

**SENATE . . . . . No. 222**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Thomas M. McGee*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act making amendments to the Massachusetts Business Corporation Act.

PETITION OF:

NAME:

*Thomas M. McGee*

DISTRICT/ADDRESS:

*Third Essex*

**SENATE . . . . . No. 222**

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By Mr. McGee, a petition (accompanied by bill, Senate, No. 222) of Thomas M. McGee for legislation to make amendments to the Massachusetts Business Corporation Act. Economic Development and Emerging Technologies.

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act making amendments to the Massachusetts Business Corporation Act.

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

1           SECTION 1. Section 1.24(d)(1) of chapter 156D is hereby amended by deleting the  
2 words “of the articles of correction” and inserting in their place the following words: on which  
3 the articles of correction were filed.

4           SECTION 2. Section 1.26 of chapter 156D is hereby amended by deleting the words  
5 “after the return of the document to” in the second sentence and inserting in their place the  
6 following words: after the secretary of state has given the notice required by section 1.25(c) in.

7           SECTION 3. Section 1.40(a) of chapter 156D is hereby amended as follows:

8           By inserting the words “and series” after the words “shares of all classes” in the  
9 definition of “Authorized shares”

10           By inserting the words “any or all of” in the first sentence of the definition of  
11 “Distribution” after the words “benefit of” and before the words “its shareholders”

12 By deleting the words “filed organizational document” in the definition of “Nonfiling  
13 entity” and inserting in their place the following words: public organic document

14 By inserting the words “or a subsequent statement of change under section 5.02” in the  
15 definition of “Principal office” after the words “annual report” and before the word “where”

16 By deleting the phrase “appointed under chapter 156B unless the corporation has also  
17 appointed a ‘secretary’ or the context otherwise requires” in the definition of “Secretary” and  
18 inserting in its place the following phrase: unless the corporation has appointed another person as  
19 “clerk” to perform the functions of “secretary”

20 By deleting the definition of “Public corporation” in its entirety and replacing it with the  
21 following:

22 “Public corporation,” any corporation to which this chapter applies, and which has shares  
23 with voting power registered under the Securities Exchange Act of 1934, as amended; provided,  
24 that if a corporation is subject to paragraph (b) of section 8.06 at the time it ceases to have any  
25 shares with voting power so registered, such corporation shall nonetheless be deemed to be a  
26 public corporation for a period of twelve months following the time it ceased to have such shares  
27 registered.

28 And by adding at the end of Section 1.40(a) the following paragraph:

29 “Voting power” means the current power to vote in the election of directors.

30 SECTION 4. Section 1.41(e) of chapter 156D is hereby amended by deleting the  
31 following words: “shown in its most recent annual report.”

32 SECTION 5. Section 2.02 (b)(1)(iii) of chapter 156D is hereby amended by deleting the  
33 words “or any class thereof.”

34 SECTION 6. Section 2.02 (b)(1)(iv) of chapter 156D is hereby amended by inserting the  
35 words “or series” after the words “or classes” and before the words “of shares.”

36 SECTION 7. Section 2.02(b)(4) of chapter 156D is deleted in its entirety and replaced by  
37 the following:

38 (4) A provision eliminating or limiting the personal liability of a director to the  
39 corporation or its shareholders for monetary damages for breach of fiduciary duty as a director  
40 notwithstanding any provision of law imposing such liability; but the provision shall not  
41 eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to  
42 the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve  
43 intentional misconduct or a knowing violation of law, (iii) for improper distributions under  
44 section 6.40, or (iv) for any transaction from which the director derived an improper personal  
45 benefit.

46 SECTION 8. Section 2.05 of chapter 156D is hereby amended by deleting the word “by-  
47 laws” in each place where it appears and inserting in its place the following word: bylaws.

48 SECTION 9. Section 2.05(a)(2) of chapter 156D is hereby amended as follows:

49 By deleting the words “the initial directors named in the articles of organization” and  
50 inserting in their place the following words: the directors, president, treasurer and secretary  
51 named in the articles of organization shall be the initial directors, president, treasurer and  
52 secretary and the initial directors

53 And by deleting the words “shall be elected” and inserting in their place the following  
54 words: may be elected to replace the initial president, treasurer and secretary.

55 SECTION 10. Section 2.05(c) of chapter 156D is hereby amended by deleting the word  
56 “and” and inserting in its place the following word: or.

57 SECTION 11. Section 3.02(a)(6) of chapter 156D is hereby amended by deleting the  
58 words “any other entity” and inserting in their place the following words: any other domestic  
59 business corporation, any domestic nonprofit corporation, any foreign business or nonprofit  
60 corporation or any other entity.

61 SECTION 12. Section 3.02(a)(12) of chapter 156D is hereby amended by deleting the  
62 words “any other corporation or entity” and inserting in their place the following words: any  
63 other domestic business corporation, domestic nonprofit corporation, foreign business or  
64 nonprofit corporation or any other entity.

65 SECTION 13. Section 3.02(b) of chapter 156D is hereby amended by deleting the word  
66 “stock” in each place where it appears and inserting in its place the following word: shares.

