Committee/Subcommittee hearing bill: Judiciary Committee

Representative Byrd offered the following:

Amendment (with directory amendment)

Remove lines 5766-6862 and insert:

(4)

(c) The interested shareholder has been the beneficial owner of at least 80 percent of the corporation’s outstanding voting shares for at least 3 ½ years preceding the announcement date.

(5) The provisions of this section do not apply:

(a) To any corporation the original articles of incorporation of which contain a provision expressly electing not to be governed by this section;

(b) To any corporation which adopted an amendment to its articles of incorporation prior to July 1, 2018 (January 1, 1989, 846561 - h1009-line5766.docx

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expressly electing not to be governed by this section, provided that such amendment does not apply to any affiliated transaction of the corporation with an interested shareholder whose determination date is on or prior to the effective date of such amendment;

(c) To any corporation which adopts an amendment to its articles of incorporation or bylaws, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of a majority of the outstanding voting shares of the corporation, excluding the voting shares of interested shareholders and their affiliates and associates, expressly electing not to be governed by this section, provided that such amendment to the articles of incorporation or bylaws shall not be effective until 18 months after such vote of the corporation's shareholders and shall not apply to any affiliated transaction of the corporation with an interested shareholder whose determination date is on or prior to the effective date of such amendment; or

(d) To any affiliated transaction of the corporation with an interested shareholder of the corporation which became an interested shareholder inadvertently, if such interested shareholder, as soon as practicable, divests itself of a sufficient amount of the voting shares of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 20 percent or more of the outstanding voting

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shares of the corporation, and would not at any time within the 3-year period preceding the announcement date with respect to such affiliated transaction have been an interested shareholder but for such inadvertent acquisition.

(6) Any corporation that elected not to be governed by this section, either through a provision in its original articles of incorporation or through an amendment to its articles of incorporation or bylaws may elect to be bound by the provisions of this section by adopting an amendment to its articles of incorporation or bylaws that repeals the original article or the amendment. In addition to any requirements of this chapter, or the articles of incorporation or bylaws of the corporation, any such amendment shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by any interested shareholder.

Section 116. Paragraph (d) of subsection (2) of section 607.0902, Florida Statutes, is amended to read:

607.0902 Control-share acquisitions.—
(2) "CONTROL-SHARE ACQUISITION."—
(d) The acquisition of any shares of an issuing public corporation does not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances:

3. Pursuant to the laws of intestate succession or pursuant to a gift or testamentary transfer.

4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this section.

5. Pursuant to a merger or share exchange effected in compliance with s. 607.1101, s. 607.1102, s. 607.1103, s. 607.1104, or s. 607.1105 s. 607.1107, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

6. Pursuant to any savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries or any fiduciary with respect to any such plan when acting in such fiduciary capacity.

7. Pursuant to an acquisition of shares of an issuing public corporation if the acquisition has been approved by the board of directors of such issuing public corporation before acquisition.

Section 117. Subsection (1) of section 607.1001, Florida Statutes, is amended to read:

607.1001 Authority to amend the articles of incorporation.—

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or
permitted in the articles of incorporation or to delete a provision not required to be contained in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

Section 118. Section 607.1002, Florida Statutes, is amended to read:

607.1002 Amendment by board of directors.—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 approval action:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

2. To delete the names and addresses of the initial directors;

3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the department of State;

4. To delete any other information contained in the articles of incorporation that is solely of historical interest;

5. To delete the authorization for a class or series of shares authorized pursuant to s. 607.0602, if no shares of such class or series are issued;
(6) To change the corporate name by substituting the word "corporation," "incorporated," or "company," or the abbreviation "corp.,” "Inc.,” or "Co.,” for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

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

(8) To provide that if the corporation acquires its own shares, such shares belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation; or

(9) To reflect a reduction in authorized shares, as a result of the operation of s. 607.0631(2), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(10) To delete a class of shares from the articles of incorporation, as a result of the operation of s. 607.0631(2), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(11) To make any other change expressly permitted by this act to be made without shareholder approval.
607.10025 Shares; combination or division.—

(4) If a division or combination is effected by a board action without shareholder approval and includes an amendment to the articles of incorporation, there shall be signed executed in accordance with s. 607.0120 on behalf of the corporation and filed in the office of the department of State articles of amendment which shall set forth:

(a) The name of the corporation.
(b) The date of adoption by the board of directors of the resolution approving the division or combination.
(c) That the amendment to the articles of incorporation does not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and does not result in the percentage of authorized shares that remain unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.
(d) The class or series and number of shares subject to the division or combination and the number of shares into which the shares are to be divided or combined.
(e) The amendment of the articles of incorporation made in connection with the division or combination.
(f) If the division or combination is to become effective at a time subsequent to the time of filing, the date, which may
not exceed 90 days after the date of filing, when the division
or combination becomes effective.

