

§ 1629b. Procedures for considering amendments and resolutions

(a) Coverage

Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section—

(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 1606 of this title, subsection (d)(1)(B) of this section, or section 1629c of this title;

(2) a resolution authorized by section 1629d(a)(2) of this title;

(3) a resolution to establish a Settlement Trust; or

(4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to section 1629e(a)(1) of this title;

shall be considered in accordance with the provisions of this section.

(b) Basic procedure

(1) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

(B) The board of directors may, but shall not be required to, appraise or otherwise determine the value of—

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery;

(ii) the surface estate of land that is both—

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of title 16); or

(iii) land or interest in land which the board of directors believes to be only of speculative value;

in connection with any communication made to the shareholders pursuant to this subsection.

(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

(c) Shareholder petitions

(1)(A) With respect to an amendment authorized by section 1606(g)(1)(B) of this title or section 1629c(b) of this title or an amendment authorizing the issuance of stock subject to the restrictions provided by section 1606(g)(2)(B)(iii) of this title, the holders of shares representing at least 25 per centum of the total voting power of a Native Corporation may petition the board of directors to submit such amendment to a vote of the shareholders in accordance with the provisions of this section.

(B) The requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition described in subparagraph (A) except that the requirements of Federal law shall govern the solicitation of signatures for a petition that is to be submitted to a Native Corporation which at the time of such submission has issued a class of equity securities registered pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]. If a petition meets the applicable solicitation requirements and—

(i) the board agrees with such petition, the board shall submit the amendment and either the proponents' statement or its own statement in support of the amendment to the shareholders for a vote, or

(ii) the board disagrees with the petition for any reason, the board shall submit the amendment and the proponents' statement to the shareholders for a vote and may, at its discretion, submit an opposing statement or an alternative amendment.

(2) Paragraph (1) shall not apply to a Native Corporation that on or before the date one year after February 3, 1988, elects application of section 1629c(d) of this title in lieu of section 1629c(b) of this title. Until December 18, 1991, paragraph (1) shall not apply to a Native Corporation that elects application of section 1629c(c) of this title in lieu of section 1629c(b) of this title. Insofar as they are not inconsistent with this section, the laws of the State shall govern any shareholder right of petition for Native Corporations.

(d) Voting standards

(1) Except as otherwise set forth in subsection (d)(3) of this section, an amendment or resolution described in subsection (a) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

(A) a majority of the total voting power of the corporation, or

(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(2) A Native Corporation in amending its articles of incorporation pursuant to section 1606(g)(2) of this title to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) (other than an amendment authorized by section 1629c of this title) in order for such amendment or resolution to be approved.

(3) A resolution described in subsection (a)(3) or an amendment to articles of incorporation under section 1606(g)(1)(B) of this title shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

(A) a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to articles of incorporation; or

(B) an amount of shares greater than a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to articles of incorporation (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(e) Voting power

For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.

(f) Substantially all of the assets

For purposes of this section and section 1629e of this title, a Native Corporation shall be considered to be transferring all or substantially all of its assets to a Settlement Trust only if such assets represent two-thirds or more of the fair market value of the Native Corporation's total assets.

(Pub. L. 92-203, § 36, as added Pub. L. 100-241, § 7, Feb. 3, 1988, 101 Stat. 1795; amended Pub. L. 108-7, div. F, title III, § 337(a), Feb. 20, 2003, 117 Stat. 278; Pub. L. 109-179, § 1, Mar. 13, 2006, 120 Stat. 283; Pub. L. 109-221, title I, § 101(a), May 12, 2006, 120 Stat. 336.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (c)(1)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2006—Pub. L. 109-221, § 101(a)(1), made technical corrections to the directory language of Pub. L. 108-7, § 337(a). See 2003 Amendment notes below.

Subsec. (d). Pub. L. 109-179, § 1, redesignated par. (d)(3) as par. (3), and in that par. as so redesignated, substituted “or an amendment to articles of incorporation under section 1606(g)(1)(B) of this title” for “of this section” in introductory provisions, “the resolution or amendment to articles of incorporation; or” for “such resolution, or” in subpar. (A), and “the resolution or amendment to articles of incorporation” for “such resolution” in subpar. (B).

Subsec. (f). Pub. L. 109-221, § 101(a)(2), made technical amendment to reference in original act which appears in text as reference to section 1629e of this title.

2003—Subsec. (d)(1). Pub. L. 108-7, § 337(a)(1), as amended by Pub. L. 109-221, § 101(a)(1)(A), substituted “Except as otherwise set forth in subsection (d)(3) of this section, an” for “An”.

Subsec. (d)(d)(3). Pub. L. 108-7, § 337(a)(2), as amended by Pub. L. 109-221, § 101(a)(1)(A), (B), added par. (d)(3) to subsec. (d).

Subsec. (f). Pub. L. 108-7, § 337(a)(3), as amended by Pub. L. 109-221, § 101(a)(1)(A), (C), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-221, title I, § 101(c), May 12, 2006, 120 Stat. 337, provided that: “The amendments made by this section [amending this section and section 1629e of this title] take effect on February 20, 2003.”

§ 1629c. Duration of alienability restrictions

(a) General rule

Alienability restrictions shall continue until terminated in accordance with the procedures established by this section. No such termination shall take effect until after July 16, 1993: *Provided, however*, That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition.

(b) Opt-out procedure

(1)(A) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsection. Only one amendment to terminate alienability restrictions shall be considered and voted on prior to December 18, 1991. Rejection of the amendment shall not preclude consideration prior to December 18, 1991, of subsequent amendments to terminate alienability restrictions.

(B) If an amendment to terminate alienability restrictions is considered, voted on, and rejected prior to December 18, 1991, then subsequent amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not earlier than five years after the rejection of the most recently rejected amendment to terminate restrictions; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not earlier than two years after the rejection of the most recently rejected amendment to terminate restrictions.

(C) If no amendment to terminate alienability restrictions is considered and voted on prior to December 18, 1991, then amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—