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Tom Bakos, FSA, MAAA

September 5, 2009

Curtis Huntington
Chair, Actuarial Board for Counseling and Discipline
American Academy of Actuaries
Suite 300
1850 M Street, N.W.
Washington, DC 20036

Dear Curtis:

I am very sorry to find myself writing a letter like this. But, as you may be aware, a very serious matter involving the American Academy of Actuaries in litigation with its President-Elect is now pending. There is absolutely no precedent for this.

I believe that the AAA has found itself in litigation with Bruce Schobel through a series of events which no one at the Academy Board level exercised any rational control over. I believe that the Academy Board has repeatedly ignored its Bylaws and applicable Illinois law. To the extent it has been given legal advice in this matter that legal advice has either been very, very bad or ignored.

I will state up front that I am making references to the Board as a collective and not to any particular member. It may very well be that the Board is simply not being kept well informed by staff or leaders. This is not yet a formal complaint as the Academy has been so incredibly inefficient in communicating with its members that it is nearly impossible to find out what the Academy Board is actually doing or has actually done. In an environment like that one can only be left with the impression that something is really wrong without knowing exactly what it is.

I am asking for your help in investigating this matter since there is, apparently, no option other than an appeal to the ABCD or filing a lawsuit in Federal Court to getting the Academy Board back on track and responsive to the membership. As is clearly evident, the pending litigation born of incompetence (in my opinion) is quickly destroying a reputation the Academy has built over its 44 year history. There are, clearly, apparent, material violations of the Code lying around somewhere.

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Background follows

Although there may be other problems those itemized below relate to the Academy Board's lack of adherence to its own Bylaws and applicable Illinois law.

In particular, I point out the opening paragraph of the ***Code of Professional Conduct*** as an important reference when considering the activities outlined below:

> ***The purpose of this Code of Professional Conduct ("Code") is to require Actuaries to adhere to the high standards of conduct, practice, and qualifications of the actuarial profession, thereby supporting the actuarial profession in fulfilling its responsibility to the public. An Actuary shall comply with the Code. An Actuary who commits a material violation of the provisions of the Code shall be subject to the profession's counseling and discipline procedures.***

And also, the Code requires compliance with law which, I believe, should be equally applicable when providing volunteer service to the profession as an Academy Board member:

> ***Laws may also impose obligations upon an Actuary. Where requirements of Law conflict with the Code, the requirements of Law shall take precedence.***

Pattern of Ignoring Bylaws

I have two examples. These are not trivial as they involve the governance of the AAA under its Bylaws and applicable Illinois law.

1. On May 21, 2009 the Academy Board met and, among other things, decided to split the Secretary/Treasurer position into two separate officer positions: Secretary and Treasurer. In addition, per my discussion with one Board member (Bill Bluhm), the Board desired to create this additional officer position without changing the total number of directors on the board (which is 29). Bluhm has insisted that the Bylaws have been changed and that members have been notified of this.

   The Academy in reporting on this May 21, 2009 Board meeting has not announced a Bylaws change. The only thing available is a ***Summary of Actions Taken*** (see Attachment 1) which makes no mention of a Bylaws amendment which, obviously, must occur to accomplish the action noted in item #2 of the Summary.

   - In fact, as of today (9/5/2009, **nearly 4 months after** the apparent Board vote), the Bylaws posted on the Academy website do not reflect any such change, and
   - The *official* Academy Bylaws filed as Attachment A to Mary Downs' Declaration as a fact witness in the Academy litigation also shows no split in the

Secretary/Treasurer position which was apparently voted on at the May 21, 2009 Academy Board meeting.

However, a more serious concern is that, if the Bylaws were to be amended to accommodate the changes described above, a change to reduce by one the number of Board members elected directly by the members would be required in order to accommodate an additional officer director. I think any reasonable person reading the existing Bylaws would conclude that making such a change would require a vote of the membership. No such issue has been put to the membership.

I have so far been unsuccessful in getting any confirmation as to what the Academy Board actually did on May 21. This is information I believe I am entitled to as a member.

Implementation of the noted claimed change would seem to require a Bylaws change which has not been made and, therefore, be in violation of Academy Bylaws. The Academy Board as well as Academy General Counsel appear to have absolutely no idea what the Academy Bylaws require nor any concern, even though this discrepancy has been pointed out, to correct an obvious error.

2. On August 5, 2009 the Academy Board had a special meeting. Notice of this meeting was provided on July 14, 2009 to Board members. See Attachment 2. Although this meeting was called for a "discussion" of the "Anker letter", a vote was taken at that meeting to remove a director, Bruce Schobel, who was also President-Elect. None of the subsequent modifications to or advisories to the meeting announcement changed the basic purpose of the meeting within the 10 day notice requirement specified in the Academy Bylaws.

   The action taken on 8/5/09, that is, *a vote to remove a director* was clearly contrary to the Academy Bylaws and applicable Illinois law. It is this matter which is the subject of the pending lawsuit. Although this case has not yet gone to trial, in a hearing on Thursday, 9/3/2009, the judge in U.S. District Court DC made clear to the defendant Academy that he seemed not convinced that appropriate notice had been given. When questioned by the judge as to when notice was given, I understand that Academy counsel indicated ***that notice was given at the beginning of the 8/5 meeting***.

