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HOUSE . . . . . No. 4509

The Commonwealth of Massachusetts

By Mr. Walsh of Lynn, for the committee on State Administration and Regulatory Oversight, on House, No. 3033, a Bill making amendments to the Massachusetts Corporation Act -Part Two (House, No. 4509). February 22, 2010.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Steven M. Walsh	11th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act MAKING AMENDMENTS TO THE MASSACHUSETTS CORPORATION ACT -PART TWO.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1.40 of chapter 156D is hereby further amended by striking out the word "stock" in each place where it appears and inserting in place thereof the following word:- shares.

SECTION 2. Section 2.05 of chapter 156D is hereby amended by striking out the word "bylaws" in each place where it appears and inserting in place thereof the following word:- bylaws.

SECTION 3. Section 2.05 of chapter 156D is hereby amended by striking out the word "and" in line 19 and inserting in place thereof the following word:- or.

SECTION 4. Section 3.02 of chapter 156D is hereby amended by striking out the word "stock" in each place where it appears and inserting in place thereof the following word:- shares.

SECTION 5. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby amended by striking out its text in its entirety and inserting in place thereof the following words:- shall contain the word "corporation," "incorporated," "company" or "limited" or the abbreviation "corp," "inc," "co," or "ltd," or words or abbreviations of like import in another language; and

SECTION 6. Section 6.02 of chapter 156D is hereby amended by striking out the word “recision” in line 40, and inserting in place thereof the following word:- rescission.

SECTION 7. Section 7.08 of chapter 156D is hereby amended by striking out the word "stockholder" in line 17, and inserting in place thereof the following word:- shareholder.

SECTION 8. Section 7.08 of chapter 156D is hereby amended by striking out the word "stockholder" in line 23, and inserting in place thereof the following word:- shareholder.

SECTION 9. Section 7.27(b) of Chapter 156D is deleted in its entirety and replaced by the following:—

(b) If any provision of this chapter requires the affirmative vote of more than a majority of all the votes entitled to be cast on a matter by any voting group, the articles of organization may provide that action may be taken by the affirmative vote of a lesser proportion than the chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter by the voting group.

SECTION 10, Section 7.44(b)(3) of Chapter 156D is deleted in its entirety and replaced by the following:—

(3) the affirmative vote of a majority of all the votes entitled to be cast on the matter, not including the votes cast by holders of shares owned by or voted under the control of a shareholder or related person who has or had a beneficial financial interest in the act or omission complained of or other interest therein that would reasonably be expected to exert an influence on that shareholder's or related person's judgment if called upon to vote in the determination.

SECTION 11. Section 8.06 of chapter 156D is hereby amended by striking out the words “shall, unless otherwise provided in the vote, shall become” in lines 53-54, and inserting in place thereof the following words:- shall, unless otherwise provided in the vote, become.

SECTION 12. Section 8.06 of chapter 156D is hereby amended by striking out the word “effect” in line 111, and inserting in place thereof the following word:- affect.

SECTION 13. Sections 8.06(c)(1) and (2) are deleted in their entirety and replaced by the following:—

(c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of an annual meeting of the public corporation has been given on or prior to the effective date of this chapter, unless (i) the board of directors of the public corporation, or (ii) the holders of shares of each class of shares outstanding holding the right to cast two-thirds of all the votes entitled to be cast by the class, and the holders of two-thirds of the shares of each outstanding class of otherwise non-voting shares, each voting as a separate voting group, shall at a meeting duly called for the purpose of the vote adopt a vote providing that the corporation elects to be exempt from the provisions of subsection (b). Upon adoption of the vote, subsection (b) shall, unless otherwise provided in the vote, become immediately ineffective with respect to such public corporation and the provisions of section 8.05 shall become immediately effective with respect to the corporation as soon as subsection (b) of this section is no longer effective.

(2) In the event that any public corporation shall so elect by vote of the board of directors to be exempt pursuant to clause (1) the public corporation may at any time thereafter adopt a vote of its board of directors electing to be subject to subsection (b). In the event that any public corporation shall so elect by the shareholders to be exempt pursuant to clause (1) of this subsection the public corporation may at any time thereafter by vote of the holders of the shares of all classes of stock outstanding, voting as a single voting group, holding the right to cast two-thirds of all the votes entitled to be cast by all classes, elect to be subject to the provisions of subsection (b). Upon adoption of the vote, subsection (b), unless otherwise provided in the vote, shall immediately become effective.

