

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1009 (2019)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                        (Y/N)  
ADOPTED AS AMENDED                        (Y/N)  
ADOPTED W/O OBJECTION                    (Y/N)  
FAILED TO ADOPT                             (Y/N)  
WITHDRAWN                                    (Y/N)  
OTHER                                            

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Byrd offered the following:

3  
4           **Amendment (with title amendment)**

5           Remove lines 3915-4321 and insert:

6 directors or shareholders of the corporation; or

7           (j) ~~(h)~~ Otherwise governs the exercise of the corporate  
8 powers or the management of the business and affairs of the  
9 corporation or the relationship between the shareholders, the  
10 directors, and ~~of~~ the corporation, or among any of them, and is  
11 not contrary to public policy. ~~For purposes of this paragraph,~~  
12 ~~agreements contrary to public policy include, but are not~~  
13 ~~limited to, agreements that reduce the duties of care and~~  
14 ~~loyalty to the corporation as required by ss. 607.0830 and~~  
15 ~~607.0832, exculpate directors from liability that may be imposed~~  
16 ~~under s. 607.0831, adversely affect shareholders' rights to~~

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17 ~~bring derivative actions under s. 607.07401, or abrogate~~  
18 ~~dissenters' rights under ss. 607.1301-607.1320.~~

19 (2) An agreement authorized by this section shall be:

20 (a)1. Set forth or referenced in the articles of  
21 incorporation or bylaws and approved by all persons who are  
22 shareholders at the time the agreement; or

23 2. Set forth in a written agreement that is signed by all  
24 persons who are shareholders at the time of the agreement and  
25 such written agreement is made known to the corporation; and.

26 (b) Subject to termination or amendment only by all  
27 persons who are shareholders at the time of the termination or  
28 amendment, unless the agreement provides otherwise ~~with respect~~  
29 ~~to termination and with respect to amendments that do not change~~  
30 ~~the designation, rights, preferences, or limitations of any of~~  
31 ~~the shares of a class or series.~~

32 (3) The existence of an agreement authorized by this  
33 section shall be noted conspicuously on the front or back of  
34 each certificate for outstanding shares or on the information  
35 statement required with respect to uncertified shares by s.  
36 607.0626(2). If at the time of the agreement the corporation has  
37 shares outstanding which are represented by certificates, the  
38 corporation shall recall such certificates and issue substitute  
39 certificates that comply with this subsection. The failure to  
40 note the existence of the agreement on the certificate or  
41 information statement shall not affect the validity of the

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42 agreement or any action taken pursuant to it. Any purchaser of  
43 shares who, at the time of purchase, did not have knowledge of  
44 the existence of the agreement shall be entitled to rescission  
45 of the purchase. A purchaser shall be deemed to have knowledge  
46 of the existence of the agreement if its existence is noted on  
47 the certificate or information statement for the shares in  
48 compliance with this subsection and, if the shares are not  
49 represented by a certificate, the information statement is  
50 delivered to the purchaser at or before ~~prior to~~ the time of the  
51 purchase of the shares. An action to enforce the right of  
52 rescission authorized by this subsection must be commenced  
53 within the earlier of 90 days after discovery of the existence  
54 of the agreement or 2 years after the time of purchase of the  
55 shares.

56 (4) An agreement authorized by this section shall cease to  
57 be effective when shares of the corporation are registered  
58 pursuant to s. 12 of the Securities Exchange Act of 1934 ~~listed~~  
59 ~~on a national securities exchange or regularly quoted in a~~  
60 ~~market maintained by one or more members of a national or~~  
61 ~~affiliated securities association.~~ If the agreement ceases to be  
62 effective for any reason, the board of directors may, if the  
63 agreement is contained or referred to in the corporation's  
64 articles of incorporation or bylaws, adopt an amendment to the  
65 articles of incorporation or bylaws, without shareholder action,  
66 to delete the agreement and any references to it.

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67 (5) An agreement authorized by this section that limits or  
68 restricts the discretion or powers of the board of directors  
69 shall relieve the directors of, and impose upon the person or  
70 persons in whom such discretion or powers are vested, liability  
71 for acts or omissions imposed by law on directors to the extent  
72 that the discretion or powers of the directors are limited by  
73 the agreement.

74 (8) This section does not limit or invalidate agreements  
75 that are otherwise valid or authorized without regard to this  
76 section, including shareholder agreements between or among some  
77 or all of the shareholders or agreements between or among the  
78 corporation and one or more shareholders.

