

By Representatives Boyd, Wise and Murman

1 A bill to be entitled
2 An act relating to corporations; amending s.
3 48.101, F.S.; providing for two kinds of
4 service of process on dissolved corporations
5 depending on the date of dissolution; amending
6 s. 607.01401, F.S.; defining the term "treasury
7 shares"; amending s. 607.0732, F.S.; providing
8 additional requirements with respect to certain
9 shareholder agreements; amending s. 607.1002,
10 F.S.; providing an additional criteria whereby
11 a corporation's board of directors may adopt
12 one or more amendments to the articles of
13 incorporation without shareholder action;
14 amending s. 617.0808, F.S.; deleting reference
15 to the board of directors of certain charitable
16 organizations with respect to the removal of
17 directors; amending s. 617.2103, F.S.; revising
18 language with respect to exemptions for certain
19 corporations; providing an 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. Section 48.101, Florida Statutes, is
24 amended to read:

25 48.101 Service on dissolved corporations.--Process
26 against the directors of any corporation which was ~~is~~
27 dissolved before July 1, 1990, as trustees of the dissolved
28 corporation shall be served on one or more of the directors of
29 the dissolved corporation as trustees thereof and binds all of
30 the directors of the dissolved corporation as trustees

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1 thereof. Process against any other dissolved corporation shall
2 be served in accordance with s. 48.081.

3 Section 2. Subsections (27) and (28) of section
4 607.01401, Florida Statutes, are renumbered as subsections
5 (28) and (29), respectively, and a new subsection (27) is
6 added to said section to read:

7 607.01401 Definitions.--As used in this act, unless
8 the context otherwise requires, the term:

9 (27) "Treasury shares" means shares of the corporation
10 that belong to the issuing corporation that are authorized and
11 issued shares that are not outstanding, are not canceled, and
12 have not been restored to the status of authorized but
13 unissued shares.

14 Section 3. Paragraphs (f) and (g) of subsection (1) of
15 section 607.0732, Florida Statutes, are amended, and paragraph
16 (h) is added to said subsection, to read:

17 607.0732 Shareholder agreements.--

18 (1) An agreement among the shareholders of a
19 corporation with 100 or fewer shareholders at the time of the
20 agreement, that complies with this section, is effective among
21 the shareholders and the corporation, even though it is
22 inconsistent with one or more other provisions of this
23 chapter, if it:

24 (f) Transfers to any shareholder or other person any
25 authority to exercise the corporate powers or to manage the
26 business and affairs of the corporation, including the
27 resolution of any issue about which there exists a deadlock
28 among directors or shareholders; ~~or~~

29 (g) Requires dissolution of the corporation at the
30 request of one or more of the shareholders or upon the
31 occurrence of a specified event or contingency; or

1 (h) Otherwise governs the exercise of the corporate
2 powers or the management of the business and affairs of the
3 corporation or the relationship among the shareholders, the
4 directors, and the corporation, or among any of them, and is
5 not contrary to public policy. For purposes of this
6 subsection, agreements contrary to public policy include, but
7 are not limited to, agreements that reduce the duties of care
8 and loyalty to the corporation as required by ss. 607.0830 and
9 607.0832, exculpate directors from liability that may be
10 imposed under s. 607.0831, adversely affect the shareholders'
11 rights to bring derivative actions under s. 607.07401, or
12 abrogate dissenters' rights under ss. 607.1301 through
13 607.1320.

14 Section 4. Subsections (7) and (8) of section
15 607.1002, Florida Statutes, are amended, and a new subsection
16 (8) is added to said section, to read:

17 607.1002 Amendment by board of directors.--Unless the
18 articles of incorporation provide otherwise, a corporation's
19 board of directors may adopt one or more amendments to the
20 corporation's articles of incorporation without shareholder
21 action:

22 (7) To change the par value for a class or series of
23 shares; ~~or~~

24 (8) To provide that if the corporation acquires its
25 own shares, shares so acquired belong to the corporation and
26 constitute treasury shares until disposed of or canceled by
27 the corporation; or

28 ~~(9)~~ ~~(8)~~ To make any other change expressly permitted by
29 this act to be made without shareholder action.

