

**As Passed by the House**

**124th General Assembly  
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**Sub. S. B. No. 110**

**SENATORS Johnson, Hottinger, Amstutz, Oelslager  
REPRESENTATIVES Willamowski, Seitz, Sulzer, Manning, Hagan, Evans,  
Schmidt, Buehrer, Hughes, Gilb, Lendrum, Widowfield, Damschroder, Cates**

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**A B I L L**

To amend sections 1701.11, 1701.16, 1701.58, and 1  
1701.71 of the Revised Code to restrict shareholder 2  
removal of directors on a classified board of 3  
directors of issuing public corporations to removal 4  
for cause, to require in addition to existing law's 5  
requirements that an amendment to declassify such a 6  
board be with the approval of a majority of the 7  
shares held by voting disinterested shareholders, 8  
and to confirm the authority of directors to redeem 9  
options. 10

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1701.11, 1701.16, 1701.58, and 11  
1701.71 of the Revised Code be amended to read as follows: 12

**Sec. 1701.11.** (A)(1) Regulations for the government of a 13  
corporation, the conduct of its affairs, and the management of its 14  
property, consistent with law and the articles, may be adopted in 15  
any of the following ways: 16

(a) Within ninety days after the corporation is formed, by 17  
the directors in accordance with section 1701.10 of the Revised 18

Code;

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(b) By the shareholders at a meeting held for that purpose,  
by the affirmative vote of the holders of shares entitling them to  
exercise a majority of the voting power of the corporation on the  
proposal;

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(c) Without a meeting, by the written consent of the holders  
of shares entitling them to exercise two-thirds of the voting  
power of the corporation on the proposal.

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(2) The Except as otherwise provided in division (A)(4) of  
this section, the regulations may be amended, or new regulations  
may be adopted, in either of the following ways:

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(a) By the shareholders at a meeting held for that purpose,  
by the affirmative vote of the holders of shares entitling them to  
exercise a majority of the voting power of the corporation on the  
proposal;

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(b) Without a meeting, by the written consent of the holders  
of shares entitling them to exercise two-thirds of the voting  
power of the corporation on the proposal.

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(3) ~~If~~ Except as otherwise provided in division (A)(4) of  
this section, if the articles or regulations that have been  
adopted so provide or permit, regulations may be adopted or  
amended or new regulations may be adopted by the affirmative vote  
or written consent of the holders of shares entitling them to  
exercise a greater or lesser proportion but not less than a  
majority of the voting power of the corporation.

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(4) Any amendment of regulations and any amended or new  
regulations adopted by shareholders of an issuing public  
corporation whose directors are classified pursuant to section  
1701.57 of the Revised Code that would change or eliminate the  
classification of directors shall be adopted by the shareholders  
only at a meeting held for that purpose, by the affirmative vote

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of holders of shares entitling them to exercise the voting power 50  
of the corporation that is required for shareholders at a meeting 51  
under division (A)(2)(a) or (3) of this section, and also by the 52  
affirmative vote of the holders of a majority of disinterested 53  
shares voted on the proposal determined as specified in division 54  
(C)(9) of section 1704.01 of the Revised Code. 55

(B) Without limiting the generality of the authority 56  
described in division (A) of this section, the regulations may 57  
include provisions with respect to all of the following: 58

(1) The time and place for holding, the manner of and 59  
authority for calling, giving notice of, and conducting, and the 60  
requirements of a quorum for, meetings of shareholders; 61

(2) The taking of a record of shareholders or the temporary 62  
closing of books against transfers of shares; 63

(3) The number, classification, manner of fixing or changing 64  
the number, qualifications, term of office, and compensation or 65  
manner of fixing compensation, of directors; 66

(4) The time and place for holding, the manner of and 67  
authority for calling, giving notice of, and conducting, and the 68  
requirements of a quorum for, meetings of the directors; 69

(5) The appointment of an executive and other committees of 70  
the directors, and their authority; 71

(6) The titles, qualifications, duties, term of office, 72  
compensation or manner of fixing compensation, and the removal, of 73  
officers; 74

(7) The terms on which new certificates for shares may be 75  
issued in the place of lost, stolen, or destroyed certificates; 76

(8) The manner in which and conditions upon which a 77  
certificated security, and the conditions upon which an 78  
uncertificated security, and the shares represented by a 79

certificated or uncertificated security, may be transferred,  
restrictions on the right to transfer the shares, and reservations  
of liens on the shares;

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(9)(a) Restrictions on the transfer and the right to transfer  
shares of either of the following:

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(i) An issuing public corporation to any person in a control  
share acquisition;

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(ii) A corporation with fifty or more shareholders to any  
person in an acquisition that would be a control share acquisition  
if the corporation were an issuing public corporation.

