

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 826

SPONSOR: Senator Scott

SUBJECT: Corporations -- Proxy Voting and Internal Corporate Mergers

DATE: February 15, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill amends Florida corporate law to allow shareholders to use modern electronic means to appoint a proxy. In addition, this bill amends Florida corporate law to clarify that existing statutory provisions regarding the conversion of shares in certain internal mergers of corporations relate specifically to the conversion of shares that are outstanding immediately prior to the effective date of the merger.

This bill amends ss. 607.0722 and 607.11045, Florida Statutes.

## II. Present Situation:

### A. Proxy Voting

Current law provides that a corporation, 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 by the class (i.e., common or preferred) of stock the shareholder owns.

Section 607.0721, F.S., 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. 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.

Section 607.0722(2), F.S., provides that a shareholder may appoint a proxy to vote or otherwise act for him or her by signing an appointment form, either personally or by his or her attorney in fact. An executed telegram or cablegram appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of an appointment form, is a sufficient appointment form. Current law, however, does not specifically authorize other electronic means, such as Internet proxy voting. 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. Section 607.0722(5), F.S., provides that the appointment of a proxy is essentially the appointment of an agent and is revocable in accordance with the principles of agency law unless the appointment form conspicuously states that it is irrevocable and is coupled with an interest.

## **B. Internal Corporate Mergers**

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 s. 607.11045, F.S., 1998 Supp., which permits 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).

According to representatives of the Department of State and the Business Law Section of the Florida Bar, language that was in an earlier version of the 1998 legislation was inadvertently left out of the legislation ultimately adopted by the Legislature. The original language, which was modeled after 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 represent the type and number of shares a corporation is permitted to issue according to its articles of incorporation. Language which stated that only "outstanding" shares were to be used in calculations for purposes of valuation at the time of the merger was inadvertently left out of the language passed by the 1998 Legislature.

## **III. Effect of Proposed Changes:**

### **A. Proxy Voting**

The amendments to s. 607.0722, F.S., would expand the current options for executing a valid corporate shareholder proxy form. Current law permits a shareholder to appoint a proxy by means of a shareholder's personal signature or the shareholder's attorney-in-fact signature on the appointment form, an executed telegram or cablegram, or a reproduction of an the shareholder's signature on the appointment form. Amendments to s 607.0722, F.S., would allow a shareholder or the shareholder's authorized officer, director, employee, or agent to grant proxy by signing the appointment form utilizing "any reasonable means," including but not limited to facsimile signature.

Section 607.0722, F.S., is also amended to authorize "other means of electronic transmission" 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 (which is currently limited to cablegrams and telegrams). This amendment provides for any other electronic transmission (which would include contemporary means such as Internet proxy voting). New language states that electronic transmissions need be accompanied 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. This amendment, by not specifically defining "other electronic means," appears to leave room for the future evolution of electronic transmissions.

#### **B. Internal Corporate Mergers**

Current law allows a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval under certain circumstances. Section 607.11045, F.S., is amended to clarify that such a re-organization through 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.

This bill provides that it shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill provides alternate, modern means for shareholder voting and clarifies rules regarding internal corporate mergers. However, the precise impact to the private sector cannot be determined.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.