

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/CS/HB 1009 Business Organizations
SPONSOR(S): Judiciary Committee and Civil Justice Subcommittee, Byrd
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 892

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|-------------------------------|---------------------|---------|--|
| 1) Civil Justice Subcommittee | 13 Y, 0 N, As CS | Mawn | Poche |
| 2) Judiciary Committee | 17 Y, 0 N, As CS | Mawn | Poche |

FINAL HOUSE FLOOR ACTION: 111 Y's 0 N's
GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1009 passed the House on April 25, 2019, and subsequently passed the Senate on April 30, 2019.

A corporation is a legal entity created through the laws of its state of incorporation. As of April 2019, Florida had approximately 778,913 corporations in existence, regulated under the Florida Business Corporation Act (FBCA), a law modeled after the Model Business Corporation Act (MBCA) promulgated by the American Bar Association in 1950.

In 2014, the Corporations, Securities, and Financial Services Committee of The Florida Bar's Business Law Section organized a drafting task force to recommend revisions to the FBCA. The task force's mission statement included a comprehensive study of the FBCA and the proposal of revisions to the FBCA with the purpose of:

- Bringing the FBCA in line with 2016 revisions to the MBCA;
- Maintaining Florida's competitiveness with other jurisdictions;
- Fixing issues created by the existing FBCA; and
- Encouraging the formation and use of Florida corporations.

The bill is a comprehensive revision to the FBCA resulting from the work of the task force. The bill includes changes to the FBCA, harmonizing changes to other Florida entity statutes, and necessary corrections to cross references. The bill predominantly mirrors the 2016 version of the MBCA, but deviates from the MBCA in a number of respects by:

- Retaining certain non-MBCA provisions contained in the existing FBCA;
- Borrowing language from the Delaware General Corporation Law; and
- Borrowing language and approaches from the Florida Revised Limited Liability Company Act for purposes of harmonizing the two statutes on issues where the task force considered harmonization appropriate.

The bill does not appear to impact state or local governments.

The bill was approved by the Governor on June 7, 2019, ch. 2019-90, L.O.F., and will become effective on January 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

A corporation is a legal entity created through the laws of its state of incorporation.¹ Individual states have the power to promulgate laws relating to the creation, organization, operation, and dissolution of corporations.² However, in 1950, the American Bar Association (ABA) promulgated the Model Business Corporations Act (MBCA), a body of laws designed to regulate corporations uniformly across different states.³

As of April 2019, Florida had approximately 778,913 domestic for-profit corporations in existence, regulated by the State under the Florida Business Corporation Act (FBCA).⁴ The FBCA generally follows the MBCA in regulating for-profit corporations.⁵ The ABA revised and modernized the MBCA in its entirety in 2016.⁶ The FBCA was last overhauled in 1989, and otherwise has undergone only patchwork amendments.⁷

In 2014, the Corporations, Securities, and Financial Services Committee of The Florida Bar's Business Law Section organized a drafting task force to recommend revisions to the FBCA.⁸ The task force's mission statement included a comprehensive study of the FBCA and the proposal of revisions to the FBCA with the purpose of:

- Bringing the FBCA in line with revisions to the MBCA;
- Maintaining Florida's competitiveness with other jurisdictions;
- Fixing issues created by the existing FBCA; and
- Encouraging the formation and use of Florida corporations.⁹

CS/CS/HB 1009 is a comprehensive revision to the FBCA resulting from the work of the task force.

Effect of the Bill

General Provisions

Applicability; Severability; Effective Date (Sections 1-2, 226-227, 230-231, and 293)

CS/CS/HB 1009 amends s. 607.0101, F.S., to clarify that Part I of the FBCA applies generally to corporations; Part II of FBCA applies to social purpose corporations; and Part III of the FBCA applies to benefit corporations.¹⁰ The bill also clarifies that when reference is made to ch. 607, F.S., the reference includes corporations organized under Parts I, II, and III.

¹ Legal Information Institute, Cornell Law School, Corporations, <https://www.law.cornell.edu/wex/corporations> (last visited May 2, 2019).

² *Id.*

³ William H. Clark, Jr., The Relationship of the Model Business Corporation Act to Other Entity Laws, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1609&context=lcp> (last visited May 2, 2019).

⁴ The Florida Department of State, Division of Corporations, *Yearly Statistics*, <https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited May 2, 2019).

⁵ The Florida Bar, Business Law Section, *Proposed Modifications to Chapter 607 (Florida Business Corporation Act)*, (Jan. 24, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Both a benefit corporation and a social purpose corporation are formed with the statutory purpose of crating or pursuing public benefit activities. However, a benefit corporation has a broad purpose to benefit the public generally while a social purpose corporation can choose to limit the benefit goals it pursues. See Stuart R. Cohn and Stuart D. Ames, *Now It's Easier Being Green: Florida's New Benefit*

The bill also amends ss. 607.1701 and 607.1702, F.S., to provide that the amended FBCA applies to all corporations registered or authorized to do business in Florida on January 1, 2020. However, the bill amends s. 607.1907, F.S., to provide that any pending action, proceeding, or right accrued prior to January 1, 2020, will be completed as though the amendments made to the FBCA by this bill had not taken effect. Finally, the bill creates s. 607.1908, F.S., to provide that provisions of the bill are severable.

Powers of the Department (Section 12)

The bill amends s. 607.0130, F.S., to make a technical change that eliminates certain express powers of the Department of State (Department), but does not reduce the Department's authority or power to administer the FBCA.

Definitions (Sections 13-15, 23, 27, 38, 116, 161)

The bill amends ss. 607.01401-607.0143; 607.0208; 607.0304; 607.0601; 607.0901; and 607.1301, F.S., to add definitions for use in the FBCA.

Records and Documents; Filing

The FBCA requires domestic and foreign corporations seeking to transact business in Florida to register and file annual reports and other notices with the Department of State (Department).¹¹ These documents must be executed by an officer, incorporator, or fiduciary of the corporation and contain information as prescribed by law. The Department determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database.¹² If the Department refuses to file a document due to a defect, the filing corporation may remedy the defect or may appeal the matter to a court of competent jurisdiction.

