

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2718

SPONSOR: Senator Klein

SUBJECT: Florida Business Corporation Act

DATE: April 16, 2004

REVISED: 04/19/04 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill is designed to correct some issues from the 2003 comprehensive overhaul of the Florida Business Corporation Act. The bill extends certain shareholder rights to a shareholder whose shares are authorized on or after October 1, 2003, if the shares are within a class prescribed in the articles of incorporation before October 1, 2003. The bill also revises certain other shareholders' rights, including the right to initiate a court proceeding to determine the fair value of shares when a shareholder demands payment from a corporation for the shareholder's shares because of certain actions taken by the corporation. The bill also revises the procedures that follow from the initiation of the court proceeding to determine the fair value of shares. Additionally, the bill clarifies the procedures for a dissolved corporation to notify the public that the corporation has dissolved in order to give the public time to file any claims against the dissolved corporation. The statute of limitations relating to the filing of unknown claims against a dissolved corporation is also clarified.

This bill amends sections 607.1302 and 607.1407, Florida Statutes, and creates section 607.1330, Florida Statutes.

## II. Present Situation:

### Florida Business Corporation Act

Chapter 607, F.S., the Florida Business Corporation Act (act), provides for the regulation of corporations. The act was adopted by the Legislature in 1989, with the intent to update the law to contemporary corporate practice.<sup>1</sup> The Corporate Law Revision Committee of the Business Law

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<sup>1</sup> Chapter 89-154, L.O.F.

Section of the Florida Bar assisted in drafting the act. In 2003, the Legislature substantially revised the act.<sup>2</sup>

### ***Shareholders' Rights***

The act, among other things, entitles a shareholder to appraisal rights,<sup>3</sup> and the right to obtain payment of the fair value of that shareholder's shares, provided that one of the following corporate actions has occurred:

- Consummation of a merger in which the corporation is a party if shareholder approval is required and the shareholder is entitled to vote on the merger, or if the corporation is a subsidiary and the merger is a parent-subsidary merger;
- Consummation of a share exchange, for which appraisal is limited to the class or series of shares exchanged;
- Consummation of certain dispositions of assets;
- Other amendments to the articles of incorporation, merger, share exchange, or disposition of assets provided certain criteria are met; and
- With regard to shares issued prior to October 1, 2003, amendments to the articles of incorporation where the shareholder is entitled to vote on the amendment and the amendment adversely affects the shareholder in specified ways.<sup>4</sup>

### ***Problem Areas Identified in the Act***

Practitioners have identified several areas of the 2003 revisions that they believe are cause for concern, including:

- Shares of the same class are not treated equally in terms of rights and preferences under the law.
- If a disagreement arises between a corporation and a shareholder over the fair value of the shareholder's shares which the corporation has offered to purchase because of actions taken by the corporation that affected the shareholder's appraisal rights, no provision exists to address certain civil processes, such as the initiation of a court proceeding, deadlines for filing a court proceeding, venue, and the service of pleadings.
- An incorrect cross-reference exists in s. 607.1407(3)(a), F.S., which relates to a statute of limitations for claimants in certain corporate dissolution actions. The cross-reference in current law is to s. 607.1456(10), F.S., which no longer exists. The correct cross-reference should be s. 607.1406(10), F.S., which requires a dissolved corporation or successor entity that has not followed proper procedure regarding claims to pay certain claims and obligations in full, and, where the corporation is unable to pay in full, to pay in order of priority status.
- The Department of State was inadvertently omitted as the entity to whom the dissolved corporation or successor entity files articles of dissolution when using the option of filing a "Notice of Corporate Dissolution" in a newspaper. Also, the time of expiration is

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<sup>2</sup> Chapter 2003-283, L.O.F.

<sup>3</sup> Appraisal rights were previously known as "dissenter's rights."

<sup>4</sup> Section 607.1302(1), F.S.

unclear for the four-year statute of limitations for claims unknown to the dissolved corporation to be filed by certain claimants.

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

The bill corrects and clarifies recent changes made to the Florida Business Corporation Act.