(6) If a division or combination is effected by action of
the board and of the shareholders, there shall be signed
executed on behalf of the corporation and filed with the
department of State articles of amendment as provided in s.
607.1006 or 607.1003, which articles shall set forth, in
addition to the information required by s. 607.1006 or 607.1003,
the information required in subsection (4).

(8) This section applies only to corporations with more
than 35 shareholders of record.

Section 120. Section 607.1003, Florida Statutes, is
amended to read:

607.1003 Amendment by board of directors and
shareholders.—If a corporation has issued shares, an amendment
to the articles of incorporation shall be adopted in the
following manner:

(1) The proposed amendment shall first be adopted by the
board of directors. A corporation's board of directors may
propose one or more amendments to the articles of incorporation
for submission to the shareholders.

(2) (a) Except as provided in ss. 607.1002, 607.10025, and
607.1008, and, with respect to restatements that do not require
shareholder approval, s. 607.1007, the amendment shall then be
approved by the shareholders.
(b) In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

1. The board of directors makes a determination that because of a conflict of interest or other special circumstances it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board must inform the shareholders of the basis for its so proceeding without such recommendation. For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5).

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or the effectiveness of the amendment condition its submission of the proposed amendment on any basis.

(4) If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not
entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must be given in accordance with s. 607.0705, state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and must contain or be accompanied by a copy of the amendment. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter act, the articles of incorporation, or the board of directors, acting pursuant to subsection (3), requires a greater vote or a greater quorum, the approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the shares entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in s. 607.1004(3), the approval of each such separate voting group at a meeting at which a quorum of the voting group exists consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group.

(6) If the amendment by any voting group would create appraisal rights, approval of the amendment must also require
the vote of a majority of the votes entitled to be cast by such
voting group vote by voting groups, the amendment to be adopted
must be approved by:

(a) A majority of the votes entitled to be cast on the
amendment by any voting group with respect to which the
amendment would create dissenters’ rights; and

(b) The votes required by ss. 607.0725 and 607.0726 by
every other voting group entitled to vote on the amendment.

(7)(6) Unless otherwise provided in the articles of
incorporation, the shareholders of a corporation having 35 or
fewer shareholders may amend the articles of incorporation
without an act of the directors at a meeting for which notice of
the changes to be made is given. For purposes of this
subsection, the term "shareholder" means a record shareholder, a
beneficial shareholder, or an unrestricted voting trust
beneficial owner.

(8) If as a result of an amendment of the articles of
incorporation one or more shareholders of a domestic corporation
would become subject to new interest holder liability, approval
of the amendment shall require the signing in connection with
the amendment, by each such shareholder, of a separate written
consent to become subject to such new interest holder liability,
unless in the case of a shareholder that already has interest
holder liability the terms and conditions of the new interest
holder liability are substantially identical to those of the
existing interest holder liability (other than changes that
eliminate or reduce such interest holder liability).

(9) For purposes of subsection (8) and s. 607.1009, the
term "new interest holder liability" means interest holder
liability of a person resulting from an amendment of the
articles of incorporation if the person did not have interest
holder liability before the amendment becomes effective, or the
person had interest holder liability before the amendment
becomes effective, the terms and conditions of which are changed
when the amendment becomes effective.

Section 121. Section 607.1004, Florida Statutes, is
amended to read:

607.1004 Voting on amendments by voting groups.—

(1) If the corporation has more than one class of shares
outstanding, the holders of the outstanding shares of a class
are entitled to vote as a separate voting group (if
shareholder voting is otherwise required by this chapter) upon a proposed amendment to the articles of incorporation, if
the amendment would:

(a) Effect an exchange or reclassification of all or part
of the shares of the class into shares of another class.

(b) Effect an exchange or reclassification, or create a
right of exchange, of all or part of the shares of another class
into the shares of the class.
(c) Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

(d) Change the shares of all or part of the class into a different number of shares of the same class.

