

## **IC 23-13-5**

### **Chapter 5. Management of Educational Institutions Established Under General Laws and Special Enactments**

#### **IC 23-13-5-1**

##### **Election of governing or administrative body by board of directors**

Sec. 1. Any university, college or other institution of learning heretofore organized and now existing under special enactments of the general assembly of the state of Indiana, constituting the charter of the institution, or which now is or hereafter may be organized under the general laws of the state of Indiana, may provide that the board of directors, trustees or other governing or administrative body thereof may from time to time be elected by such board of directors instead of by stockholders or otherwise.

*(Formerly: Acts 1909, c.52, s.1.)*

#### **IC 23-13-5-2**

##### **Articles of association; contents**

Sec. 2. In all cases of corporations organized after March 3, 1909, desiring to accept the provisions of this chapter, the corporation shall in its articles of association specifically set forth the number of trustees, directors, or other members of its governing or administrative board, the manner of election, their powers, and the system adopted for administering their respective funds.

*(Formerly: Acts 1909, c.52, s.2.) As amended by P.L.34-1987, SEC.343.*

#### **IC 23-13-5-3**

##### **Procedure for accepting provisions of chapter**

Sec. 3. (a) All such corporations created before March 3, 1909, and existing on March 3, 1909, desiring to accept the provisions of this chapter may do so in the manner following, that is to say: At any regular meeting of the stockholders or others authorized to elect trustees or directors, such election shall be held in the usual manner; and thereupon such stockholders or electors may upon the affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) in value of all the stock of such institution accept the provisions of this chapter for such corporation and may vote and declare that the board so elected and their successors shall be authorized and empowered thereafter from time to time to elect the directors, trustees, or other governing body of such institution; provided, also, that any university, college, or other institution of learning, the graduates of which university, college, or other institution of learning have and maintain an active alumni association, organized and operating under a constitution and bylaws and which constitution defines who shall be the active members of such alumni association and which university, college, or institution of learning is operating on March 3, 1909, under this chapter, by resolution duly passed at any regular meeting of the board of directors, trustees, or other governing body of such university, college, or institution of learning, or at a special meeting of such

board of directors, trustees, or other governing body of such institution, called for that purpose, of which meeting, and the time, place, and the purpose thereof, ten (10) days notice, in writing, shall be given to all directors, trustees, or other governing body, and by a majority vote of the directors, trustees, or other governing body, may provide:

(1) that, after a date to be fixed in said resolution, and which date so fixed shall not be less than one hundred twenty (120) days from the date on which such resolution shall be passed, the number of directors, trustees, or members of the governing board thereof shall be nine (9);

(2) that five (5) of such members shall be selected by the said governing body;

(3) that four (4) of such members shall be selected by the active members of the alumni association of such university, college, or institution of learning;

(4) that of the five (5) to be selected by such governing body, one (1) shall be elected to serve for the term of one (1) year, one (1) for the term of two (2) years, and three (3) for the term of three (3) years;

(5) that of the four (4) to be elected by the alumni association, one (1) shall be elected for the term of one (1) year, one (1) for the term of two (2) years, and two (2) for the term of three (3) years, and that thereafter the term of office of all members of such governing body shall be three (3) years, except when an election is had to fill a vacancy, in which case the election shall be only for the unexpired term;

(6) that the annual meeting of such board of trustees, directors, or other governing body shall be held on the first Monday of July in each year and that the term of office of outgoing directors, trustees, or other officers of such governing body shall expire on the date of such annual meeting and that the terms of the newly elected trustees, directors, or other officers of such governing body shall commence on said date;

(7) that the officers to be elected by said alumni association shall be elected by ballot, to be cast and taken at such time and in such manner, at such time and for such candidates as may be selected by the members of such alumni association, all in accordance with a resolution duly passed by such board of directors, trustees, or other governing body of such university, college, or other educational institution.