67 SECTION 14. Section 4.01(a)(1) of chapter 156D is deleted in its entirety and replaced  
68 by the following:

69 (1) shall contain the word “corporation,” “incorporated,” “company,” or “limited” or the  
70 abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another  
71 language; and

72 SECTION 15. Section 5.01 of chapter 156D is deleted in its entirety and replaced by the  
73 following:

74 Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

75 Each corporation shall continuously maintain in the commonwealth:

76 (1) a registered office that may, but need not, be the same as any of its places of  
77 business; and

78 (2) a registered agent, who may be any of the following individuals or entities whose  
79 business office is also the registered office of the corporation:

80 (i) an individual, including the secretary or another officer of the corporation;

81 (ii) a domestic business corporation, a domestic nonprofit corporation or a domestic  
82 other entity;

83 (iii) a foreign business corporation or a foreign nonprofit corporation authorized in either  
84 case to transact business in this commonwealth; or

85 (iv) a foreign other entity authorized to transact business in this commonwealth.

86 SECTION 16. The second sentence of Section 6.01(a) of chapter 156D is deleted in its  
87 entirety and is replaced by the following two sentences:

88 The articles of organization also shall, before the issuance of any shares of a class or  
89 series, prescribe the number of authorized shares of the class or series and its distinguishing  
90 designation, preferences, limitations and relative rights. All shares of a class or series must have  
91 a distinguishing designation and preferences, limitations and relative rights that are identical with  
92 those of other shares of the same class or series.

93 SECTION 17. Section 6.02(d) of chapter 156D is hereby amended by deleting the word  
94 “recision” and inserting in its place the following word: rescission.

95 SECTION 18. Section 6.23(b) of chapter 156D is deleted in its entirety and replaced by  
96 the following:

97 (b) Shares of 1 class or series shall not be issued as a share dividend in respect of shares  
98 of another class or series unless (1) the articles of organization so authorize, (2) the holders of  
99 shares entitled to cast a majority of all the votes entitled to be cast by the class or series to be  
100 issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.  
101 In addition, shares of a class or series having preference over another class or series with respect  
102 to distributions, including dividends and distributions upon the dissolution of the corporation,  
103 shall not be issued as a share dividend in respect of shares of such other class or series if there  
104 are at the time any outstanding shares of any third class or series as to which the shares then to be  
105 issued have a right with respect to distributions which is prior, superior or substantially equal  
106 unless (1) the articles of organization so authorize, or (2) the holders of shares entitled to cast a  
107 majority of all the votes entitled to be cast by the outstanding shares of such third class or series  
108 approve the issue.

109 SECTION 19. Section 6.30(a) of chapter 156D is deleted in its entirety and replaced by  
110 the following:

111 (a) The shareholders of a corporation shall not have a preemptive right to acquire the  
112 corporation's unissued shares except to the extent the articles of organization so provide.

113 SECTION 20. Section 6.40(f) of chapter 156D is hereby amended by deleting the words  
114 “subordinated by agreement” and inserting in their place the following words: the indebtedness  
115 is expressly made subordinate.

116 SECTION 21. Sections 6.41(f)(2) and (3) of chapter 156D are deleted in their entirety  
117 and replaced by the following:

118 (2) in the case of a distribution in liquidation by a corporation in dissolution under Part  
119 14, the later of (i) the date on which the effect of the challenged distribution would have been  
120 measured under subsection (e) or (g) of section 6.40 if it had not been a distribution in  
121 liquidation and (ii) 6 months after the end of the 3-year period referred to in subsection (d); or

122 (3) in the case of a distribution in liquidation by a corporation not in dissolution under  
123 Part 14, as described in the second clause of the last sentence of subsection (h) of section 6.40,  
124 three years after the date on which the effect of the challenged distribution would have been  
125 measured under subsection (e) or (g) of section 6.40 if it had not been a distribution in  
126 liquidation.

127 SECTION 22. Section 7.04 of chapter 156D is hereby amended as follows:

128 Section 7.04(c) is amended by deleting the words “consent of the required number of  
129 shareholders” and inserting in their place the following words: consent of shareholders having  
130 the required number of votes.

131 Section 7.04(d) is deleted in its entirety and replaced by the following two subsections:

132 (d) If (1) this chapter requires that notice of a proposed action be given to nonvoting  
133 shareholders and the action is to be taken by written consent of the voting shareholders, or (2)



134 action is taken by less than unanimous written consent of the voting shareholders, the  
135 corporation shall give its nonvoting shareholders or its non-consenting voting shareholders, as  
136 the case may be, written notice of the action not more than 7 days after written consents  
137 sufficient to take the action have been delivered to the corporation. The notice must reasonably  
138 describe the action taken and contain or be accompanied by the same material that, under any  
139 provision of this chapter, would have been required to be sent to nonvoting shareholders or to  
140 voting shareholders, as the case may be, in a notice of a meeting at which the proposed action  
141 would have been submitted to the shareholders for action.

142 (e) The notice requirements in subsection (d) shall not delay the effectiveness of actions  
143 taken by written consent, and a failure to comply with such notice requirements shall not  
144 invalidate actions taken by written consent, provided that this subsection shall not be deemed to  
145 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely  
146 affected by a failure to give such notice within the required time period.

147 SECTION 23. Section 7.07(c) of chapter 156D is hereby amended by deleting the words  
148 “the date fixed for the original meeting” and inserting in their place the following words: the  
149 record date fixed for the original meeting.

