

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1517 Corporate Annual Financial Statements
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Murzin
TIED BILLS: IDEN./SIM. BILLS: SB 1500

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee, 14 Y, 0 N, As CS, Cooper, Cooper. Row 2: General Government Policy Council, Cooper, Hamby. Rows 3-5 are empty.

SUMMARY ANALYSIS

Currently, Florida law requires corporations for profit to mail financial statements to shareholders within 120 days after the close of each fiscal year. Mail is defined in relevant Florida Statutes as "the United States Mail, facsimile transmissions, and private mail carriers handling nationwide mail services." Consequently, current law limits the ability of corporations to provide shareholders financial statements through alternative means, such as through electronic transmission.

This bill permits corporations to furnish shareholders annual financial statements via electronic transmission, as well as by mail. In addition, the bill allows a corporation that has an outstanding class of securities to fulfill the requirement of furnishing annual financial statements by complying with rules of the Securities and Exchange Commission, which provide for the electronic transmission of corporations' financial statements, called "e-proxy" procedures. Under these rules, corporations must post proxy materials on a publicly accessible website and must provide paper or e-mail copies of the posted material upon a security holder's request. Specifically, a corporation can either choose to use the "full set delivery option" or "notice of Internet availability of proxy materials" option to deliver proxy materials.

The bill does not have a fiscal impact on state or local government. Because the bill authorizes corporations to choose alternate and potentially less expensive means to furnish annual financial statements to their shareholders, it may have a positive fiscal on those entities.

The effective date of the bill is upon becoming a law and it applies the new provisions to all fiscal years ending on or after December 31, 2008.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Current law requires corporations for profit to mail financial statements to shareholders within 120 days after the close of each fiscal year.<sup>1</sup> Mail is defined as "the United States Mail, facsimile transmissions, and private mail carriers handling nationwide mail services."<sup>2</sup> Consequently, corporations' ability to provide shareholders financial statements through alternative means, such as through electronic transmission, is limited.

Section 607.1620(1), F.S., allows a corporation's shareholders to waive the corporation's obligation to furnish annual financial statements, but only if approved by the shareholders by resolution and within 120 days of the close of the corporation's fiscal year.

Several states, including Alaska, Georgia, Pennsylvania, Arizona, and California, currently allow corporations to provide shareholders with financial statements or annual reports through electronic transmission.<sup>3</sup> California specifically permits corporations to satisfy annual reporting requirements by meeting the Security and Exchange Commission (SEC) reporting requirements specified under 17 C.F.R. 240.14a-3(b), as amended, and 17 C.F.R. 240.14a-16, as amended.<sup>4</sup>

The SEC provides for the electronic transmission of corporations' financial statements, called "e-proxy" rules, under 17 C.F.R. 240.14a-3(b), as amended, and 17 C.F.R. 240.14a-16, as amended.<sup>5</sup> The SEC prescribes mandatory "e-proxy" rules that delineate the manner in which proxy materials for securities registered under Section 12 of the Securities Exchange Act of 1934 must be provided to security holders. Under these rules, corporations must post proxy materials on a publicly accessible website and must provide paper or e-mail copies of the posted material upon a security holder's request. Specifically, a corporation can either choose to use the "full set delivery option" or "notice of Internet availability of proxy materials" option to deliver proxy materials.

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<sup>1</sup> Section 607.1620(3), F.S.

<sup>2</sup> Section 607.01401(17), F.S.

<sup>3</sup> See A.S. §10.06.433, Ga. Code Ann. §14-3-1620 and §14-2-1620, 15 Pa. C.S.A. §1554, A.R.S. §10-1620, and Cal. Corp. Code §1501.

<sup>4</sup> See Cal. Corp. Code §1501(a)(4).

<sup>5</sup> Information provided by the Florida Bar Business Law Section. Document on file with the Insurance, Business & Financial Affairs Policy Committee

The “notice of Internet availability” option requires corporations to post their proxy materials on an Internet website and send a notice to security holders to inform them of the electronic availability of the proxy materials at least 40 days before the security holders’ meeting.<sup>6</sup> Corporations that follow this option must respond to security holder requests for copies, including a security holder’s permanent request for paper or e-mail copies of proxy materials for all security holder meetings.<sup>7</sup>

The “full set delivery option” allows a corporation to deliver a full set of proxy materials to security holders, along with the notice of Internet availability of proxy materials at least 40 days before the security holders’ meeting.<sup>8</sup> If a corporation chooses this option, it need not prepare and deliver a separate notice if the materials contain all of the information required by the e-proxy rules to appear in the notice and proxy statement.<sup>9</sup> Moreover, corporations do not have to respond to requests for copies, as is required under the notice of Internet availability option.<sup>10</sup>

### **Effect of Proposed Changes**

This bill amends s. 607.1620, F.S., which relates to financial statements for shareholders, to allow corporations for profit to furnish annual financial statements to shareholders via electronic transmission or by mail. The addition of electronic transmission to this section broadens the methods by which a corporation can provide financial statements to shareholders.

The term “electronic transmission” is defined in s. 607.01401(9), F.S., as:

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.

A new subsection (5) is created to not only allow a corporation to furnish annual financial statements by mail or electronically, but also to allow a corporation to satisfy the annual requirement of furnishing financial statements to shareholders by complying with 17 C.F.R. s. 240.14a-3(b), as amended.<sup>11</sup> 17 C.F.R. s. 240a-3(b), as amended, in conjunction with 17 C.F.R. s. 240.14a-16, as amended, requires a corporation to furnish annual reports to security holders in a certain format and under specified time requirements and allows for reports to be provided through an electronic medium.<sup>12</sup> These federal rules are often referred to as “e-proxy” rules.<sup>13</sup>

### **B. SECTION DIRECTORY:**

Section 1. Amends s.607.1620, F.S., relating to financial statements for shareholders.

Section 2. Provides an effective date of upon becoming a law and applying the new provisions to all fiscal years ending on or after December 31, 2008.

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<sup>6</sup> See 17 C.F.R. 240.14a-3(a)(1) and <http://www.allbusiness.com/legal/banking-law-banking-finance-regulation/11579823-1.html>.

<sup>7</sup> See <http://www.allbusiness.com/legal/banking-law-banking-finance-regulation/11579823-1.html>

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> This section of the bill is similar to a provision in California’s corporation code. See Cal. Corp. Code §1501(a)(4).

<sup>12</sup> See 17 C.F.R. s. 240.14a-3(b)(2)(ii), for format specifications of reports delivered through an electronic medium.

<sup>13</sup> See <http://www.allbusiness.com/legal/banking-law-banking-finance-regulation/11579823-1.html>.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Corporations may reduce printing and mailing costs by choosing to use the Internet to furnish financial statements to shareholders.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted a “strike-all” amendment to conform the House bill to the Senate bill, by:

- Permitting corporations to furnish statements via “electronic transmission” instead of “electronically.”
- Stating that the requirement to furnish annual financial statements “may” be satisfied by complying with federal rules, instead of “shall” be.
- Changing the bill’s effective date from July 1, 2009 to upon becoming a law and applying the new provisions to all fiscal years ending on or after December 31, 2008.