(b) A certified copy of the resolution of the board of trustees, directors, or other governing body of such university, college, or other institution of learning, duly attested as to its passage and its correctness, filed with the secretary of state and with the recorder of the county in which such university, college, or other institution of learning is situated, shall constitute an amendment of its said charter conformable to the provisions of this chapter.

*(Formerly: Acts 1909, c.52, s.3; Acts 1929, c.210, s.1.) As amended by P.L.34-1987, SEC.344.*

**IC 23-13-5-4****Perpetual existence; merger**

Sec. 4. Any postsecondary educational institution which may be organized before, on, or after March 3, 1909, under or which may otherwise become subject to the provisions of this chapter shall be deemed to have a perpetual existence by operation of law. Any two (2) or more postsecondary educational institutions incorporated under the provisions of this chapter may be merged into one (1) corporation by the action of the boards of trustees of the respective corporations. *(Formerly: Acts 1909, c.52, s.3a; Acts 1953, c.17, s.1.) As amended by P.L.34-1987, SEC.345; P.L.2-2007, SEC.315.*

**IC 23-13-5-5****Assignment of capital stock of institution to board of directors or trustees**

Sec. 5. And at the same meeting of stockholders mentioned in section 3 of this chapter, or at any meeting of stockholders called for the purpose by the board of directors or trustees of such institution, upon not less than four (4) advertisements therefor, once a week for four (4) successive weeks preceding such meeting, printed in two (2) newspapers of general circulation published in the city of Indianapolis, Indiana, giving the date and place of such meeting, and the matters to be considered and acted upon thereat, the stockholders of said corporation created before March 3, 1909, and existing on March 3, 1909, may, by the vote of two-thirds (2/3) in value of all the stock of such corporation, vote that all the capital stock of the corporation shall be assigned and turned over to the directors or trustees of the corporation to be held by said directors for the benefit of the corporation. Upon such vote, the directors or trustees and their successors are and shall be authorized to hold for the benefit of said corporation exclusively and to vote any stock that may be so assigned and turned over to them. And when all the stock of said corporation shall, by virtue of the provisions of this chapter or otherwise, have come under the control or ownership of said directors or trustees, then they shall cancel the entire capital stock of such corporation, and such corporation shall cease to be represented in any sense by capital stock.

*(Formerly: Acts 1909, c.52, s.4.) As amended by P.L.34-1987, SEC.346.*

**IC 23-13-5-6****Purchasing shares of dissatisfied stockholders; determination of value**

Sec. 6. The board of directors of any such corporation is hereby authorized to buy in for the corporation the share or shares of stock of any person or persons dissatisfied with the action of the majority of stockholders provided for in section 3 or 4 of this chapter, provided such dissatisfied stockholders did not vote with the majority at such meeting or meetings. If any such dissatisfied stockholder shall not be satisfied with the price offered for his stock by said directors

or trustees, then he may apply by petition to one (1) of the judges of the circuit or superior courts, if any, of the county where such institution is located, making the corporation defendant therein, praying said court to appoint three (3) disinterested persons to estimate and appraise the fair cash value of the shares of such stock owned by the petitioner, and shall at the same time file with the clerk his certificate of stock in said corporation. And the value of such shares having been so appraised by said commissioners, by a vote of a majority thereof, shall be reported to said court, and when confirmed by the court, shall be final and conclusive on all parties, and thereupon said corporation shall be decreed to be the owner of such shares, and the petitioner shall assign his said stock to said corporation and deliver to said board of directors or trustees the certificate therefor and shall be paid the appraised value thereof out of the endowment or other funds of said corporation. Should any such petitioner fail after such appraisement to so assign and deliver said stock and the certificate therefor within sixty (60) days after the confirmation of such appraisal therefor, the said directors or trustees may make payment of the amount of such award to the clerk of the court for the party entitled thereto and, upon such payment, the clerk shall assign and deliver to said directors or trustees the said stock and certificate. The costs of such proceeding and appraisement shall be paid by the corporation in case the appraised value of such stock exceeds the sum offered therefor by such directors or trustees; otherwise such costs shall be paid by the petitioner.