150 SECTION 24. Section 7.08(2)(i) of chapter 156D is hereby amended by deleting the  
151 word “stockholder” and inserting in its place the following word: shareholder.

152 SECTION 25. Section 7.08(2)(iii) of chapter 156D is hereby amended by deleting the  
153 word “stockholder” and inserting in its place the following word: shareholder.

154 SECTION 26. Section 7.27(b) of chapter 156D is deleted in its entirety and replaced by  
155 the following:

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

161 SECTION 27. Section 7.44(a) of chapter 156D is deleted in its entirety and replaced by  
162 the following:

163 (a) A derivative proceeding shall be dismissed by the court on motion by the corporation  
164 if the court finds that either: (1) 1 of the groups specified in subsection (b)(1), (b)(2) or (f) has  
165 determined in good faith after conducting a reasonable inquiry upon which its conclusions are  
166 based that the maintenance of the derivative proceeding is not in the best interests of the  
167 corporation; or (2) shareholders specified in subsection (b)(3) have determined that the  
168 maintenance of the derivative proceeding is not in the best interests of the corporation.

169 SECTION 28. Section 7.44(b)(3) of chapter 156D is deleted in its entirety and replaced  
170 by the following:

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

177 the matter and entitled to be counted under this clause (3) constitute a quorum for the purpose of  
178 this clause.

179 SECTION 29. Section 7.44(e) of chapter 156D is deleted in its entirety and replaced by  
180 the following:

181 (e) If a majority of the board of directors does not consist of independent directors at the  
182 time the determination by independent directors is made, the corporation shall have the burden of  
183 proving that the requirements of subsection (a) have been met and that the determination that  
184 maintenance of the derivative proceeding is not in the best interests of the corporation was  
185 reasonable and principled. If a majority of the board of directors consists of independent  
186 directors at the time the determination by independent directors is made or if the determination is  
187 made by shareholders pursuant to clause (3) of subsection (b) or by a panel appointed pursuant to  
188 subsection (f), the plaintiff shall have the burden of proving that the requirements of subsection  
189 (a) have not been met.

190 SECTION 30. Section 8.06(b) of chapter 156D is hereby amended by deleting the word  
191 “stock” and inserting in its place the following word: shares.

192 SECTION 31. Section 8.06(c)(1) of chapter 156D is hereby amended as follows:

193 By deleting the portion of the first sentence that begins with the word “unless”

194 and inserting in its place the following phrase: unless (i) the board of directors of the  
195 public corporation shall have elected to be exempt from the provisions of subsection (b), or (ii)  
196 holders of shares of each class or series of the corporation that has voting power, voting as  
197 separate voting groups if required by the articles of organization, at a meeting duly called for the

198 purpose, shall have so elected by vote of two-thirds of all the votes entitled to be cast by the  
199 voting group.

200 And by inserting the following additional sentence after the first sentence: A vote by  
201 which the corporation elected to be exempt from the provisions of subsection (b) of section 50A  
202 of chapter 156B shall constitute such a vote.

203 SECTION 32. Section 8.06(c)(2) of chapter 156D is hereby amended by deleting the  
204 second sentence and inserting in its place the following sentence:

205 In the event that any public corporation shall have so elected by a vote of shareholders  
206 pursuant to clause (1) of this subsection, the public corporation may at any time thereafter, by a  
207 vote or votes cast by holders of two-thirds of all shares having voting power that would satisfy  
208 the requirements of clause (1) if it were applicable, elect to be subject to the provisions of  
209 subsection (b).

210 SECTION 33. Section 8.06(d) of chapter 156D is hereby amended by deleting the words  
211 “a majority of the shares outstanding and entitled to vote in the election of directors” and  
212 inserting in their place the following words: holders of shares with voting power casting a  
213 majority of all the votes entitled to be cast by such holders, voting as a single group.

214 SECTION 34. Section 8.10(b) of chapter 156D is hereby amended by deleting the word  
215 “by-laws” and inserting in its place the following word: bylaws.

216 SECTION 35. Section 8.21 of chapter 156D is deleted in its entirety and replaced by the  
217 following:

218 Section 8.21. ACTION WITHOUT MEETING

219 (a) Unless the articles of organization or bylaws provide that action required or permitted  
220 by this chapter to be taken by the directors may be taken only at a meeting, the action may be  
221 taken without a meeting if each director signs a consent describing the action to be taken and it is  
222 delivered to the corporation or as the corporation directs for inclusion in the corporate records.

223 (b) Action taken under this section is effective when one or more consents signed by all  
224 the directors are delivered as provided in subsection (a), unless the consent specifies a different  
225 effective date.

226 (c) A consent complying with this section has the effect of a meeting vote and may be  
227 described as such in any document.

228 SECTION 36. Section 8.25(e) of chapter 156D is deleted in its entirety and replaced by  
229 the following:

230 (e) A committee may not, however:

231 (1) authorize distributions, including any purchase, redemption or other acquisition of  
232 shares, unless made according to a formula or method prescribed by the board of directors;

233 (2) adopt or submit to shareholders action that this chapter requires be approved by  
234 shareholders;

235 (3) change the number of the board of directors, remove directors from office or fill  
236 vacancies on the board of directors;

237 (4) amend articles of organization pursuant to section 10.02; or

238 (5) adopt, amend or repeal bylaws.

