

1 A bill to be entitled
2 An act relating to charitable corporations;
3 amending ss. 617.0808 and 617.2103, F.S.;
4 excluding charitable corporations from certain
5 provisions relating to removal of a director
6 from a board of directors; amending s. 48.101,
7 F.S.; clarifying service of process on certain
8 corporations; amending s. 607.01401, F.S.;
9 providing a definition; amending s. 607.0732,
10 F.S.; specifying an additional criterion for
11 certain shareholder agreements; amending s.
12 607.0902, F.S.; clarifying a circumstance under
13 which acquisition of certain shares does not
14 constitute a control-share acquisition;
15 amending s. 607.1002, F.S.; authorizing a
16 corporation's board of directors to amend the
17 corporation's articles of incorporation for an
18 additional purpose; providing an effective
19 date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 617.0808, Florida Statutes, is
24 amended to read:

25 617.0808 Removal of directors.--A director may be
26 removed from office pursuant to procedures provided in the
27 articles of incorporation or the bylaws, which shall provide
28 the following, and if they do not do so, shall be deemed to
29 include the following:

30 (1) ~~Except as provided in subsection (2),~~Any member
31 of the board of directors may be removed from office with or

1 without cause by the vote or agreement in writing by a
2 majority of all votes of the membership.

3 ~~(2) Any member of the board of directors of a~~
4 ~~charitable organization as defined in s. 496.404, may be~~
5 ~~removed from office without cause only following the~~
6 ~~recommendation of a majority of the board of directors~~
7 ~~followed by the vote or agreement in writing by a majority of~~
8 ~~all votes of the membership.~~

9 (2)~~(3)~~ The notice of a meeting of the members to
10 recall a member or members of the board of directors shall
11 state the specific directors sought to be removed.

12 (3)~~(4)~~ A proposed removal of a director at a meeting
13 shall require a separate vote for each board member sought to
14 be removed. Where removal is sought by written agreement, a
15 separate agreement is required for each board member to be
16 removed.

17 (4)~~(5)~~ If removal is effected at a meeting, any
18 vacancies created thereby shall be filled by the members at
19 the same meeting.

20 (5)~~(6)~~ Any director who is removed from the board
21 shall not be eligible to stand for reelection until the next
22 annual meeting of the members.

23 (6)~~(7)~~ Any director removed from office shall turn
24 over to the board of directors within 72 hours any and all
25 records of the corporation in his possession.

26 (7)~~(8)~~ If a director who is removed shall not
27 relinquish his office or turn over records as required under
28 this section, the circuit court in the county where the
29 corporation's principal office is located may summarily order
30 the director to relinquish his office and turn over corporate
31 records upon application of any member.

1 Section 2. Subsection (1) of section 617.2103, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 617.2103 Exemptions for certain corporations.--

4 (1) No corporation described in s. 501(c) of the
5 Internal Revenue Code of 1986, as amended, shall be subject to
6 the provisions of s. 617.0808, s. 617.1601, s. 617.1602, s.
7 617.1603, s. 617.1604, s. 617.1605, or s. 617.2102, unless the
8 articles of incorporation or bylaws provide otherwise. ~~No~~
9 ~~corporation described in s. 501(c) of the Internal Revenue~~
10 ~~Code of 1986, as amended, except a charitable organization as~~
11 ~~defined in s. 496.404, is subject to the provisions of s.~~
12 ~~617.0808.~~For purposes of this subsection, if a current
13 determination letter issued under the authority of the
14 internal revenue laws of the United States of America
15 determines that a particular corporation is or is not exempt
16 from federal income taxation under s. 501(c) of the Internal
17 Revenue Code of 1986, as amended, that shall be conclusive on
18 the question whether the corporation is or is not described in
19 s. 501(c) of the Internal Revenue Code of 1986, as amended.

20 Section 3. Section 48.101, Florida Statutes, is
21 amended to read:

22 48.101 Service on dissolved corporations.--Process
23 against the directors of any corporation which was ~~is~~
24 dissolved before July 1, 1990, as trustees of the dissolved
25 corporation shall be served on one or more of the directors of
26 the dissolved corporation as trustees thereof and binds all of
27 the directors of the dissolved corporation as trustees
28 thereof. Process against any other dissolved corporation shall
29 be served in accordance with s. 48.081.