79 Section 72. Section 607.07401, Florida Statutes, is  
80 repealed.

81 Section 73. Section 607.0741, Florida Statutes, is created  
82 to read:

83 607.0741 Standing.—

84 (1) A shareholder may not commence a derivative proceeding  
85 unless the shareholder is a shareholder at the time the action  
86 is commenced and:

87 (a) Was a shareholder when the conduct giving rise to the  
88 action occurred; or

89 (b) Whose status as a shareholder devolved on the person  
90 through transfer or by operation of law from one who was a  
91 shareholder when the conduct giving rise to the action occurred.

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92           (2) In ss. 607.0741-607.0747, the term "shareholder" means  
93 a record shareholder, a beneficial shareholder, or an  
94 unrestricted voting trust beneficial owner.

95           Section 74. Section 607.0742, Florida Statutes, is created  
96 to read:

97           607.0742 Complaint; demand and excuse.—A complaint in a  
98 proceeding brought in the right of a corporation must be  
99 verified and allege with particularity:

100           (1) The demand, if any, made to obtain the action desired  
101 by the shareholder from the board of directors; and

102           (2) Either:

103           (a) If such a demand was made, that the demand was  
104 refused, rejected, or ignored by the board of directors prior to  
105 the expiration of 90 days from the date the demand was made;

106           (b) If such a demand was made, why irreparable injury to  
107 the corporation or misapplication or waste of corporate assets  
108 causing material injury to the corporation would result by  
109 waiting for the expiration of a 90-day period from the date the  
110 demand was made; or

111           (c) The reason or reasons the shareholder did not make the  
112 effort to obtain the desired action from the board of directors  
113 or comparable authority.

114           Section 75. Section 607.0743, Florida Statutes, is created  
115 to read:

116           607.0743 Stay of proceedings.—If the corporation commences

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117 an inquiry into the allegations made in the demand or complaint,  
118 the court may stay any derivative proceeding for such period as  
119 the court deems appropriate.

120 Section 76. Section 607.0744, Florida Statutes, is created  
121 to read:

122 607.0744 Dismissal.—

123 (1) A derivative proceeding may be dismissed, in whole or  
124 in part, by the court on motion by the corporation if a group  
125 specified in subsection (2) or subsection (3) has determined in  
126 good faith, after conducting a reasonable inquiry upon which its  
127 conclusions are based, that the maintenance of the derivative  
128 proceeding is not in the best interests of the corporation. In  
129 all such cases, the corporation has the burden of proof  
130 regarding the qualifications, good faith, and reasonable inquiry  
131 of the group making the determination.

132 (2) Unless a panel is appointed pursuant to subsection  
133 (3), the determination required in subsection (1) shall be made  
134 by:

135 (a) A majority of qualified directors present at a meeting  
136 of the board of directors if the qualified directors constitute  
137 a quorum; or

138 (b) A majority vote of a committee consisting of two or  
139 more qualified directors appointed by majority vote of qualified  
140 directors present at a meeting of the board of directors,  
141 regardless of whether such qualified directors constitute a

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142 quorum.

143 (3) Upon motion by the corporation, the court may appoint  
144 a panel consisting of one or more disinterested and independent  
145 individuals to make a determination required in subsection (1).

146 (4) This section does not prevent the court from:

147 (a) Enforcing a person's rights under the corporation's  
148 articles of incorporation, bylaws or this chapter, including the  
149 person's rights to information under s. 607.1602; or

150 (b) Exercising its equitable or other powers, including  
151 granting extraordinary relief in the form of a temporary  
152 restraining order or preliminary injunction.

153 Section 77. Section 607.0745, Florida Statutes, is created  
154 to read:

155 607.0745 Discontinuance or settlement; notice.-

156 (1) A derivative action on behalf of a corporation may not  
157 be discontinued or settled without the court's approval.

158 (2) If the court determines that a proposed discontinuance  
159 or settlement will substantially affect the interest of the  
160 corporation's shareholders or a class, series, or voting group  
161 of shareholders, the court shall direct that notice be given to  
162 the shareholders affected. The court may determine which party  
163 or parties to the derivative action shall bear the expense of  
164 giving the notice.