30 Section 5. Section 617.0808, Florida Statutes, is
31 amended to read:

1 617.0808 Removal of directors.--A director may be
2 removed from office pursuant to procedures provided in the
3 articles of incorporation or the bylaws, which shall provide
4 the following, and if they do not do so, shall be deemed to
5 include the following:

6 (1) ~~Except as provided in subsection (2),~~Any member
7 of the board of directors may be removed from office with or
8 without cause by the vote or agreement in writing by a
9 majority of all votes of the membership.

10 ~~(2) Any member of the board of directors of a~~
11 ~~charitable organization as defined in s. 496.404, may be~~
12 ~~removed from office without cause only following the~~
13 ~~recommendation of a majority of the board of directors~~
14 ~~followed by the vote or agreement in writing by a majority of~~
15 ~~all votes of the membership.~~

16 (2)~~(3)~~ The notice of a meeting of the members to
17 recall a member or members of the board of directors shall
18 state the specific directors sought to be removed.

19 (3)~~(4)~~ A proposed removal of a director at a meeting
20 shall require a separate vote for each board member sought to
21 be removed. Where removal is sought by written agreement, a
22 separate agreement is required for each board member to be
23 removed.

24 (4)~~(5)~~ If removal is effected at a meeting, any
25 vacancies created thereby shall be filled by the members at
26 the same meeting.

27 (5)~~(6)~~ Any director who is removed from the board
28 shall not be eligible to stand for reelection until the next
29 annual meeting of the members.

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1 (6)~~(7)~~ Any director removed from office shall turn
2 over to the board of directors within 72 hours any and all
3 records of the corporation in his possession.

4 (7)~~(8)~~ If a director who is removed shall not
5 relinquish his office or turn over records as required under
6 this section, the circuit court in the county where the
7 corporation's principal office is located may summarily order
8 the director to relinquish his office and turn over corporate
9 records upon application of any member.

10 Section 6. Subsection (1) of section 617.2103, Florida
11 Statutes, 1996 Supplement, is amended to read:

12 617.2103 Exemptions for certain corporations.--

13 (1) No corporation described in s. 501(c) of the
14 Internal Revenue Code of 1986, as amended, shall be subject to
15 the provisions of s. 617.0808, s. 617.1601, s. 617.1602, s.
16 617.1603, s. 617.1604, s. 617.1605, or s. 617.2102, unless the
17 articles of incorporation or bylaws provide otherwise. ~~No~~
18 ~~corporation described in s. 501(c) of the Internal Revenue~~
19 ~~Code of 1986, as amended, except a charitable organization as~~
20 ~~defined in s. 496.404, is subject to the provisions of s.~~
21 ~~617.0808.~~ For purposes of this subsection, if a current
22 determination letter issued under the authority of the
23 internal revenue laws of the United States of America
24 determines that a particular corporation is or is not exempt
25 from federal income taxation under s. 501(c) of the Internal
26 Revenue Code of 1986, as amended, that shall be conclusive on
27 the question whether the corporation is or is not described in
28 s. 501(c) of the Internal Revenue Code of 1986, as amended.

29 Section 7. This act shall take effect upon becoming a
30 law.

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HOUSE SUMMARY

Provides for service of process on dissolved corporations with a different procedure for corporations dissolved before July 1, 1990, and on or after that date.

Provides additional criteria whereby an agreement among the shareholders of a corporation with 100 or fewer shareholders is effective among the shareholders, even though inconsistent with one or more provisions of chapter 607, F.S.

Provides that unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action to provide that if the corporation acquires its own shares, shares so acquired belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation.

Defines the term "treasury shares" to mean shares of a corporation that belong to the issuing corporation that are authorized and issued shares that are not outstanding, are not canceled, and have not been restored to the status of authorized but unissued shares.

Deletes reference to the board of directors of a charitable corporation from a provision of law governing the removal of directors.