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(b) The restrictions on the transfer and the right to  
transfer shares described in division (B)(9)(a)(i) and (ii) of  
this section may include requirements and procedures for consent  
to an acquisition of the shares by directors based on a  
determination by the directors of the best interests of the  
corporation and its shareholders, consent to an acquisition of the  
shares by shareholders, and reasonable sanctions for a violation  
of those requirements, including the right of the corporation to  
refuse to transfer, to redeem, or to deny voting or other  
shareholder rights appurtenant to shares acquired in an  
acquisition of the shares.

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(10) Defining, limiting, or regulating the exercise of the  
authority of the corporation, the directors, the officers, or all  
the shareholders.

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(C) The shareholders of a corporation may adopt and may  
authorize the directors to adopt, either before or during an  
emergency, as that term is defined in division (U) of section  
1701.01 of the Revised Code, emergency regulations that shall be  
operative only during an emergency. The emergency regulations may  
include any provisions that are authorized to be included in  
regulations by divisions (A) and (B) of this section. In addition,

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unless expressly prohibited by the articles or the regulations, 111  
the emergency regulations may make any provision, notwithstanding 112  
any different provisions in this chapter and notwithstanding any 113  
different provisions in the articles or the regulations that are 114  
not expressly stated to be operative during an emergency, that may 115  
be practical or necessary with respect to the following: 116

(1) The time and place for holding, the manner of and 117  
authority for calling, giving notice of, and conducting, and the 118  
requirements of a quorum for, meetings of the directors; 119  
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(2) The creation and appointment of an executive and other 121  
committees of the directors and the delegation of authority to the 122  
committees by the board; 123

(3) The creation, existence, and filling of vacancies, 124  
including temporary vacancies, in the office of director; 125

(4) The selection, by appointment, election, or otherwise, of 126  
officers and other persons to serve as directors for a meeting of 127  
the board in the absence from the meeting of one or more of the 128  
directors; 129

(5) The creation, existence, and filling of vacancies, 130  
including temporary vacancies, in any office; 131

(6) The order of rank and the succession to the duties and 132  
authority of officers. 133

(D) If the regulations are amended or new regulations are 134  
adopted, without a meeting of the shareholders, the secretary of 135  
the corporation shall mail a copy of the amendment or the new 136  
regulations to each shareholder who would have been entitled to 137  
vote on the adoption of the amendment or the new regulations and 138  
did not participate in the adoption of the amendment or the new 139  
regulations. 140

(E) No person dealing with the corporation shall be charged 141

with constructive notice of the regulations. 142

(F) Unless expressly prohibited by the articles or the 143  
regulations or unless otherwise provided by the emergency 144  
regulations, the following special rules shall be applicable 145  
during an emergency notwithstanding any different provision 146  
elsewhere in this chapter: 147

(1) Meetings of the directors may be called by any officer or 148  
director. 149

(2) Notice of the time and place of each meeting of the 150  
directors shall be given to such of the directors as it may be 151  
feasible to reach at the time and by the means of communication, 152  
written or oral, personal or mass, as may be practicable at the 153  
time. 154

(3) The director or directors present at any meeting of the 155  
directors that has been duly called and notice of which has been 156  
duly given shall constitute a quorum for the meeting, and, in the 157  
absence of one or more of the directors, the director or directors 158  
present may appoint one or more of the officers of the corporation 159  
directors for the meeting. 160

(4) If none of the directors attends a meeting of the 161  
directors that has been duly called and notice of which has been 162  
duly given, the officers of the corporation who are present, not 163  
exceeding three, in order of rank, shall be directors for the 164  
meeting, shall constitute a quorum for the meeting, and may 165  
appoint one or more of the other officers of the corporation 166  
directors for the meeting. 167