165 Section 78. Section 607.0746, Florida Statutes, is created  
166 to read:

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167 607.0746 Proceeds and expenses.—On termination of the  
168 derivative proceeding the court may:

169 (1) Order the corporation to pay from the amount recovered  
170 in the derivative proceeding by the corporation the plaintiff's  
171 reasonable expenses, including reasonable attorney fees and  
172 costs, incurred in the derivative proceeding if it finds that,  
173 in the derivative proceeding, the plaintiff was successful in  
174 whole or in part; or

175 (2) Order the plaintiff to pay any of the defendant's  
176 reasonable expenses, including reasonable attorney fees and  
177 costs, incurred in defending the proceeding if it finds that the  
178 proceeding was commenced or maintained without reasonable cause  
179 or for an improper purpose.

180 Section 79. Section 607.0747, Florida Statutes, is created  
181 to read:

182 607.0747 Applicability to foreign corporations.—In any  
183 derivative proceeding in the right of a foreign corporation  
184 brought in the courts of this state, the matters covered by ss.  
185 607.0741-607.0747 shall be governed by the laws of the  
186 jurisdiction of incorporation of the foreign corporation except  
187 for ss. 607.0743, 607.0745, and 607.0746.

188 Section 80. Section 607.0748, Florida Statutes, is created  
189 to read:

190 607.0748 Shareholder action to appoint custodians or  
191 receivers.—



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192       (1) A circuit court may appoint one or more persons to be  
193 custodians or receivers of and for a corporation in a proceeding  
194 by a shareholder where it is established that:

195       (a) The directors are deadlocked in the management of the  
196 corporate affairs, the shareholders are unable to break the  
197 deadlock, and irreparable injury to the corporation is  
198 threatened or being suffered; or

199       (b) The directors or those in control of the corporation  
200 are acting fraudulently and irreparable injury to the  
201 corporation is threatened or being suffered.

202       (2) The court:

203       (a) May issue injunctions, appoint one or more temporary  
204 custodians or temporary receivers with all the powers and duties  
205 the court directs, take other action to preserve the corporate  
206 assets wherever located, and carry on the business of the  
207 corporation until a full hearing is held;

208       (b) Shall hold a full hearing, after notifying all parties  
209 to the proceeding and any interested persons designated by the  
210 court, before appointing a custodian or receiver; and

211       (c) Has jurisdiction over the corporation and all of its  
212 property, wherever located.

213       (3) The court may appoint a natural person, a domestic  
214 eligible entity, or a foreign eligible entity authorized to  
215 transact business in this state as a custodian or receiver and  
216 may require the custodian or receiver to post bond, with or

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217 without sureties, in an amount the court directs.

218 (4) The court shall describe the powers and duties of the  
219 custodian or receiver in its appointing order, which may be  
220 amended. Among other powers:

221 (a) A custodian may exercise all of the powers of the  
222 corporation, through or in place of its board of directors, to  
223 the extent necessary to manage the business and affairs of the  
224 corporation; and

225 (b) A receiver may dispose of all or any part of the  
226 assets of the corporation, wherever located, at a public or  
227 private sale, if authorized by the court, and may sue and defend  
228 in the receiver's own name as receiver in all courts of this  
229 state.

230 (5) During a custodianship, the court may redesignate the  
231 custodian a receiver and, during a receivership, the court may  
232 redesignate the receiver a custodian, in each case if doing so  
233 is in the best interests of the corporation.

234 (6) The court from time to time during the custodianship  
235 or receivership may order compensation paid and expense  
236 disbursements or reimbursements made to any custodian or  
237 receiver from the assets of the corporation or proceeds from the  
238 sale of its assets.

239 Section 81. Section 607.0749, Florida Statutes, is created  
240 to read:

241 607.0749 Provisional director.—

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242       (1) In a proceeding by a shareholder, a provisional  
243 director may be appointed in the discretion of the court if it  
244 appears that such action by the court will remedy a situation in  
245 which the directors are deadlocked in the management of the  
246 corporate affairs and the shareholders are unable to break the  
247 deadlock. A provisional director may be appointed  
248 notwithstanding the absence of a vacancy on the board of  
249 directors, and such director shall have all the rights and  
250 powers of a duly elected director, including the right to notice  
251 of and to vote at meetings of directors, until such time as the  
252 provisional director is removed by order of the court or, unless  
253 otherwise ordered by a court, removed by a vote of the  
254 shareholders sufficient either to elect a majority of the board  
255 of directors or, if greater than majority voting is required by  
256 the articles of incorporation or the bylaws, to elect the  
257 requisite number of directors needed to take action. A  
258 provisional director shall be an impartial person who is neither  
259 a shareholder nor a creditor of the corporation or of any  
260 subsidiary or affiliate of the corporation, and whose further  
261 qualifications, if any, may be determined by the court.