(e) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

(f) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

(g) Limit or deny an existing preemptive right of all or part of the shares of the class.

(h) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to vote as a separate voting group class on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or substantially similar way, the
holders of the shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to s. 607.1003(3).

(4) A class or series of shares is entitled to the voting rights granted by this section even if although the articles of incorporation provide that the shares are nonvoting shares.

Section 122. Section 607.1005, Florida Statutes, is amended to read:

607.1005 Amendment before issuance of shares.—If a corporation has not yet issued shares, its board of directors, or a majority of its incorporators if it has no or board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

Section 123. Section 607.1006, Florida Statutes, is amended to read:

607.1006 Articles of amendment.—

(1) After an amendment to the corporation's articles of incorporation has been adopted and approved as required by this chapter, the corporation shall deliver to the department of State for filing articles of amendment which must be signed executed in accordance with s. 607.0120 and which must set forth:

(a)(1) The name of the corporation;
(b) The text of each amendment adopted, or the information required by s. 607.0120(11)(e), if applicable;

(c) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside of the articles of amendment in accordance with s. 607.0120(11);

(d) The date of each amendment's adoption; and

(e) If an amendment:

1. Was adopted by the incorporators or board of directors without shareholder approval action, a statement that the amendment was duly adopted by the incorporators or by the board of directors, as the case may be, to that effect and that shareholder approval action was not required;

2. If an amendment was approved Required approval by the shareholders, a statement that the number of votes cast for the amendment by the shareholders in a manner required by this chapter and by the articles of incorporation was sufficient for approval and if more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment, and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group; or
3. Is being filed pursuant to s. 607.0120(11)(e), a statement to that effect.

(2) Articles of amendment shall take effect at the effective date determined pursuant to s. 607.0123.

Section 124. Section 607.1007, Florida Statutes, is amended to read:

607.1007 Restated articles of incorporation.—

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval, subject to subsection (2) action.

(2) If the restated articles The restatement may include one or more new amendments that require to the articles. If the restatement includes an amendment requiring shareholder approval, the amendments it must be adopted and approved as provided in s. 607.1003.

(3) Notwithstanding subsection (1), if the board of directors submits a restatement for shareholder approval, and the approval is to be given at a meeting action, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the restatement is to be submitted for approval. The notice must be given of the proposed shareholders' meeting in accordance with s. 607.0705 and must. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the
restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation that restates its articles of incorporation shall execute and deliver to the department of State for filing articles of restatement, that comply with the provisions of s. 607.0120, and to the extent applicable, s. 607.0202, setting forth:

(a) The name of the corporation;
(b) The text of the restated articles of incorporation;
(c) A statement that the restated articles consolidate all amendments into a single document; and
(d) If one or more new amendments are included in the restated articles, the statements required under s. 607.1006 with respect to each new amendment Together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or
(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by s. 607.1006.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation them.
(6) The department of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the statements certificate information required by subsection (4).

Section 125. Subsections (1), (2), and (3) of section 607.1008, Florida Statutes, are amended to read:

607.1008 Amendment pursuant to reorganization.—

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States or of this state any federal or Florida statute if the articles of incorporation after amendment contain only provisions required or permitted by s. 607.0202.

(2) The individual or individuals designated by the court shall deliver to the department of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a federal or Florida statute.
(3) Shareholders of a corporation undergoing reorganization do not have appraisal dissenters' rights except as and to the extent provided in the reorganization plan.

Section 126. Section 607.1009, Florida Statutes, is amended to read:

607.1009 Effect of amendment.—

(1) An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not affect abate a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability in respect of the corporation as a result of an amendment to the articles of incorporation shall have that new interest holder liability only in respect of interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability in respect of the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective shall be as follows:
(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability as in effect immediately prior to the amendment shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (a), as if the amendment had not occurred.

(c) The shareholder shall have such rights of contribution from other persons as are provided by the articles of incorporation relating to interest holder liability as in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by paragraph (3)(a), as if the amendment had not occurred.

(d) The shareholder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

Section 127. Subsection (1) of section 607.1020, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

607.1020 Amendment of bylaws by board of directors or shareholders.–
(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this chapter act reserves the power to amend the bylaws generally or a particular bylaw provision exclusively to the shareholders in whole or in part; or

(b) Except as provided in s. 607.0206(5), the shareholders, in amending or repealing, or adopting the bylaws generally or a particular bylaw provision, provide expressly that the board of directors may not amend or repeal, adopt, or reinstate the bylaws generally or that particular bylaw provision.

