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or require the winding up of the series, regardless of whether the member was the last remaining member associated with the series.

Sec. 101.611. **MEMBER STATUS WITH RESPECT TO DISTRIBUTION.** (a) Provides that subject to Sections 101.613, 101.617, 101.618, 101.619, and 101.620, when a member associated with a series established under this subchapter is entitled to receive a distribution with respect to the series, the member, with respect to the distribution, has the same status as a creditor of the series and is entitled to any remedy available to a creditor of the series.

(b) Provides that Section 101.207 does not apply to a distribution with respect to the series.

Sec. 101.612. RECORD DATE FOR ALLOCATIONS AND DISTRIBUTIONS. Authorizes a company agreement to establish or provide for the establishment of a record date for allocations and distributions with respect to a series.

Sec. 101.613. DISTRIBUTIONS. (a) Authorizes a limited liability company to make a distribution with respect to a series.

(b) Prohibits a limited liability company from making a distribution with respect to a series to a member if, immediately after making the distribution, the total amount of the liabilities of the series, other than liabilities described by Subsection (c), exceeds the fair value of the assets associated with the series.

(c) Provides that for purposes of Subsection (b), the liabilities of a series do not include a liability related to the member's membership interest or except as provided by Subsection (e), a liability of the series for which the recourse of creditors is limited to specified property of the series.

(d) Provides that for purposes of Subsection (b), the assets associated with a series include the fair value of property of the series subject to a liability for which recourse of creditors is limited to specified property of the series only if the fair value of that property exceeds the liability.

(e) Provides that a member who receives a distribution from a series in violation of this section is not required to return the distribution to the series unless the member had knowledge of the violation.

(f) Prohibits this section from being construed to affect the obligation of a member to return a distribution to the series under the company agreement or other state or federal law.

(g) Provides that Section 101.206 does not apply to a distribution with respect to a series.

(h) Provides that for purposes of this section, "distribution" does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Sec. 101.614. AUTHORITY TO WIND UP AND TERMINATE SERIES. Authorizes a series and its business and affairs, except to the extent otherwise provided in the company agreement and subject to Sections 101.617, 101.618, 101.619, and 101.620, to be wound up and terminated without causing the winding up of the limited liability company.

Sec. 101.615. TERMINATION OF SERIES. (a) Provides that except as otherwise provided by Sections 101.617, 101.618, 101.619, and 101.620, the series terminates on the completion of the winding up of the business and affairs of the series in accordance with Sections 101.617, 101.618, 101.619, and 101.620.

(b) Requires the limited liability company to provide notice of the termination of a series in the manner provided in the company agreement for notice of termination, if any.

(c) Provides that the termination of the series does not affect the limitation on liabilities of the series provided by Section 101.602.

Sec. 101.616. EVENT REQUIRING WINDING UP. Requires that the business and affairs of a series, subject to Sections 101.617, 101.618, 101.619, and 101.620, are to be wound up if the winding up of the limited liability company is required under Section

101.552(a) (relates to a majority vote being required for approval of certain actions) or Chapter 11, or on the earlier of a certain specified time, occurrence, or determination.

Sec. 101.617. PROCEDURES FOR WINDING UP AND TERMINATION OF SERIES.

(a) Provides that Subchapters A (General Provisions), G (Judicial Winding Up and Termination), H (Claims Resolution on Termination), and I (Receivership), Chapter 11, and Subchapter B (Winding Up of Domestic Entity), Chapter 11, other than Sections 11.051 (Event Requiring Winding Up of Domestic Entity), 11.056 (Supplemental Provisions for Limited Liability Company), 11.057 (Supplemental Provisions for Domestic General Partnership), 11.058 (Supplemental Provision for Limited Partnership), and 11.059 (Supplemental Provisions for Corporations), apply to a series and the associated members and managers of the series.