239 SECTION 37. Section 8.31(d) of chapter 156D is deleted in its entirety and replaced by  
240 the following:

241 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is  
242 authorized, approved, or ratified if at a meeting at which a quorum exists it receives the  
243 affirmative vote of a majority of all the votes entitled to be cast on the matter and counted under  
244 this subsection. The votes of shares owned by or voted under the control of a director who has a  
245 direct or indirect interest in the transaction, and of shares owned by or voted under the control of  
246 an entity described in clause (1) of subsection (b), may not be counted in a vote of shareholders  
247 to determine whether to authorize, approve, or ratify a conflict of interest transaction under  
248 clause (2) of subsection (a). The vote of those shares, however, is counted in determining  
249 whether the transaction is approved under other sections of this chapter. Shares entitled to cast a  
250 majority of all the votes entitled to be counted in a vote under this subsection constitute a  
251 quorum for the purpose of this section.

252 SECTION 38. Section 8.32(a) of chapter 156D is hereby amended by deleting the phrase  
253 “the obligation of a director of, the corporation” and inserting in its place the following phrase:  
254 the obligation of, a director of the corporation.

255 SECTION 39. The first sentence of Section 8.45 of chapter 156D is hereby amended by  
256 deleting the words “the clerk or an assistant clerk” and inserting in their place the following  
257 words: the secretary or an assistant secretary.

258 SECTION 40. Section 8.53(c)(1)(i) of chapter 156D is hereby amended by deleting the  
259 words “by the vote” and inserting in their place the following words: by such a vote.

260 SECTION 41. Section 8.54(a)(3)(ii) of chapter 156D is hereby amended by deleting the  
261 phrase “sections 8.51 or 8.51” and inserting in its place the following phrase: section 8.51.

262 SECTION 42. Section 8.58(b) of chapter 156D is hereby amended as follows:

263 By deleting the words "articles of incorporation" and inserting in their place the  
264 following words: articles of organization

265 And by deleting the number 3 that appears in parentheses immediately after the word  
266 "clause” and inserting in its place the number 4.

267 SECTION 43. Section 9.21(5) of chapter 156D is deleted in its entirety and replaced by  
268 the following:

269 (5) Unless (1) a greater percentage vote is required by the articles of organization,  
270 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the  
271 board of directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for  
272 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan  
273 of domestication requires (i) the affirmative vote of two-thirds of all the votes entitled generally  
274 to be cast on the plan by the articles of organization and, in addition, (ii) the affirmative vote of  
275 two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on  
276 the plan by this chapter, by the articles, by the bylaws, or by action of the board of directors  
277 pursuant to paragraph (3) of this section.

278 SECTION 44. Section 9.21(6)(i) is hereby amended by deleting the word “are” and  
279 inserting in its place the following word: is.

280 SECTION 45. Section 9.31(5) of chapter 156D is deleted in its entirety and replaced by  
281 the following:

282 (5) Unless (1) a greater percentage vote is required by the articles of organization,  
283 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the  
284 board of directors, acting pursuant to paragraph (3) of this section, or (2) the articles provide for  
285 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan  
286 of nonprofit conversion requires (i) the affirmative vote of two-thirds of all the votes entitled  
287 generally to be cast on the plan by the articles of organization, and, in addition, (ii) the  
288 affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to  
289 vote separately on the plan by this chapter, by the articles, by the bylaws, or by action of the  
290 board of directors pursuant to paragraph (3) of this section.

291 SECTION 46. Section 9.52(4) of chapter 156D is hereby amended by deleting the words  
292 "organizational documents" and inserting in their place the following words: organic documents.

293 SECTION 47. Section 9.52(5) of Chapter 156D is deleted in its entirety and replaced by  
294 the following:

295 (5) Unless (i) a greater percentage vote is required by the articles of organization,  
296 pursuant to section 7.27(a), by the bylaws, pursuant to section 10.21, or by the board of directors,  
297 acting pursuant to paragraph (3) of this section, or (ii) the articles provide for a lesser percentage  
298 vote, in accordance with subsection (b) of section 7.27, approval of the plan of entity conversion  
299 requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be cast on the  
300 plan by the articles of organization and, in addition, (ii) the affirmative vote of two-thirds of all  
301 the votes entitled to be cast by any voting group entitled to vote separately on the plan by this



302 chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to  
303 paragraph (3) of this section.

304 SECTION 48. Section 9.52(6) of chapter 156D is amended by deleting clause (i) thereof  
305 in its entirety and replacing it with the following:

306 (i) would have a right to vote as a separate voting group on a provision in the plan that, if  
307 contained in a proposed amendment to the articles of organization, would require action by  
308 separate voting groups under section 10.04; provided, however, that receipt of interests in  
309 another entity in exchange for shares pursuant to a plan of conversion shall not entitle holders of  
310 the exchanged class or series to vote as a separate voting group based solely on the ground that  
311 they were receiving interests in a different issuer; or

312 SECTION 49. Section 9.53(b)(3) of chapter 156D is hereby amended by deleting the  
313 phrase “any other desired provisions that section 2.02 subsection (b) of permits” and inserting in  
314 its place the following phrase: any other desired provisions that section 2.02(b) permits.

