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WITHDRAWN __ (Y/N)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 __

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

Amendment (with title amendment)

Remove lines 3915-4321 and insert:

directors or shareholders of the corporation; or

(j)(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship between the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy. For purposes of this paragraph, agreements contrary to public policy include, but are not limited to, agreements that reduce the duties of care and loyalty to the corporation as required by ss. 607.0830 and 607.0832, exculpate directors from liability that may be imposed under s. 607.0831, adversely affect shareholders' rights to
bring derivative actions under s. 607.07401, or abrogate
dissenters' rights under ss. 607.1301-607.1320.

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

   (a) 1. Set forth or referenced in the articles of
         incorporation or bylaws and approved by all persons who are
         shareholders at the time the agreement; or
         2. Set forth in a written agreement that is signed by all
            persons who are shareholders at the time of the agreement and
            such written agreement is made known to the corporation; and-

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

(3) The existence of an agreement authorized by this
section shall be noted conspicuously on the front or back of
each certificate for outstanding shares or on the information
statement required with respect to uncertified shares by s.
607.0626(2). If at the time of the agreement the corporation has
shares outstanding which are represented by certificates, the
corporation shall recall such certificates and issue substitute
certificates that comply with this subsection. The failure to
note the existence of the agreement on the certificate or
information statement shall not affect the validity of the
agreement or any action taken pursuant to it. Any purchaser of
shares who, at the time of purchase, did not have knowledge of
the existence of the agreement shall be entitled to rescission
of the purchase. A purchaser shall be deemed to have knowledge
of the existence of the agreement if its existence is noted on
the certificate or information statement for the shares in
compliance with this subsection and, if the shares are not
represented by a certificate, the information statement is
delivered to the purchaser at or before prior to the time of the
purchase of the shares. An action to enforce the right of
rescission authorized by this subsection must be commenced
within the earlier of 90 days after discovery of the existence
of the agreement or 2 years after the time of purchase of the
shares.

(4) An agreement authorized by this section shall cease to
be effective when shares of the corporation are registered
pursuant to s. 12 of the Securities Exchange Act of 1934 listed
on a national securities exchange or regularly quoted in a
market maintained by one or more members of a national or
affiliated securities association. If the agreement ceases to be
effective for any reason, the board of directors may, if the
agreement is contained or referred to in the corporation's
articles of incorporation or bylaws, adopt an amendment to the
articles of incorporation or bylaws, without shareholder action,
to delete the agreement and any references to it.
(5) An agreement authorized by this section that limits or restricts the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

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

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

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

607.0741  Standing.—
(1) A shareholder may not commence a derivative proceeding unless the shareholder is a shareholder at the time the action is commenced and:
    (a) Was a shareholder when the conduct giving rise to the action occurred; or
    (b) Whose status as a shareholder devolved on the person through transfer or by operation of law from one who was a shareholder when the conduct giving rise to the action occurred.
(2) In ss. 607.0741-607.0747, the term "shareholder" means a record shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner.

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

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

(1) The demand, if any, made to obtain the action desired by the shareholder from the board of directors; and
(2) Either:
   (a) If such a demand was made, that the demand was refused, rejected, or ignored by the board of directors prior to the expiration of 90 days from the date the demand was made;
   (b) If such a demand was made, why irreparable injury to the corporation or misapplication or waste of corporate assets causing material injury to the corporation would result by waiting for the expiration of a 90-day period from the date the demand was made; or
   (c) The reason or reasons the shareholder did not make the effort to obtain the desired action from the board of directors or comparable authority.