(5) If the chief executive officer dies, is missing, or for 168  
any other reason is temporarily or permanently incapable of 169  
discharging the duties of the office, the next ranking officer who 170  
is available shall assume the duties and authority of the office 171  
of the deceased, missing, or incapacitated chief executive officer 172

until such time as the directors shall otherwise order. 173

(6) The offices of secretary and treasurer shall be deemed to 174  
be of equal rank, and, within the same office and as between the 175  
offices of secretary and treasurer, rank shall be determined by 176  
priority in time of the first election to the office or, if two or 177  
more persons have been first elected to the office at the same 178  
time, by seniority in age. 179

**Sec. 1701.16.** (A) Unless the articles otherwise provide, a 180  
corporation by its directors may grant options to subscribe for or 181  
to purchase shares of any authorized class at the times and on the 182  
terms that are set forth in the securities, or in the contracts, 183  
warrants or instruments that evidence the options, which 184  
contracts, warrants, or instruments may be transferable or 185  
nontransferable and may be separable or inseparable from 186  
securities, upon the following conditions: 187

(1) If the shares are subject to preemptive rights and if the 188  
options are not granted to shareholders in satisfaction of their 189  
preemptive rights, the granting of the options must be authorized 190  
by the vote or consent of the shareholders or holders of shares of 191  
particular classes that then would be required to waive or release 192  
such preemptive rights. The vote or consent shall release the 193  
preemptive rights to the shares required to satisfy the options if 194  
and when exercised. 195

(2) If, at the time of granting the options, the corporation 196  
does not have authorized and unissued shares sufficient to satisfy 197  
the options if and when exercised, the granting of the options 198  
must be authorized by the vote of the shareholders or holders of 199  
shares of particular classes that then would be required to adopt 200  
an amendment to the articles for the purpose of increasing the 201  
authorized number of such shares, and the shares required to be 202  
issued upon the exercise of the options shall be provided by an 203

amendment concurrently or thereafter adopted by the shareholders	204
or the directors.	205
(B)(1) The securities, contracts, warrants, or instruments	206
that evidence the options may contain any terms not repugnant to	207
law for the protection of the holders of the options, including,	208
but not limited to, the following:	209
(a) Restrictions upon the authorization or issuance of	210
additional shares;	211
(b) Provisions for the adjustment of the option price;	212
(c) Provisions concerning rights in the event of	213
reorganization, merger, consolidation, or sale of the entire	214
assets of the corporation;	215
(d) Provisions for the reservation of authorized but unissued	216
shares to satisfy the options;	217
(e) Restrictions upon the declaration or payment of dividends	218
or distributions;	219
(f) Conditions on the exercise <u>or redemption</u> of the options,	220
including, subject to the limitation specified in division (B)(2)	221
of this section, conditions that preclude the holder or holders of	222
at least a specified number or percentage of the outstanding	223
common shares of a corporation from exercising <u>or redeeming</u> the	224
options.	225
(2) The express or implied authority conferred by division	226
(B)(1) of this section or any other section of this chapter for	227
securities, contracts, warrants, or instruments that evidence	228
options to contain a condition on the exercise <u>or redemption</u> of	229
options that precludes the holder or holders of at least a	230
specified number or percentage of the outstanding common shares of	231
a corporation from exercising <u>or redeeming</u> options shall apply	232
only to the following:	233

(a) A corporation that has issued and outstanding shares 234  
listed on a national securities exchange or regularly quoted in an 235  
over-the-counter market by one or more members of a national or 236  
affiliated securities association; 237

(b) A corporation that has adopted a close corporation 238  
agreement pursuant to which options are granted, if the 239  
securities, contracts, warrants, or instruments that evidence the 240  
options contain a condition that precludes the holder or holders 241  
of at least a specified number or percentage of the outstanding 242  
common shares of that corporation from exercising or redeeming the 243  
options. 244

(C) As used in this section, "securities" includes 245  
obligations and shares of the corporation. 246

**Sec. 1701.58.** (A) The office of a director becomes vacant if 247  
~~he~~ the director dies or resigns. A resignation shall take effect 248  
immediately or at such other time as the director may specify. 249

(B) The directors may remove any director and thereby create 251  
a vacancy in the board: 252

(1) If by order of court ~~he~~ the director has been found to be 253  
of unsound mind, or if ~~he~~ the director is adjudicated a bankrupt; 254  
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(2) If within sixty days, or within such other period of time 256  
as is prescribed in the articles or the regulations, from the date 257  
of ~~his~~ the director's election ~~he~~ the director does not qualify by 258  
accepting in writing ~~his~~ the director's election to such office or 259  
by acting at a meeting of the directors, and by acquiring the 260  
qualifications specified in the articles or the regulations; or 261  
if, for such period as is prescribed in the articles or the 262  
regulations, ~~he~~ the director ceases to hold the required 263

qualifications.