315 SECTION 50. Section 9.55(a)(5) of chapter 156D is hereby amended by deleting the  
316 words "organizational document" in each place they appear and inserting in their place the  
317 following words: organic document.

318 SECTION 51. Section 10.03(e) of chapter 156D is deleted in its entirety and replaced by  
319 the following:

320 (e) Unless (1) a greater percentage vote is required by the articles of organization,  
321 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the  
322 board of directors, acting pursuant to subsection (c) of this section, or (2) the articles provide for

323 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the  
324 amendment requires:

325 (1) except as otherwise provided in clause (2), (i) the affirmative vote of two-thirds of all  
326 the votes entitled generally to be cast on the amendment by the articles of organization and, in  
327 addition, (ii) the affirmative vote of two-thirds of all the votes entitled to be cast by any voting  
328 group entitled to vote separately on the amendment by this chapter, by the articles, by the  
329 bylaws, or by action of the board of directors pursuant to subsection (c) of this section, or

330 (2) if the amendment relates solely to (A) an increase or reduction in the corporation's  
331 capital stock of any class or series then authorized, (B) a change in its authorized shares into a  
332 different number of shares or the exchange thereof pro rata for a different number of shares of  
333 the same class or series, or (C) a change of its corporate name, the required vote shall be a  
334 majority rather than two-thirds, except that, if the vote of a separate voting group is required  
335 under section 10.04, the required vote of that voting group shall remain two-thirds.

336 If the amendment to the articles of organization changes a quorum or voting requirement  
337 for action by the shareholders, approval by the shareholders shall satisfy not only the quorum and  
338 voting requirement then applicable for amendment of the articles but also the particular quorum  
339 or voting requirement being changed.

340 SECTION 52. Section 10.04(a) of chapter 156D is hereby amended by deleting the text  
341 preceding paragraph subsection (1), and inserting in its place the following:

342 Subject to Section 10.05, if the corporation has more than one class or series

343 of shares outstanding, the holders of the outstanding shares of a class or series are entitled  
344 to vote as a separate voting group, whether or not shareholder voting is otherwise required by  
345 this chapter, on a proposed amendment to the articles of organization if the amendment would:

346 SECTION 53. Section 10.21(c) of chapter 156D is deleted in its entirety and replaced by  
347 the following:

348 (c) Any initial bylaw adopted by the incorporators or board of directors, and any  
349 bylaw

350 subsequently adopted or amended by the shareholders, that provides for (i) a greater or  
351 lesser quorum requirement for shareholders than is provided by this chapter or (ii) a greater  
352 voting requirement for shareholders (or for more voting groups of shareholders) than is provided  
353 by this chapter may not be amended or repealed by the board of directors unless the bylaw  
354 otherwise provides.

355 SECTION 54. Part 11 of chapter 156D is amended by deleting the words “organizational  
356 documents” each time they appear in Part 11 and inserting in their place the following words:  
357 organic documents.

358 SECTION 55. Section 11.01 of chapter 156D is hereby amended as follows:

359 By deleting in its entirety the phrase “As used in this part:” and the definition of  
360 “Interests” and replacing them with the following:

361 As used in this Part, the following words have the following meanings, unless the context  
362 requires otherwise:

363 “Interest”, includes any form of membership in a domestic or foreign nonprofit  
364 corporation.

365 And by deleting in paragraph (1) of the definition of “Party to a merger” or “party to a  
366 share exchange” the words “merger under a plan of merger” and inserting in their place the  
367 following words: merge under a plan of merger.

368 SECTION 56. Section 11.02 of chapter 156D is hereby amended by deleting the words  
369 “or other entity” in the text preceding subsection (a) and inserting in their place the following  
370 words: or a domestic or foreign other entity.

371 SECTION 57. Section 11.02(b) of chapter 156D is hereby amended by deleting the  
372 words “the law under which a domestic other entity is organized” and inserting in their place the  
373 following words: the organic law applicable to a domestic other entity.

374 SECTION 58. Section 11.02(b)(1) is hereby amended by deleting the words “filed  
375 organizational document” and inserting in their place the following words: organic document.

376 SECTION 59. Section 11.03(a)(2) of chapter 156D is hereby amended by deleting the  
377 words “or other entity” in the first and second sentences and inserting in their place the following  
378 words: or by a domestic or foreign other entity.

379 SECTION 60. Section 11.03(b) of chapter 156D is hereby amended by deleting the  
380 words “the law under which a domestic other entity is organized” and inserting in their place the  
381 following words: the organic law applicable to a domestic other entity.

382 SECTION 61. Section 11.03(b)(1) is hereby amended by deleting the words “filed  
383 organizational document” and inserting in their place the following words: organic document.

384 SECTION 62. Section 11.03(c) of chapter 156D is hereby amended by deleting the words  
385 “domestic or” in the text preceding paragraph (1).

386 SECTION 63. Section 11.03 of chapter 156D is hereby further amended by deleting  
387 subsection (e) in its entirety and changing the parenthetical letters designating subsections (f) and  
388 (g) to (e) and (f) respectively.

