

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1340

Page 1, line 2, replace "public" with "publicly traded"

Page 1, line 7, replace "Public" with "Publicly Traded"

Page 1, line 19, replace "public" with "publicly traded"

Page 2, line 28, replace "public" with "publicly traded"

Page 3, line 1, replace "Public" with "Publicly traded"

Page 3, line 3, replace "is incorporated" with "becomes governed by chapter 10-19.1"

Page 3, line 5, replace "Public" with "Publicly traded"

Page 3, after line 6, insert:

- "8. "Qualified shareholder" means a person or group of persons acting together that satisfies the following requirements:
- a. The person or group owns beneficially in the aggregate more than five percent of the outstanding shares of the publicly traded corporation that are entitled to vote generally for the election of directors; and
  - b. The person or each member of the group has beneficially owned the shares that are used for purposes of determining the ownership threshold in subdivision a continuously for at least two years."

Page 3, line 7, replace "8." with "9."

Page 3, line 8, after the first "the" insert "publicly traded"

Page 3, line 16, after "applies" insert "only", replace "every public" with "a publicly traded", and after "corporation" insert "meeting the definition of a publicly traded corporation" in section 10-35-02 during such time as its articles state that it is governed by this chapter"

Page 3, line 19, replace "public" with "publicly traded"

Page 3, line 20, replace "public" with "publicly traded"

Page 3, line 21, replace "public" with "publicly traded"

Page 3, line 25, replace "public" with "publicly traded"

Page 3, line 28, replace "public" with "publicly traded"

Page 4, line 1, replace "public" with "publicly traded"

Page 4, line 6, replace "public" with "publicly traded"

Page 4, line 8, replace "public" with "publicly traded"

Page 4, line 12, replace "public" with "publicly traded"

Page 4, line 14, replace "public" with "publicly traded"

Page 4, line 16, replace "public" with "publicly traded"

Page 4, line 22, replace "public" with "publicly traded"

Page 4, line 27, replace "public" with "publicly traded"

Page 5, line 1, replace "public" with "publicly traded"

Page 5, line 10, replace "The date" with "Any deadline"

Page 5, line 17, remove ", the later of:"

Page 5, remove lines 18 through 22

Page 5, line 23, replace "(2) Ninety" with "ninety"

Page 5, line 27, replace "public" with "publicly traded"

Page 6, line 4, replace "public" with "publicly traded"

Page 6, line 11, replace "public" with "publicly traded"

Page 6, line 13, replace "shareholder" with "person" and remove the fourth "of"

Page 6, line 14, remove "shareholders"

Page 6, line 15, replace "shareholder" with "person" and remove "of shareholders"

Page 6, line 16, replace "3" with "8 of section 10-35-02 and reasonable evidence of the required ownership of shares by the person or group"

Page 6, line 17, replace "shareholder" with "person" and remove "of shareholders"

Page 6, line 30, replace "\"Qualified shareholder\" means a person or group of persons acting together that" with "If the qualified shareholder does not own at least five percent of the outstanding shares of the publicly traded corporation entitled to vote generally for the election of directors on the date of the meeting, the qualified shareholder is not entitled to nominate the candidates named in the notice provided under subsection 1."

Page 6, remove line 31

Page 7, remove lines 1 through 11

Page 7, line 13, replace "public" with "publicly traded"

Page 7, line 18, replace "public" with "publicly traded"

Page 8, line 21, replace "public" with "publicly traded"

Page 8, line 25, after "shareholders" insert "of a publicly traded corporation"

Page 9, line 2, replace "public" with "publicly traded"

Page 9, line 13, replace "**Director supermajority**" with "**Supermajority**"

Page 9, line 14, replace "public" with "publicly traded", remove the first "for", remove "greater", and replace the second "for" with ":

1. For"

Page 9, line 15, after the second "board" insert "that is greater"

Page 9, line 16, after "vacancies" insert "; or

2. For shareholders that is greater than a majority of the voting power of the shares entitled to vote on the item of business or, in the case of a class or series entitled to vote as a separate group, a majority of the voting power of the outstanding shares of the class or series"

Page 9, line 19, replace "public" with "publicly traded"

Page 9, line 23, replace "public" with "publicly traded"

Page 9, line 27, replace "public" with "publicly traded"

Page 10, line 1, replace "public" with "publicly traded"

