

1 A bill to be entitled
2 An act relating to corporations; amending s.
3 607.0631, F.S.; authorizing a corporation to
4 acquire shares of a certain series or class and
5 designate such shares as treasury shares;
6 amending s. 607.0722, F.S.; providing
7 alternative methods for appointing proxies by
8 shareholders; amending s. 607.11045, F.S.;
9 clarifying provisions relating to the
10 conversion of shares in certain internal
11 mergers of corporations; providing an effective
12 date.

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

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16 Section 1. Subsection (1) of section 607.0631, Florida
17 Statutes, is amended, and subsection (5) is added to that
18 section, to read:

19 607.0631 Corporation's acquisition of its own
20 shares.--

21 (1) A corporation may acquire its own shares, and,
22 unless otherwise provided in the articles of incorporation or
23 except as provided in subsection (4) or subsection (5), shares
24 so acquired constitute authorized but unissued shares of the
25 same class but undesignated as to series.

26 (5) A corporation that has shares of any class or
27 series which are either registered on a national securities
28 exchange or designated as a national market system security on
29 an interdealer quotation system by the National Association of
30 Securities Dealers, Inc., may acquire such shares and
31 designate, either in the bylaws or in the resolutions of its

1 board, that shares so acquired by the corporation shall
2 constitute treasury shares.

3 Section 2. Subsection (2) of section 607.0722, Florida
4 Statutes, is amended to read:

5 607.0722 Proxies.--

6 (2)(a) A shareholder may appoint a proxy to vote or
7 otherwise act for the shareholder ~~him or her~~ by signing an
8 appointment form, either personally or by the shareholder's
9 ~~his or her~~ attorney in fact. An executed telegram or cablegram
10 appearing to have been transmitted by such person, or a
11 photographic, photostatic, or equivalent reproduction of an
12 appointment form, is a sufficient appointment form.

13 (b) Without limiting the manner in which a shareholder
14 may appoint a proxy to vote or otherwise act for the
15 shareholder pursuant to paragraph (a), a shareholder may grant
16 such authority by:

17 1. Signing an appointment form or having such form
18 signed by the shareholder's authorized officer, director,
19 employee, or agent by any reasonable means including, but not
20 limited to, facsimile signature.

21 2. Transmitting or authorizing the transmission of a
22 telegram, cablegram, or other means of electronic transmission
23 to the person who will be the proxy or to a proxy solicitation
24 firm, proxy support service organization, registrar, or agent
25 authorized by the person who will be designated as the proxy
26 to receive such transmission. However, any telegram,
27 cablegram, or other means of electronic transmission must set
28 forth or be submitted with information from which can be
29 determined that the transmission was authorized by the
30 shareholder. If it is determined that the transmission is
31 valid, the inspectors of election or, if there are no

1 inspectors, such other persons making that determination shall
2 specify the information upon which they relied.

3 Section 3. Subsections (3) and (5) of section
4 607.11045, Florida Statutes, 1998 Supplement, are amended to
5 read:

6 607.11045 Holding company formation by merger by
7 certain corporations.--

8 (3) Notwithstanding the requirements of s. 607.1103,
9 unless expressly required by its articles of incorporation, no
10 vote of shareholders of a corporation is necessary to
11 authorize a merger of the corporation with or into a wholly
12 owned subsidiary of such corporation if:

13 (a) Such corporation and wholly owned subsidiary are
14 the only constituent corporations to the merger;

15 (b) Each share or fraction of a share of the
16 constituent corporation whose shares are being converted
17 pursuant to the merger which are outstanding immediately prior
18 to the effective date of the merger is converted in the merger
19 into a share or equal fraction of share of a holding company
20 having the same designations, rights, powers and preferences,
21 and qualifications, limitations and restrictions thereof as
22 the share of the constituent corporation being converted in
23 the merger;

24 (c) The holding company and each of the constituent
25 corporations to the merger are domestic corporations;

26 (d) The articles of incorporation and bylaws of the
27 holding company immediately following the effective date ~~time~~
28 of the merger contain provisions identical to the articles of
29 incorporation and bylaws of the constituent corporation whose
30 shares are being converted pursuant to the merger immediately
31 prior to the effective date ~~time~~ of the merger, except

1 provisions regarding the incorporators, the corporate name,
2 the registered office and agent, the initial board of
3 directors, the initial subscribers for shares and matters
4 solely of historical significance, and such provisions
5 contained in any amendment to the articles of incorporation as
6 were necessary to effect a change, exchange, reclassification,
7 or cancellation of shares, if such change, exchange,
8 reclassification, or cancellation has become effective;

9 (e) As a result of the merger, the constituent
10 corporation whose shares are being converted pursuant to the
11 merger or its successor corporation becomes or remains a
12 direct or indirect wholly owned subsidiary of the holding
13 company;

14 (f) The directors of the constituent corporation
15 become or remain the directors of the holding company upon the
16 effective date of the merger;

17 (g) The articles of incorporation of the surviving
18 corporation immediately following the effective date ~~time~~ of
19 the merger are identical to the articles of incorporation of
20 the constituent corporation whose shares are being converted
21 pursuant to the merger immediately prior to the effective date
22 ~~time~~ of the merger, except provisions regarding the
23 incorporators, the corporate name, the registered office and
24 agent, the initial board of directors, the initial subscribers
25 for shares and matters solely of historical significance, and
26 such provisions contained in any amendment to the articles of
27 incorporation as were necessary to effect a change, exchange,
28 reclassification, or cancellation of shares, if such change,
29 exchange, reclassification, or cancellation has become
30 effective. The articles of incorporation of the surviving
31 corporation must be amended in the merger to contain a

1 provision requiring, by specific reference to this section,
2 that any act or transaction by or involving the surviving
3 corporation which requires for its adoption under this act or
4 its articles of incorporation the approval of the shareholders
5 of the surviving corporation also be approved by the
6 shareholders of the holding company, or any successor by
7 merger, by the same vote as is required by this act or the
8 articles of incorporation of the surviving corporation. The
9 articles of incorporation of the surviving corporation may be
10 amended in the merger to reduce the number of classes and
11 shares which the surviving corporation is authorized to issue;

12 (h) The board of directors of the constituent
13 corporation determines that the shareholders of the
14 constituent corporation will not recognize gain or loss for
15 United States federal income tax purposes; and

16 (i) The board of directors of such corporation adopts
17 a plan of merger that sets forth:

18 1. The names of the constituent corporations;
19 2. The manner and basis of converting the shares of
20 the corporation into shares of the holding company and the
21 manner and basis of converting rights to acquire shares of
22 such corporation into rights to acquire shares of the holding
23 company; and

24 3. A provision for the pro rata issuance of shares of
25 the holding company to the holders of shares of the
26 corporation upon surrender of any certificates therefor.

27 (5) If a plan of merger is adopted by a constituent
28 corporation by selection of its board of directors without any
29 vote of shareholders pursuant to this section, the secretary
30 or assistant secretary of the constituent corporation shall
31 certify in the articles of merger that the plan of merger has

1 been adopted pursuant to this section and that the conditions
2 specified in subsection (3)~~the first sentence of this section~~
3 have been satisfied. The articles of merger so certified shall
4 then be filed and become effective in accordance with s.
5 607.1106.

6 Section 4. This act shall take effect upon becoming a
7 law.

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