(b) Provides that for purposes of the application of Chapter 11 to a series and as the context requires a reference to "domestic entity," "filing entity," "entity," means the "series"; to "owner" means a "member associated with the series;" to "governing authority" or "governing person" means the "governing authority associated with the series," or "governing person associated with the series"; to "business," "property," "obligations," or "liabilities," means the "business associated with the series," "property associated with the series," "obligations associated with the series," or "liabilities associated with the series."

(c) Requires that the winding up of a series, after the occurrence of an event requiring winding up of the series under Section 101.616, unless a revocation as provided by Section 101.618 or a cancellation as provided by Section 101.619 occurs, be carried out by the governing authority of the series or one or more persons, including a governing person, designated by certain entities, or a person appointed by the court to carry out the winding up of the series under Section 11.054 (Court Supervision of Winding Up Process), 11.405 (Appointment of Receiver to Liquidate Domestic Entity), 11.409 (Ancillary Receiverships of Foreign Entities), or 11.410 (Receivership for All Property and Business of Foreign Entity).

(d) Provides that an action taken in accordance with this section does not affect the limitation on liability of members and managers provided by Section 101.606.

Sec. 101.618. REVOCATION OF VOLUNTARY WINDING UP. Authorizes a voluntary decision to wind up the series under Section 101.616(2)(C) or (D), before the termination of the series takes effect, to be revoked by a majority vote of all of the members associated with the series approving the revocation or, if there is more than one class or group of members associated with the series, a majority vote of the members of each class or group of members associated with the series approving the revocation; or if the series has no members, a majority vote of all the managers associated with the series approving the revocation or, if there is more than one class or group of managers associated with the series, a majority vote of the managers of each class or group of managers associated with the series approving the revocation.

Sec. 101.619. CANCELLATION OF EVENT REQUIRING WINDING UP. (a) Authorizes an event requiring winding up of the series under Section 101.616(1) or (2), unless the cancellation is prohibited by the company agreement, to be canceled by the consent of all of the members of the series before the termination of the series takes effect.

(b) Requires the members, in connection with the cancellation, to amend the company agreement to eliminate or extend the time specified for the series if the event requiring winding up of the series occurred under Section 101.616(1), or eliminate or revise the event specified with respect to the series if the event requiring winding up of the series occurred under Section 101.616(2).

Sec. 101.620. CONTINUATION OF BUSINESS. Authorizes that the series continue its business following the revocation under Section 101.618 or the cancellation under Section 101.619.

Sec. 101.621. WINDING UP BY COURT ORDER. Provides that a district court in the county in which the registered office or principal place of business in this state of a domestic limited liability company is located, on application by or for a member associated with the series, has jurisdiction to order the winding up and termination of a series if the court determines that it is not reasonably practicable to carry on the business of the series in conformity with the company agreement.

SECTION 46. Amends Chapter 151, Business Organizations Code, by adding Section 151.004, as follows:

Sec. 151.004. OFFICERS. Authorizes a partnership to have elected or appointed officers in accordance with Section 3.103 (Officers).

SECTION 47. Amends Section 152.801(a), Business Organizations Code, to provide that as except as provided by Subsection (b) (relating to a partner in a limited liability partnership not being personally liable) or the partnership agreement, a partner in a limited liability partnership is not personally liable to any person, including a partner, directly or indirectly, by contribution, indemnity, or otherwise, for a debt or obligation of the partnership incurred while the partnership is a limited liability partnership.

SECTION 48. Amends Section 152.802(f), Business Organizations Code, to require that a certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid, be filed with the notice of withdrawal of a registration.

SECTION 49. Amends Section 152.906, Business Organizations Code, by adding Subsection (c), to require that a certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid, be filed with the withdrawal of registration.

SECTION 50. Amends Section 152.914, Business Organizations Code, by adding Subsection (f), to require that a tax clearance letter from the comptroller stating that a foreign limited liability partnership has satisfied all franchise tax liabilities and is authorized to be reinstated be filed with certificate of reinstatement if the foreign limited liability partnership is a taxable entity under Chapter 171, Tax Code.