Extrinsic Facts (Section 3)

The bill amends s. 607.0120, F.S., to allow a corporation to make its articles of incorporation, or any amendments thereto, terms of shares, mergers, share exchanges, domestications, or conversion transactions dependent upon extrinsic facts. However, the corporation must identify within the document both the extrinsic fact and the effect it will have on the document. Further, the bill prohibits specific terms from being made dependent upon extrinsic facts, including the identity of a corporation's registered agent and the effective date of a document, and provides that a foreign corporation may not make its certificate of authority dependent upon specific facts.

Effective Dates and Times; Withdrawal; Correction (Sections 6 and 7)

The bill amends ss. 607.0123 and 607.0124, F.S., respectively, to clarify provisions relating to the date and time a document is filed with the Department, or effective, as follows:

- A corporation may make the effective date of its articles of incorporation retroactive up to five days before the date of filing;
- Articles of incorporation must take effect no later than the date of filing;
- No document, subject to provisions otherwise in law, may include a delayed effective date of more than 90 days from the date of filing;

and Social Purpose Corporations, The Florida Bar Journal, Vol. 89, No. 9 (Nov. 2014), <https://www.floridabar.org/the-florida-bar-journal/now-its-easier-being-green-floridas-new-benefit-and-social-purpose-corporations/> (last visited May 2, 2019).

¹¹ S. 607.1622, F.S.

¹² Florida Department of State, Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/> (last visited May 2, 2019).

- The default effective time of a document is changed from the “start of business” to “12:01 a.m.,” and
- The default time zone is that of the location where the document was filed.

The bill also creates a process for the withdrawal of a filing delivered to the Department. A withdrawal statement signed by or on behalf of all who filed the underlying document must be filed with the Department prior to the effective date of the document that it requests to withdraw and may not be filed with a delayed effective date. Additionally, the bill eliminates the 30-day period for correction of a document filed by a corporation. A corporation may now correct a document at any time.

Filing by Department (Section 8)

The bill amends s. 607.0125, F.S., to clarify that the Department files a document by stamping or otherwise endorsing it. Prior law only required the Department to record a document. Additionally, the bill permits the Department to issue a notice of filing by electronic mail, but limits the form of a notice sent by U.S. mail to a filed copy.

Venue for Appeal (Section 9)

The bill amends s. 607.0126, F.S., to limit a corporation’s venue for appeal of the Department’s refusal to file a document to the Leon County Circuit Court. Previously, a corporation could pursue an appeal in either Leon County or the county in which the corporation’s principal office is located.

Certified Copies (Section 10)

The bill amends s. 607.0217, F.S., to require certified copies of documents filed with the Department to bear the secretary of state’s signature, in either original or facsimile form, and the state seal. Prior law did not require any specific mark for a document to be considered certified. The bill also requires certificates issued by the Department to be received by all courts, public offices, and official bodies as prima facie evidence¹³ of the facts stated therein.

Certificates of Status (Section 11)

The bill amends s. 607.0128, F.S., to clarify the information required in a certificate of status. The bill also authorizes the Department to require that the fee for the issuance of a certificate of status be paid prior to its issuance.

Incorporation

A corporation must file its articles of incorporation with the Department before it may transact business in the state. Generally, the FBCA requires articles of incorporation to include the corporation’s name and address, the number of shares it is authorized to issue, and information about the registered agent.¹⁴

Notice of Organizational Meeting (Section 20)

The bill amends s. 607.0205, F.S., to reduce the amount of time before which a director must receive notice of a corporation’s organizational meeting from three days before the meeting to two days before the meeting.

¹³ Prima facie evidence is evidence sufficient to establish a given fact. Blacks’ Law Dictionary 825 (6th ed. 1995).

¹⁴ S. 607.0202, F.S.

Forum Provisions; Arbitration (Sections 17, 21, and 23)

The bill amends ss. 607.0202, 607.0206, and 607.0208, F.S., to allow articles of incorporation and bylaws to include exclusive forum provisions relating to internal corporate claims. However, the bill prohibits articles of incorporation and bylaws from including forced arbitration clauses relating to the resolution of an internal corporate claim.

Shareholder Liability Provisions (Sections 17, 21, and 71)

The bill amends ss. 607.0202, 607.0206, and 607.0732, F.S., to limit the adoption of provisions in articles of incorporation and bylaws that make shareholders liable for fees related to internal corporate claims they institute or participate in. However, the bill amends s. 607.0732, F.S., to allow such provisions pursuant to a shareholder agreement.

Proxy Access Provisions (Section 21)

The bill continues to allow a corporation to include any provision in its bylaws that is consistent with law and the articles of incorporation. However, the bill explicitly allows a corporation's bylaws to include provisions that authorize or limit proxy¹⁵ access.

Corporate Purpose; Regulated Business (Section 24)

The bill amends s. 607.0301, F.S., to set a default corporate purpose of "engaging in any lawful business" unless a more limited purpose is stated in a corporation's articles of incorporation. The bill also limits corporations that engage in a regulated business under another Florida Statute from incorporating under ch. 607, F.S., unless the underlying regulating chapter expressly permits such incorporation.

Corporate Names

Indistinguishable Names (Section 28)

The FBCA currently requires a corporation to file a corporate name that is distinguishable from all other corporate names and that clearly indicates the corporation is not a natural person.¹⁶ The bill amends s. 607.0401, F.S., to allow a corporation to register under a name that is indistinguishable from another entity's name if the corporation files the written consent of the similarly-named entity with its registration.

Reserved Names (Section 29)

Florida law used to permit a corporation to reserve its desired name.¹⁷ The bill creates s. 607.04021, F.S., to restore this practice by allowing a corporation to reserve its desired name for up to 120 days prior to its incorporation and to transfer the name to another entity during the reservation period.

¹⁵ A proxy is a written authorization given by one person to another so that the second person can act for the first, such as that given by a shareholder to someone else to represent him and vote his shares at a shareholder's meeting. Black's Law Dictionary 853 (6th ed. 1995).

¹⁶ S. 607.0401, F.S.

¹⁷ Ch. 98-101, § 15, Laws of Fla.

Registered Office and Agent; Service of Process

A corporation transacting business in Florida must designate and maintain a registered agent and registered office located in Florida.¹⁸

Qualifications; Non-Compliance (Section 31)

The FBCA currently permits a Florida resident or a corporation authorized to do business in Florida to serve as a corporation's registered agent.¹⁹ The bill amends s. 607.0501, F.S., to allow any business entity authorized to do business in Florida²⁰ to serve as a corporation's registered agent. The bill amends s. 607.0501, F.S., to clarify that a corporation that does not comply with the registered agent requirements of that section may defend itself in Florida court actions but may not bring or otherwise maintain such actions in Florida until it appoints a registered agent.

