

By Senator Klein

28-1261-01

1                                   A bill to be entitled  
2           An act relating to corporations; amending s.  
3           607.01401, F.S.; redefining the term  
4           "electronic transmission" to include telegrams,  
5           cablegrams, telephone transmissions, and  
6           transmissions through the Internet; amending s.  
7           607.0721, F.S.; providing requirements for the  
8           voting of shares held by partnerships, limited  
9           liability companies, and other similar  
10          entities; amending s. 607.0722, F.S.;  
11          specifying those persons who may vote on behalf  
12          of a shareholder; authorizing the appointment  
13          of a proxy by electronic transmission; deleting  
14          provisions limiting the period during which an  
15          appointment of proxy is irrevocable;  
16          authorizing the use of certain copies or  
17          reproductions in lieu of the original writing  
18          or electronic transmission; authorizing a  
19          corporation to adopt bylaws authorizing  
20          additional procedures for shareholders to use  
21          in exercising certain rights; providing an  
22          effective date.

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

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26           Section 1. Subsection (9) of section 607.01401,  
27 Florida Statutes, is amended to read:  
28           607.01401 Definitions.--As used in this act, unless  
29 the context otherwise requires, the term:  
30           (9) "Electronic transmission" or "electronically  
31 transmitted" means any process of communication not directly

1 involving the physical transfer of paper that is suitable for  
2 the retention, retrieval, and reproduction of information by  
3 the recipient, including, but not limited to, telegrams,  
4 cablegrams, telephone transmissions, and transmissions through  
5 the Internet.

6 Section 2. Subsection (5) of section 607.0721, Florida  
7 Statutes, is amended to read:

8 607.0721 Voting entitlement of shares.--

9 (5)(a) Shares standing in the name of another  
10 corporation, domestic or foreign, may be voted by such  
11 officer, agent, or proxy as the bylaws of the corporate  
12 shareholder may prescribe or, in the absence of any applicable  
13 provision, by such person as the board of directors of the  
14 corporate shareholder may designate. In the absence of any  
15 such designation or in case of conflicting designation by the  
16 corporate shareholder, the chair of the board, the president,  
17 any vice president, the secretary, and the treasurer of the  
18 corporate shareholder, in that order, are ~~shall be~~ presumed to  
19 be fully authorized to vote such shares.

20 (b) Shares standing in the name of a limited liability  
21 company, partnership, or other similar entity, domestic or  
22 foreign, may be voted by such member, officer, manager, agent,  
23 or proxy as the agreement governing the operation of such  
24 entity prescribes or, in the absence of any applicable  
25 agreement or applicable provision within such agreement, by  
26 such person as the members, partners, managers, or other  
27 governing body or persons of such entity designate. In the  
28 absence of any such designation or in case of conflicting  
29 designation by a limited liability company, the president, any  
30 vice president, the secretary, the treasurer of the limited  
31 liability company, if any, and the member with the largest

1 percentage interest in the limited liability company, in that  
2 order, are presumed to be fully authorized to vote such  
3 shares. In the absence of any such designation or in case of  
4 conflicting designation by a partnership, the president, any  
5 vice president, the secretary, the treasurer of the  
6 partnership, if any, the general partner of a limited  
7 partnership, and the partner with the largest percentage  
8 interest in the partnership, in that order, are presumed to be  
9 fully authorized to vote such shares. In the absence of any  
10 such designation or in case of conflicting designation by any  
11 other such entity, the president, any vice president, the  
12 secretary, and the treasurer of the entity, if any, in that  
13 order, are presumed to be fully authorized to vote such  
14 shares.

15 Section 3. Section 607.0722, Florida Statutes, is  
16 amended to read:

17 607.0722 Proxies.--

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

22 (2)(a) A shareholder, other person entitled to vote on  
23 behalf of a shareholder pursuant to s. 607.0721, or attorney  
24 in fact for a shareholder may appoint a proxy to vote or  
25 otherwise act for the shareholder by signing an appointment  
26 form or by electronic transmission, ~~either personally or by~~  
27 ~~the shareholder's attorney in fact.~~ Any type of electronic  
28 transmission appearing to have been, or containing or  
29 accompanied by such information or obtained under such  
30 procedures to reasonably ensure that the electronic  
31 transmission was, transmitted by such person is a sufficient

1 appointment, subject to the verification requested by the  
2 corporation under s. 607.0724.~~An executed telegram or~~  
3 ~~cablegram appearing to have been transmitted by such person,~~  
4 ~~or a photographic, photostatic, or equivalent reproduction of~~  
5 ~~an appointment form, is a sufficient appointment form.~~

6 (b) Without limiting the manner in which a  
7 shareholder, other person entitled to vote on behalf of a  
8 shareholder pursuant to s. 607.0721, or attorney in fact for a  
9 shareholder may appoint a proxy to vote or otherwise act for  
10 the shareholder pursuant to paragraph (a), a shareholder,  
11 other person entitled to vote on behalf of a shareholder  
12 pursuant to s. 607.0721, or attorney in fact for a shareholder  
13 may make grant such an appointment authority by:

14 1. Signing an appointment form, with the signature  
15 affixed,~~or having such form signed by the shareholder's~~  
16 ~~authorized officer, director, employee, or agent~~ by any  
17 reasonable means including, but not limited to, facsimile or  
18 electronic signature.