262       (2) A provisional director shall report from time to time  
263 to the court concerning the matter complained of, or the status  
264 of the deadlock, if any, and of the status of the corporation's  
265 business, as the court shall direct. No provisional director  
266 shall be liable for any action taken or decision made, except as

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267 directors may be liable under s. 607.0831. In addition, the  
268 provisional director shall submit to the court, if so directed,  
269 recommendations as to the appropriate disposition of the action.  
270 Whenever a provisional director is appointed, any officer or  
271 director of the corporation may, from time to time, petition the  
272 court for instructions clarifying the duties and  
273 responsibilities of such officer or director.

274 (3) In any proceeding under this section, the court shall  
275 allow reasonable compensation to the provisional director for  
276 services rendered and reimbursement or direct payment of  
277 reasonable costs and expenses, which amounts shall be paid by  
278 the corporation.

279 Section 82. Section 607.0750, Florida Statutes, is created  
280 to read:

281 Section 607.0750 Direct action by shareholder.-

282 (1) Subject to subsection (2), a shareholder may maintain  
283 a direct action against another shareholder, officer, director,  
284 or the company, to enforce the shareholder's rights and  
285 otherwise protect the shareholder's interests, including rights  
286 and interests under the articles of incorporation, the bylaws or  
287 this chapter or arising independently of the shareholder  
288 relationship.

289 (2) A shareholder maintaining a direct action under this  
290 section must plead and prove either:

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291 (a) An actual or threatened injury that is not solely the  
292 result of an injury suffered or threatened to be suffered by the  
293 corporation; or

294 (b) An actual or threatened injury resulting from a  
295 violation of a separate statutory or contractual duty owed by  
296 the alleged wrongdoer to the shareholder, even if the injury is  
297 in whole or in part the same as the injury suffered or  
298 threatened to be suffered by the corporation.

299 Section 83. Section 607.0801, Florida Statutes, is amended  
300 to read:

301 607.0801 Requirement for and duties of board of  
302 directors.—

303 (1) Except as may be provided in an agreement authorized  
304 pursuant to s. 607.0732(1), each corporation must have a board  
305 of directors.

306 (2) All corporate powers shall be exercised by or under  
307 the authority of the board of directors of the corporation, and  
308 the business and affairs of the corporation shall be managed by  
309 or under the direction of, and subject to the oversight of, its  
310 board of directors, subject to any limitation set forth in the  
311 articles of incorporation or in an agreement authorized under s.  
312 607.0732.

313 Section 84. Section 607.0802, Florida Statutes, is amended  
314 to read:

315 607.0802 Qualifications of directors.—

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316 (1) Directors must be natural persons who are 18 years of  
317 age or older but need not be residents of this state or  
318 shareholders of the corporation unless the articles of  
319 incorporation or bylaws so require. The articles of  
320 incorporation or bylaws may prescribe additional qualifications  
321 for directors or nominees for directors.

322 (2) A qualification for nomination for director prescribed  
323 before a person's nomination shall apply to such person at the  
324 time of nomination. A qualification for nomination for director  
325 prescribed after a person's nomination does not apply to such  
326 person with respect to such nomination.

327 (3) A qualification for director prescribed before a  
328 director has been elected or appointed may apply only at the  
329 time an individual becomes a director or may apply during a  
330 director's term. A qualification prescribed after a director has  
331 been elected or appointed does not apply to that director before  
332 the end of that director's term.

333 (4)-(2) In the event that the eligibility to serve as a  
334 member of the board of directors of a condominium association,  
335 cooperative association, homeowners' association, or mobile home  
336 owners' association is restricted to membership in such  
337 association and membership is appurtenant to ownership of a  
338 unit, parcel, or mobile home, a grantor of a trust described in  
339 s. 733.707(3), or a qualified beneficiary as defined in s.  
340 736.0103 of a trust which owns a unit, parcel, or mobile home

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341 shall be deemed a member of the association and eligible to  
342 serve as a director of the condominium association, cooperative  
343 association, homeowners' association, or mobile home owners'  
344 association, provided that said beneficiary occupies the unit,  
345 parcel, or mobile home.

346 Section 85. Subsection (3) of section 607.0803, Florida  
347 Statutes, is amended to read:

348 607.0803 Number of directors.—

349 (3) Directors are elected at the first annual  
350 shareholders' meeting and at each annual shareholders' meeting  
351 thereafter, unless elected by written consent in lieu of an  
352 annual shareholders' meeting pursuant to s. 607.0704 or unless  
353 their terms are staggered under s. 607.0806.