Duties (Section 31)

The bill amends s. 607.0501, F.S., to explicitly set forth the duties of a registered agent. These duties include forwarding to the corporation a process, notice, or demand pertaining to the corporation which is served on or received by the registered agent and to provide notice to the corporation of his or her resignation.

Designation of Successor (Section 32)

The bill amends s. 607.0502, F.S. to require a corporation's designation of a successor registered agent to include a written statement of acceptance from the successor registered agent. The statement of acceptance operates to designate the successor registered agent as the registered agent from the moment of his or her acceptance of the position.

Resignation; Change of Name or Address (Sections 33 and 34)

The FBCA sets forth requirements regarding a registered agent's resignation or change of name or address.²¹ The bill re-designates current law regarding a registered agent's resignation or change of name or address under ss. 607.0503 and 607.05031, F.S., respectively.

Service of Process (Section 36)

The bill amends s. 607.0504, F.S., to update methods of service of process on a corporation. The bill provides that service may be made on the registered agent, but provides for alternative methods of service if the corporation has not designated a registered agent or the registered agent cannot be served. The bill also specifies that nothing in the section affects the right to serve process, give notice, or make a demand in any other manner provided for by law.

Shares and Distribution; Awards

A corporation's articles of incorporation must prescribe the classes of shares and the number of shares²² in each class the corporation may issue.²³ At least one class of shares must have unlimited voting rights, and one (which may be the same as the voting class) that is entitle to the corporation's

¹⁸ S. 607.0501, F.S.

¹⁹ *Id.*

²⁰ E.g., a limited liability corporation or a partnership.

²¹ S. 607.0502, F.S.

²² A share is a unit of stock representing ownership in a corporation. Black's Law Dictionary 958 (6th ed. 1995).

²³ S. 607.0601, F.S.

net assets. Shareholder and corporate share rights are laid out in statute, but may also be defined in a corporation's articles of incorporation, bylaws, or shareholder agreement.

Classes and Series (Section 38)

The bill amends s. 607.0601, F.S., to authorize a corporation to define both classes of shares²⁴ the corporation will issue and the series of shares within those classes. All shares of a class or series must have terms, including preferences,²⁵ limitations, and relative rights, identical with those of other shares of the same class or series.

Scripts; Fractional Shares (Section 40)

The bill deletes a provision from s. 607.0604, F.S., that allowed the board to authorize the issuance of a scrip²⁶ only when doing so was considered desirable, so that the board may now authorize the issuance of a scrip under any condition. The bill also deletes a provision from this section that declared the good faith judgment of the board as to the fair value of fractional shares²⁷ conclusive.

Subscription Shares (Section 41)

The bill amends s. 607.0620, F.S., to provide that a corporation must wait to sell shares to satisfy the debt owed to it as a result of a subscription share from 20 days after demand for payment is sent to 20 days after such demand is delivered. The bill also clarifies that a subscription for shares is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

Equity Compensation Awards (Section 45)

The FBCA allows a board of directors to issue equity compensation awards.²⁸ The bill amends s. 607.0624, F.S., to authorize a board to delegate to its committees and officers the ability to issue such awards.

Distributions to Shareholders (Section 51)

The FBCA allows a board of directors to make distributions²⁹ to its shareholders, subject to restrictions in the articles of incorporation and in statute.³⁰ The bill amends s. 607.06401, F.S., to clarify that a board of directors may fix a record date to determine which shareholders are eligible for distributions made pursuant to the terms of their shares, but that date may not be retroactive. However, if the board does not fix a record date, the record date is the date the board of directors authorizes the distribution.

²⁴ Stocks are generally issued in two or more general classes; e.g., Class A and Class B. Normally only one class has voting rights. Black's Law Dictionary 170 (6th ed. 1995).

²⁵ A preference share is stock giving the holder a preference, either as to receipt of dividends or as to payment in case of winding up, or both. Black's Law Dictionary 815 (6th ed. 1995).

²⁶ A scrip is issued in place of fractional shares. When the holder has enough scrip, he or she may exchange the scrip for a share. Black's Law Dictionary 937 (6th ed. 1995).

²⁷ A fractional share is a unit of stock less than a full share. This term comes into use with a stock dividend. Black's Law Dictionary 454 (6th ed. 1995).

²⁸ S. 607.0624, F.S.; An equity compensation award is the award of stock options, i.e., an ownership interest in the corporation to employees. See Financial Industry Regulatory Authority, Employee Stock Awards: Five Questions Workers Should Ask, <http://www.finra.org/investors/employee-stock-awards-five-questions-workers-should-ask> (last visited May 2, 2019).

²⁹ A distribution is a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its shareholders. A distribution may be in the form of a declaration or the payment of a dividend. Black's Law Dictionary 329 (6th ed. 1995).

³⁰ S. 607.06401(1), F.S.

Shareholders

Shareholder Meetings; Who Can Call (Sections 52-54)

The FBCA requires a corporation to hold an annual shareholders meeting at which the shareholders will elect directors and transact business.³¹ Additionally, a special meeting for an express, limited purpose may be called by a board of directors, persons authorized to call such a meeting, or a specified percentage of shareholders.³² If a board fails to hold an annual or special meeting in a timely manner, a court may order a meeting.³³ The bill amends s. 607.0703, F.S., to lengthen from 13 months to 15 months the amount of time a corporation has to hold its annual meeting or undertake action by written consent before a court may order a meeting or other action. The bill also recognizes the court's ability to establish quorum³⁴ requirements for separate voting groups at a court-ordered meeting.

Shareholder Meetings; Remote Meeting Attendance (Sections 52-53, 56, and 59)

The bill amends ss. 607.0701 and 607.0702, F.S., to clarify that shareholders may participate in shareholder meetings by remote communication. The bill also amends s. 607.0705, F.S., to require a board of directors to give notice of the types of remote communication that a shareholder may use to participate in a meeting. Further, the bill amends s. 607.0709, F.S., to outline limits on participation in a meeting by remote communication.

Votes by Written Consent (Section 55)

The FBCA allows certain shareholders to instigate a vote by written consent.³⁵ If the shareholders deliver a sufficient number of votes by written consent to a corporation within a 60-day timeframe, the matter voted upon is adopted and the corporation must give notice of the action to all shareholders who did not give their written consent. The bill amends s. 607.0704, F.S., to allow a corporation to delay the effectiveness of a written consent vote for a reasonable time to allow it to count the votes delivered by written consent, and also clarifies that a corporation's failure to give notice of the outcome of a written consent vote does not affect the vote's outcome.