*(Formerly: Acts 1909, c.52, s.5.) As amended by P.L.34-1987, SEC.347.*

#### **IC 23-13-5-7**

##### **Nonappearing stockholders; determination of value of shares**

Sec. 7. Whenever a majority in value of the capital stock of any such corporation existing on March 3, 1909, shall have been assigned and turned over to the directors or trustees, as provided for in sections 5 and 6 of this chapter, the directors or trustees of such corporation may, if they see fit, cause to be filed in the circuit court or superior court, if any, of the county where the institution is located the petition of said institution, making defendant thereto any known stockholder or stockholders, as shown by the stock register of the corporation, or the stockholder's administrator and heirs (if the stockholder is dead) including the surviving spouse and any unknown heirs of such stockholder, and praying the court to appoint three (3) disinterested persons to estimate and appraise the fair cash value of the stock held by such persons. If it appear by affidavit that the name or residence of any stockholder or defendant is unknown or that the person is a nonresident of the state of Indiana, or that the person is believed to be dead and that the names of the person's surviving spouse and heirs or either are unknown, the clerk, by order of the court, shall cause a notice of the pendency of such action and the term at which the same will stand for trial to be published for three (3) weeks successively in some newspaper of general circulation printed in the English

language and published in said county. And the value of such shares having been so appraised by said commissioners, by a vote of a majority thereof, when confirmed by the court, shall be final and conclusive upon all parties. And thereupon said corporation shall be decreed to be the purchaser and owner of such shares as against all parties served with notice or against whom or the unknown surviving spouse or heirs of whom publication was made as provided in this section, at and for the value of their respective shares as fixed by such appraisal; and said directors or trustees shall thereupon cause entry of such purchase and ownership to be noted upon the stock register of the corporation, and shall pay to the respective owners of such stock the value thereof as fixed by said appraisal whenever the owners shall present the certificate for such shares owned and assign the same to such corporation or the directors or trustees thereof.

*(Formerly: Acts 1909, c.52, s.6.) As amended by P.L.34-1987, SEC.348.*

#### **IC 23-13-5-8**

#### **Nullifying action of board regarding corporate stock; vesting property and assets in local public school corporation; vesting in county; bonds**

Sec. 8. (a) Should for any cause any action of the board of directors or trustees of a corporation be invalid or ineffective in whole or in part as and for a cancellation or retirement of capital stock as provided in this chapter, then the entire act of cancellation or retirement as to all other stock shall be held null and void. If at any time after the transfer of any stock to the corporation or to the trustees or directors it becomes no longer possible for the corporation to operate the postsecondary educational institution as a postsecondary educational institution, and the fact is found to exist by the board of trustees or directors, the property and assets of the corporation vest in and belong absolutely to the local public school corporation within whose territorial limits the postsecondary educational institution is situated unless the local public school corporation elects to refuse to accept the property and assets in writing served upon the board of trustees or an officer thereof within one hundred twenty (120) days. If the local public school corporation elects to refuse to accept the property and assets, then the property and assets of the corporation vest in and belong absolutely to the county within whose territorial limits the postsecondary educational institution is situated unless the county, acting by its legislative body, elects to refuse to accept the property and assets in writing served upon the board of trustees or an officer within one hundred twenty (120) days. If the county refuses to accept the property and assets, the property and assets vest in and belong absolutely to the state general fund. If the postsecondary educational institution is situated in a school township, the election shall be made by the township executive with the approval of the township legislative body. If situated in a school city or town corporation, the election shall be

made by the school board of the municipality.