389 SECTION 64. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted  
390 in their entirety and replaced by the following:

391 (5) Unless (i) a greater percentage vote is required by the articles of organization,  
392 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the  
393 board of directors, acting pursuant to paragraph (3) of this section, or (ii) the articles provide for  
394 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan  
395 of merger or share exchange requires (i) the affirmative vote of two-thirds of all the votes  
396 entitled generally to be cast on the plan by the articles of organization and, in addition, (ii) the  
397 affirmative vote of two-thirds of all the votes entitled to be cast by any voting group entitled to  
398 vote separately on the plan by this chapter, by the articles, by the bylaws, or by action of the  
399 board of directors pursuant to paragraph (3) of this section.

400 (6) Except as otherwise expressly provided in the articles of organization, voting by a  
401 class or series of shares as a separate voting group is required on a plan of merger or share  
402 exchange if the plan contains a provision that, if contained in a proposed amendment to articles  
403 of organization, would entitle such class or series to vote as a separate voting group on the  
404 proposed amendment under section 10.04; provided however, that (i) receipt of shares of a class  
405 or series of shares in exchange for shares pursuant to a plan of merger or share exchange

406 involving each outstanding class and series shall not entitle holders of the exchanged class or  
407 series to vote as a separate voting group based solely on the grounds that they are receiving  
408 shares of a different issuer or that paragraph (1) or (5) of section 10.04 would apply if the change  
409 were contained in a proposed amendment to the articles of organization, and (ii) if the proposed  
410 provision would, as an amendment, entitle two or more classes or series of shares to vote  
411 separately but would affect those classes or series in the same or a substantially similar way, the  
412 shares of all such classes or series shall, unless the articles of organization provide otherwise,  
413 vote together as a single voting group on the plan.

414 (7) Unless the articles of organization otherwise provide, approval by the corporation's  
415 shareholders of a plan of merger or share exchange is not required if:

416 (i) the corporation will survive the merger or is the acquiring corporation in a share  
417 exchange;

418 (ii) except for amendments permitted by section 10.05, its articles of organization will  
419 not be changed;

420 (iii) each shareholder of the corporation whose shares were outstanding immediately  
421 before the effective date of the merger or share exchange will hold the same number of shares,  
422 with identical preferences, limitations, and relative rights, immediately after the effective date of  
423 change; and

424 (iv) in the case of a plan of merger, the shares of any class or series of shares of such  
425 corporation to be issued or delivered pursuant to the plan of merger (including any shares  
426 issuable upon conversion of convertible securities or exercise of rights issued or delivered

427 pursuant to the plan of merger) does not exceed 20 per cent of the shares of such corporation of  
428 the same class or series outstanding immediately before the effective date of the merger.

429 (8) If as a result of a merger or share exchange 1 or more shareholders of a domestic  
430 corporation would become subject to owner liability for the debts, obligations or liabilities of any  
431 other person or entity, approval of the plan of merger or share exchange shall require the  
432 execution, by each such shareholder, of a separate written consent to become subject to such  
433 owner liability.

434 SECTION 65. Section 11.05(a) of chapter 156D is deleted in its entirety and replaced by  
435 the following:

436 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary  
437 corporation, and a foreign parent corporation that owns shares of a domestic subsidiary  
438 corporation, in each case that carry at least 90 per cent of the voting power of each class and  
439 series of the outstanding shares of the subsidiary that have voting power, may merge the  
440 subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without  
441 the approval of the board of directors or shareholders of the subsidiary unless the laws of the  
442 foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the  
443 articles of organization of any of the corporations otherwise provide.

444 SECTION 66. Section 11.06(c) of chapter 156D is hereby amended by deleting the words  
445 “or share exchange” each of the three times they appear in that subsection.

446 SECTION 67. The first sentence of section 11.08(b) of chapter 156D is hereby amended  
447 by deleting the word “with” the first time it appears and inserting in its place the following word:  
448 by.

449 SECTION 68. Section 12.01(a)(3) of chapter 156D is deleted in its entirety and replaced  
450 by the following:

451 (3) transfer any or all of its assets to one or more domestic or foreign business  
452 corporations or domestic or foreign other entities all of the shares or interests of which  
453 are owned, directly or indirectly, by the corporation; or

454 SECTION 69. Section 12.02(e) of chapter 156D is deleted in its entirety and replaced by  
455 the following:

456 (e) Unless (1) a greater percentage vote is required by the articles of organization,  
457 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the  
458 board of directors, acting pursuant to subsection (b) of this section, or (2) the articles provide for  
459 a lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the  
460 transaction requires (i) the affirmative vote of two-thirds of all the votes entitled generally to be  
461 cast on the matter by the articles of organization and, in addition, (ii) the affirmative vote of two-  
462 thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the  
463 matter by the articles, by the bylaws, or by action of the board of directors pursuant to subsection  
464 (b) of this section.

465 SECTION 70. Section 13.01 of chapter 156D is hereby amended by deleting the  
466 definition of “Marketable securities” and by inserting in its place the following definition:

467 “Marketable securities”,

468 (a) securities held of record by, or by financial intermediaries or depositories on behalf  
469 of, at least 1,000 persons, which are



470 (1) listed on a national securities exchange; or

471 (2) listed on a regional securities exchange or traded in an interdealer quotation or other  
472 trading system and are of a class or series that has at least 250,000 shares outstanding with a  
473 market value of at least \$5,000,000, excluding in each case shares owned by officers, directors  
474 and affiliates; or

475 (b) securities issued by an open end management investment company registered under  
476 the Investment Company Act of 1940 that may be redeemed at the option of the holder at net  
477 asset value.