Record Dates; Shareholder Lists (Sections 58-60)

The FBCA requires a corporation to compile a list of shareholders eligible to participate in the corporation's meetings as of the record date³⁶ established for that purpose.³⁷ Any shareholder may inspect and copy this list.³⁸ The bill amends s. 607.0707, F.S., to expressly allow a corporation's bylaws to establish more than one record date for separate issues, e.g., which shareholders may vote at or are entitled to notice of a meeting, who may demand a special meeting, and who may take other specified actions. The bill also sets default record dates to be used by a corporation that does not establish such dates in its bylaws.

Further, the bill creates s. 607.0709, F.S., and amends s. 607.0720, F.S., to adopt language to further implement bifurcated record dates, explicitly state that shareholders' electronic mail addresses may be excluded from the shareholder list, and remove a \$5,000 civil penalty for the improper sale or

³¹ S. 607.0701, F.S.

³² S. 607.0702, F.S.

³³ S. 607.0703, F.S.

³⁴ A quorum is the number of members of a deliberative body who must be present before business may be transacted. Black's Law Dictionary 867 (6th ed. 1995).

³⁵ S. 607.0704, F.S.

³⁶ A record date is the date on which a person must be registered as a shareholder on the stock book of a company in order to receive a declared dividend, or among other things, to vote on company affairs. Black's Law Dictionary 882 (6th ed. 1995).

³⁷ S. 607.0720, F.S.

³⁸ *Id.*

distribution of a shareholder's list to give a court discretion to determine the amount of any such penalty.

Beneficial Ownership (Section 63)

The bill amends s. 607.0723, F.S., to modify the process for a corporation to create a beneficial ownership certificate.³⁹ Specifically, the bill requires the record shareholder and the person on whose behalf the shares are held to sign or assent to the beneficial ownership certificate.

Role of the Office of Inspector of Elections (Sections 64 and 68)

The bill creates s. 607.0729, F.S., to require a public corporation to appoint an inspector of elections to determine voting results at shareholder meetings and to allow any other corporation to do the same. The inspector of election generally determines the validity and number of votes cast and keeps relevant books and records relating to a corporation's shareholders. The bill also incorporates the role of the inspector of elections into s. 607.0724, F.S., and deems a determination made by an inspector of elections controlling, but also subjects the decision to de novo review by a court.

Agreements (Sections 70 and 71)

The bill amends s. 607.0731, F.S., and 607.0732, F.S., to distinguish between voting agreements and shareholder agreements. The bill also expands matters that may be subject to shareholder agreements to include:

- Imposing shareholder liability for participation in an internal corporate claim; and
- Establishing a mechanism for breaking a deadlock between the corporation's directors or shareholders.

Shareholder Derivative Actions (Sections 72-79)

A shareholder derivative action is a legal proceeding brought by a shareholder on behalf of a corporation to assert a claim that the corporation refuses to bring.⁴⁰ A shareholder may not pursue a derivative action in court before he or she requests that the corporation take specific action and the corporation either refuses to act or ignores the shareholder's request for at least 90 days.

The bill amends s. 607.07401, F.S., to conform the provisions of that section to those of the Model Act. The bill also creates s. 607.0741-607.0747, F.S., to:

- Remove the requirement that a shareholder maintain his or her shares in the corporation during the entirety of the derivative action that the shareholder initiated;
- Allow a shareholder to initiate a derivative action without waiting 90 days for the corporation to respond to his or demand, if the shareholder is able to prove that such a demand is futile;
- Permit a court to order the plaintiff in a derivative action to pay the defendant's expenses and attorney fees if the court finds that the plaintiff began or maintained the action without reasonable cause or for an improper purpose; and
- In accordance with the internal affairs doctrine,⁴¹ allow court action as outlined in ss. 607.0743, 607.0745, and 607.0746, F.S., regarding foreign corporations, but ensure the application of their organic law otherwise.

³⁹ A beneficial owner does not have title to property but has rights in the property which are the normal incident of owning the property. In the corporation context, a beneficial owner certificate designates a third party to be treated as the record shareholder even though the shares are held by someone else. Black's Law Dictionary 107 (6th ed. 1995).

⁴⁰ Black's Law Dictionary 305 (6th ed. 1995).

⁴¹ The internal affairs doctrine is a conflict of laws principle which recognizes that only one state should have the authority to regulate a corporation's internal affairs. See *Edgar v. Mite Corp.* 457 U.S. 624, 645 (1982).

Shareholder Direct Actions (Section 82)

A direct action is a suit by a shareholder against a corporation to enforce the shareholder's personal right of action.⁴² Courts recognize a two-prong test for a shareholder to bring a direct action.⁴³ Specifically, a shareholder must allege that he or she suffered:

- Direct harm from an injury that did not flow from a general harm to the corporation; and
- A special injury separate and distinct from any injury suffered by other shareholders.⁴⁴

Courts also recognize as an exception to the two-prong test a violation of a separate statutory or contractual duty owed to the shareholder by the defendant.⁴⁵

The bill codifies the test and exception recognized by the courts, requiring a shareholder bringing a direct action against a corporation to plead and prove an actual or threatened injury:

- Not solely due to an injury suffered or threatened to be suffered by the corporation; or
- Resulting from a violation of a separate statutory or contractual duty owed to the shareholder by the wrongdoer, even if the injury is the same as that suffered or threatened to be suffered by the corporation.

Alternatives to Judicial Dissolution (Sections 80-81)

Under the FBCA, where harm is threatened to or incurred by a corporation as a result of a deadlock between its directors, or of a director's fraudulent activity, a shareholder's only resolution is to seek judicial dissolution of the corporation under s. 607.1430, F.S., pursuant to which a court may appoint a receiver⁴⁶ or a custodian.⁴⁷ The bill creates s. 607.0748, F.S., to allow a shareholder to petition a court to appoint a receiver or custodian to manage a corporation's business and affairs where the directors are deadlocked or acting fraudulently.

The bill also creates s. 607.0749, F.S., to allow a court to appoint an impartial provisional director to remedy, outside of a judicial dissolution proceeding, a deadlock between directors that cannot be broken by shareholder action. The provisional director is vested with all the powers of an elected director and is subject to removal by a shareholder vote or court action.