   Illinois law, as outlined in Attachment 3, clearly states that:

   > 108.35 (c)*(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.*

   This meeting notice requirement was clearly not met meaning that the Academy Board vote taken on 8/5/09 was apparently in violation of Illinois law.

In addition, Illinois law clearly requires a 2/3rds affirmative vote to remove a director. The vote admitted by the Academy was 17-9-1 which does not meet this 2/3rds requirement.

Even more significant, is the fact that Illinois law seems to not allow a director for a nonprofit corporation such as the Academy which has different classes of directors with non-uniform terms to be removed except for cause and then only if the Bylaws so provide. The Academy Bylaws make no provision for the removal of a director with or without cause therefore doing so would be in apparent violation of Illinois law.

A defense offered is that the Illinois Act provision [108.35] setting forth this restriction is ambiguous and that a director can be removed with or without cause – the second sentence being ambiguous. See below:

> ***Sec. 108.35. Removal of directors.*** *(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, no director may be removed except for cause if the articles of incorporation or the bylaws so provide.*

However, the ***Illinois General Not For Profit Corporation Act of 1986*** was amended on 8/24/2009 for effect on 1/1/2010 by Senate Bill SB1390. A Westlaw document referring to this change in its Summary (see underlined sentence in Attachment 4) indicates that one amendment was intended to change the meaning of this section 108.35 by changing the second sentence to the following:

> *In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, the articles of incorporation or bylaws may provide that such directors may only be removed for cause.*

The Westlaw document indicates that the original meaning, which was law on 8/5/2009 and is law through 1/1/2010 was that the currently applicable section 108.35 ***prohibited the removal of a director except for cause*** and that was being changed.

There was no cause argued as a reason for the director removal voted on at the 8/5/2009 Academy Board meeting. Therefore, the Academy Board, apparently violated Illinois law.

Therefore, assuming even that the Academy Board had authority granted by the Bylaws under Illinois law to remove a director, there were three basic legal requirements **none of which were met in the 8/5/2009 vote**:

- A meeting to remove a director requires adequate specific notice.
- Removal can be for cause only.

- A 2/3rds affirmative vote is required.

In addition, as pointed out by the judge at the 9/3/2009 hearing, the Academy:

- Never notified the members of the outcome of this ***open meeting*** vote that they believed they had removed Bruce Schobel as President-Elect/Director of the Academy.
- Never notified Bruce Schobel (who protested the validity of the vote) by letter that the Academy Board believed it had removed him as President-Elect/Director of the Academy.

On at least two recent occasions the Academy Board seems to have acted in total disregard for their controlling Bylaws and applicable Illinois law. Their apparent failure to even recognize that the Bylaws may have been violated and the seeming preference to go to court rather than responsibly address the obvious appears incredibly arrogant and not in keeping with any reasonable application of the Code.

The ABCD simply must investigate this and address any Code violations it finds.

As this litigation is not yet resolved and since none of the apparent votes taken at either the May 21, 2009 or the August 5, 2009 Board meetings have ever been announced, the Academy Board may choose the prudent path and simply acknowledge that neither vote actually occurred. In that case, of course, it would appear that there may have been no Code violations involving the violation of Illinois law.

Sincerely,

Tom Bakos, FSA, MAAA

cc: Academy Board of Directors

Attachment 1
Summary of Actions Taken

AMERICAN ACADEMY OF ACTUARIES
BOARD OF DIRECTORS MEETING
Washington, DC
May 21, 2009

Summary of Actions Taken

1. The Board approved the 2008 audit report.

2. The Board approved the separation of the Secretary/Treasurer position into two positions, Secretary and Treasurer.

3. The Board approved an amendment to the Committee Appointment Rules to allow other U.S.-based actuarial organizations to request that their liaisons on Academy Committees who reach their tenure limit be exempted from Committee tenure requirements. Those requests will be automatically granted. An exempt liaison will not count toward a committee's average tenure.

4. The Board approved an amendment to the Audit Committee charter, adding the Chief Financial Officer to the General Counsel and Executive Director who will meet at least annually with the Treasurer.

5. The Board approved the revised mission statement of The Actuarial Foundation Supporting Organization Committee to reflect that TAFSOC reports to CUSP.

6. The Board approved the following changes to the Academy's Strategic Plan:

- Reassigning Initiative 1.3.3., "Support ABCD operations," to CUSP.
- Moving Initiatives 1.5.1. (advocating professionalism standards) and 3.1.2. (advocating for the public on issues in the public interest) under Core Functional Area 4 ("Recognition and Communication"). Initiative 1.5.1. is now initiative 4.1.5., and 3.1.2. is now initiative 4.1.6.
- Creating Initiative 5.1.2, the Dues Collection Initiative, and assigning it to CUSP. The initiative's goal is to explore the feasibility of a single dues notice for the U.S. actuarial profession.