Page 10, line 5, replace "public" with "publicly traded"

Page 10, line 12, replace "public" with "publicly traded"

Page 10, line 17, replace "public" with "publicly traded"

Page 10, line 22, replace "public" with "publicly traded"

Page 11, line 5, replace "The date" with "Any deadline"

Page 11, line 12, remove ", the later of:"

Page 11, remove lines 13 through 17

Page 11, line 18, replace "(2) Ninety" with "ninety"

Page 11, line 22, replace "public" with "publicly traded"

Page 11, line 28, replace "public" with "publicly traded"

Page 12, line 1, replace "public" with "publicly traded"

Page 12, line 7, after "shareholders" insert "and reasonable evidence of that ownership"

Page 12, line 9, replace "public" with "publicly traded"

Page 12, line 14, replace "**Quorum at**" with "**Requirements for convening**" and after the boldfaced underscored period insert:

- "1. If the articles or bylaws of a publicly traded corporation have a provision for advance notice authorized by section 10-35-07 or 10-35-14, a regular meeting of shareholders of the corporation may not be convened unless the corporation has announced the date of the meeting in the body of a public filing, and not solely in an exhibit or attachment to a filing, regardless of whether the exhibit or attachment has been incorporated by reference into the body of the filing, with the commission under the Exchange Act at least twenty-five days before the deadline in the articles or bylaws for a shareholder to give the advance notice."

Page 12, line 15, replace "1." with "2." and replace "public" with "publicly traded"

Page 12, line 17, remove "for"

Page 12, line 18, remove "purposes of section 10-19.1-76"

Page 12, line 19, after "meeting" insert "for purposes of determining the existence of a quorum under section 10-19.1-76"

Page 12, line 20, remove "2."

Page 12, line 22, replace "section" with "subsection"

Page 12, line 23, replace "**Shareholder supermajority provisions prohibited.** Neither the articles nor" with:

**"Approval of certain issuances of shares.**

1. An issuance by a publicly traded corporation of shares, or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders if the voting power of the shares that are issued or issuable as a result of the transaction or series of integrated transactions will exceed twenty percent of the voting power of the shares of the corporation which were outstanding immediately before the transaction.
2. Subsection 1 does not apply to:
  - a. A public offering solely for cash, cash equivalents or a combination of cash and cash equivalents; or
  - b. A bona fide private financing, solely for cash, cash equivalents or a combination of cash and cash equivalents, of:
    - (1) Shares at a price equal to at least the greater of the book or market value of the corporation's common shares; or
    - (2) Other securities or rights if the conversion or exercise price is equal to at least the greater of the book or market value of the corporation's common shares.

3. For purposes of this section:

- a. The voting power of shares issued and issuable as a result of a transaction or series of integrated transactions shall be the greater of:
  - (1) The voting power of the shares to be issued; or
  - (2) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.
- b. A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.
- c. "Bona fide private financing" means a sale in which:
  - (1) A registered broker-dealer purchases the shares, other securities, or rights from the publicly traded corporation with a view to their private sale to one or more purchasers; or
  - (2) The corporation sells the shares, other securities, or rights to multiple purchasers, and no one purchaser or group of related purchasers acquires, or has the right to acquire, more than five percent of the voting power of shares issued or issuable in the transaction or series of integrated transactions."

Page 12, remove lines 24 through 27

Page 12, line 29, replace "public" with "publicly traded"

Page 13, line 1, replace "public" with "publicly traded"

Page 13, line 4, replace "meting" with "meeting"

Page 13, line 24, replace "public" with "publicly traded"

Page 13, line 28, replace "public" with "publicly traded"

Page 13, line 30, replace "public" with "publicly traded"

Page 14, line 2, replace "public" with "publicly traded"

Page 14, line 13, replace "public" with "publicly traded"

Page 14, line 21, replace "public" with "publicly traded"

Page 15, line 4, replace "public" with "publicly traded"

Page 15, line 10, replace "public" with "publicly traded"

Page 15, line 13, replace "twenty-five" with "twenty"

Page 15, line 24, replace "**prohibition**" with "**restrictions or prohibitions**" and remove "**adoption of**"

Page 15, line 25, replace "The" with "A provision of the" and replace "public" with "publicly traded"

Page 15, line 26, after the underscored period insert "Such a provision may provide for the effect it has on a poison pill in force at the time of the provision's adoption."