#### **Right of Shareholders to Appraisal**

Current law entitles a shareholder whose shares are issued before October 1, 2003, to appraisal rights and to payment of the fair value of the shareholder's shares, if the corporation's articles of incorporation are amended in certain ways<sup>5</sup> that adversely affect the shareholder's rights and the shareholder is entitled to vote on the amendment. The bill extends these shareholder rights to a shareholder whose shares are authorized on or after October 1, 2003, if the shares are within a class prescribed in the articles of incorporation before October 1, 2003.

#### **Fair Value of Shares**

The bill provides for certain rights and procedures regarding shareholder proceedings:

- If a shareholder demands payment from a corporation for the shareholder's shares, and the parties cannot agree on the fair value of the shares, the corporation must bring a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation fails to initiate a proceeding within the 60 days, the shareholder is authorized to initiate a proceeding in the name of the corporation.
- The proceeding must be brought in the appropriate court of the county in which the corporation's principal or registered office is located, or in the court of the county where the principal office or registered office of a domestic corporation that merged with a foreign corporation was located at the time of the transaction.
- All shareholders, both in and out of state, whose demands remain unsettled must be made parties to the proceeding, and are required to be served with the initial pleading by the corporation, if the corporation initiates the proceeding, in a certain manner.
- The jurisdiction of the court is complete and exclusive.
- The court is authorized to appoint appraisers to recommend a fair value for the shares.

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<sup>5</sup> Section 607.1302(1)(e)1.-7., F.S., lists the possible adverse actions, which are: altering or abolishing any preemptive rights attached to any of his or her shares; altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares; effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares; reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable; making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative; reducing the stated dividend preference of any of the shareholder's preferred shares; or reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

- Each shareholder made a party to the proceeding is entitled to judgment for the fair value of the shareholder's shares, plus interest, as found by a court.
- A corporation is required to pay a judgment within 10 days after the court's final determination. The payment of the judgment relinquishes each shareholder's interest in the shareholder's shares.

### **Unknown Claims Against a Dissolved Corporation**

Two options are available under current law for a dissolved corporation to notify the public that it has dissolved in order to give the public time to file any claims against the dissolved corporation.<sup>6</sup> One option is to file a notice of dissolution with the Department of State. The second option requires the corporation to adopt articles of dissolution and then publish a "Notice of Corporate Dissolution" in a newspaper of general circulation. The bill clarifies some of the procedures for the second option. The bill provides that within 10 days of filing articles of dissolution with the Department of State, rather than within 10 days of adopting articles of dissolution, the dissolved corporation must publish a "Notice of Corporate Dissolution" once a week for two consecutive weeks in a county in the state in which the corporation has its principal office, or if none, in a county in the state in which the corporation owns real or personal property. Among other things, the notice must state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within four years after the date of the second consecutive weekly publication of the notice.

Some claims are barred if the dissolved corporation has properly complied with either of the options for notifying the public that a corporation has dissolved. In order to bring a timely filed claim, the claim must be brought within four years after the date of filing the notice of dissolution with the Department of State or the date of the second consecutive weekly publication, as applicable.

### **Effective Date**

This bill takes 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.

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<sup>6</sup> Section 607.1407(1) & (2), F.S.

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

None.

**B. Private Sector Impact:**

The corrections in the bill provide a clearer mechanism to a corporation or a shareholder to initiate a court proceeding to determine the fair value of a shareholder's shares when there is no agreement between the shareholder and a corporation over the fair value of the shares. Additionally, shares in the same class are granted the same treatment under the bill, regardless of the date of issuance. The bill also clarifies the procedures for claims against dissolved corporations.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Commerce, Economic Opportunities, and Consumer Services:

Reenacts portions of the following four sections of current law in order to incorporate the changes made by the bill to s. 607.1302, F.S.: s. 607.1106, F.S., which relates to effects of corporate mergers or share exchanges; s. 607.1107, F.S., which addresses mergers or share exchanges with foreign corporations; s. 607.1109, F.S., which governs articles of merger; and s. 607.1321, F.S., which relates to notice of intent to demand payment. (WITH TITLE AMENDMENT)