19 2. Transmitting or authorizing the transmission of an  
20 ~~a telegram, cablegram, or other means of~~ electronic  
21 transmission to the person who will be appointed as the proxy  
22 or to a proxy solicitation firm, proxy support service  
23 organization, registrar, or agent authorized by the person who  
24 will be designated as the proxy to receive such transmission.  
25 However, any ~~telegram, cablegram, or other means of~~ electronic  
26 transmission must set forth or be submitted with information  
27 from which it can be determined that the electronic  
28 transmission was authorized by the shareholder, other person  
29 entitled to vote on behalf of a shareholder pursuant to s.  
30 607.0721, or attorney in fact for a shareholder. If it is  
31 determined that the electronic transmission is valid, the

1 inspectors of election or, if there are no inspectors, such  
2 other persons making that determination shall specify the  
3 information upon which they relied.

4 (3) An appointment of a proxy is effective when  
5 received by the secretary or other officer or agent authorized  
6 to tabulate votes. An appointment is valid for up to 11  
7 months unless a longer period is expressly provided in the  
8 appointment form.

9 (4) The death or incapacity of the shareholder  
10 appointing a proxy does not affect the right of the  
11 corporation to accept the proxy's authority unless notice of  
12 the death or incapacity is received by the secretary or other  
13 officer or agent authorized to tabulate votes before the proxy  
14 exercises his or her authority under the appointment.

15 (5) An appointment of a proxy is revocable by the  
16 shareholder unless the appointment form or electronic  
17 transmission conspicuously states that it is irrevocable and  
18 the appointment is coupled with an interest. Appointments  
19 coupled with an interest include the appointment of:

20 (a) A pledgee;

21 (b) A person who purchased or agreed to purchase the  
22 shares;

23 (c) A creditor of the corporation who extended credit  
24 to the corporation under terms requiring the appointment;

25 (d) An employee of the corporation whose employment  
26 contract requires the appointment; or

27 (e) A party to a voting agreement created under s.  
28 607.0731.

29 (6) An appointment made irrevocable under subsection  
30 (5) becomes revocable when the interest with which it is  
31 coupled is extinguished ~~and, in a case provided for in~~

1 ~~paragraph (5)(c) or paragraph (5)(d), the proxy becomes~~  
2 ~~revocable 3 years after the date of the proxy or at the end of~~  
3 ~~the period, if any, specified therein, whichever is less,~~  
4 ~~unless the period of irrevocability is renewed from time to~~  
5 ~~time by the execution of a new irrevocable proxy as provided~~  
6 ~~in this section. This does not affect the duration of a proxy~~  
7 ~~under subsection (3).~~

8 (7) A transferee for value of shares subject to an  
9 irrevocable appointment may revoke the appointment if the  
10 transferee did not know of its existence when he or she  
11 acquired the shares and the existence of the irrevocable  
12 appointment was not noted conspicuously on the certificate  
13 representing the shares or on the information statement for  
14 shares without certificates.

15 (8) Subject to s. 607.0724 and to any express  
16 limitation on the proxy's authority appearing on the face of  
17 the appointment form or in the electronic transmission, a  
18 corporation is entitled to accept the proxy's vote or other  
19 action as that of the shareholder making the appointment.

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

23 (10) Any copy, facsimile transmission, or other  
24 reliable reproduction of the writing or electronic  
25 transmission created under paragraph (2) may be substituted or  
26 used in lieu of the original writing or electronic  
27 transmission for any purpose for which the original writing or  
28 electronic transmission could be used if the copy, facsimile  
29 transmission, or other reproduction is a complete reproduction  
30 of the entire original writing or electronic transmission.

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

4           Section 4. This act shall take effect July 1, 2001.

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7                               SENATE SUMMARY

8           Revises provisions of the Florida Business Corporation  
9           Act governing the voting of shares of a corporation.  
10          Includes telegrams, cablegrams, telephone transmissions,  
11          and transmissions through the Internet within the  
12          definition of the term "electronic transmission."  
13          Provides for the voting of shares held by partnerships,  
14          limited liability companies, and other similar entities.  
15          Authorizes the appointment of a proxy by electronic  
16          transmission. Deletes the 3-year limitation on the  
17          irrevocability of a proxy. Authorizes the use of certain  
18          copies or reproductions in lieu of the original writing  
19          or electronic transmission. Provides for a corporation to  
20          adopt bylaws authorizing additional procedures for  
21          shareholders to use in exercising their rights by proxy.  
22          (See bill for details.)