7. The Board approved the following dates for meetings in 2010:

- January 28 (DC)
- May 20 (DC)
- October 5 (TBD)

Attachment 2
AAA Meeting Notice – August 5, 2009 Special Board meeting

From: John P Parks [Johnpparks@gmail.com]
Sent: Tuesday, July 14, 20094:44 PM
To: Academy Board of Directors
Subject: [board] Special Meeting of the Board of Directors

Dear Members of the Board:

Pursuant to Article III, Section 3. (Meetings) of the Academy's bylaws, I am calling a special meeting of the Academy Board of Directors to be held in person from 1 to 3 pm, CDT in Minneapolis, MN. The purpose of the meeting is to discuss with the Board the letter sent to it by Bob Anker on behalf of 19 past presidents of the Academy. As you may know, the Academy's Executive Committee has an already scheduled meeting that will occur on that date in Minneapolis, and terminating the EC meeting early in order to add a Board meeting to that date will allow us to take up this important matter as expeditiously as possible while leveraging the presence of the many Board members who will already be in Minneapolis for the EC meeting. As is our practice, we will not have a call-in number or proxies. Attendance in person is necessary to participate in this meeting.

The EC meeting will take place in the Milliman offices at 8500 Normandale Lake Blvd in Minneapolis. We may have to arrange a different room outside of that facility depending on the number of Board members who can attend, so I ask you to respond to this email as soon as possible but please, in any event no later than **this Friday, July 17.**

I have asked Andrea Sweeny to work with Mary Downs and outside counsel, Betsy Lewis, a partner at Cooley Godward Kronish LLP to develop a fair and proper meeting process and procedures for deciding what available information about this matter can and cannot be properly presented to the Board for its discussion on August 5th without subjecting the Academy to any undue liability. More information about that process will be given to you as it is developed prior to the meeting.

I hope that all of you can attend this special and critically important meeting in Minneapolis.

John P Parks
President
American Academy of Actuaries
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Washington, DC 20036-5805
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AMERICAN ACADEMY OF ACTUARIES

Board of Directors: Election; Resignation; Removal

BOARD COMPOSITION

(Prior to Bylaw changes in Secretary/Treasurer position)

Per Article III (1) of the Bylaws:

> *The Board shall consist of 29 Directors, comprising the nine Officers, the two immediate Past Presidents, and 18 elected Directors.*

These 29 are broken into categories with election, duties, and terms as defined below:

Special Directors (8[1]): Election by majority vote of Board
Represent other U.S. actuarial organizations
2 year term

Regular Directors (10[2]): Election by members (except majority vote of Board fills vacancy)[3]
No special duties
3 year term

Officer Directors (9): Election by majority vote of Board[4]
Duties as specified in Bylaws or by tradition assigned by Board
Consists of:
- President-Elect – with, effectively, 2 year term[5]
- President – effectively, 2nd year of President-Elect term
- Vice Presidents (6) – 2 year terms
- Secretary/Treasurer – 1 year term[6]

Immediate Past Presidents Directors (2): Effectively, this is the 3rd or 4th year of a President-Elect
Duties are as specified in the Bylaws

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[1] The Bylaws specify not more than 8, so fewer Special Directors may be elected. If fewer than 8, then more Regular Directors would be elected by the members.

[2] Usually 10, but enough to bring number of "elected" directors to 18.

[3] Members elect Regular Directors to fill expiring terms – 3 Regular Board seats (or 4 every third year)

[4] The Board elects some classes of Directors to fill expiring terms. Typically, each year Board elections fill: 4 Special Director seats; 3 VP Director seats; President-Elect Director; Secretary/Treasurer Director for a total of 9. Together with member elected directors, 12 or 13 vacancies are filled each year.

[5] It might also be argued that an individual elected as President-Elect is elected to a 4 year term on the Board. However, after serving as President, the President-Elect automatically transitions into two terms as an Immediate Past President Director, a specifically identified separate director class.

[6] The Secretary/Treasurer term is implied as 1 year since this Officer Director is elected each year. No term is specifically stated in the Bylaws.

It seems clear that "officers" are merely a special class of director and that the Officer Director status is not separable. That is, it would be unreasonable to believe that an individual could, for example, resign an officer position without also resigning a director role.

This combination of officer and director is clearly allowed by the Act:

> *108.50 (c) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or any other person holding a particular office outside the corporation shall be a director or directors while he or she holds that office. Unless the articles of incorporation or the bylaws provide otherwise, such director or directors shall have the same rights, duties and responsibilities as other directors.*

A reasonable interpretation of this section of the ACT is that a person elected as an officer is effectively elected to a special class of director if the corporation's bylaws make officers directors as the Academy's does.

A Note: Although the Bylaws make reference to 18 "elected" directors, 10 elected by members and 8 elected by the Board, all of the directors are, in fact, elected. The Officer Directors are elected by the Board just as the Special Directors are. It might be argued that the President Director and the Immediate Past President Directors are not elected to those Board positions directly. However, those individuals are on the Board by virtue of an election process in a prior year.

TYPE OF CORPORATION

Under the ***Illinois General Not for Profit Corporation Act (Act)*** the Academy is a 108.10(e) organization. This is because the Academy has several classes of directors as described above.

> *108.10(e) The articles of incorporation or the bylaws may provide that directors may be divided into classes and the terms of office of several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.*

RESIGNATION OF DIRECTORS

Generally, the Academy Bylaws accommodate resignations of directors by allowing the Board to fill a vacancy by majority vote. Normally, the vacancy may be filled immediately for the unexpired remaining term of the director resigning. There are three exceptions:

- The Bylaws provide that a vacancy in the office of ***President-Elect***, if the incumbent resigns, is effectively not filled. Instead, at the next annual meeting the Board elects a President to serve immediately in place of the resigned President-Elect.

