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HOUSE BILL NO. 234

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 9, 2016)

(Patron Prior to Substitute—Delegate Sullivan)

A *BILL to amend and reenact § 13.1-865 of the Code of Virginia, relating to nonstock corporations; action without board of directors meeting.*

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-865 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-865. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation. *However, if expressly authorized in the articles of incorporation, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting by fewer than all of the directors, but not less than the greater of (i) a majority of the directors in office or (ii) a quorum of the directors as required by the articles of incorporation or bylaws, if the requisite number of directors sign a consent describing the action to be taken and deliver it to the corporation, except such action shall not be permitted to be taken without a meeting if any director objects to the taking of such proposed action. To be effective, such objection shall have been delivered to the corporation no later than ten business days after notice of the proposed action is given. The corporation shall promptly notify each director of any such objection. Any actions taken without a meeting shall comply with any voting requirements established in the articles of incorporation or bylaws. If corporate action is to be taken under this subsection by fewer than all of the directors, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, or such longer period as may be required by the articles of incorporation or bylaws, to all directors. The notice shall contain or be accompanied by a description of the action to be taken. Notwithstanding any provision of this subsection, corporate action may not be taken by fewer than all of the directors without a meeting if the action also requires adoption by or approval of the members.*

B. Action taken under this section is effective when the last director, *or the last director sufficient to satisfy the requirements of subsection A if action by fewer than all of the directors is authorized*, signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by ~~all~~ the *requisite number of directors*.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.