Directors and Officers

A corporation is managed by and subject to the oversight of its board of directors. The FCBA requires a director to be a natural person who is at least 18 years old, but any other qualifications must come from a corporation's articles of incorporation.⁴⁸

⁴² *Strazzulla v. Riverside Banking Co.*, 175 So. 3d 879 (Fla. 4th DCA 2015).

⁴³ *Id.*; See also *Dinuro Investments, LLC v. Camacho*, 141 So. 3d 731 (Fla. 3d DCA 2014).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ A receiver is a person appointed by the court for the purpose of preserving property. Black's Law Dictionary 877 (6th ed. 1995).

⁴⁷ A custodian is a person who has charge or custody of property, securities, papers, assets, etc. Black's Law Dictionary 267 (6th ed. 1995).

⁴⁸ S. 607.0802(1), F.S.

Qualifications (Section 84)

The bill amends s. 607.0802, F.S., to distinguish qualifications for nomination for director from qualifications for elected or appointed directors. Any qualification for nomination prescribed after a person's nomination does not apply to such person with respect to such nomination. Likewise, a qualification for an elected or appointed director prescribed after a director's election or appointment does not apply to that director before the end of his or her term.

Terms of Office (Sections 87 and 88)

The bill amends s. 607.0805, F.S., to clarify when the term of a director expires if director terms are staggered under s. 607.0806, F.S. The bill also amends s. 607.0806, F.S., to clarify the applicable terms of office when a board is first classified and then upon subsequent annual elections when a staggered board is in place.

Removal (Section 91)

The bill creates s. 607.08081, F.S., to allow a court acting pursuant to a shareholder derivative proceeding to remove a director where other remedies are inadequate and impracticable. This remedy is limited to cases in which:

- The director acted fraudulently with respect to the corporation or its shareholders, grossly abused his or her position, or intentionally inflicted harm on the corporation; and
- Removal of the director is in the best interests of the corporation.

Vacancies (Section 92)

The bill amends s. 607.0809, F.S., governing how vacancies created by directors who were elected by a separate voting group must be filled. The bill requires the same voting group, or under certain circumstances the remaining directors elected by that voting group, to vote to fill the vacancy.

Written Consent (Section 94)

The FBCA allows a board of directors, or members of a board committee, to act without meeting, even if the action is otherwise required to be taken at a meeting, by way of a written consent signed by all members of the board or committee.⁴⁹ The bill amends s. 607.0821, F.S., to clarify that a written consent is only effective upon its delivery to the corporation.

Objections to Meetings (Section 95)

The FBCA requires a director who objects to a board meeting or to the business to be transacted at the meeting to register his or her objection at the beginning of the meeting.⁵⁰ The bill amends s. 607.0823, F.S., to require a director who objects to such things to both state an objection at the beginning of the meeting and to refuse to vote on any action taken at the meeting. If the director fails to do both, his or her presence constitutes a waiver of notice of the meeting and of all objections to the date, time, place, or purpose of the meeting.

⁴⁹ S. 607.0821, F.S.

⁵⁰ S. 607.0823, F.S.

Board Committees (Section 97)

The FBCA currently authorized a board of directors to delegate many of its functions to a board committee.⁵¹ The bill amends s. 607.0825, F.S., to delete the duties specific to a board committee member. The duties of a board committee member will be those of directors under s. 607.0830, F.S. The bill also deletes a provision restricting the board's ability to delegate to a committee the issuance of sale or shares, or the designation of relative rights, preferences, and limitations of a voting group.

Force the Vote Provisions (Section 98)

The bill creates s. 607.0826, F.S., to authorize a board of directors to enter into an agreement that contains a "force the vote" provision. Such provisions, often used in merger agreements, require the board to submit a matter to a shareholder vote even if the board no longer wants to pursue the matter.

Standards for Directors; Conflicts of Interest (Sections 99, 103, and 105)

The bill amends s. 607.0830, F.S., to update Florida's business judgment rule and to clarify a director's fiduciary duties.⁵² Specifically, the bill modifies the prudent person standard of care to require a director to act as an ordinary prudent person in a like position would reasonably believe appropriate under similar circumstances. The bill also provides guidance for whom a board director may rely upon in discharging his or her duties.

Further, the bill amends s. 60.0832, F.S., relating to director conflicts of interest. In particular, the bill requires any transaction in which a conflict of interest is present to be fair to the corporation⁵³ at the time it is authorized. The bill also creates a shifting burden of proof in a challenge against a conflict of interest transaction, wherein approval by a disinterested majority of directors or shareholders who received advanced notice of the conflict places the burden on the person challenging the transaction, but the lack of any such approval places the burden on the person defending the transaction.

Additionally, the bill creates s. 607.08411, F.S., which provides a standard of conduct for officers that parallels a director's fiduciary duties. Generally, the bill requires an officer to act in good faith and in a manner the officer reasonably believes to be in the best interests of the corporation. An officer must also report to or inform superior officers or other appropriate persons within the corporation of:

- Material information about the corporation's affairs;
- Actual or probable material violations of law that involve the corporation; and
- Actual or probable breaches of duty to the corporation.

Finally, the bill amends s. 607.0834, F.S., to clarify the statute of limitations for a director's liability for unlawful distributions.

Indemnification; Advanced Expenses (Sections 107-115)

The bill amends s. 607.0850, F.S., to:

- Exclude employees and agents of a corporation from indemnification⁵⁴ pursuant to law and specifying that a corporation may indemnify its employees or agents in its articles of incorporation, bylaws or other agreements;

⁵¹ S. 607.0825, F.S.

⁵² A fiduciary duty is a duty to act for someone else's benefit. Black's Law Dictionary 432 (6th ed. 1995).

⁵³ The term "fair to the corporation" is defined in s. 607.0832(1)(b), F.S., as a transaction that, as a whole, is beneficial to the corporation and its shareholders, taking into appropriate account whether it is: (1) fair in terms of the director's dealings with the corporation in connection with the transaction and (2) comparable to what might have been obtainable in an arm's length transaction.

⁵⁴ Indemnification is the practice by which corporations pay expenses of officers or directors who are named as defendants in litigation relating to corporate affairs. Black's Law Dictionary 529 (6th ed. 1995).