Page 15, line 28, replace "public" with "publicly traded"

Page 16, line 4, replace "public" with "publicly traded"

Page 16, line 14, replace "corporations" with "corporation"

Page 16, line 23, replace "corporations" with "corporation"

Page 17, line 24, replace "that" with ":

(1) If the shares"

Page 17, line 26, after "pill" insert ";

(2) Which serves to protect dividend, interest, sinking fund, conversion, exchange, or other rights of the shares, or to protect against the issuance of additional securities that would be on a parity with or superior to the shares"

Page 17, line 30, replace "public" with "publicly traded"

Page 18, line 2, replace "public" with "publicly traded"

Page 18, line 4, replace "10-25-29" with "10-35-29"

Page 18, line 5, replace "public" with "publicly traded"

Page 18, line 6, replace "public" with "publicly traded"

Page 18, line 7, replace "public" with "publicly traded"

Page 18, line 8, replace "public" with "publicly traded"

Page 18, line 9, replace "public" with "publicly traded"

Page 18, line 10, replace "public" with "publicly traded"

Page 18, line 13, replace "public" with "publicly traded"

Page 18, line 18, replace "public" with "publicly traded"

Page 18, line 20, replace "public" with "publicly traded"

Page 18, line 25, replace "public" with "publicly traded"

Page 18, line 26, replace "public" with "publicly traded"

Page 18, line 27, replace the first "public" with "publicly traded" and replace the second "public" with "publicly traded"

Page 18, line 28, replace "public" with "publicly traded"

Page 18, line 30, replace "public" with "publicly traded"

Page 19, line 1, replace "public" with "publicly traded"

Page 19, line 3, replace "public" with "publicly traded"

Page 19, line 5, replace "public" with "publicly traded"

Page 19, line 6, replace "public" with "publicly traded"

Page 19, line 12, replace "public" with "publicly traded"

Page 19, line 16, replace "public" with "publicly traded"

Page 19, line 18, replace "public" with "publicly traded"

Page 19, line 19, replace "**public**" with "**publicly traded**"

Page 19, line 20, replace "public" with "publicly traded"

Page 19, line 21, replace "public" with "publicly traded"

Page 19, line 23, replace "public" with "publicly traded"

Page 19, line 26, replace "public" with "publicly traded"

Page 20, line 4, replace "public" with "publicly traded"

Page 20, line 7, replace "public" with "publicly traded"

Page 20, line 10, replace "public" with "publicly traded"

Page 20, line 18, replace "**public**" with "**publicly traded**"

Page 20, line 19, replace the first "public" with "publicly traded" and replace the second "public" with "publicly traded"

Page 20, line 21, replace "public" with "publicly traded"

Page 20, line 25, replace "public" with "publicly traded"

Page 20, line 29, replace "public" with "publicly traded"

Page 20, line 30, replace "public" with "publicly traded"

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Page 21, line 4, replace "public" with "publicly traded"

Page 21, line 7, replace the first "public" with "publicly traded" and replace the second "public" with "publicly traded"

Page 21, line 12, replace "public" with "publicly traded"

Page 21, line 13, replace "public" with "publicly traded"

Page 21, line 16, replace the first "public" with "publicly traded" and replace the second "public" with "publicly traded"

Page 21, line 19, replace "public" with "publicly traded"

Page 21, line 21, replace "free" with "fee"

Page 22, line 1, replace "public" with "publicly traded"

Page 22, line 3, replace "public" with "publicly traded"

Page 22, line 4, replace "public" with "publicly traded"

Page 22, line 6, replace "must" with "may"

Page 22, line 11, replace "public" with "publicly traded"

Page 22, line 12, replace "public" with "publicly traded"

Page 22, line 17, replace the first "and" with "any"

Page 22, line 19, replace "public" with "publicly traded"

Page 23, line 1, replace "public" with "publicly traded"

Page 23, line 9, replace "public" with "publicly traded"

Page 23, line 10, replace "public" with "publicly traded"

Page 23, line 13, replace "public" with "publicly traded"

Page 23, line 18, replace "public" with "publicly traded"

Page 23, line 20, replace "and" with "any"

Page 23, line 21, replace "public" with "publicly traded"

Page 23, line 23, replace "public" with "publicly traded"

Page 23, line 31, replace "public" with "publicly traded"

Renumber accordingly