

Committee Substitute for  
Committee Substitute for Senate Bill No. 1880

An act relating to corporations; amending s. 607.01401, F.S.; redefining the term “electronic transmission” to include telegrams, cablegrams, telephone transmissions, and transmissions through the Internet for purposes of proxy voting; amending s. 607.0722, F.S.; specifying those persons who may vote on behalf of a shareholder; authorizing the appointment of a proxy by electronic transmission; deleting provisions limiting the period during which an appointment of proxy is irrevocable; authorizing the use of certain copies or reproductions in lieu of the original writing or electronic transmission; authorizing a corporation to adopt bylaws authorizing additional procedures for shareholders to use in exercising certain rights; amending s. 15.16, F.S.; authorizing the department to discount a filing fee in an amount equal to the convenience charge imposed for an electronic record filing by way of a contractor; amending s. 607.193, F.S.; waiving the charge for late filings of supplemental corporate fees when the business entity did not receive the uniform business report prescribed by the department; providing an effective date.

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

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

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

(9) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions through the Internet.

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

607.0722 Proxies.—

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

(2)(a) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission, either personally or by the

shareholder's attorney in fact. Any type of electronic transmission appearing to have been, or containing or accompanied by such information or obtained under such procedures to reasonably ensure that the electronic transmission was, transmitted by such person is a sufficient appointment, subject to the verification requested by the corporation under s. 607.0724. 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, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may make grant such an appointment authority by:

1. Signing an appointment form, with the signature affixed, 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 or electronic signature.

2. Transmitting or authorizing the transmission of an a telegram, cablegram, or other means of electronic transmission to the person who will be appointed as 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 it can be determined that the electronic transmission was authorized by the shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder. If it is determined that the electronic 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.

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

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

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

- (a) A pledgee;
  - (b) A person who purchased or agreed to purchase the shares;
  - (c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;
  - (d) An employee of the corporation whose employment contract requires the appointment; or
  - (e) A party to a voting agreement created under s. 607.0731.
- (6) An appointment made irrevocable under subsection (5) becomes revocable when the interest with which it is coupled is extinguished ~~and, in a case provided for in paragraph (5)(c) or paragraph (5)(d), the proxy becomes revocable 3 years after the date of the proxy or at the end of the period, if any, specified therein, whichever is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This does not affect the duration of a proxy under subsection (3).~~

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

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

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

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

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

Section 3. Subsection (8) is added to section 15.16, Florida Statutes, to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(8) The Department of State may use government or private sector contractors in the promotion or provision of any electronic filing services and may discount the filing fee in an amount equal to the convenience charge for such electronic filings.

Section 4. Paragraph (b) of subsection (2) of section 607.193, Florida Statutes, is amended to read:

607.193 Supplemental corporate fee.—

(2)

(b) In addition to the fees levied under ss. 607.0122, 608.452, and 620.182 and the supplemental corporate fee, a late charge of \$400 shall be imposed if the supplemental corporate fee is remitted after May 1 except in circumstances in which a business entity did not receive the uniform business report prescribed by the department.

Section 5. This act shall take effect July 1, 2001.

Approved by the Governor June 8, 2001.

Filed in Office Secretary of State June 8, 2001.