30 Section 4. Subsections (27) and (28) of section
31 607.01401, Florida Statutes, are renumbered as subsections

1 (28) and (29), respectively, and a new subsection (27) is
2 added to said section, to read:

3 607.01401 Definitions.--As used in this act, unless
4 the context otherwise requires, the term:

5 (27) "Treasury shares" means shares of a corporation
6 that belong to the issuing corporation, which shares are
7 authorized and issued shares that are not outstanding, are not
8 canceled, and have not been restored to the status of
9 authorized but unissued shares.

10 Section 5. Paragraph (h) is added to subsection (1) of
11 section 607.0732, Florida Statutes, to read:

12 607.0732 Shareholder agreements.--

13 (1) An agreement among the shareholders of a
14 corporation with 100 or fewer shareholders at the time of the
15 agreement, that complies with this section, is effective among
16 the shareholders and the corporation, even though it is
17 inconsistent with one or more other provisions of this
18 chapter, if it:

19 (h) Otherwise governs the exercise of the corporate
20 powers or the management of the business and affairs of the
21 corporation or the relationship between the shareholders, the
22 directors, or the corporation, and is not contrary to public
23 policy. For purposes of this paragraph, agreements contrary to
24 public policy include, but are not limited to, agreements that
25 reduce the duties of care and loyalty to the corporation as
26 required by ss. 607.0830 and 607.0832, exculpate directors
27 from liability that may be imposed under s. 607.0831,
28 adversely affect shareholders' rights to bring derivative
29 actions under s. 607.07401, or abrogate dissenters' rights
30 under ss. 607.1301-607.1320.

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1 Section 6. Paragraph (d) of subsection (2) of section
2 607.0902, Florida Statutes, is amended to read:

3 607.0902 Control-share acquisitions.--

4 (2) "CONTROL-SHARE ACQUISITION."--

5 (d) The acquisition of any shares of an issuing public
6 corporation does not constitute a control-share acquisition if
7 the acquisition is consummated in any of the following
8 circumstances:

9 1. Before July 2, 1987.

10 2. Pursuant to a contract existing before July 2,
11 1987.

12 3. Pursuant to the laws of intestate succession or
13 pursuant to a gift or testamentary transfer.

14 4. Pursuant to the satisfaction of a pledge or other
15 security interest created in good faith and not for the
16 purpose of circumventing this section.

17 5. Pursuant to a merger or share exchange effected in
18 compliance with s. 607.1101, s. 607.1102, s. 607.1103, s.
19 607.1104, or s. 607.1107, if the issuing public corporation is
20 a party to the agreement of merger or plan of share exchange.

21 6. Pursuant to any savings, employee stock ownership,
22 or other employee benefit plan of the issuing public
23 corporation or any of its subsidiaries or any fiduciary with
24 respect to any such plan when acting in such fiduciary
25 capacity.

26 7. Pursuant to an acquisition of shares of an issuing
27 public corporation if the ~~which~~ acquisition has been approved
28 by the board of directors of such issuing public corporation
29 before acquisition.

30 Section 7. Section 607.1002, Florida Statutes, is
31 amended to read:

1 607.1002 Amendment by board of directors.--Unless the
2 articles of incorporation provide otherwise, a corporation's
3 board of directors may adopt one or more amendments to the
4 corporation's articles of incorporation without shareholder
5 action:

6 (1) To extend the duration of the corporation if it
7 was incorporated at a time when limited duration was required
8 by law;

9 (2) To delete the names and addresses of the initial
10 directors;

11 (3) To delete the name and address of the initial
12 registered agent or registered office, if a statement of
13 change is on file with the Department of State;

14 (4) To delete any other information contained in the
15 articles of incorporation that is solely of historical
16 interest;

17 (5) To delete the authorization for a class or series
18 of shares authorized pursuant to s. 607.0602, if no shares of
19 such class or series are issued;

20 (6) To change the corporate name by substituting the
21 word "corporation," "incorporated," or "company," or the
22 abbreviation "corp.," "Inc.," or "Co.," for a similar word or
23 abbreviation in the name, or by adding, deleting, or changing
24 a geographical attribution for the name;

25 (7) To change the par value for a class or series of
26 shares; ~~or~~

27 (8) To provide that if the corporation acquires its
28 own shares, such shares belong to the corporation and
29 constitute treasury shares until disposed of or canceled by
30 the corporation; or

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(9)~~(8)~~ To make any other change expressly permitted by
this act to be made without shareholder action.
Section 8. This act shall take effect upon becoming a
law.