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DATE: March 3, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: CS/HB 133

RELATING TO: Shareholder voting

SPONSOR(S): Committee on Financial Services and Representative Goodlette

COMPANION BILL(S): SB 826(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 133 makes the following changes to Florida's corporation statutes:

Shareholder Proxy Voting

The changes proposed for proxy voting are modernization measures. The current options for executing a valid corporate shareholder proxy form would be expanded from the current law requiring either the shareholder's personal signature or the shareholder's attorney-in-fact's signature on a proxy form, to include either: (1) the signature of a director, employee or other authorized agent; or, (2) the shareholder's signature affixed to the appointment form by any reasonable means, including a facsimile signature, by an authorized agent of the shareholder.

In addition, the means by which a shareholder may appoint an individual, a proxy solicitation firm, a support service, a registrar, or other similar agent to act as proxy for the shareholder is expanded from the transmission of a telegram or cablegram, to include any other electronic transmission, provided the transmission is submitted with information that verifies that the transmission was authorized by the shareholder. Corporate representatives who verify the authenticity of the transmission shall be required to specify the information upon which they relied in that determination.

Holding Company Merger Without Shareholder Action

Current law permitting a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval is clarified in that such a merger may be effected providing all other statutory conditions are met and that the valuation of shares that are outstanding (shares issued by the corporation and purchased by consumers) immediately prior to the effective date of the merger remains the same.

CS/HB 133 does not appear to have any discernable fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Shareholder Voting - Generally

Corporations, whether publicly traded on the open market or privately held by its founders, may raise operating capital by selling interests in the company (referred to as "shares") to individuals or other companies (called shareholders). Rights of shareholders may vary from corporation to corporation, in accordance with the corporation's articles of incorporation. Broad, core rights, such as the right to vote in person or by proxy at shareholder meetings, are established by statute. Such voting rights, however, may be restricted by statute, by the corporation's articles of incorporation and also by the class (i.e., common or preferred) of stock the shareholder owns.

Florida law generally provides that each outstanding share of stock, regardless of class, is entitled to one vote per share unless otherwise provided in the articles of incorporation.¹ The articles of incorporation may provide for fractional or multiple votes per share, and may provide that some classes of stock are nonvoting on some issues, or have multiple or fractional votes per share. Prior to shareholder meetings, shareholders typically are mailed information regarding the issues to be voted upon, along with voting proxy forms to fill out and submit if the shareholder is unable to attend the meeting in person.

Shareholder Proxy Voting

Section 607.0722, F.S., provides that a shareholder may appoint a proxy to vote or act for the shareholder by signing an appointment form to that effect. An executed telegram or cablegram appearing to have been transmitted by the shareholder or the shareholder's attorney-in-fact, or a photographic equivalent reproduction of the appointment form, is considered statutorily sufficient. The proxy has the same power to vote as that possessed by the shareholder, unless the appointment form contains an express limitation on the power to vote or direction as to how to vote the shares on a particular matter. An appointment is effective upon receipt by a company agent authorized to tabulate votes.

An appointment is generally valid for up to 11 months unless a longer period is expressly provided for in the appointment form. The appointment of a proxy is essentially the appointment of an agent and is revokable in accordance with the principles of agency law unless it is "accompanied by an interest."²

Holding Company Merger Without Shareholder Action

A corporation may be organized, according to a plan articulated in its articles of incorporation and bylaws, to actively pursue a business interest or product. As the corporation's business grows and diversifies, a corporation may find itself owning other corporation subsidiaries. In order to take advantage of business and tax opportunities, such a corporation may find it advantageous to reorganize as a holding company in order to allow each segment of its business to occupy its own subsidiary unit.

In 1998, the Legislature passed a law³ permitting a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval so long as certain conditions are met (e.g., articles of incorporation are not changed, and valuation of shares remains the same).

¹Section 607.0721, F.S.

²Section 607.0722(5), F.S.

³Section 607.11045, F.S., (1998 Supp.)