478 SECTION 71. Section 13.02(a) of chapter 156D is deleted in its entirety and replaced by  
479 the following:

480 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of  
481 his shares, in the event of any of the following corporate or other actions:

482 (1) consummation of a plan of merger to which the corporation is a party if shareholder  
483 approval is required for the merger by section 11.04 or the articles of organization or if the  
484 corporation is a subsidiary and the merger is governed by section 11.05, unless, in either case,  
485 (A) all shareholders are to receive only cash for their shares in amounts proportionate to what  
486 they would receive upon a dissolution of the corporation or, in the case of shareholders already  
487 holding marketable securities in the merging corporation, only marketable securities of the  
488 surviving corporation, marketable securities of the parent in the case of a merger with a  
489 subsidiary and/or cash and (B) no director, officer or controlling shareholder has a direct or  
490 indirect material financial interest in the merger other than (i) in his capacity as a shareholder of  
491 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the

492 merging or the surviving corporation or of any affiliate of the surviving corporation if his  
493 financial interest is pursuant to bona fide arrangements with either corporation or any such  
494 affiliate, or (iii) in any other capacity provided that the shareholder does not own shares entitled  
495 to cast more than five percent of all votes entitled to be cast by holders of all classes and series of  
496 shares either generally or on the plan of merger;

497           (2) consummation of a plan of share exchange in which his shares are included unless  
498 (A) both his existing shares and the shares, obligations or other securities to be acquired by him  
499 are marketable securities; and (B) no director, officer or controlling shareholder has a direct or  
500 indirect material financial interest in the share exchange other than (i) in his capacity as a  
501 shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director,  
502 officer, employee or consultant of either the corporation whose shares are to be exchanged or the  
503 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is  
504 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any  
505 other capacity provided that the shareholder does not own shares entitled to cast more than five  
506 percent of all votes entitled to be cast by holders of all classes and series of shares to be  
507 exchanged pursuant to the plan of share exchange;

508           (3) consummation of a disposition of property pursuant to section 12.02 or a disposition  
509 of all, or substantially all, of the property of a corporation in dissolution, unless:

510           (i) his shares are then redeemable by the corporation at a price not greater than the cash  
511 to be received in exchange for his shares; or

512           (ii) the disposition is pursuant to court order; or

513 (iii) in the case of a disposition of all, or substantially all, of the property of the  
514 corporation subject to section 12.02, approval of shareholders for the disposition is conditioned  
515 upon the dissolution of the corporation and the distribution in cash or, if his shares are  
516 marketable securities, in marketable securities and/or cash, of substantially all of its net assets, in  
517 excess of a reasonable amount reserved to meet unknown claims under section 14.07, to the  
518 shareholders in accordance with their respective interests within one year after the disposition  
519 and no director, officer or controlling shareholder has a direct or indirect material financial  
520 interest in the disposition other than (i) in his capacity as a shareholder of the corporation, (ii) in  
521 his capacity as a director, officer, employee or consultant of either the corporation or the  
522 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is  
523 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any  
524 other capacity provided that the shareholder does not own shares entitled to cast more than five  
525 percent of all votes entitled to be cast by holders of all classes and series of shares either  
526 generally or on the disposition;

527 (4) an amendment of the articles of organization that materially and adversely affects  
528 rights in respect of a shareholder's shares because it:

529 (i) creates, alters or abolishes the stated rights or preferences of the shares with respect to  
530 distributions or to dissolution, including making non-cumulative in whole or in part a dividend  
531 theretofore stated as cumulative;

532 (ii) creates, alters or abolishes a stated right in respect of conversion or redemption,  
533 including any provision relating to any sinking fund or purchase, of the shares;

534 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or  
535 other securities;

536 (iv) excludes or limits the right of the holder of the shares to vote on any matter, or to  
537 cumulate votes, except as such right may be limited by voting rights given to new shares then  
538 being authorized of an existing or new class; or

539 (v) reduces the number of shares owned by the shareholder to a fraction of a share if the  
540 fractional share so created is to be acquired for cash under section 6.04;

541 (5) an amendment of the articles of organization or of the bylaws that adds restrictions  
542 on the transfer or registration of transfer of any outstanding shares held by the shareholder or  
543 amends any pre-existing restrictions on the transfer or registration of transfer of his shares in a  
544 manner that is materially adverse to the ability of the shareholder to transfer his shares;

545 (6) any corporate action taken pursuant to a shareholder vote to the extent the articles of  
546 organization, bylaws or a resolution of the board of directors provides that voting or nonvoting  
547 shareholders are entitled to appraisal;

548 (7) consummation of a domestication pursuant to subdivision A of Part 9 if the  
549 shareholder would have had appraisal rights if the transaction had been effected as a merger;

550 (8) consummation of a conversion of the corporation to nonprofit status pursuant to  
551 subdivision B of Part 9; or

552 (9) consummation of a conversion of the corporation into a form of other entity pursuant  
553 to subdivision E of Part 9.

554 SECTION 72. Section 13.02(b) of chapter 156D is deleted in its entirety and replaced by  
555 the following:

556 (b) Except as otherwise provided in subsection (a) of section 13.03, in the event of  
557 corporate action specified in paragraphs (1), (2), (3), (7), (8) or (9) of subsection (a), a  
558 shareholder may assert appraisal rights only if he seeks them with respect to all of his shares of  
559 whatever class or series.