- Establish a process for the board of directors to determine whether, and the extent to which, an officer or director may be indemnified in connection with a proceeding by or in the right of the corporation;
- Set a new standard for mandatory indemnification, requiring an officer or director involved in a proceeding because of his or her role as a corporate director or officer to be “wholly successful”⁵⁵ in the action, rather than “successful on the merits;”
- Explicitly outlining how advancement of expenses may be authorized by either the board of directors or shareholders; and
- Clarifying a corporation’s ability to indemnify above and beyond indemnification provided for in law.

Anti-Takeover Provisions

Affiliated Transactions (Section 116)

Florida’s affiliated transaction statute is intended to deter hostile takeovers.⁵⁶ It protects minority shareholders in merger offers by ensuring that specific transactions are either approved by an appropriate number of disinterested directors or shareholders, or result in a fair price to all shareholders.⁵⁷ The bill amends s. 607.0901, F.S., to define an “interested shareholder” and to more clearly provide exceptions to the affiliated transaction statute.

Amendments to Articles of Incorporation and Bylaws (Sections 119-121, 127, 131)

A board of directors may amend the corporation’s articles of incorporation without shareholder approval in limited, usually administrative, circumstances. The bill amends s. 607.1002, F.S., to allow a board to amend these documents to reduce authorized shares and to delete an extinct class of shares when no shares of the class remain. The bill also deletes language in s. 607.10025, F.S., that allowed the board to approve share splits or combinations without shareholder approval in corporations of 35 or more shareholders. The effect of this deletion is to permit all corporations to take such actions without shareholder approval.

Additionally, the bill amends s. 607.1003, F.S., to require that shareholder receive a full copy of a proposed amendment to a corporation’s articles of information prior their meeting to vote on the amendment. The FBCA currently only requires shareholders to receive a summary of the amendment.⁵⁸ Further, the bill requires a board to obtain the written consent of all shareholders who will be subject to a new interest holder liability as a result of an amendment to the articles of incorporation. The bill also amends s. 607.1009, F.S., governing the effect of interest holder liability imposed as a result of an amendment to the articles of incorporation for both parties who incurred new liability and those whose existing liability is affected.

Voting for Directors (Section 131)

Finally, the bill creates s. 607.1023, F.S., to adopt language from the Model Act that provides a method of voting for directors. However, the bill provides that a corporation must elect to be governed by this section in its bylaws for it to apply to a corporation.

⁵⁵ Commentary to s. 8.52 of the Model Act provides that “A defendant is wholly successful only if the entire proceeding is disposed of on a basis which does not involve any finding of liability.”

⁵⁶ A hostile takeover is an attempt to purchase a controlling stake in a corporation without the consent of the board of directors of the target company, or else continuing to negotiate with shareholders after the board rejects the bid. Cornell Law School, Legal Information Institute, Hostile Takeovers, https://www.law.cornell.edu/wex/hostile_takeover (last visited May 2, 2019)

⁵⁷ Daniel Nunn, Jr., *The Wolf at the Door: Florida’s Takeover Laws Revisited*, Florida Bar Journal Vol. 83, No. 3 (Mar. 2009), <https://www.floridabar.org/the-florida-bar-journal/the-wolf-at-the-door-floridas-takeover-laws-revisited/> (last visited May 2, 2019).

⁵⁸ S. 607.1003, F.S.

Mergers and Share Exchanges

Other Entities (Sections 132-134)

The FBCA does not anticipate the merger⁵⁹ of a domestic corporation with certain types of business entities, such as a limited liability corporation or a foreign eligible entity. The bill amends s. 607.1101, F.S., to account for such mergers. The bill also amends s. 607.1102, F.S., to account for share exchanges between a Florida corporation and a non-corporate domestic entity or a foreign corporation. Finally, the bill amends s. 607.1103, F.S., to clarify the process for shareholder approval of a merger or share exchange where a domestic corporation is either a party to the merger or is the entity acquired in a share exchange and allows the newly formed entity's articles of incorporation to eliminate or limit separate voting rights. An exception exists when:

- The merger or share exchange includes an amendment to the new corporation's articles of incorporation that requires voting by separate groups or classes; and
- The transaction will not affect a substantive business combination.

Two-Step Mergers (Section 135)

The bill creates s. 607.11035, F.S., to permit the merger of corporations without a shareholder vote if the tender offer is first made to shareholders and ultimately results in the offeror's acquisition of a large enough interest in the corporation to satisfy the shareholder approval that would otherwise be required. This process is known as a two-step merger.⁶⁰ In order to prevent predatory share devaluation of the shares held by (now minority) shareholders who did not sell their shares in response to the tender offer, the bill implements a guarantee that the holdout shareholders retain their right to receive the same payment offered in the initial tender offer after their shares are converted to shares of the new entity created as a result of the two-step merger.

Subsidiaries (Section 136)

The bill amends s. 607.1104, F.S., to subject mergers between a parent corporation and its subsidiary,⁶¹ or between a parent corporation's subsidiaries, to the general merger provisions in ss. 607.1101-607.1107, F.S. Additionally, a parent corporation must give notice of a successful merger to each of the subsidiary's shareholders within 10 days of the merger's effective date. This notice requirement replaces a provision that required the parent company to wait 30 days after it sent notice of the merger to shareholders to file its notice of merger with the Department.

Articles of Merger and of Share Exchanges (Section 138)

The bill amends s. 607.1105, F.S., to provide for the formalization of articles of merger and of share exchanges, to specify the content required in the articles, and to establish a method of filing the articles with the Department. The bill also provides an effective date for the articles.

Effects (Section 139)

The bill amends s. 607.1106, F.S., to clarify the effect of mergers or share exchanges on domestic and foreign corporations. Specifically, the bill addressed the effect of a merger or share exchange on:

- Corporate existence;

⁵⁹ A merger is an amalgamation of two corporations pursuant to statutory provision in which one of the corporations survives and the other disappears. Black's Law Dictionary 682 (6th ed. 1995).

⁶⁰ See Nunn, *supra*, note 57.

⁶¹ A subsidiary is a corporation run or owned by another corporation known as a parent corporation. Black's Law Dictionary 996 (6th ed. 1995).

- Property ownership;
- Debt obligations, other liabilities, and creditor rights;
- Ongoing proceedings;
- Articles of incorporation, bylaws, and organic rules;
- Shareholders' rights; and
- Interest holder liability.

Abandonment (Section 140)

The FBCA permits corporations to abandon a merger only before the articles of merger are filed with the Department. The bill amends s. 607.1107, F.S., to allow a statement of abandonment signed by all parties to result in the abandonment of a merger after articles of merger are filed with the Department but before they take effect.