354 Section 86. Section 607.0804, Florida Statutes, is amended  
355 to read:

356 607.0804 Election of directors by certain voting groups;  
357 special voting rights of certain directors.—The articles of  
358 incorporation may confer upon holders of any voting group the  
359 right to elect one or more directors who shall serve for such  
360 term and have such voting powers as are stated in the articles  
361 of incorporation. The terms of office and voting powers of the  
362 directors elected in the manner provided in the articles of  
363 incorporation may be greater than or less than those of any  
364 other director or class of directors. If the articles of  
365 incorporation provide that directors elected by the holders of a

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366 voting group shall have more or less than one vote per director  
367 on any matter, every reference in this chapter ~~act~~ to a majority  
368 or other proportion of directors shall refer to a majority or  
369 other proportion of the votes of such directors. If a  
370 shareholders' agreement meeting the requirements of s. 607.0732,  
371 or articles of incorporation or bylaws meeting the requirements  
372 of s. 607.0732, provide that directors shall have more or less  
373 than one vote per director on any matter, every reference in  
374 this chapter to a majority or other proportion of directors  
375 shall refer to a majority or other proportion of the votes of  
376 such directors.

377 Section 87. Subsections (2) and (5) of section 607.0805,  
378 Florida Statutes, are amended to read:

379 607.0805 Terms of directors generally.—

380 (2) The terms of all other directors expire at the next  
381 annual shareholders' meeting following their election, except to  
382 the extent:

383 (a) Provided in s. 607.0806;

384 (b) Provided in s. 607.1023 if a bylaw electing to be  
385 governed by that section is in effect; or

386 (c) That a shorter term is specified in the articles of  
387 incorporation in the event of a director nominee failing to  
388 receive a specified vote for election unless their terms are  
389 staggered under s. 607.0806.



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390 (5) Except to the extent otherwise provided in the  
391 articles of incorporation or under s. 607.1023, if a bylaw  
392 electing to be governed by that section is in effect, despite  
393 the expiration of a director's term, the director continues to  
394 serve until his or her successor is elected and qualifies or  
395 until there is a decrease in the number of directors.

396 Section 88. Section 607.0806, Florida Statutes, is amended  
397 to read:

398 607.0806 Staggered terms for directors.-

399 (1) ~~The directors of any corporation organized under this~~  
400 ~~act may, by the~~ articles of incorporation, the initial bylaws or  
401 ~~by an initial bylaw, or by~~ a bylaw adopted by a vote of the  
402 shareholders, may provide for staggering the terms of directors  
403 by dividing the total number of directors into two or three  
404 groups, with each group containing half or one-third of the  
405 total, as near as may be practicable. In that event, the terms  
406 of the first group expire at the first annual shareholders'  
407 meeting after their election, the terms of the second group  
408 expire at the second annual shareholders' meeting after their  
409 election, and the terms of the third group, if any, expire at  
410 the third annual shareholders' meeting after their election. At  
411 each annual shareholders' meeting held thereafter, directors  
412 shall be elected for a term of two years or three years be  
413 ~~divided into one, two, or three classes with the number of~~  
414 ~~directors in each class being as nearly equal as possible; the~~

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415 ~~term of office of those of the first class to expire at the~~  
416 ~~annual meeting next ensuing; of the second class 1 year~~  
417 ~~thereafter; of the third class 2 years thereafter; and at each~~  
418 ~~annual election held after such classification and election,~~  
419 ~~directors shall be chosen for a full term, as the case may be,~~  
420 to succeed those whose terms expire. If the directors have  
421 staggered terms, then any increase or decrease in the number of  
422 directors shall be so apportioned among the classes as to make  
423 all classes as nearly equal in number as possible.

424 (2) In the case of any Florida corporation in existence  
425 prior to July 1, 1990, directors of such corporation divided  
426 into four classes may continue to serve staggered terms as the  
427 articles of incorporation or bylaws of such corporation provided  
428 immediately prior to July 1, 1990~~the effective date of this act,~~  
429 unless and until the articles of incorporation or bylaws are  
430 amended to alter or terminate such classes.

431

432

433 **T I T L E A M E N D M E N T**

434 Remove line 218 and insert:

435 services; creating s. 607.0750, F.S.; providing for direct  
436 action by shareholder; amending s. 607.0801, F.S.; making  
437 technical