

By the Committees on Judiciary; Commerce and Economic Opportunities; and Senator Klein

308-1937-01

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 for purposes
7 of proxy voting; amending s. 607.0722, F.S.;
8 specifying those persons who may vote on behalf
9 of a shareholder; authorizing the appointment
10 of a proxy by electronic transmission; deleting
11 provisions limiting the period during which an
12 appointment of proxy is irrevocable;
13 authorizing the use of certain copies or
14 reproductions in lieu of the original writing
15 or electronic transmission; authorizing a
16 corporation to adopt bylaws authorizing
17 additional procedures for shareholders to use
18 in exercising certain rights; providing an
19 effective date.

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

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

25 607.01401 Definitions.--As used in this act, unless
26 the context otherwise requires, the term:

27 (9) "Electronic transmission" or "electronically
28 transmitted" means any process of communication not directly
29 involving the physical transfer of paper that is suitable for
30 the retention, retrieval, and reproduction of information by
31 the recipient. For purposes of proxy voting in accordance with

1 ss. 607.0721, 607.0722, and 607.0724, the term includes, but
2 is not limited to, telegrams, cablegrams, telephone
3 transmissions, and transmissions through the Internet.

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

6 607.0722 Proxies.--

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

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

26 (b) Without limiting the manner in which a
27 shareholder, other person entitled to vote on behalf of a
28 shareholder pursuant to s. 607.0721, or attorney in fact for a
29 shareholder may appoint a proxy to vote or otherwise act for
30 the shareholder pursuant to paragraph (a), a shareholder,
31 other person entitled to vote on behalf of a shareholder

1 pursuant to s. 607.0721, or attorney in fact for a shareholder
2 may make grant such an appointment authority by:

3 1. Signing an appointment form, with the signature
4 affixed, or having such form signed by the shareholder's
5 authorized officer, director, employee, or agent by any
6 reasonable means including, but not limited to, facsimile or
7 electronic signature.

8 2. Transmitting or authorizing the transmission of an
9 a telegram, cablegram, or other means of electronic
10 transmission to the person who will be appointed as the proxy
11 or to a proxy solicitation firm, proxy support service
12 organization, registrar, or agent authorized by the person who
13 will be designated as the proxy to receive such transmission.
14 However, any telegram, cablegram, or other means of electronic
15 transmission must set forth or be submitted with information
16 from which it can be determined that the electronic
17 transmission was authorized by the shareholder, other person
18 entitled to vote on behalf of a shareholder pursuant to s.
19 607.0721, or attorney in fact for a shareholder. If it is
20 determined that the electronic transmission is valid, the
21 inspectors of election or, if there are no inspectors, such
22 other persons making that determination shall specify the
23 information upon which they relied.

24 (3) An appointment of a proxy is effective when
25 received by the secretary or other officer or agent authorized
26 to tabulate votes. An appointment is valid for up to 11
27 months unless a longer period is expressly provided in the
28 appointment form.

29 (4) The death or incapacity of the shareholder
30 appointing a proxy does not affect the right of the
31 corporation to accept the proxy's authority unless notice of

1 the death or incapacity is received by the secretary or other
2 officer or agent authorized to tabulate votes before the proxy
3 exercises his or her authority under the appointment.

4 (5) An appointment of a proxy is revocable by the
5 shareholder unless the appointment form or electronic
6 transmission conspicuously states that it is irrevocable and
7 the appointment is coupled with an interest. Appointments
8 coupled with an interest include the appointment of:

9 (a) A pledgee;

10 (b) A person who purchased or agreed to purchase the
11 shares;

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

14 (d) An employee of the corporation whose employment
15 contract requires the appointment; or

16 (e) A party to a voting agreement created under s.
17 607.0731.

18 (6) An appointment made irrevocable under subsection
19 (5) becomes revocable when the interest with which it is
20 coupled is extinguished and, ~~in a case provided for in~~
21 ~~paragraph (5)(c) or paragraph (5)(d), the proxy becomes~~
22 ~~revocable 3 years after the date of the proxy or at the end of~~
23 ~~the period, if any, specified therein, whichever is less,~~
24 ~~unless the period of irrevocability is renewed from time to~~
25 ~~time by the execution of a new irrevocable proxy as provided~~
26 ~~in this section. This does not affect the duration of a proxy~~
27 ~~under subsection (3).~~

28 (7) A transferee for value of shares subject to an
29 irrevocable appointment may revoke the appointment if the
30 transferee did not know of its existence when he or she
31 acquired the shares and the existence of the irrevocable

1 appointment was not noted conspicuously on the certificate
2 representing the shares or on the information statement for
3 shares without certificates.

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

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

12 (10) Any copy, facsimile transmission, or other
13 reliable reproduction of the writing or electronic
14 transmission created under subsection (2) may be substituted
15 or used in lieu of the original writing or electronic
16 transmission for any purpose for which the original writing or
17 electronic transmission could be used if the copy, facsimile
18 transmission, or other reproduction is a complete reproduction
19 of the entire original writing or electronic transmission.

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

23 Section 3. This act shall take effect July 1, 2001.

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25 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
26 COMMITTEE SUBSTITUTE FOR
27 CS/SB 1880

28 Makes two technical changes: one to reflect proxy appointments
29 by form or electronic transmission and one to correct a
30 cross-reference to a subsection.

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