

IC 23-1-39

Chapter 39. Amendment of Bylaws

IC 23-1-39-1

Power of board of directors

Sec. 1. Unless the articles of incorporation or section 4 of this chapter provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

As added by P.L.149-1986, SEC.23. Amended by P.L.133-2009, SEC.31.

IC 23-1-39-2

Bylaws fixing quorum or voting requirements; adoption or amendment by shareholders

Sec. 2. (a) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this article.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

As added by P.L.149-1986, SEC.23.

IC 23-1-39-3

Bylaw fixing greater than majority quorum or voting requirement; amendment or repeal

Sec. 3. (a) A bylaw that fixes a greater than majority quorum or voting requirement for action by the board of directors may be amended or repealed:

(1) if originally adopted by the shareholders, only by the shareholders; or

(2) if originally adopted by the board of directors, only by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater than majority quorum or voting requirement for action by the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for action by the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

As added by P.L.149-1986, SEC.23. Amended by P.L.3-2008, SEC.164.

IC 23-1-39-4

Voting procedures

Sec. 4. (a) This section does not apply to any corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.

(b) Unless the articles of incorporation specifically prohibit the adoption of a bylaw under this section, alter the vote specified in IC 23-1-30-9(a), or provide for cumulative voting, a corporation may elect in the corporation's bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

(2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present. However, a nominee who is elected but receives more votes against than for election shall serve as a director for a term that ends on the date that is the earlier of:

(A) ninety (90) days after the date on which the voting results are determined; or

(B) the date on which an individual is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board to which IC 23-1-33-9 applies.

Subject to subdivision (3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period described in clause (A).

(3) The board of directors may select a qualified individual to fill the office held by a director who received more votes against than for election.

(c) Subsection (b) does not apply to an election of directors by a voting group if:

(1) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(2) absent a provision described in subdivision (1), at a time fixed by the board of directors that is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur;

there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual is not considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(d) A bylaw under which a corporation elects to be governed by this section may be repealed:

(1) if originally adopted by the shareholders, only by the

shareholders, unless the bylaw otherwise provides; or
(2) if adopted by the board of directors, by the board of
directors.

As added by P.L.133-2009, SEC.32.