SECTION 14. Section 8.06(d) of Chapter 156D is deleted in its entirety and replaced by the following:—

(d) Notwithstanding anything to the contrary in this chapter or in the articles of organization or bylaws of any public corporation, in the case of directors of a public corporation whose terms are staggered pursuant to subsection (b), shareholders may, by the vote of the holders of shares having the right to cast a majority of all the votes entitled to be cast by the holders of all classes of stock outstanding and entitled to vote in the election of directors, voting as a single voting group, effect the removal of any director or directors or the entire board of directors only for cause.

SECTION 15. Section 8.10 of chapter 156D is hereby amended by striking out the word “bylaws” in line 12, and inserting in place thereof the following word:- bylaws.

SECTION 16. Section 8.32 of chapter 156D is hereby amended by striking out the words “the obligation of a director of, the corporation” in line 3, and inserting in place thereof the following words:- the obligation of, a director of the corporation.

SECTION 17. Section 8.31(d) of Chapter 156D is deleted in its entirety and replaced by the following:—

(d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of all the votes entitled to be cast on the matter entitled to be counted under this subsection. The votes of shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and of shares owned by or voted under the control of an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under clause (2) of subsection (a).

SECTION 18. Section 8.45 of chapter 156D is hereby amended by striking out the words “clerk or an assistant clerk” in line 6, and inserting in place thereof the following words:- secretary or an assistant secretary.

SECTION 19. Section 8.54 of chapter 156D is hereby amended by striking out the words “sections 8.51 or 8.51” in lines 19-20, and inserting in place thereof the following words:- section 8.51.

SECTION 20. Section 8.58 of chapter 156D is hereby amended by striking out the words "articles of incorporation" in line 20, and inserting in place thereof the following words:- articles of organization.

SECTION 21. Section 8.58 of chapter 156D is hereby further amended by striking out the words "clause (3) of subsection (a) of section 11.07" in line 24, and inserting in place thereof the following words:- clause (4) of subsection (a) of section 11.07.

SECTION 22. Section 9.21 of chapter 156D is hereby amended by striking out the words "subsection (c) of section 9.21" in line 28, and inserting in place thereof the following words:- paragraph (3) of this section.

SECTION 23. Section 9.31 of chapter 156D is hereby amended by striking out the words "section 10.22" in line 27, and inserting in place thereof the following words:- section 10.21.

SECTION 24. Section 9.31 of chapter 156D is hereby further amended by striking out the words "plan of domestication" in line 30, and inserting in place thereof the following words:- plan of nonprofit conversion.

SECTION 25. Section 9.31 of chapter 156D is hereby further amended by striking out the words "section 9.31(c)" in line 35, and inserting in place thereof the following words:- section 9.31(3).

SECTION 26. Section 9.52 of chapter 156D is hereby amended by striking out the words "organizational documents" in lines 16-17, and inserting in place thereof the following words:- organic documents.

ECTION 27. Section 9.52 of chapter 156D is hereby further amended by striking out the words "plan of domestication" in line 24, and inserting in place thereof the following words:- plan of conversion.

SECTION 28. Section 9.52 of chapter 156D is hereby further amended by striking out the words "subsection (c) of this section" in line 29, and inserting in place thereof the following words:- paragraph (3) of this section.

SECTION 29. Section 9.53 of chapter 156D is hereby amended by striking out the words “any other desired provisions that section 2.02 subsection (b) of permits” in lines 34-35, and inserting in place thereof the following words:- any other desired provisions that subsection (b) of section 2.02 permits.

SECTION 30. Clause (5) of subsection (a) of section 9.55 of chapter 156D is hereby amended by striking out the words "organizational document" in each place it appears and inserting in place thereof the following words:- organic document.

SECTION 31. Section 11.01 of chapter 156D is hereby amended by striking out the words "merger under a plan of merger" in line 9, and inserting in place thereof the following word:- merge under a plan of merger.

SECTION 32. Section 11.04 of chapter 156D is hereby further amended by striking out the words "subsection (c) of section 11.04" in lines 36-37, and inserting in place thereof the following words:- paragraph (3) of this section.

SECTION 33. Section 11.04 of chapter 156D is hereby amended by striking out the words "article of organization" in lines 38-39, and inserting in place thereof the following words:- articles of organization.