(3) A shareholder does not have a vested property right resulting from any provision in the bylaws.

Section 128. Subsection (1) of section 607.1021, Florida Statutes, is amended to read:

607.1021 Bylaw increasing quorum or voting requirements for shareholders.—

(1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this chapter act. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote.
and voting groups required to take action under the quorum and
voting requirement then in effect or proposed to be adopted,
whichever is greater.

Section 129. Section 607.1022, Florida Statutes, is
amended to read:

607.1022 Bylaw increasing quorum or voting requirements
for directors.—

(1) A bylaw that increases a greater quorum or
voting requirement for the board of directors may be amended or
repealed:

(a) If originally adopted by the shareholders, only by the
shareholders, unless the bylaw otherwise provides; or

(b) If originally adopted by the board of directors,
either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that
increases a greater quorum or voting requirement for the
board of directors may provide that it may be amended or
repealed only by a specified vote of either the shareholders or
the board of directors.

(3) Action by the board of directors under subsection (1)
to amend or repeal paragraph (1)(b) to adopt or amend a bylaw
that changes the quorum or voting requirement for the board of
directors must meet the same quorum requirement and be adopted
by the same vote required to take action under the quorum and
voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 130. Section 607.1023, Florida Statutes, is created to read:

607.1023 Bylaw provisions relating to the election of directors.—

(1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in s. 607.0728(1), or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(a) Each vote entitled to be cast may be voted for or against up to the number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;

(b) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of 90 days from the date on which the voting results are determined pursuant to s. 607.0729(2)(e) or the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the
filling of a vacancy by the board to which s. 607.0809 applies. Subject to paragraph (c), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the 90-day period referenced above; and

(c) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(2) Subsection (1) does not apply to an election of directors by a voting group if:

(a) At the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(b) Absent such a provision, at a time fixed by the board of directors which is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(3) A bylaw electing to be governed by this section may be repealed:
(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or
(b) If adopted by the board of directors, by the board of directors or the shareholders.

Section 131. Section 607.1101, Florida Statutes, is amended to read:

607.1101 Merger.—
(1) By complying with this chapter, including adopting a plan of merger in accordance with subsection (3) and complying with s. 607.1103:
   (a) One or more domestic corporations may merge with one or more domestic or foreign eligible entities pursuant to a plan of merger, resulting in a survivor; and
   (b) Any two or more entities, each of which is either a domestic eligible entity or a foreign eligible entity, may merge, resulting in a survivor that is a domestic corporation created in the merger into another corporation if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of merger.

(2) A domestic eligible entity that is not a corporation may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the domestic eligible
entity that is not a corporation. A foreign eligible entity may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the foreign eligible entity.

(3) The plan of merger must set forth:
   (a) As to each party to the merger, its name, jurisdiction of formation, and type of entity;
   (b) The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect
   (c) The terms and conditions of the proposed merger;
   (d) The manner and basis of converting:
      1. The shares of each domestic or foreign corporation and the eligible interests of each merging domestic or foreign eligible entity into:
      a. Shares or other securities.
      b. Eligible interests.
      c. Obligations.
d. Rights to acquire shares, other securities, or eligible interests.

   e. Cash.

   f. Other property.

   g. Any combination of the foregoing; and

2. Rights to acquire shares of each merging domestic or foreign corporation and rights to acquire eligible interests of each merging domestic or foreign eligible entity into:

   a. Shares or other securities.

   b. Eligible interests.

   c. Obligations.

   d. Rights to acquire shares, other securities, or eligible interests.

   e. Cash.

   f. Other property.

   g. Any combination of the foregoing;

   (e) The articles of incorporation of any domestic or foreign corporation, or the public organic record of any other domestic or foreign eligible entity to be created by the merger, or if a new domestic or foreign corporation or other eligible entity is not to be created by the merger, any amendments to, or restatements of, the survivor's articles of incorporation or other public organic record;

   (f) The effective date and time of the merger, which may be on or after the filing date of the articles of merger; and
(g) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic rules of any such party corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property.