- If a ***President*** resigns, the ***President-Elect*** immediately succeeds to the office of President. Depending on how long a President-Elect was in office through this succession process, he or she may or may not serve a full year term as President. The President-Elect may also be called upon to perform the duties of President if the sitting President is absent, unable, or unwilling.

- There appears to be no provision to replace ***Immediate Past President Directors*** if they resign. Clearly, they will be replaced through normal succession through the presidential officer director positions.

Since an officer position is inexorably linked to a special class of director, it is reasonable to believe that an individual cannot resign only an officer position. Any resignation is, of necessity, a resignation as an Officer Director. To believe otherwise would imply or lead to the illogical conclusion that the Board in replacing one or more resigned officers (who tried to remain on the Board as a director) would need to expand the number of directors in excess of the 29 allowed by the Bylaws. This, clearly, could not be done without amending the Bylaws through a member vote.

REMOVAL OF DIRECTORS (OFFICERS)

The Academy Bylaws make no provisions for removal of directors (or for officers).

In fact, the Academy Bylaws very clearly avoid the notion of removing an officer or an Officer Director. In Article VI [Duties of Officers], the Bylaws very clearly address the situation in which a President is unable or refuses to act not by removal from office (perhaps, the most logical alternative) but by delegating the Presidential duties to the President-Elect. Therefore, the Bylaws seem to set forth, not merely by absence but also by example, that the Academy has not reserved a right to remove directors from the Board. Rather, the Bylaws establish for the Board has relatively broad powers to assign duties to the directors.

Officers are a special class of director. The officer title is inexorably linked to the director position by Academy Bylaws and the Act. Therefore it is reasonable to believe that Officer Directors may be removed only through the process that would be applied to the removal of a director.

Legal Requirements

In the absence of any specific language in the Academy Bylaws the provisions of the Act may be looked to:

> ***Sec. 108.35. Removal of directors.*** *(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, no director may be removed except for cause if the articles of incorporation or the bylaws so provide.*

It is reasonable to interpret this language as follows:

- The first sentence of this provision indicates that, in general, a Not for Profit Corporation may remove directors with or without cause.

- The second sentence is an exception to the general rule which is applied to organizations like the Academy with multiple classes of directors. In this case directors may only be removed for cause and then only if the organization's bylaws so provide.

As noted, there are no provisions at all in the Academy Bylaws pertaining to removal of directors. Therefore the Academy has not in its Bylaws reserved the right to remove a director for cause. Therefore, it would seem that unless the Academy amends its Bylaws to allow this, it cannot do it.

If the Academy Bylaws did have a provision allowing the removal of a Director for cause, then, per the Act, the process must proceed as follows (although it is acknowledged that some interpretation is required since the Act was drafted to apply to a wide variety of not for profit organizations):

The Act states:

> *108.35 (c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:*
>
> *(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.*
>
> *(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.*

Some of the Academy directors are elected by the members. Therefore, the Academy would fall into the 108.35 (c) category which would require a 2/3rds affirmative vote at a meeting for which adequate prior notice was given. Such notice must indicate the purpose of the meeting is to remove one or more directors and only those named directors can be removed at that meeting.

In the above, "members" may be taken to mean members of the organization, that is, MAAA's in the Academy's case. So, it could be argued that in an organization like the Academy with directors elected by the members (even though not all are), a director no matter how elected may only be removed by a 2/3rds vote of all MAAA's present and voting. Indeed, there may be valid and logical reasons for this restriction on removal in organizations with many classes of directors.

Since the Academy has directors both elected by members and by the Board, it might be claimed that 108.35(b) ought to apply. See below:

> *108.35 (b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.*

However, a more reasonable argument is that the Act very clearly and unambiguously divides Not For Profit Corporations into two categories:

- 108.35 (b) organizations "with no members entitled to vote on directors" and,

- 108.35 (c) organizations "with members entitled to vote for directors."

It cannot logically be argued that the Academy belongs in any category but the latter. In effect, the latter is a catch all category. That is, the paragraph (b) category is not defined as a class with "members not entitled to vote on directors" which might be construed as also identifying the Academy which does have classes of directors on which members are not entitled to vote. Rather, the paragraph (b) category is defined as a class of organizations with "no members entitled to vote on directors" which does not define the Academy voting structure since members are entitled to vote on a class of directors.