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(C) ~~If~~ Except as otherwise provided in this division, if the  
shareholders have a right to vote cumulatively in the election of  
directors, then, unless the articles or the regulations expressly  
provide that no director may be removed from office or that  
removal of directors requires a greater vote than that specified  
in this division, all the directors, all the directors of a  
particular class, or any individual director may be removed from  
office, without assigning any cause, by the vote of the holders of  
a majority of the voting power entitling them to elect directors  
in place of those to be removed, except that, unless all the  
directors, or all the directors of a particular class, are  
removed, no individual director shall be removed if the votes of a  
sufficient number of shares are cast against ~~his~~ the director's  
removal that, if cumulatively voted at an election of all the  
directors, or all the directors of a particular class, as the case  
may be, would be sufficient to elect at least one director. In the  
case of an issuing public corporation whose directors are  
classified pursuant to section 1701.57 of the Revised Code, the  
shareholders may effect a removal under this division only for  
cause.

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(D) If the shareholders do not have the right to vote  
cumulatively as a result of an amendment to the articles permitted  
by division (B)(10) of section 1701.69 of the Revised Code, then,  
unless the articles or the regulations expressly provide that no  
director may be removed from office or that removal of directors  
requires a greater vote than that specified in this division, all  
the directors, all the directors of a particular class, or any  
individual director may be removed from office, without assigning  
any cause, by the vote of the holders of a majority of the voting  
power entitling them to elect directors in place of those to be  
removed; except that in the case of an issuing public corporation

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whose directors are classified pursuant to section 1701.57 of the 296  
Revised Code, the shareholders may effect that removal only for 297  
cause. 298

(E) In case of any removal pursuant to division (C) or (D) of 299  
this section, a new director may be elected at the same meeting 300  
for the unexpired term of each director removed. Failure to elect 301  
a director to fill the unexpired term of any director removed is 302  
deemed to create a vacancy in the board. 303

(F) Unless the articles or the regulations otherwise provide, 304  
the remaining directors, though less than a majority of the whole 305  
authorized number of directors, may, by the vote of a majority of 306  
their number, fill any vacancy in the board for the unexpired 307  
term. Under this section, a vacancy exists if the shareholders 308  
increase the authorized number of directors but fail at the 309  
meeting at which such increase is authorized, or an adjournment of 310  
that meeting, to elect the additional directors provided for, or 311  
if the shareholders fail at any time to elect the whole authorized 312  
number of directors. 313

**Sec. 1701.71.** (A)(1) Except as otherwise provided in this 314  
division or division (A)(2) of this section, the shareholders, at 315  
a meeting held for that purpose, may adopt an amendment, including 316  
any amendment that could be adopted by the directors, by the 317  
affirmative vote of the holders of shares entitling them to 318  
exercise two-thirds of the voting power of the corporation on the 319  
proposal or, if the articles provide or permit, by the affirmative 320  
vote of a greater or lesser proportion, but not less than a 321  
majority, of such voting power, and by the affirmative vote of the 322  
holders of shares of any particular class that is required by the 323  
articles. Any amendment that would change or eliminate the 324  
classification of directors of an issuing public corporation whose 325  
directors are classified pursuant to section 1701.57 of the 326  
Revised Code shall be adopted by the shareholders only at a 327

meeting expressly held for that purpose, by the affirmative votes 328  
required under this division, and also by the affirmative vote of 329  
the holders of at least a majority of disinterested shares voted 330  
on the proposal determined as specified in division (C)(9) of 331  
section 1704.01 of the Revised Code. If, at the time an amendment 332  
to eliminate cumulative voting rights permitted by division 333  
(B)(10) of section 1701.69 of the Revised Code is acted upon by 334  
the shareholders, a corporation does not have issued and 335  
outstanding shares that are listed on a national securities 336  
exchange or are regularly quoted in an over-the-counter market by 337  
one or more members of a national or affiliated securities 338  
association, that amendment shall not be adopted if the votes of a 339  
sufficient number of shares are cast against the amendment that, 340  
if cumulatively voted at an election of all the directors, or all 341  
the directors of a particular class, as the case may be, would at 342  
the time the amendment is acted upon by the shareholders be 343  
sufficient to elect at least one director. 344