(4) In addition to the requirements of subsection (3), a plan of merger may contain any other provision that is not prohibited by law set forth:

(a) Amendments to, or a restatement of, the articles of incorporation of the surviving corporation;

(b) The effective date of the merger, which may be on or after the date of filing the certificate, and

(c) Other provisions relating to the merger.

(5) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with s. 607.0120(11).

(6) A plan of merger may be amended only with the consent of each party to the merger, except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:
(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to the approval of the plan are entitled to vote on or consent to any amendment to the plan that will change:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, to be received under the plan by the shareholders, holders of rights to acquire shares, other securities, or eligible interests, members, or interest holders of any party to the merger;

2. The articles of incorporation of any domestic corporation, or the organic rules of any other type of entity, that will be the survivor of the merger, except for changes permitted by s. 607.1002 or by comparable provisions of the organic law of any other type of entity; or

3. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders, members, or interest holders in any material respect.

(7) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a merger of a foreign insurer.
corporation and a domestic corporation, and the surviving corporation shall be deemed to be a domestic corporation incorporated under the laws of this state. The redomestication of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to be a foreign corporation.

Section 132. Section 607.1102, Florida Statutes, is amended to read:

607.1102 Share exchange.—
(1) By complying with this chapter, including adopting a plan of share exchange in accordance with subsection (3) and complying with s. 607.1103:
(a) A domestic corporation may acquire all of the shares or rights to acquire shares of one or more classes or series of shares or rights to acquire shares of another domestic or foreign corporation, or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity, or any combination of the foregoing, pursuant to a plan of share exchange, in exchange for:
1. Shares or other securities.
2. Eligible interests.
3. Obligations.
4. Rights to acquire shares, other securities, or eligible interests.

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5. Cash.
6. Other property.
7. Any combination of the foregoing; or
   (b) All of the shares of one or more classes or series of
   shares or rights to acquire shares of a domestic corporation may
   be acquired by another domestic or foreign eligible entity,
pursuant to a plan of share exchange, in exchange for:
   1. Shares or other securities.
   2. Eligible interests.
   3. Obligations.
   4. Rights to acquire shares, other securities, or eligible
      interests.
   5. Cash.
   6. Other property.
   7. Any combination of the foregoing.
(2) A foreign eligible entity may be the acquired eligible
entity in a share exchange only if the share exchange is
permitted by the organic law of that eligible entity A
corporation may acquire all of the outstanding shares of one or
more classes or series of another corporation if the board of
directors of each corporation adopts and its shareholders (if
required by s. 607.1103) approve a plan of share exchange.
(3)(2) The plan of share exchange must shall set forth:
   (a) The name of each domestic or foreign eligible entity
   the corporation the shares or eligible interests of which will
be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests acquiring corporation;

(b) The terms and conditions of the share exchange;

(c) The manner and basis of exchanging:

1. The shares of each domestic or foreign corporation, and the eligible interests of each domestic or foreign eligible entity, the shares or eligible interests that are to be acquired in the share exchange, into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

2. Rights to acquire shares of each domestic or foreign corporation and rights to acquire eligible interests of each domestic or foreign eligible entity, that are to be acquired in the share exchange, into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

(d) Any other provisions required by the organic law governing the acquired eligible entity or its articles of incorporation or organic rules the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property, and the manner and basis of exchanging rights to

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acquire shares of the corporation to be acquired for rights to acquire shares, obligations, or, in whole or in part, other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property.

(4) In addition to the requirements of subsection (3), the plan of share exchange may contain any other provisions that are not prohibited by law set forth other provisions relating to the exchange.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with s. 607.0120(11).

(6) A plan of share exchange may be amended only with the consent of each party to the share exchange, except as provided in the plan. A domestic eligible entity may approve an amendment to a plan:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended;

or

(b) In the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be

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received under the plan by the shareholders, members, or
interest holders of the acquired eligible entity; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders, members, or
interest holders in any material respect.

(7) This section does not limit the power of a corporation to acquire all or part of the shares, or rights to acquire shares, of one or more classes or series of another corporation or eligible interests, or rights to acquire eligible interests, of any other eligible entity through a voluntary exchange or otherwise.

Section 133. Section 607.1103, Florida Statutes, is amended to read:

607.1103 Action on a plan of merger or share exchange.—In the case of a domestic corporation that is a party to a merger or the acquired eligible entity in a share exchange, the plan of merger or the plan of share exchange must be adopted in the following manner:

(1) After adopting a plan of merger or the plan of share exchange shall first be adopted by the board of directors of such domestic corporation each corporation party to the merger, and the board of directors of the corporation the shares of which will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (7)) or the plan of share exchange for approval by its shareholders.
Committee/Subcommittee Amendment

Bill No. CS/HB 1009 (2019)

Amendment No.