Attachment 3
Illinois Senate Bill SB1390

ILLINOIS BILL TEXT

VERSION: Adopted

August 24, 2009

SUMMARY: Amends the General Not For Profit Corporation Act of 1986. Provides that notices may be delivered by electronic means to an e-mail address, facsimile number, or other appropriate contact (instead of the address) listed on the corporate records. Provides for informal action by voting membership by mail, e-mail, or other electronic means (instead of a written consent by all members entitled to vote) and notice of the informal action must be delivered at least 5 days before the effective date to members who did not vote (instead of a written consent signed by less than all voters is only effective if notice of the proposed action is delivered 5 days before the effective date of the action and if, after the effective date of the consent, prompt written notice of the action is delivered to those who did not give written consent). Provides that writings by directors or members include electronic communications unless prohibited (instead of expressly permitted) by the corporation's bylaws or incorporation articles. Provides that a voting member or the member's agent may examine or copy the corporation's records for a proper purpose and that a disputed records request is decided in circuit court (instead of a member may inspect all books and records for a proper purpose at a reasonable time). Provides that a bylaws amendment eliminating a director position may shorten (instead of may not shorten) the terms of incumbent directors, if approved by those authorized to select the directors. **Deletes provision that prohibits the removal, except for cause, of directors of different classes with non-uniform terms.** Provides that a transaction between a corporation and a member, director, officer, or any entity in which such an individual has an interest, is not void or voidable solely for that reason if the material facts are disclosed and the board or members in good faith authorize the transaction by a majority vote or the transaction is fair at the time it is authorized (instead of if a transaction is fair to the corporation, the direct or indirect interest of a director is not grounds for invalidating the transaction). Provides that no director shall be liable unless the director earns more than $25,000(instead of $5,000) per year as a director. Makes other changes.

TEXT:

SB1390 Enrolled

LRB096 08993 AJO 19132 b

AN ACT concerning

business.

Be it enacted by the

People of the State of Illinois,

represented in the General Assembly:

Section 5. The General Not For Profit Corporation Act of 1986 is amended by changing Sections 101.80, 103.12, 107.10, 107.40, 107.50, 107.75, 108.05, 108.10, 108.35, 108.45, 108.60, 108.70, and 110.30 as follows:
(805 ILCS 105/101.80) (from Ch. 32, par. 101.80)

Sec. 101.80. Definitions. As used in this Act, unless the context otherwise requires, the words and phrases defined in this Section shall have the meanings set forth herein.

(a) "Anniversary" means that day each year exactly one or more years after:

(1) The date of filing the articles of incorporation prescribed by Section 102.10 of this Act, in the case of a domestic corporation;

(2) The date of filing the application for authority prescribed by Section 113.15 of this Act in the case of a foreign corporation;

(3) The date of filing the statement of acceptance prescribed by Section 101.75 of this Act, in the case of a corporation electing to accept this Act; or (4) The date of filing the articles of consolidation SB1390 Enrolled LRB096 08993 AJO 19132 b prescribed by Section 111.25 of this Act in the case of a consolidation.

(b) "Anniversary month" means the month in which the anniversary of the corporation occurs.

(c) "Articles of incorporation" means the original articles of incorporation including the articles of incorporation of a new corporation set forth in the articles of consolidation or set forth in a statement of election to accept this Act, and all amendments thereto, whether evidenced by articles of amendment, articles of merger or statement of correction affecting articles. Restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto prior to the effective date of filing the articles of amendment incorporating the restated articles of incorporation. In the case of a corporation created by a Special Act of the Legislature, "Articles of incorporation" means the special charter and any amendments thereto made by Special Act of the Legislature or pursuant to general laws.

(d) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated. SB1390 Enrolled LRB096 08993 AJO 19132 b (f) "Corporation" or "domestic corporation" means a domestic not-for-profit corporation subject to the provisions of this Act, except a foreign corporation.

(g) "Delivered," for the purpose of determining if any notice required by this Act is effective, means:

(1) Transferred or presented to someone in person;

(2) Deposited in the United States mail addressed to the person at his, her or its address as it appears on the records of the corporation, with sufficient first-class postage prepaid thereon;

(3) Posted at such place and in such manner or otherwise transmitted to the person's premises as may be authorized and set forth in the articles of incorporation or the bylaws; or (4) Transmitted by electronic means to the **e-mail** address**, facsimile number, or other contact information** **appearing** ~~that appears~~ on the records of the corporation as may be authorized **or approved** ~~and set forth~~ in the articles of incorporation or the bylaws.

(h) "Foreign corporation" means a not-for-profit corporation as defined and organized under the laws other than the laws of this State, for a purpose or purposes for which a corporation may be organized under this Act.

(i) "Incorporator" means one of the signers of the original articles of incorporation.

(j) "Insolvent" means that a corporation is unable to pay SB1390 Enrolled LRB096 08993 AJO 19132 b its debts as they become due in the usual course of the conduct of its affairs.

(k) "Member" means a person or any organization, whether not for profit or otherwise, having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(l) "Net assets," for the purpose of determining the authority of a corporation to make distributions, is equal to the difference between the assets of the corporation and the liabilities of the corporation.

(m) "Not-for-profit corporation" means a corporation subject to this Act and organized solely for one or more of the purposes authorized by Section 103.05 of this Act.

(n) "Registered office" means that office maintained by the corporation in this State, the address of which is on file in the office of the Secretary of State, at which any process, notice or demand required or permitted by law may be served upon the registered agent of the corporation.

(o) "Special charter" means the charter granted to a corporation created by special act of the Legislature whether or not the term "charter" or "special charter" is used in such special act.

(p) **Unless otherwise prohibited by** ~~To the extent permitted~~ ~~in~~ the articles of incorporation or the bylaws of the corporation, actions required to be "written", to be "in writing", to have "written consent", to have "written approval"

SB1390 Enrolled LRB096 08993 AJO 19132 b and the like by or of members, directors, or committee members shall include any communication transmitted or received by electronic means.