Deleted and Reorganized Provisions (Sections 141-147)

The bill deletes ss. 607.1108-607.115, F.S., governing mergers and conversions. These subjects are reorganized and re-written by Sections 131-139 and 152-157 of the bill.

Domestication

The FBCA allows a foreign corporation to become a Florida domestic corporation by the process of domestication.⁶²

Types of Domestication (Section 148)

The bill creates s. 607.11920, F.S., to expand the types of domestications permitted in Florida to include in-bound domestications by foreign corporations and out-bound domestications by Florida corporations into foreign corporations. In other words, the bill allows Florida corporations to domesticate into foreign corporations organized in other U.S. states and allows foreign corporations organized in other U.S. states to become Florida corporations if the organic law of the foreign corporation allows it.

Plan and Effect (Sections 149-152)

The bill creates ss. 607.11921-607.11923, F.S., to establish the formalization of a plan of domestication of a domestic corporation into a foreign jurisdiction, to govern the effectiveness and content of the articles of domestication, and to allow the amendment or abandonment of the plan under certain circumstances. The bill also creates s. 607.11924, F.S., to outline the effect of domestication on the domesticating corporation. Specifically, the bill outlines:

- The ultimate ownership of property, debt, and other obligations;
- Shares as between the corporations;
- Ultimate locus of governance; and
- Overall duties.

Conversion

The FBCA allows a domestic corporation to convert to another business entity organized under the laws of Florida or any other state, the United States, a foreign country, or other foreign jurisdiction.⁶³

⁶² S. 607.1801, F.S.

⁶³ S. 607.1112, F.S.

Foreign Corporations; Plan of Conversion (Section 148)

The bill creates s. 607.11930, F.S., to allow a foreign eligible entity to convert to a domestic corporation if it meets specified conditions, to generally address all conversion actions, and to require the adoption of a plan of conversion to effectuate such actions. The bill also creates ss. 607.11931-607.11932, F.S., to outline the information required in a plan of conversion and the method for adoption of a plan of conversion by the board of directors and shareholders. Additionally, the bill establishes notice requirements for shareholders of the subsumed corporation, shareholders affected by interest holder liability, and shareholders who may become general partners of the converted partnership or limited partnership.

Articles of Conversion; Abandonment (Sections 156-158)

The bill creates s. 607.11933, F.S., to establish the method for filing articles of conversion with the Department, their effective date, and the effect of such filing on the governance structure of the subsumed corporation or entity. The bill also creates s. 607.11935, F.S., to more specifically address the transfer of property, debt, records, rules, and other specific rights or duties to the converted entity. Finally, the bill creates s. 607.11934, F.S., to allow a converting entity to amend or abandon its plan of conversion before the articles of conversion take effect.

Sale, Distribution, or Disposal of Assets

Sale or Distribution (Section 159)

The FBCA allows a corporation to sell its assets in the regular course of business without approval by shareholders, unless otherwise required by its articles of incorporation. The bill amends s. 607.1201, F.S., to allow a corporation to distribute its assets pro rata⁶⁴ to shareholders, except as part of a dissolution, without shareholder approval.

Disposal (Section 160)

The bill amends s. 607.1202, F.S., to provide that a board wishing to dispose of all, or substantially all, of its property not in the usual course of business must submit such a proposal to a shareholder vote unless specific factors apply. The bill also provides that a disposition approved by shareholders may be abandoned at any time before its consummation.

Appraisal Rights

The FCBA permits minority shareholders to choose to sell their shares in a corporation by asserting appraisal rights, which triggers a fair payout for their shares.⁶⁵ This right is limited to situations where a material change in the relationship between the corporation and the shareholder is proposed, e.g., a merger or a share exchange, but the shareholder lacks a right to vote on the transaction.⁶⁶

Determination of Value; Eligible Transactions (Sections 161-162)

The bill amends s. 607.1301, F.S. to clarify that an appraisal of fair value of a share should be determined without any discount for the share's lack of marketability or minority status. The bill also

⁶⁴ Pro rata means proportionately, or done according to a certain rate, percentage, or proportion. Black's Law Dictionary 848 (6th ed. 1995).

⁶⁵ S. 607.1302, F.S.

⁶⁶ *Id.*

amends s. 607.1302, F.S., to add conversions and domestication transactions to the list of transactions giving a shareholder the option to exercise his or her appraisal rights.

Notice to Shareholders (Section 164)

Additionally, the bill amends s. 607.1320, F.S., to require a statement of possible appraisal rights and appropriate law to be sent with notice of the meeting at which shareholder consent is solicited for specific transactions. If approval of a corporate action that would trigger appraisal rights is sought by written consent, then notice of the appraisal rights must be sent to any nonconsenting or nonvoting shareholders at least 10 days before the corporate action takes effect. The bill also requires the corporation to send pertinent financial documents to its shareholders with the notice of appraisal rights.

Assertion of Rights; Challenges (Sections 165 and 174)

The bill amends s. 607.1321, F.S., to provide that a shareholder who decides to assert his or her appraisal rights must deliver notice of intent to the board before the proposed transaction is effectuated and abstain from voting on the matter. A shareholder who wishes to assert appraisal rights pursuant to a two-step merger in which there is no shareholder vote can assert appraisal rights by delivering his or her shares to the corporation with intent to demand payment if the transaction occurs and holding back his or her shares from the tender offer. The bill also creates s. 607.1340, F.S., to limit a shareholder from challenging a corporate transaction under which it could have asserted appraisal rights except on the basis of fraud, material misrepresentation, omission of fact, or illegal approval.

Dissolution

Articles of Dissolution; Revocation (Sections 175-178)

The bill amends s. 607.1401-607.1405, F.S., to allow a corporation to dissolve at the action of its board and, if applicable, its shareholders. The bill makes several conforming changes regarding the articles of dissolution a corporation must file to formalize the dissolution, and adds a grace period that allows the corporation to revoke its dissolution within 120 days of the effective date of its articles of dissolution.

Dissolved Corporations (Sections 177, 179)

The bill amends s. 607.1403, F.S., to clarify that a “dissolved corporation” is one whose articles of dissolution are effective, and includes a “successor entity” that may exist solely for the purpose of prosecuting and defending suits on behalf of the dissolved corporation. This allows dissolved corporations to wind up and fully liquidate its assets while still meeting its duty to engage in ongoing matters. The bill also allows a corporation to fix a new record date for purposes of liquidation of assets.

