

Bill No. SB 1620

Amendment No. Barcode 190252

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Klein moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 14,

insert:

Section 1. Subsection (9) of section 607.01401, Florida Statutes, is amended to read:

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

(9) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions through the Internet.

Section 2. Section 607.0722, Florida Statutes, is amended to read:

607.0722 Proxies.--

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1 (1) A shareholder, other person entitled to vote on
2 behalf of a shareholder pursuant to s. 607.0721, or attorney
3 in fact for a shareholder may vote the shareholder's shares in
4 person or by proxy.

5 (2)(a) A shareholder, other person entitled to vote on
6 behalf of a shareholder pursuant to s. 607.0721, or attorney
7 in fact for a shareholder may appoint a proxy to vote or
8 otherwise act for the shareholder by signing an appointment
9 form or by electronic transmission, either personally or by
10 the shareholder's attorney in fact. Any type of electronic
11 transmission appearing to have been, or containing or
12 accompanied by such information or obtained under such
13 procedures to reasonably ensure that the electronic
14 transmission was, transmitted by such person is a sufficient
15 appointment, subject to the verification requested by the
16 corporation under s. 607.0724.~~An executed telegram or~~
17 ~~cablegram appearing to have been transmitted by such person,~~
18 ~~or a photographic, photostatic, or equivalent reproduction of~~
19 ~~an appointment form, is a sufficient appointment form.~~

20 (b) Without limiting the manner in which a
21 shareholder, other person entitled to vote on behalf of a
22 shareholder pursuant to s. 607.0721, or attorney in fact for a
23 shareholder may appoint a proxy to vote or otherwise act for
24 the shareholder pursuant to paragraph (a), a shareholder,
25 other person entitled to vote on behalf of a shareholder
26 pursuant to s. 607.0721, or attorney in fact for a shareholder
27 may make grant such an appointment authority by:

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

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1 electronic signature.

2 2. Transmitting or authorizing the transmission of an
3 ~~a telegram, cablegram, or other means of~~ electronic
4 transmission to the person who will be appointed as the proxy
5 or to a proxy solicitation firm, proxy support service
6 organization, registrar, or agent authorized by the person who
7 will be designated as the proxy to receive such transmission.
8 However, any ~~telegram, cablegram, or other means of~~ electronic
9 transmission must set forth or be submitted with information
10 from which it can be determined that the electronic
11 transmission was authorized by the shareholder, other person
12 entitled to vote on behalf of a shareholder pursuant to s.
13 607.0721, or attorney in fact for a shareholder. If it is
14 determined that the electronic transmission is valid, the
15 inspectors of election or, if there are no inspectors, such
16 other persons making that determination shall specify the
17 information upon which they relied.

18 (3) An appointment of a proxy is effective when
19 received by the secretary or other officer or agent authorized
20 to tabulate votes. An appointment is valid for up to 11
21 months unless a longer period is expressly provided in the
22 appointment form.

23 (4) The death or incapacity of the shareholder
24 appointing a proxy does not affect the right of the
25 corporation to accept the proxy's authority unless notice of
26 the death or incapacity is received by the secretary or other
27 officer or agent authorized to tabulate votes before the proxy
28 exercises his or her authority under the appointment.

29 (5) An appointment of a proxy is revocable by the
30 shareholder unless the appointment form or electronic
31 transmission conspicuously states that it is irrevocable and

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- 1 the appointment is coupled with an interest. Appointments
2 coupled with an interest include the appointment of:
- 3 (a) A pledgee;
- 4 (b) A person who purchased or agreed to purchase the
5 shares;
- 6 (c) A creditor of the corporation who extended credit
7 to the corporation under terms requiring the appointment;
- 8 (d) An employee of the corporation whose employment
9 contract requires the appointment; or
- 10 (e) A party to a voting agreement created under s.
11 607.0731.
- 12 (6) An appointment made irrevocable under subsection
13 (5) becomes revocable when the interest with which it is
14 coupled is extinguished ~~and, in a case provided for in~~
15 ~~paragraph (5)(c) or paragraph (5)(d), the proxy becomes~~
16 ~~revocable 3 years after the date of the proxy or at the end of~~
17 ~~the period, if any, specified therein, whichever is less,~~
18 ~~unless the period of irrevocability is renewed from time to~~
19 ~~time by the execution of a new irrevocable proxy as provided~~
20 ~~in this section. This does not affect the duration of a proxy~~
21 ~~under subsection (3).~~
- 22 (7) A transferee for value of shares subject to an
23 irrevocable appointment may revoke the appointment if the
24 transferee did not know of its existence when he or she
25 acquired the shares and the existence of the irrevocable
26 appointment was not noted conspicuously on the certificate
27 representing the shares or on the information statement for
28 shares without certificates.
- 29 (8) Subject to s. 607.0724 and to any express
30 limitation on the proxy's authority appearing on the face of
31 the appointment form or in the electronic transmission, a

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1 corporation is entitled to accept the proxy's vote or other
2 action as that of the shareholder making the appointment.

3 (9) If an appointment form expressly provides, any
4 proxy holder may appoint, in writing, a substitute to act in
5 his or her place.

6 (10) Any copy, facsimile transmission, or other
7 reliable reproduction of the writing or electronic
8 transmission created under subsection (2) may be substituted
9 or used in lieu of the original writing or electronic
10 transmission for any purpose for which the original writing or
11 electronic transmission could be used if the copy, facsimile
12 transmission, or other reproduction is a complete reproduction
13 of the entire original writing or electronic transmission.

14 (11) A corporation may adopt bylaws authorizing
15 additional means or procedures for shareholders to use in
16 exercising rights granted by this section.

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18 (Redesignate subsequent sections.)

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21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 1, lines 2 and 3, delete those lines

24

25 and insert:

26 An act relating to corporations; amending s.
27 607.01401, F.S.; redefining the term
28 "electronic transmission" to include telegrams,
29 cablegrams, telephone transmissions, and
30 transmissions through the Internet for purposes
31 of proxy voting; amending s. 607.0722, F.S.;

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1 specifying those persons who may vote on behalf
2 of a shareholder; authorizing the appointment
3 of a proxy by electronic transmission; deleting
4 provisions limiting the period during which an
5 appointment of proxy is irrevocable;
6 authorizing the use of certain copies or
7 reproductions in lieu of the original writing
8 or electronic transmission; authorizing a
9 corporation to adopt bylaws authorizing
10 additional procedures for shareholders to use
11 in exercising certain rights; amending s.
12 15.16, F.S.; authorizing

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