CHAPTER 99-135

Committee Substitute for House Bill No. 133

An act relating to corporations; amending s. 607.0631, F.S.; authorizing a corporation to acquire shares of a certain series or class and designate such shares as treasury shares; amending s. 607.0722, F.S.; providing alternative methods for appointing proxies by shareholders; amending s. 607.11045, F.S.; clarifying provisions relating to the conversion of shares in certain internal mergers of corporations; providing an effective date.

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

Section 1. Subsection (1) of section 607.0631, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

607.0631 Corporation's acquisition of its own shares.—

(1) A corporation may acquire its own shares, and, unless otherwise provided in the articles of incorporation or except as provided in subsection (4) or subsection (5), shares so acquired constitute authorized but unissued shares of the same class but undesignated as to series.

(5) A corporation that has shares of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., may acquire such shares and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the corporation shall constitute treasury shares.

Section 2. Subsection (2) of section 607.0722, Florida Statutes, is amended to read:

607.0722 Proxies.—

(2)(a) A shareholder may appoint a proxy to vote or otherwise act for the shareholder ~~him or her~~ by signing an appointment form, either personally or by the shareholder's ~~his or her~~ attorney in fact. An executed telegram or cablegram appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of an appointment form, is a sufficient appointment form.

(b) Without limiting the manner in which a shareholder may appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a shareholder may grant such authority by:

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

2. Transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be

the proxy or to a proxy solicitation firm, proxy support service organization, registrar, or agent authorized by the person who will be designated as the proxy to receive such transmission. However, any telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which can be determined that the transmission was authorized by the shareholder. If it is determined that the transmission is valid, the inspectors of election or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

Section 3. Subsections (3) and (5) of section 607.11045, Florida Statutes, 1998 Supplement, are amended to read:

607.11045 Holding company formation by merger by certain corporations.—

(3) Notwithstanding the requirements of s. 607.1103, unless expressly required by its articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger of the corporation with or into a wholly owned subsidiary of such corporation if:

(a) Such corporation and wholly owned subsidiary are the only constituent corporations to the merger;

(b) Each share or fraction of a share of the constituent corporation whose shares are being converted pursuant to the merger which are outstanding immediately prior to the effective date of the merger is converted in the merger into a share or equal fraction of share of a holding company having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions thereof as the share of the constituent corporation being converted in the merger;

(c) The holding company and each of the constituent corporations to the merger are domestic corporations;

(d) The articles of incorporation and bylaws of the holding company immediately following the effective date ~~time~~ of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date ~~time~~ of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective;

(e) As a result of the merger, the constituent corporation whose shares are being converted pursuant to the merger or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(f) The directors of the constituent corporation become or remain the directors of the holding company upon the effective date of the merger;

(g) The articles of incorporation of the surviving corporation immediately following the effective date ~~time~~ of the merger are identical to the articles of incorporation of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date ~~time~~ of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective. The articles of incorporation of the surviving corporation must be amended in the merger to contain a provision requiring, by specific reference to this section, that any act or transaction by or involving the surviving corporation which requires for its adoption under this act or its articles of incorporation the approval of the shareholders of the surviving corporation also be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this act or the articles of incorporation of the surviving corporation. The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares which the surviving corporation is authorized to issue;

(h) The board of directors of the constituent corporation determines that the shareholders of the constituent corporation will not recognize gain or loss for United States federal income tax purposes; and

(i) The board of directors of such corporation adopts a plan of merger that sets forth:

1. The names of the constituent corporations;

2. The manner and basis of converting the shares of the corporation into shares of the holding company and the manner and basis of converting rights to acquire shares of such corporation into rights to acquire shares of the holding company; and

3. A provision for the pro rata issuance of shares of the holding company to the holders of shares of the corporation upon surrender of any certificates therefor.

(5) If a plan of merger is adopted by a constituent corporation by selection of its board of directors without any vote of shareholders pursuant to this section, the secretary or assistant secretary of the constituent corporation shall certify in the articles of merger that the plan of merger has been adopted pursuant to this section and that the conditions specified in subsection (3) ~~the first sentence of this section~~ have been satisfied. The articles of merger so certified shall then be filed and become effective in accordance with s. 607.1106.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor April 20, 1999.

Filed in Office Secretary of State April 20, 1999.