(2)(a) Except as provided in subsections (8), (10), and (11), and in ss. 607.11035 and 607.1104, the plan of merger or the plan of share exchange shall then be adopted by the shareholders.

(b) In submitting the plan of merger or the plan of share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan, or in the case of an offer referred to in s. 607.11035(1)(b), that the shareholders tender their shares to the offeror in response to the offer, unless:

1. The board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board shall inform the shareholders of the basis for its so proceeding without such recommendation. For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that it should make no recommendation because of conflict of interest or other special circumstances and communicates the basis for its determination to the shareholders with the plan; and
(b) The shareholders entitled to vote must approve the plan as provided in subsection (5).

(3) The board of directors may set conditions for the approval of the proposed merger or share exchange by the shareholders or the effectiveness of the plan of merger or the plan of share exchange on any basis.

(4) If the plan of merger or the plan of share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is submitted for approval. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or the plan of share exchange, regardless of whether or not the meeting is an annual or a special meeting, and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic eligible entity, the notice must also include or be accompanied by a copy of the articles of incorporation and bylaws or the organic rules of that eligible entity into which the corporation is to be merged. If the corporation is to be merged with a domestic or foreign eligible
entity and a new domestic or foreign eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy of the articles of incorporation and bylaws or the organic rules of the new eligible entity. Furthermore, if applicable, the notice shall contain a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders dissenting therefrom may be entitled, if they comply with the provisions of this chapter act regarding appraisal rights, to be paid the fair value of their shares, and shall be accompanied by a copy of ss. 607.1301-607.1340.

(5) Unless this chapter act, the articles of incorporation, or the board of directors (acting pursuant to subsection (3)) requires a greater vote or a greater quorum in the respective case, approval of vote by classes, the plan of merger or the plan of share exchange shall require the approval of the shareholders at a meeting at which a quorum exists by a majority of the votes entitled to be cast on the plan, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or the plan of share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group is present by a majority of the votes entitled to be cast on the merger or share exchange by that voting group to be authorized shall be approved by each
(6) (a) Subject to subsection (7), voting by a class or series as a separate voting group is required:

1. (a) By each class or series of shares of the corporation that would be entitled to vote as a separate group on any provision in the plan which, if such provision had been contained in a proposed amendment to the articles of incorporation of a surviving corporation, would have entitled the class or series to vote as a separate voting group on the proposed amendment under s. 607.1004; or

2. If the plan contains a provision that would allow the plan to be amended to include the type of amendment to the articles of incorporation referenced in subparagraph 1., by each class or series of shares of the corporation that would have been entitled to vote as a separate group on any such amendment to the articles of incorporation; or

3. By each class or series of shares of the corporation that is to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, property, or any combination of the foregoing; or

4. If the plan contains a provision that would allow the plan to be amended to convert other classes or series of shares
of the corporation, by each class or series of shares of the corporation that would have been entitled to vote as a separate group if the plan were to be so amended.

(b) Subject to subsection (7), voting by a class or series as a separate voting group is required on a plan of share exchange:

1. By each class or series that is to be exchanged in the exchange, with each class or series constituting a separate voting group; or

2. If the plan contains a provision that would allow the plan to be amended to include the type of amendment to the articles of incorporation referenced in subparagraph (a)1., by each class or series of shares of the corporation that would have been entitled to vote as a separate group on any such amendment to the articles of incorporation.

(c) Subject to subsection (7), voting by a class or series as a separate voting group is required on a plan of merger or a plan of share exchange if the group is entitled under the articles of incorporation to vote as a voting group to approve the plan of merger or the plan of share exchange, respectively.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subparagraphs (6)(a)3. or 4. or subparagraph (6)(b)1. as to any class or series of shares, except when the plan of merger or the plan for share exchange:
(a) Includes what is or would be, in effect, an amendment subject to any one or more of subparagraphs (6)(a)1. and 2. and subparagraph (6)(b)2.; and

(b) Will not affect a substantive business combination if the shares of such class or series of shares are to be converted or exchanged under such plan or if the plan contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle the class or series to vote as a separate voting group on the proposed amendment under s. 607.1004.