560 SECTION 73. Section 13.21(b) of chapter 156D is hereby amended by deleting the word  
561 “chapter” and inserting in its place the following word: Part.

562 SECTION 74. Section 13.22(b)(3) of chapter 156D is hereby amended by deleting the  
563 word "chapter" and inserting in its place the following word: Part.

564 SECTION 75. Section 13.25(d) of chapter 156D is hereby amended as follows:

565 By deleting the word “if” and inserting in its place the following word: it

566 And by deleting the word "deserved" and inserting in its place the following word:  
567 described.

568 SECTION 76. Section 13.31(b)(2) of chapter 156D is hereby amended by deleting the  
569 word "chapter" and inserting in its place the following word: Part.

570 SECTION 77. Section 14.06(a) of chapter 156D is hereby amended by deleting the  
571 following quoted phrase: “, subject to paragraph (f),”.

572 SECTION 78. Section 14.09(d) of chapter 156D is hereby amended by deleting the  
573 words “if the procedures described in those sections are followed” and inserting in their place the  
574 following words: if the procedure described in the section applicable to the claim is followed.

575 SECTION 79. Section 14.30(2) of chapter 156D is hereby amended by deleting the  
576 phrase “the shareholders holding not less than 40 per cent of the total combined voting power of  
577 all the shares of the corporation’s stock outstanding and” and inserting in its place the following  
578 phrase: shareholders entitled to cast not less than 40 per cent of the total number of votes entitled  
579 to be cast by all holders of shares entitled to vote.

580 SECTION 80. Section 14.33(b) of chapter 156D is hereby amended by deleting the  
581 phrase “sections 14.06 and 14.07.” and inserting in its place the following phrase: sections 14.06,  
582 14.07 and 14.08.

583 SECTION 81. Section 14.40 of chapter 156D is amended by deleting from both the first  
584 and the second sentences of that section the following words: or other appropriate official of the  
585 commonwealth.

586 SECTION 82. Section 15.01(c)(4) of chapter 156D is hereby amended by deleting the  
587 word “corporations” and inserting in its place the following word: corporation’s.

588 SECTION 83. Section 15.03(a)(5) of chapter 156D is hereby amended by deleting the  
589 word "agents" and inserting in its place the following word: agent’s.

590 SECTION 84. Section 15.04(d) of chapter 156D is hereby amended by inserting after the  
591 word “information" the following word: in.

592 SECTION 85. The first sentence of Section 15.05(c) of chapter 156D is hereby amended  
593 as follows:

594 By deleting the word "corporation" and inserting in its place the following word:  
595 corporation's

596 And by deleting the word "stockholders" and inserting in its place the following word:  
597 shareholders.

598 SECTION 86. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by  
599 the following:

600 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN  
601 CORPORATION

602 Each foreign corporation authorized to transact business in the commonwealth shall  
603 continuously maintain in the commonwealth:

604 (1) a registered office that may, but need not, be the same as any of its places of  
605 business; and

606 (2) a registered agent, who may be any of the following individuals or entities whose  
607 business office is also the registered office of the foreign corporation:

608 (i) an individual who resides in the commonwealth and whose business office is identical  
609 with the registered office;

610 (ii) a domestic business corporation or a domestic nonprofit corporation;

611 (iii) a foreign business or nonprofit corporation authorized to transact business in the  
612 commonwealth; or

613 (iv) a domestic other entity or a foreign other entity authorized to transact business in the  
614 commonwealth.

615 SECTION 87. Section 15.30 of chapter 156D is hereby amended as follows:

616 By deleting the words “requiring the filing of reports with” and inserting in their  
617 place the following words: requiring the submission or delivery of reports to

618 And by inserting after "or chapter 63" the following words: of the General Laws.

619 SECTION 88. Section 15.31(b) of chapter 156D is hereby amended as follows:

620 By deleting the words “that each ground determined by the secretary” and inserting in  
621 their place the following words: that the ground

622 And by deleting the word "corporations" and inserting in its place the following word:  
623 corporation’s.

624 SECTION 89. Section 15.31(d) of chapter 156D is hereby amended by deleting the word  
625 “corporations” and inserting in its place the following word: corporation’s.

626 SECTION 90. Section 15.32(a) of chapter 156D is hereby amended as follows:

627 By deleting in the text preceding paragraph (1) the phrase “section 15.30” and inserting  
628 in its place the following phrase: section 15.31



629           And by deleting in paragraph (3) the word "corporations" and inserting in its place the  
630 following word: corporation's.

631           SECTION 91. Section 16.20(c) of chapter 156D is deleted in its entirety and replaced by  
632 the following:

633           (c) Unless otherwise provided in the articles of organization or bylaws or unless the  
634 annual financial statements of the corporation shall have previously been delivered to the  
635 shareholders, a corporation shall deliver a written notice of the availability of its annual financial  
636 statements to each shareholder before the earlier to occur of the annual meeting of shareholders  
637 or 120 days after the close of the fiscal year.

638           SECTION 92. Section 16.21 of chapter 156D is hereby amended by deleting the words  
639 "BY-LAW AMENDMENTS" in the caption and inserting in their place the following words:  
640 BYLAW AMENDMENTS.