SECTION 34. Section 11.04 of chapter 156D is hereby amended by striking out the word "stock" in line 65, and inserting in place thereof the following word:- shares.

SECTION 35. Section 11.06 of chapter 156D is hereby amended by striking out the words "organizational documents" in line 28, and inserting in place thereof the following words:- organic documents.

SECTION 36. Section 11.07 of chapter 156D is hereby amended by striking out the words "organizational documents" in line 18, and inserting in place thereof the following words:- organic documents.

SECTION 37. Subsection (e) of section 12.02 of chapter 156D is hereby amended by striking out the words "subsection (c) of section 12.02" in each place it appears and inserting in place thereof the following words:- subsection (b) of this section 12.02.

SECTION 38. Section 13.02 of chapter 156D is hereby amended by striking out the words "other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or consultant of either the merging or the surviving corporation" in lines 14-17, and inserting in place thereof the following words:- other than (i) in his capacity as a shareholder of the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the merging or the surviving corporation.

SECTION 39. Section 13.02 of chapter 156D is hereby amended by striking out the words "other than in his capacity as (i) a shareholder of the corporation whose shares are to be exchanged, (ii) a director, officer, employee or consultant of either the corporation whose shares are to be exchanged or the acquiring corporation" in lines 26-30, and inserting in place thereof the following words:- other than (i) in his capacity as a shareholder of the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the merging or the surviving corporation.

SECTION 40. Section 13.02 of chapter 156D is hereby amended by striking out the words "other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or consultant of either the corporation or the acquiring corporation" in lines 51-53, and inserting in place thereof the following words:- other than (i) in his capacity as a shareholder of the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the merging or the surviving corporation.

SECTION 41. Section 13.02 of chapter 156D is hereby amended by striking out the words "transfer of registration or any outstanding shares" in lines 79-80, and inserting in place thereof the following words:- transfer of registration of any outstanding shares.

SECTION 42. Section 13.21 of chapter 156D is hereby amended by striking out the word "chapter" in line 13, and inserting in place thereof the following word:- PART.

SECTION 43. Section 13.22 of chapter 156D is hereby amended by striking out the word "chapter" in line 38, and inserting in place thereof the following word:- PART.

SECTION 44. Section 13.25 of chapter 156D is hereby amended by striking out the word "deserved" in line 31, and inserting in place thereof the following word:- described.

SECTION 45. Section 13.31 of chapter 156D is hereby amended by striking out the word "chapter" in line 20, and inserting in place thereof the following word:- PART.

SECTION 46. Section 14.30 of chapter 156D is hereby amended by striking out the word “stock” in line 11, and inserting in place thereof the following word:- shares.

SECTION 47. Section 14.34 of chapter 156D is hereby amended by striking out the word “stock” in line 24, and inserting in place thereof the following word:- shares.

SECTION 48. Section 15.01 of chapter 156D is hereby amended by inserting after the word "with" in line 29, the following word:- the.

SECTION 49. Section 15.03 of chapter 156D is hereby amended by striking out the word "agents" in line 14, and inserting in place thereof the following word:- agent’s.

SECTION 50. Section 15.04 of chapter 156D is hereby amended by inserting after the word “information" in line 23, the following word:- in.

SECTION 51. Section 15.05 of chapter 156D is hereby amended by striking out the word "corporations" in line 12, and inserting in place thereof the following word:- corporation’s.

SECTION 52. Section 15.05 of chapter 156D is hereby further amended by striking out the word "stockholders" in line 13, and inserting in place thereof the following word:- shareholders.

SECTION 53. Section 15.30 of chapter 156D is hereby amended by inserting after the words "or chapter 63" in line 6, the following words:- of the General Laws.

SECTION 54. Section 15.31 of chapter 156D is hereby amended by striking out the word "corporations" in line 13, and inserting in place thereof the following word:- corporation’s.

SECTION 55. Section 15.31 of chapter 156D is hereby amended by striking out the word "corporations" in line 19, and inserting in place thereof the following word:- corporation’s.

SECTION 56, Section 15.32 of chapter 156D is hereby amended by striking out the word "corporations" in line 10, and inserting in place thereof the following word:- corporation’s.

SECTION 57. Section 16.21 of chapter 156D is hereby amended by striking out the title “BY-LAW AMENDMENTS” in line 1, and inserting in place thereof the following title:- BYLAW AMENDMENTS.