(Source: P.A. 92-33, eff. 7-1-01; 92-572, eff. 6-26-02.) (805 ILCS 105/103.12) (from Ch. 32, par. 103.12)

Sec. 103.12. Private foundations - Federal tax laws. In the absence of an express provision to the contrary in its articles of incorporation, a corporation, as defined in

Section 509 of the Internal Revenue Code of **1986, as may be amended from time to time** ~~1954~~, during the period it is a private foundation:

(a) Shall not engage in any act of self-dealing as defined in Section 4941(d) thereof;

(b) Shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 thereof;

(c) Shall not retain any excess business holdings as defined in Section 4943(c) thereof;

(d) Shall not make any investment in such manner as to subject it to tax under Section 4944 thereof;

(e) Shall not make any taxable expenditure as defined in

Section 4945(d) thereof.

(Source: P.A. 84-1423.) (805 ILCS 105/107.10) (from Ch. 32, par. 107.10)

Sec. 107.10. Informal action by members entitled to vote. SB1390 Enrolled LRB096 08993 AJO 19132 b (a) Unless otherwise provided in the articles of incorporation or the bylaws, any action required by this Act to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of the members entitled to vote, may be taken **by ballot without a meeting in writing by mail, e-mail, or any other electronic means pursuant to which the members entitled to vote thereon are given the opportunity to vote for or against the proposed action, and the action receives approval by a majority of the members casting votes, or such larger number as may be required by the Act, the articles of incorporation, or the bylaws, provided that the number of members casting votes would constitute a quorum if such action had been taken at a meeting. Voting must remain open for not less than 5 days from the date the ballot is delivered; provided, however, in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets, the voting must remain open for not less than 20 days from the date the ballot is delivered.** ~~without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed either: (i) by all of the members entitled to vote with respect to the subject matter thereof, or (ii) by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voting.~~ SB1390 Enrolled LRB096 08993 AJO 19132 b (b) **Such informal action by members** ~~If such consent is signed by less than all of the members entitled to vote, then such consent~~ shall become effective only~~: (1)~~ if, at least 5 days prior to the effective date of such **informal action** ~~consent~~, a notice in writing of the proposed action is delivered to all of the members entitled to vote with respect to the subject matter thereof**.** ~~, and (2) if, after the effective date of such consent, prompt notice in writing of the taking of the corporate action without a meeting is delivered to those members entitled to vote who have not consented in writing.~~

(c) In the event that the action which is **approved** ~~consented to~~ is such as would have required the filing of a certificate under any other Section of this Act if such action had been voted on by the members at a meeting thereof, the certificate filed under such other Section shall state, in lieu of any statement required by such Section concerning any vote of members, that **an informal vote** ~~written consent~~ has been **conducted** ~~given~~ in accordance with the provisions of this

Section and that written notice has been delivered as provided in this Section.

(Source: P.A. 84-1423.) (805 ILCS 105/107.40) (from Ch. 32, par. 107.40)

Sec. 107.40. Voting. (a) The right of the members, or any class or classes of members, to vote may be limited, enlarged SB1390 Enrolled LRB096 08993 AJO 19132 b or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(b) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his or her vote and to give one candidate a number of votes equal to his or her vote multiplied by the number of directors to be elected, or to distribute such votes on the same principle among as many candidates as he or she shall think fit.

(c) If a corporation has no members or its members have no right to vote **with respect to a particular matter**, the directors shall have the sole voting power **with respect to such matter**.

(Source: P.A. 84-1423.) (805 ILCS 105/107.50) (from Ch. 32, par. 107.50)

Sec. 107.50. Proxies. A member entitled to vote may vote in person or, unless the articles of incorporation or ~~the~~ bylaws **explicitly prohibit** ~~otherwise provide~~, by proxy executed in writing by the member or by that member's duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. **Unless otherwise prohibited by the articles of incorporation or bylaws, the election of directors, officers,** SB1390 Enrolled LRB096 08993 AJO 19132 b **or representatives by members may be conducted by mail, e-mail, or any other electronic means as set forth in subsection (a) of**

Section 107.10. ~~Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.~~

(Source: P.A. 84-1423.) (805 ILCS 105/107.75) (from Ch. 32, par. 107.75)

Sec. 107.75. Books and records.

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. **Any voting member shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a voting member must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor. If the corporation refuses examination, the voting member may file suit in the circuit court of the county in which**

either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as SB1390 Enrolled LRB096 08993 AJO 19132 b **may be proper. If a voting member seeks to examine books or records of account the burden of proof is upon the voting member to establish a proper purpose. If the purpose is to examine minutes, the burden of proof is upon the corporation to establish that the voting member does not have a proper purpose.** ~~All books and records of a corporation may be inspected by any member entitled to vote, or that member's agent or attorney, for any proper purpose at any reasonable time.~~

(b) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall keep an accurate and complete account of all transfers of membership and shall, on a quarterly basis, record all transfers of membership with the county clerk of the county in which the residential cooperative is located. Additionally, a list of all transfers of membership shall be available for inspection by any member of the corporation.

(Source: P.A. 91-465, eff. 8-6-99.) (805 ILCS 105/108.05) (from Ch. 32, par. 108.05)

Sec. 108.05. Board of directors.

(a) Each corporation shall have a board of directors, and except as provided in articles of incorporation, the affairs of the corporation shall be managed by or under the direction of SB1390 Enrolled LRB096 08993 AJO 19132 b the board of directors.