(b) The local school corporation receiving the property or assets is responsible for the payment of the lawful debts and liabilities of the corporation. For the purpose of raising funds to pay the debts and liabilities, the township executive, with the concurrence and sanction of the township legislative body, or the city or town school board, as the case may be, is authorized and empowered to issue and sell bonds of the school township, school city, or school town. The debt created by the bonds, together with all other indebtedness of the school corporation, may not exceed two percent (2%) of the adjusted value of the taxable property within the school corporation as determined under IC 36-1-15. If the building or property of the corporation vested in the school corporation is suitable for instructing students of the township in the arts of agriculture, domestic science, or physical or practical mental culture, and in which to hold school or civic entertainments or be used for township, town, or city purposes, then the township executive, with the concurrence and sanction of the township, city, or town legislative body, as the case may be, is authorized and empowered to issue and sell bonds of the civil township, city, or town, as the case may be, and apply the proceeds to the payment of the debts and liabilities of the corporation. The proceeds of the bonds, together with all other indebtedness of the civil township, city, or town, may not exceed two percent (2%) of the adjusted value of the taxable property within the civil township, city, or town, as determined under IC 36-1-15. If the county receives the property, it is authorized to issue its general obligation bonds to pay the debts and liabilities as general obligation bonds of counties are issued under the general law. Unless the school and civil townships and school and civil cities and towns can liquidate the debts and liabilities without violating Article 13, Section 1 of the Constitution of the State of Indiana and IC 36-1-15, they shall elect to refuse to accept the property. Unless the county can liquidate the debts and liabilities without violating the constitutional provision, it shall elect to refuse the property. If a civil township, city, or town uses its funds or the proceeds of the sale of its bonds to liquidate the debts and liabilities, it shall have an interest in the property in the proportion the funds expended by it bear to the funds expended by the school township, school city, or school town.

(c) Any bonds issued under this chapter shall be payable in not more than twenty (20) years after the date of their issuance. The municipal corporation issuing the bonds shall annually levy a tax on all of the taxable property within the municipal corporation in an amount sufficient to pay the interest on and the principal of such bonds as they mature. The bonds may mature and be payable either semiannually or annually. Notice of sale of the bonds shall be published once each week for two (2) weeks in a newspaper published in the municipal corporation issuing the bonds, or in a newspaper published in the county seat of the county in which the municipal corporation is located. Additional notices may be published.

(d) If the corporation ceases to exist or winds up its affairs without its board of trustees or directors finding that it is no longer possible for the corporation to operate the university, college, or institution of learning as a postsecondary educational institution, this shall have the same effect as such a finding.

*(Formerly: Acts 1909, c.52, s.7; Acts 1949, c.147, s.1; Acts 1951, c.78, s.1.) As amended by P.L.8-1987, SEC.74; P.L.8-1989, SEC.83; P.L.1-1993, SEC.192; P.L.6-1997, SEC.196; P.L.246-2005, SEC.208; P.L.2-2007, SEC.316.*

#### **IC 23-13-5-9**

##### **Certificate regarding assignment of shares**

Sec. 9. Whenever this chapter shall have been accepted by a vote of the stockholders, as provided in section 3 of this chapter, and not less than two-thirds (2/3) of all outstanding stock of the corporation shall have been assigned and turned over to the directors or trustees for the corporation, or directly to the corporation, then a certificate containing a copy of the resolutions or other proceedings and votes in said matter had and done at such stockholders' meeting, and also stating that such two-thirds (2/3) of all such stock has been so duly assigned and turned over, signed by the president of the directors or other chief executive officer of such corporation, and attested by the secretary thereof and the corporate seal of such institution attached thereto, shall be filed with the secretary of state for the state of Indiana, and thereupon, the same shall be taken and deemed as an amendment to and part and parcel of the charter of such institution, but such charter shall not be taken or deemed as altered or amended in any other respect than as specified in such resolution or votes.

*(Formerly: Acts 1909, c.52, s.8.) As amended by P.L.34-1987, SEC.349.*

#### **IC 23-13-5-10**

##### **Presumption of assignment**

Sec. 10. After one (1) year from the date of any such stockholders' meeting, all stockholders shall be conclusively presumed to have assented to the action thereof and to have assigned their stock to said directors or trustees accordingly, unless, within such year, they shall have filed their respective petitions as provided for the valuation and sale of their stock. After one (1) year from the entry of any decree of court hereinbefore provided for, no appeal shall lie therefrom.

*(Formerly: Acts 1909, c.52, s.9.)*