

By Senator Scott

31-414A-99

1 A bill to be entitled
2 An act relating to corporations; amending s.
3 607.0722, F.S.; providing alternative methods
4 of appointing proxies by shareholders; amending
5 s. 607.11045, F.S.; clarifying provisions
6 relating to the conversion of shares in certain
7 internal mergers of corporations; providing an
8 effective date.

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

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12 Section 1. Subsection (2) of section 607.0722, Florida
13 Statutes, is amended to read:

14 607.0722 Proxies.--

15 (2)(a) A shareholder may appoint a proxy to vote or
16 otherwise act for the shareholder ~~him or her~~ by signing an
17 appointment form, either personally or by the shareholder's
18 ~~his or her~~ attorney in fact. An executed telegram or cablegram
19 appearing to have been transmitted by such person, or a
20 photographic, photostatic, or equivalent reproduction of an
21 appointment form, is a sufficient appointment form.

22 (b) Without limiting the manner in which a shareholder
23 may appoint a proxy to vote or otherwise act for the
24 shareholder pursuant to paragraph (a), a shareholder may grant
25 such authority by:

26 1. Signing an appointment form or having such form
27 signed by the shareholder's authorized officer, director,
28 employee, or agent by any reasonable means including, but not
29 limited to, facsimile signature.

30 2. Transmitting or authorizing the transmission of a
31 telegram, cablegram, or other means of electronic transmission

1 to the person who will be the proxy or to a proxy solicitation
2 firm, proxy support service organization, registrar, or agent
3 authorized by the person who will be designated as the proxy
4 to receive such transmission. However, any telegram,
5 cablegram, or other means of electronic transmission must set
6 forth or be submitted with information from which it can be
7 determined that the transmission was authorized by the
8 shareholder. If it is determined that the transmission is
9 valid, the inspectors of election, or if there are no
10 inspectors, any other persons making that determination shall
11 specify the information upon which they relied.

12 Section 2. Subsections (3) and (5) of section
13 607.11045, Florida Statutes, 1998 Supplement, are amended to
14 read:

15 607.11045 Holding company formation by merger by
16 certain corporations.--

17 (3) Notwithstanding the requirements of s. 607.1103,
18 unless expressly required by its articles of incorporation, no
19 vote of shareholders of a corporation is necessary to
20 authorize a merger of the corporation with or into a wholly
21 owned subsidiary of such corporation if:

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

24 (b) Each share or fraction of a share of the
25 constituent corporation whose shares are being converted
26 pursuant to the merger which are outstanding immediately prior
27 to the effective date of the merger is converted in the merger
28 into a share or equal fraction of share of a holding company
29 having the same designations, rights, powers and preferences,
30 and qualifications, limitations and restrictions thereof as

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1 the share of the constituent corporation being converted in
2 the merger;

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

5 (d) The articles of incorporation and bylaws of the
6 holding company immediately following the effective date ~~time~~
7 of the merger contain provisions identical to the articles of
8 incorporation and bylaws of the constituent corporation whose
9 shares are being converted pursuant to the merger immediately
10 prior to the effective date ~~time~~ of the merger, except
11 provisions regarding the incorporators, the corporate name,
12 the registered office and agent, the initial board of
13 directors, the initial subscribers for shares and matters
14 solely of historical significance, and such provisions
15 contained in any amendment to the articles of incorporation as
16 were necessary to effect a change, exchange, reclassification,
17 or cancellation of shares, if such change, exchange,
18 reclassification, or cancellation has become effective;

19 (e) As a result of the merger, the constituent
20 corporation whose shares are being converted pursuant to the
21 merger or its successor corporation becomes or remains a
22 direct or indirect wholly owned subsidiary of the holding
23 company;

24 (f) The directors of the constituent corporation
25 become or remain the directors of the holding company upon the
26 effective date of the merger;

27 (g) The articles of incorporation of the surviving
28 corporation immediately following the effective date ~~time~~ of
29 the merger are identical to the articles of incorporation of
30 the constituent corporation whose shares are being converted
31 pursuant to the merger immediately prior to the effective date

1 ~~time~~ of the merger, except provisions regarding the
2 incorporators, the corporate name, the registered office and
3 agent, the initial board of directors, the initial subscribers
4 for shares and matters solely of historical significance, and
5 such provisions contained in any amendment to the articles of
6 incorporation as were necessary to effect a change, exchange,
7 reclassification, or cancellation of shares, if such change,
8 exchange, reclassification, or cancellation has become
9 effective. The articles of incorporation of the surviving
10 corporation must be amended in the merger to contain a
11 provision requiring, by specific reference to this section,
12 that any act or transaction by or involving the surviving
13 corporation which requires for its adoption under this act or
14 its articles of incorporation the approval of the shareholders
15 of the surviving corporation also be approved by the
16 shareholders of the holding company, or any successor by
17 merger, by the same vote as is required by this act or the
18 articles of incorporation of the surviving corporation. The
19 articles of incorporation of the surviving corporation may be
20 amended in the merger to reduce the number of classes and
21 shares which the surviving corporation is authorized to issue;

22 (h) The board of directors of the constituent
23 corporation determines that the shareholders of the
24 constituent corporation will not recognize gain or loss for
25 United States federal income tax purposes; and

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

- 28 1. The names of the constituent corporations;
- 29 2. The manner and basis of converting the shares of
30 the corporation into shares of the holding company and the
31 manner and basis of converting rights to acquire shares of

1 such corporation into rights to acquire shares of the holding
2 company; and

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

6 (5) If a plan of merger is adopted by a constituent
7 corporation by selection of its board of directors without any
8 vote of shareholders pursuant to this section, the secretary
9 or assistant secretary of the constituent corporation shall
10 certify in the articles of merger that the plan of merger has
11 been adopted pursuant to this section and that the conditions
12 specified in subsection (3)~~the first sentence of this section~~
13 have been satisfied. The articles of merger so certified shall
14 then be filed and become effective in accordance with s.
15 607.1106.

16 Section 3. This act shall take effect upon becoming a
17 law.

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20 SENATE SUMMARY

21 Provides alternative methods by which shareholders of
22 corporations may appoint proxies. Clarifies provisions
23 relating to the conversion of shares when a corporation
24 merges with or into a wholly owned subsidiary.
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