(b) ~~The articles of incorporation or bylaws may prescribe qualifications for directors.~~ A director need not be a resident of this State or a member of the corporation unless the articles of incorporation or bylaws so prescribe. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

(c) Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, notwithstanding the provisions of

Section 108.60 of this Act.

(d) No director may act by proxy on any matter.

(Source: P.A. 95-368, eff. 8-23-07.) (805 ILCS 105/108.10) (from Ch. 32, par. 108.10)

Sec. 108.10. Number, election and resignation of directors. (a) The board of directors of a corporation shall consist of three or more directors. The number of directors shall be fixed by the bylaws, except the number of initial directors shall be fixed by the incorporators in the articles of incorporation. In the absence of a bylaw fixing the number of directors, the number shall be the same as that fixed in the articles of incorporation. The number of directors may be SB1390 Enrolled LRB096 08993 AJO 19132 b increased or decreased from time to time by amendment to the bylaws.

(b) The bylaws may establish a variable range for the size of the board by prescribing a minimum and maximum (which may not be less than 3 or exceed the minimum by more than 5) number of directors. If a variable range is established, unless the bylaws otherwise provide, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the directors without further amendment to the bylaws.

(c) The terms of all directors expire at the next meeting for the election of directors following their election unless their terms are staggered under subsection (e). The term of a director elected to fill a vacancy expires at the next annual meeting of the members entitled to vote at which his or her predecessor's term would have expired or in accordance with

Section 108.30 of this Act. The term of a director elected as a result of an increase in the number of directors expires at the next annual meeting of members entitled to vote unless the term is staggered under subsection (e).

(d) Despite the expiration of a director's term, he or she continues to serve until the next meeting of members **or directors** entitled to vote on directors at which directors are elected. **An amendment to the bylaws decreasing** ~~A decrease in~~ the number of directors **or eliminating the position of a director elected or appointed by persons or entities other than the members may shorten the terms of incumbent directors;** SB1390 Enrolled LRB096 08993 AJO 19132 b **provided, however, such amendment has been approved by the party with the authority to elect or appoint such directors** ~~does not shorten an incumbent director's term~~.

(e) The articles of incorporation or the bylaws may provide that directors may be divided into classes and the terms of office of several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(f) If the articles of incorporation or bylaws authorize dividing the members into classes, the articles **or bylaws** may also authorize the election of all or a specified number or percentage of directors by one or more authorized classes of members.

(g) A director may resign at any time by written notice delivered to the board of directors, its chairman, or to the president or secretary of the corporation. A resignation is effective when the notice is delivered unless the notice specifies a future date. The pending vacancy may be filled before the effective date, but the successor shall not take office until the effective date.

(Source: P.A. 84-1423.) (805 **ILCS 105/108.35) (from** Ch. 32, par. 108.35)

Sec. 108.35. Removal of directors. (a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified SB1390 Enrolled LRB096 08993 AJO 19132 b in accordance with subsection 108.10(e) of this Act, **the articles of incorporation or bylaws may provide that such directors may only be removed for cause** ~~no director may be removed except for cause if the articles of incorporation or the bylaws so provide~~.

(b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.

(c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:

(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.

(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is

delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.

(3) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed, with or without cause, if the votes cast against SB1390 Enrolled LRB096 08993 AJO 19132 b his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors.

(4) If a director is elected by a class of voting members entitled to vote, directors or other electors, that director may be removed only by the same class of members entitled to vote, directors or electors which elected the director.

(d) The provisions of subsections (a), (b) and (c) shall not preclude the Circuit Court from removing a director of the corporation from office in a proceeding commenced either by the corporation or by members entitled to vote holding at least 10 percent of the outstanding votes of any class if the court finds (1) the director is engaged in fraudulent or dishonest conduct or has grossly abused his or her position to the detriment of the corporation, and (2) removal is in the best interest of the corporation. If the court removes a director, it may bar the director from reelection for a period prescribed by the court. If such a proceeding is commenced by a member entitled to vote, such member shall make the corporation a party defendant.

(Source: P.A. 84-1423.) (805 ILCS 105/108.45) (from Ch. 32, par. 108.45)

Sec. 108.45. Informal action by directors. (a) Unless specifically prohibited by the articles of incorporation or bylaws, any action required by this Act to be taken at a SB1390 Enrolled LRB096 08993 AJO 19132 b meeting of the board of directors of a corporation, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors and all of any nondirector committee members entitled to vote with respect to the subject matter thereof, or by all the members of such committee, as the case may be.

(b) The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and **provides a written record of approval** ~~bears the signature of one or more directors or committee members~~. All the approvals evidencing the consent shall be delivered to the secretary to be filed in the corporate records. The action taken shall be effective when all the directors or the committee members, as the case may be, have approved the consent unless the consent specifies a different effective date.

(c) Any such consent signed by all the directors or all the committee members, as the case may be, shall have the same effect as a unanimous vote and may be stated as such in any document filed with the Secretary of State under this Act.

(Source: P.A. 84-1423.) (805 ILCS 105/108.60) (from Ch. 32, par. 108.60)

Sec. 108.60. Director conflict of interest. (a) If a transaction is fair to a corporation at the time it is SB1390 Enrolled LRB096 08993 AJO 19132 b authorized, approved, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction is not grounds for invalidating the transaction.