SECTION 51. Amends Section 153.103, Business Organizations Code, as follows:

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN BUSINESS FOR LIABILITY PURPOSES. Provides that for purposes of this section and Sections 153.102 (Liability to Third Parties), 153.104 (Enumeration of Actions Not Exclusive), and 153.105 (Creation of Rights), a limited partner does not participate in the control of the business because the limited partner is acting as contractor for or an officer or other agent or employee of the limited partnership.

SECTION 52. Amends Section 153.210, Business Organizations Code, as follows:

Sec. 153.210. LIMITATION ON DISTRIBUTION. (a) Creates this subsection from existing text. Prohibits a limited partnership, unless the distribution is made in compliance with Chapter 11, from making a distribution to a partner under certain circumstances. Makes a nonsubstantive change.

(b) Provides that for purposes of this section, "distribution" does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

SECTION 53. Amends Section 153.256(c), Business Organizations Code, to prohibit a charging order lien from being foreclosed on under this code or any other law.

SECTION 54. Amends Section 153.309(c), Business Organizations Code, to provide that this section and certain other sections do not affect the liability of a limited partner, rather than affect the liability of a limited partner to the limited partnership.

SECTION 55. Amends Section 153.311, Business Organizations Code, as follows:

Sec. 153.311. New heading: TERMINATION OF CERTIFICATE OR REVOCATION OF REGISTRATION AFTER FORFEITURE. (a) Authorizes SOS to terminate, rather than cancel, the certificate of formation of a domestic limited partnership, or revoke the registration of a foreign limited partnership, if the limited partnership performs certain actions.

(b)-(d) Makes conforming changes.

SECTION 56. Amends Sections 153.312(a) and (b), Business Organizations Code, as follows:

(a) Authorizes a limited partnership the certificate of formation or registration of which has been terminated or revoked, rather than canceled, as provided by Section 153.311 to be relieved of the termination or revocation, rather than cancellation, by filing a certain report, accompanied by certain filing fees.

(b) Requires SOS, if the limited partnership pays the fees required by Subsection (a) and all taxes, penalties, and interest due and accruing before termination or revocation, to perform certain actions.

SECTION 57. Amends Section 154.001, Business Organizations Code, by adding Subsection (d), as follows:

(d) Provides that Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a partnership interest in a partnership, including the rights, powers, and interests arising under the governing documents of the partnership or under this code. Provides that to the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. Provides that it is the express intent of this subsection to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.

SECTION 58. Amends Section 200.317(b), Business Organizations Code, as follows:

(b) Provides that an otherwise valid contract or transaction described by Subsection (a) (relating to contract or transaction between a real estate investment trust and certain other entities) is valid notwithstanding that the trust manager or officer having the relationship or interest described by Subsection (a), rather than a trust manager or officer of the trust, is present at or participates in the meeting of the trust managers or of a committee of the trust managers that authorizes the contract or transaction, or votes or signs, in the person's capacity as a trust manager or committee member, a unanimous written consent of trust managers or committee members to authorize the contract or transaction, if:

(1) the material facts as to the relationship or interest described by Subsection (a) and as to the contract or transaction are disclosed to or known by certain persons and those certain persons in good faith authorize the contract or transaction by the approval, rather than affirmative vote, of the majority of certain disinterested persons.

SECTION 59. Amends Section 402.005(a), Business Organizations Code, to provide that if the actions specified by Section 402.003 (Early Adoption of Code by Existing Domestic Entity), rather than 402.003(a), or 402.004 to elect to adopt this code, have not been taken on or after January 1, 2010, by a domestic entity formed before January 1, 2006, or a foreign filing entity registered with SOS to transact business in the state before January 1, 2006, then certain conditions apply or actions are required to be taken.

SECTION 60. Amends Section 9.406, Business & Commerce Code, by adding Subsection (j), to provide that this section does not apply to an interest in a partnership or limited liability company.