(8) Unless the corporation's articles of incorporation provide otherwise, approval by the corporation's shareholders of Notwithstanding the requirements of this section, unless required by its articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The corporation will survive the merger;

(b) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in s. 607.1002) from its articles of incorporation before the merger; and

(c) Each shareholder of the surviving corporation whose shares were outstanding immediately prior to the effective date of the merger will hold the same number of shares, with identical designations, preferences, rights, and limitations.
and relative rights, immediately after the effective date of the merger.

(8) Any plan of merger or share exchange may authorize the board of directors of each corporation party to the merger or share exchange to amend the plan at any time prior to the filing of the articles of merger or share exchange. An amendment made subsequent to the approval of the plan by the shareholders of any corporation party to the merger or share exchange may not:

(a) Change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of any or all of the shares of any class or series of such corporation;

(b) Change any other terms and conditions of the plan if such change would materially and adversely affect such corporation or the holders of the shares of any class or series of such corporation; or

(c) Except as specified in s. 607.1002 or without the vote of shareholders entitled to vote on the matter, change any term of the articles of incorporation of any corporation the shareholders of which must approve the plan of merger or share exchange.

If articles of merger or share exchange already have been filed with the Department of State, amended articles of merger or...
share exchange shall be filed with the Department of State prior to the effective date of the merger or share exchange.

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or the plan of share exchange shall require, in connection with the transaction, the signing by each such shareholder of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to such domestic corporation:

(a) The new interest holder liability is with respect to a domestic or foreign corporation (which may be a different or the same domestic corporation in which the person is a shareholder); and

(b) The terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability (other than for changes that reduce or eliminate such interest holder liability).

(10) Unless the articles of incorporation otherwise provide, approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring eligible entity in the share exchange.
(11) Unless the articles of incorporation otherwise provide, shares in the acquired eligible entity not to be exchanged under the plan of share exchange are not entitled to vote on the plan. Unless a plan of merger or share exchange prohibits abandonment of the merger or share exchange without shareholder approval after a merger or share exchange has been authorized, the planned merger or share exchange may be abandoned (subject to any contractual rights) at any time prior to the filing of articles of merger or share exchange by any corporation party to the merger or share exchange, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors of such corporation.

Section 134. Section 607.11035, Florida Statutes, is created to read:

607.11035 Shareholder approval of a merger or share exchange in connection with a tender offer.—

(1) Unless the articles of incorporation otherwise provide, shareholder approval of a plan of merger or a plan of share exchange under s. 607.1103(1)(b) is not required if:

(a) The plan of merger or share exchange expressly:

1. Permits or requires the merger or share exchange to be effected under this section; and
2. Provides that, if the merger or share exchange is to be
effected under this section, the merger or share exchange will
be effected as soon as practicable following the satisfaction of
the requirement in paragraph (f);

(b) Another party to the merger, the acquiring eligible
entity in the share exchange, or a parent of another party to
the merger or the parent of the acquiring eligible entity in the
share exchange, makes an offer to purchase, on the terms
provided in the plan of merger or the plan of share exchange,
any and all of the outstanding shares of the corporation that,
absent this section, would be entitled to vote on the plan of
merger or the plan of share exchange, except that the offer may
exclude shares of the corporation that are owned at the
commencement of the offer by the corporation, the offeror, or
any parent of the offeror, or by any wholly owned subsidiary of
any of the foregoing;

(c) The offer discloses that the plan of merger or the
plan of share exchange provides that the merger or share
exchange will be effected as soon as practicable following the
satisfaction of the requirement in paragraph (f) and that the
shares of the corporation that are not tendered in response to
the offer will be treated pursuant to paragraph (h);

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in
response to the offer and not properly withdrawn;
(f) The shares listed below are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this section, would be required by this chapter and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by each other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

1. Shares purchased by the offeror in accordance with the offer;
2. Shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and
3. Shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or eligible interests in such offeror, parent, or subsidiary;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger.
into, or into the right to receive, or is to be exchanged in the
share exchange for, or for the right to receive, the same amount
and kind of securities, eligible interests, obligations, rights,
cash, other property, or any combination of the foregoing, to be
paid or exchanged in accordance

DIRE﻿CTORY AMENDMENT

Remove line 5552 and insert:

of subsection (1) and subsections (2), (4), (5), and (6) of
section