(b) In a proceeding contesting the validity of a transaction described in subsection (a), the person asserting validity has the burden of proving fairness unless:

(1) The material facts of the transaction and the director's interest or relationship were disclosed or known to the board of directors or a committee consisting entirely of directors and the board or committee authorized, approved or ratified the transaction by the affirmative votes of a majority of disinterested directors, even though the disinterested directors be less than a quorum; or (2) The material facts of the transaction and the director's interest or relationship were disclosed or known to the members entitled to vote, if any, and they authorized, approved or ratified the transaction without counting the vote of any member who is an interested director.

(c) The presence of the director, who is directly or indirectly a party to the transaction described in subsection (a), or a director who is otherwise not disinterested, may be counted in determining whether a quorum is present but may not be counted when the board of directors or a committee of the board takes action on the transaction.

(d) For purposes of this

Section, a director is "indirectly" a party to a transaction if the other party to the SB1390 Enrolled LRB096 08993 AJO 19132 b transaction is an entity in which the director has a material financial interest or of which the director is an officer, director or general partner.

(e) The provisions of this Section do not apply where a director of the corporation is directly or indirectly a party to a transaction involving a grant or contribution, without consideration, by one organization to another.

(Source: P.A. 84-1423.) (805 ILCS 105/108.70) (from Ch. 32, par. 108.70)

Sec. 108.70. Limited Liability of directors, officers, board members, and persons who serve without compensation.

(a) No director or officer serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to

Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.

(b) No director of a corporation organized under this Act or any predecessor Act for the purposes identified in items (14), (19), (21) and (22) of subsection (a) of

Section 103.05 of this Act, and exempt or qualified for exemption from SB1390 Enrolled LRB096 08993 AJO 19132 b taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, unless: (1) such director earns in excess of **$25,000** ~~$5,000~~ per year from his duties as director, other than reimbursement for actual expenses; or (2) the act or omission involved willful or wanton conduct.

(b-5) Except for willful and wanton conduct, no volunteer board member serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no action may be brought, for damages resulting from any action of the executive director concerning the false reporting of or intentional tampering with financial records of the organization, where the actions of the executive director result in legal action. This subsection (b-5) shall not apply to any action taken by the

Attorney General (i) in the exercise of his or her common law or statutory power and duty to protect charitable assets or (ii) in the exercise of his or her authority to enforce the laws of this State that apply to trustees of a charity, as that term is defined in the Charitable Trust Act and the Solicitation for Charity Act. SB1390 Enrolled LRB096 08993 AJO 19132 b (c) No person who, without compensation other than reimbursement for actual expenses, renders service to or for a corporation organized under this Act or any predecessor Act and exempt or qualified for exemption from taxation pursuant to

Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services, unless the act or omission involved willful or wanton conduct.

(d) (Blank).

(e) Nothing in this Section is intended to bar any cause of action against the corporation or change the liability of the corporation arising out of an act or omission of any director, officer or person exempt from liability for negligence under this Section.

(Source: P.A. 95-342, eff. 1-1-08.) (805 ILCS 105/110.30) (from Ch. 32, par. 110.30)

Sec. 110.30. Articles of amendment.

(a) Except as provided in

Section 110.40 of this Act, the articles of amendment shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If the amendment was adopted pursuant to Section SB1390 Enrolled LRB096 08993 AJO 19132 b 110.15 of this Act:

(i) A statement that the amendment received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or (ii) A statement that the amendment was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act;

(4) If the amendment was adopted pursuant to Section

110.20 of this Act:

(i) A statement that the amendment was adopted at a meeting of members entitled to vote by the affirmative vote of the members having not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation or the bylaws, and the date of the meeting; or (ii) A statement that the amendment was adopted by ~~written consent signed by~~ members entitled to vote having not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation, or the bylaws, in compliance with

Section 107.10 of this Act.

(5) If the amendment restates the articles of incorporation, the amendment shall so state and shall set forth:

(i) The text of the articles as restated; SB1390 Enrolled LRB096 08993 AJO 19132 b (ii) The date of incorporation, the name under which the corporation was incorporated, subsequent names, if any, that the corporation adopted pursuant to amendment of its articles of incorporation, and the effective date of any such amendments;

(iii) The address of the registered office and the name of the registered agent on the date of filing the restated articles. The articles as restated must include all the information required by subsection (a) of Section 102.10 of this Act, except that the articles need not set forth the information required by paragraphs 3, 4 or

5 thereof. If any provision of the articles of incorporation is amended in connection with the restatement, the articles of amendment shall clearly identify such amendment.

(6) If, pursuant to Section 110.35 of this Act, the amendment is to become effective subsequent to the date on which the articles of amendment are filed, the date on which the amendment is to become effective.

(7) If the amendment revives the articles of incorporation and extends the period of corporate duration, the amendment shall so state and shall set forth:

(i) The date the period of duration expired under the articles of incorporation;

(ii) A statement that the period of duration will SB1390 Enrolled LRB096 08993 AJO 19132 b be perpetual, or, if a limited duration is to be provided, the date to which the period of duration is to be extended; and (iii) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of amendment.

(Source: P.A. 92-33, eff. 7-1-01.)

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