SECTION 61. Amends Section 9.408, Business & Commerce Code, by adding Subsection (e), to provide that this section does not apply to an interest in a partnership or limited liability company.

SECTION 62. Amends Section 71.002, Business & Commerce Code, by amending Subdivisions (2), (4), (7), (8), and (9) and adding Subdivisions (6-a), to redefine "assumed name," "company," "office," "partnership," and "person," and define "foreign filing entity."

SECTION 63. Amends Section 71.003(b), Business & Commerce Code, to provide that this chapter does not require a corporation, limited partnership, limited liability partnership, rather than a registered limited liability partnership, limited liability company, or foreign filing entity or certain persons to file a certain certificate.

SECTION 64. Amends Section 71.051, Business & Commerce Code, as follows:

Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED PERSONS. Requires a person to file a certificate under this subchapter if the person regularly conducts business or renders a professional service in this state under an assumed name other than as a corporation, limited partnership, limited liability partnership limited liability company, or foreign filing entity. Makes a nonsubstantive and conforming change.

SECTION 65. Amends Section 71.052, Business & Commerce Code, as follows:

Sec. 71.052. CONTENTS OF CERTIFICATE. Deletes existing text requiring that a certificate state if the registrant is a corporation. Requires that the certificate state a statement specifying that the business that is or will be conducted or the professional service that is or will be rendered in the county under the assumed name is being or will be conducted or rendered as certain entity including a limited liability partnership, rather than a registered limited liability partnership, or a foreign filing entity.

SECTION 66. Amends Section 71.101, Business & Commerce Code, as follows:

Sec. 71.101. New heading: CERTIFICATE FOR INCORPORATED BUSINESS OR PROFESSION, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, OR FOREIGN FILING ENTITY. Makes a conforming and nonsubstantive change.

SECTION 67. Amends Section 71.102, Business & Commerce Code, as follows:

Sec. 71.102. CONTENTS OF CERTIFICATE. Requires that the certificate state a statement specifying that the registrant is a for-profit corporation, rather than a business corporation, a limited liability partnership, rather than a registered limited liability partnership, and a foreign or domestic entity. Deletes existing text requiring that the certificate state the address of the registrant's registered office in this state and the name of its registered agent at that address, and if the principal office address is not the same as the registrant's registered office address in this state. Makes nonsubstantive changes.

SECTION 68. Amends Section 71.103, Business & Commerce Code, as follows:

Sec. 71.103. PLACE OF FILING. (a) Requires the corporation, limited partnership, limited liability partnership, rather than registered limited liability partnership, limited liability company, or foreign filing entity to file the certificate in certain locations.

(b) Requires an entity that maintains a registered office in this state to file the certificate in the office, rather than the offices, of the county clerk of the county in

which the entity's registered office is located, if the entity's principal office is not located in this state, or principal office is located, if the entity's principal office is located in this state. Makes conforming changes.

(c) Makes conforming changes.

SECTION 69. Amends Section 71.152(b), Business & Commerce Code, to delete existing text that includes, among the events that cause the information in a certificate to become materially misleading, for a registrant required by law to maintain a registered office or similar agent at that office, a change in the address of the office or in the identity of the agent.

SECTION 70. Amends Section 19(A), Texas Professional Association Act (Article 1528f, V.T.C.S.), to require that a certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid, together with the original and a copy of the articles of dissolution, be delivered to SOS.

SECTION 71. Amends Section 2.03(a), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to require that a certificate of limited partnership be canceled by paying the filing fee and filing a certificate of cancellation, together with a certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid, with SOS under certain circumstances.

SECTION 72. Amends Section 9.06, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to include a certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid among the requirements that once completed, authorize a foreign limited partnership to cancel its registration.

SECTION 73. Repealer: Section 2.006 (Permissible Purpose of For-Profit Corporation Related to Railroads), Business Organizations Code.

SECTION 74. Effective date: September 1, 2009.