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

607.0743 Stay of proceedings.—If the corporation commences

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

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

607.0744 Dismissal.—

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

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

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

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

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

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

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

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

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

607.0745 Discontinuance or settlement; notice.—

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

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

Section 78. Section 607.0746, Florida Statutes, is created to read:
607.0746  Proceeds and expenses.—On termination of the derivative proceeding the court may:

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

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

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

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

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

607.0748  Shareholder action to appoint custodians or receivers.—
(1) A circuit court may appoint one or more persons to be custodians or receivers of and for a corporation in a proceeding by a shareholder where it is established that:

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

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

(2) The court:

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

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

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

(3) The court may appoint a natural person, a domestic eligible entity, or a foreign eligible entity authorized to transact business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or
without sureties, in an amount the court directs.

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

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

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

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

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

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

607.0749  Provisional director. —
(1) In a proceeding by a shareholder, a provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy a situation in which the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock. A provisional director may be appointed notwithstanding the absence of a vacancy on the board of directors, and such director shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the shareholders sufficient either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. A provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court.

(2) A provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's business, as the court shall direct. No provisional director shall be liable for any action taken or decision made, except as
directors may be liable under s. 607.0831. In addition, the provisional director shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. Whenever a provisional director is appointed, any officer or director of the corporation may, from time to time, petition the court for instructions clarifying the duties and responsibilities of such officer or director.

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

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

Section 607.0750 Direct action by shareholder.—

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

(2) A shareholder maintaining a direct action under this section must plead and prove either:
(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the corporation; or

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

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

607.0801 Requirement for and duties of board of directors.—

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

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

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

607.0802 Qualifications of directors.—
(1) Directors must be natural persons who are 18 years of age or older but need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe additional qualifications for directors or nominees for directors.

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

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

(4) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile home owners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a qualified beneficiary as defined in s. 736.0103 of a trust which owns a unit, parcel, or mobile home...
shall be deemed a member of the association and eligible to
serve as a director of the condominium association, cooperative
association, homeowners' association, or mobile home owners'
association, provided that said beneficiary occupies the unit,
parcel, or mobile home.

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

607.0803 Number of directors.—
(3) Directors are elected at the first annual
shareholders' meeting and at each annual shareholders' meeting
thereafter, unless elected by written consent in lieu of an
annual shareholders' meeting pursuant to s. 607.0704 or unless
their terms are staggered under s. 607.0806.

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

607.0804 Election of directors by certain voting groups;
special voting rights of certain directors.—The articles of
incorporation may confer upon holders of any voting group the
right to elect one or more directors who shall serve for such
term and have such voting powers as are stated in the articles
of incorporation. The terms of office and voting powers of the
directors elected in the manner provided in the articles of
incorporation may be greater than or less than those of any
other director or class of directors. If the articles of
incorporation provide that directors elected by the holders of a
voting group shall have more or less than one vote per director on any matter, every reference in this chapter to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors. If a shareholders' agreement meeting the requirements of s. 607.0732, or articles of incorporation or bylaws meeting the requirements of s. 607.0732, provide that directors shall have more or less than one vote per director on any matter, every reference in this chapter to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

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

607.0805 Terms of directors generally.—

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

(a) Provided in s. 607.0806;

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

(c) That a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election unless their terms are staggered under s. 607.0806.
(5) Except to the extent otherwise provided in the articles of incorporation or under s. 607.1023, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

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

607.0806 Staggered terms for directors.—

(1) The directors of any corporation organized under this act may, by the articles of incorporation, the initial bylaws or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be elected for a term of two years or three years be divided into one, two, or three classes with the number of directors in each class being as nearly equal as possible; the
term of office of those of the first class to expire at the
annual meeting next ensuing; of the second class 1 year
thereafter; of the third class 2 years thereafter; and at each
annual election held after such classification and election,
directors shall be chosen for a full term, as the case may be,
to succeed those whose terms expire. If the directors have
staggered terms, then any increase or decrease in the number of
directors shall be so apportioned among the classes as to make
all classes as nearly equal in number as possible.

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

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T I T L E  A M E N D M E N T
Remove line 218 and insert:
services; creating s. 607.0750, F.S.; providing for direct
action by shareholder; amending s. 607.0801, F.S.; making
technical