(2) Whenever under division (B) of this section the holders 345  
of shares of any particular class are entitled to vote as a class 346  
on the adoption of an amendment, the amendment, in order to be 347  
adopted, must receive the affirmative vote of the holders of at 348  
least two-thirds of the shares of that class or, if the articles 349  
provide or permit, a greater or lesser proportion, but not less 350  
than a majority, of the shares of that class. If the proposed 351  
amendment would authorize any particular corporate action that, 352  
under any applicable provision of law or under the existing 353  
articles, could be authorized only by or pursuant to a specified 354  
vote of shareholders, the amendment, in order to be adopted, must 355  
receive the affirmative vote so specified. 356

(B) Regardless of limitations or restrictions in the articles 357  
on the voting rights of the shares of any class, the holders of 358  
shares of a particular class, and in the cases specified in 359

divisions (B)(6), (7), and (8) of this section the holders of 360  
shares of every class, shall be entitled to vote as a class on the 361  
adoption of an amendment that does any of the following: 362

(1) Increases or decreases the par value of the issued shares 364  
of the particular class; 365

(2) Changes issued shares of the particular class, whether 366  
with or without par value, into a lesser number of shares of the 367  
same class or into the same or a different number of shares of any 368  
other class, with or without par value, previously or then 369  
authorized; 370

(3) Changes the express terms, or adds express terms, of the 371  
shares of the particular class in any manner substantially 372  
prejudicial to the holders of the shares; 373

(4) Changes the express terms of issued shares of any class 374  
senior to the particular class in any manner substantially 375  
prejudicial to the holders of shares of the particular class; 376

(5) Authorizes shares of another class that are convertible 377  
into, or authorizes the conversion of shares of another class 378  
into, shares of the particular class, or authorizes the directors 379  
to fix or alter conversion rights of shares of another class that 380  
are convertible into shares of the particular class; provided, 381  
however, both of the following apply: 382

(a) The failure to obtain the shareholders' approval only 383  
prevents the conversion of the shares until the shareholders' 384  
approval is obtained and does not otherwise affect the 385  
authorization or any other express terms of the shares; 386

(b) The articles may provide that no vote of the holders of 387  
common shares, as a class, is required in connection with the 388  
authorization of shares of any class that are convertible into 389  
common shares. 390

(6) Provides, in the case of an amendment described in 391  
division (B)(1) or (2) of this section, that the stated capital of 392  
the corporation shall be reduced or eliminated as a result of the 393  
amendment, or provides, in the case of an amendment described in 394  
division (B)(5) of this section, that the stated capital of the 395  
corporation shall be reduced or eliminated upon the exercise of 396  
such conversion rights, provided that any reduction or elimination 397  
is consistent with section 1701.30 of the Revised Code; 398

(7) Changes substantially the purposes of the corporation, or 399  
provides that a subsequent amendment to the articles may be 400  
adopted that changes substantially the purposes of the 401  
corporation; 402

(8) Changes a corporation into a nonprofit corporation. 403

(C) An amendment that changes a corporation into a nonprofit 404  
corporation shall contain a statement of purposes proper in the 405  
case of a nonprofit corporation and a statement that, after the 406  
effective date of the amendment, the corporation shall be subject 407  
to the provisions of the Revised Code relating to nonprofit 408  
corporations. In the case of a corporation formed on or after June 409  
9, 1927, the amendment also shall provide for the cancellation of 410  
all outstanding shares and the terms and considerations, if any, 411  
for the cancellation. In the case of a corporation formed prior to 412  
June 9, 1927, the amendment may provide for the cancellation of 413  
outstanding shares, but if it does not so provide, the amendment 414  
shall contain a provision forbidding the payment of dividends or 415  
distributions on any shares after the effective date of the 416  
amendment. 417

**Section 2.** That existing sections 1701.11, 1701.16, 1701.58, 418  
and 1701.71 of the Revised Code are hereby repealed. 419