According to representatives of the Department of State, and the Florida Bar Business Section, language that was in the original 1998 bill was inadvertently taken out of the bill when it became law. The language, which modeled Delaware law, specified that all shares that are outstanding immediately prior to the merger would be converted at a value par with the merging corporation. Shares that are "outstanding" are shares that have been issued by the corporation for purchase. This differentiates from "authorized" shares, which represents the type and number of shares a corporation is permitted to issue according to its articles of incorporation. For example, Corporation A's articles of incorporation authorizes 100 shares of stock. Corporation A issues 90 shares. Sixty shares are purchased by consumers, and thirty shares are purchased back by Corporation A (becoming "treasury shares"). If Corporation A is a party to a merger as envisioned by the 1998 law, only the sixty shares that have been issued and in the hands of consumer/shareholders would be subject to a par valuation. The thirty shares reacquired by the corporation are not considered "outstanding,"⁴ and the remaining ten shares that are "authorized" but not "issued" do not exist for purposes of valuation.

B. EFFECT OF PROPOSED CHANGES:

Shareholder Proxy Voting

The current options for executing a valid corporate shareholder proxy form would be expanded from the current law requiring either the shareholder's personal signature or the shareholder's attorney-in-fact's signature on a proxy form, to include either: (1) the signature of a director, employee or other authorized agent; or, (2) the shareholder's signature affixed to the appointment form by any reasonable means, including a facsimile signature⁵, by an authorized agent of the shareholder.

In addition, the means by which a shareholder may appoint an individual, a proxy solicitation firm, a support service, a registrar, or other similar agent to act as proxy for the shareholder is expanded from the transmission of a telegram or cablegram, to include any other electronic transmission, provided the transmission is submitted with information that verifies that the transmission was authorized by the shareholder. The inclusion of any other electronic means will permit the use of the Internet in proxy voting. Corporate representatives who verify the authenticity of the transmission shall be required to specify the information upon which they relied in that determination.

Holding Company Merger Without Shareholder Action

Current law permitting a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval is clarified in that such a merger may be effected providing all other statutory conditions are met and that the valuation of shares that are outstanding (shares issued by the corporation and purchased by consumers) immediately prior to the effective date of the merger remains the same.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

⁴Section 607.0603, F.S., states that shares that are issued are outstanding until they are reacquired, redeemed, converted, or canceled.

⁵According to a representative from the National Conference of State Legislatures, the "usual" test for verifying a digital signature is whether the signature is : (1) unique to the person using the signature form; (2) capable of verification; (3) under the sole control of the person using it; and, (4) linked to the data such that if the data is changed the signature is invalidated.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The means by which a shareholders may appoint a proxy are expanded to include electronic media (i.e., computers, "facsimile" signatures)

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 607.0722, F.S. (1997), and s. 607.11045, F.S. (1998 Supp.)

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 607.0722, F.S., expanding the current options for executing a valid corporate shareholder proxy form to include either: (1) the signature of a director, employee or other authorized agent; or, (2) the shareholder's signature affixed to the appointment form by any reasonable means, including a facsimile signature, by an authorized agent of the shareholder. In addition, a shareholder may appoint a proxy by using any electronic means available, provided the transmission is submitted with information with which the transmission can be verified as one authorized by the shareholder. The corporate representative verifying the transmission/appointment is required to specify the information upon which they relied.

Section 2. Amends s. 607.11045, F.S. (1998 Supp.), clarifying current law permitting a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval in that such a merger may be effected providing that the valuation of shares that are outstanding (shares issued by the corporation and purchased by consumers) immediately prior to the effective date of the merger remains the same.

Section 3. Makes the bill take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Shareholder options for appointment of a proxy for voting purposes would be expanded to include the use of electronic (computer) technology.

3. Effects on Competition, Private Enterprise and Employment Markets:

Shareholder proxy appointments may be effected more quickly and more efficiently.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 20, 1999, the Financial Services Committee passed one amendment offered by Representative Roberts. This amendment made technical changes to the bill by providing cleaner, more understandable language, and by conforming all references to the timing of the merger to one standard (i.e., the effective date as opposed to the time of the merger). The amendment conformed the House bill to the Senate bill.

On March 3, 1999, Business Regulation and Consumer Affairs Committee passed a technical amendment to correct an error on page 2, line 28. The word "to" is present in the bill, without coding, where the word "into" is present in the current statute language and the Senate companion. The amendment is technical and makes no substantive change in the bill.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Eric Lloyd

Staff Director:

Rebecca R. Everhart