Claims Against Dissolved Corporations (Sections 180-184)

Additionally, the bill amends s. 607.1406, F.S., to require a dissolved corporation to give written notice to claimants against itself no later than 270 days before the date that is 3 years after articles of dissolution take effect. The bill also deletes contingent claims and claims that are effective upon an event that may occur after dissolution from the definition of known claims that must receive notice from the dissolved corporation.

The bill creates ss. 607.1408-607.1409, F.S., to provide for the enforcement of a claim against a dissolved corporation. The bill also creates procedures for handling unknown and contingent claims against a dissolved corporation. Additionally, the bill creates s. 607.1410, F.S., to add to a director’s duties the payment of claims and distributions of assets during a corporation’s dissolution or liquidation.

and to shield directors from liability against claims of breach of these duties if the corporation was properly dissolved.

Administrative Dissolution; Reinstatement (Sections 185-188)

The bill amends ss. 607.1420-607.1423, F.S., to add failure to pay a fee or penalty to the Department as a basis for the administrative dissolution of a corporation by the Department. The bill also clarifies that an administratively dissolved corporation may wind up its affairs and liquidate its assets. If a corporation wants to be reinstatement following such a dissolution, it may file appropriate forms and fees with the Department. The Department may deny reinstatement, and the corporation may appeal its denial to the Leon County Circuit Court. The FBCA currently permits a corporation to appeal its denial in the jurisdiction where the corporation resides.⁶⁷

Judicial Dissolution (Sections 189-190, 193, 195-196)

A shareholder may request that a court dissolve a corporation in which he or she owns shares for reasons including fraud and ineffectiveness. The bill amends s. 607.1431, F.S., to require a corporate defendant in a judicial dissolution proceeding to notify all shareholders, other than the petitioner, that they may avoid dissolution by electing to purchase the petitioner's shares. This remedy exists currently under the FBCA; only the notice requirement is new.

The bill amends s. 607.1434, F.S., to grant to a court in a judicial dissolution proceeding discretion to order remedies other than those outlined in the statute to avoid dissolution. The bill also amends s. 607.1436, F.S., to require that a corporation that elects to purchase its shares instead of dissolving follow through on the transaction and prohibits the corporation from ultimately dissolving. Finally, the bill amends s. 607.14401, F.S., to delete a provision requiring a dissolved corporation to deposit funds owed to a missing or incompetent shareholder with the Department of Financial Services (DFS) within 6 months of the final liquidating distribution. The dissolved corporation must still deposit such funds with DFS; only the timeframe for doing so is deleted.

Foreign Corporations

Foreign corporations operate under a certificate of authority issued by the Department and, like domestic corporations, must notify the Department of their registered agent, principal office, and other pertinent information. A foreign corporation must amend its certificate of authority to reflect any change in its operating documents within 90 days of the occurrence.

Distinguishable Names (Section 203)

The FBCA requires a foreign corporation to file for a certificate of authority under a name distinguishable from those names already in use by other entities.⁶⁸ The bill amends s. 607.1506, F.S., to allow a foreign corporation to register under a name that is not distinguishable from that of another entity with the written consent of the other entity.

Organic Law (Sections 198-199)

The bill amends s. 607.15015, F.S., to clarify that a foreign corporation's organic law⁶⁹ governs its organization, internal affairs, and shareholders' interest holder liability. The bill also amends s. 607.1502, F.S., to provide that a foreign corporation's organic law applies when the corporation fails to

⁶⁷ S. 607.1423, F.S.

⁶⁸ S. 607.1506, F.S.

⁶⁹ Organic law is the fundamental law that establishes a corporation's body of rules. Black's Law Dictionary 759 (6th ed. 1995).

hold a certificate of authority to transact business in Florida and the Florida Secretary of State is the designated agent for the corporation should any unauthorized transactions occur in Florida.

Registered Agents; Service (Sections 204-209)

The bill amends or creates ss. 607.1507-607.15091, F.S., to parallel the requirements for a foreign corporation's registered agent to those of a domestic corporation's registered agent. The bill also creates s. 607.15092, F.S., to account for notice delivery by electronic communication and amends s. 607.15101, F.S., to provide for alternative service if a foreign corporation's registered agent is unavailable for service.

Conversion; Mergers; Dissolution; Reinstatement (Sections 211-213, 216-217)

The bill creates ss. 607.1521 and 607.1522, F.S., to specify that a converting, merging, or dissolving foreign corporation must give notice to the Department of the transaction and identify its effect on the corporations' certificate of authority. The bill also amends s. 607.15315, F.S., to permit the reinstatement of a foreign corporation's certificate of authority following its revocation but deletes as a basis for reinstatement that the grounds for revocation did not or no longer exist. Finally, the bill amends s. 607.1532, F.S., to designate the Leon County Circuit Court as the proper venue for appeals of the Department's denial of a petition for reinstatement.

Records and Reports

Maintenance (Section 218)

The bill amends s. 607.1601, F.S., to replace a corporations duty to "keep as permanent records" with a duty to "maintain" certain documents. The bill also updates this section to explicitly include financial statements and notices required under s. 607.0120(11), F.S., within the record of documents a corporation must maintain.

Access (Sections 219-222)

The bill amends ss. 607.1602-607.1605, F.S., to reduce the number of days a corporation has to produce certain records upon a shareholder request from 15 to 5, and to allow such production in an electronic format. The bill also extends shareholder rights to include the inspection of corporate documents of a corporation's subsidiary. Further, the bill entitles a shareholder who must resort to court action to enforce his or her right of inspection to reimbursement of attorney fees and reasonable expenses incurred in the proceeding. Finally, the bill clarifies a court's right to impose reasonable confidentiality requirements on any court-ordered right to inspection and copy of a corporation's documents.

Financial Statements (Section 223)

The FBCA requires a corporation to provide its shareholders with a copy of its annual financial report within 120 days of the close of each fiscal year.⁷⁰ The bill amends s. 607.1620, F.S., to require a corporation to furnish shareholders with its annual financial report within 5 days of a shareholder's request for such report. If the shareholder's initial request so specifies, the corporation must give notice to all other shareholders of the availability of the financial information. The corporation may provide the requested documents by posting them on its website, may place reasonable confidentiality restrictions on their distribution, and may decline the request if it determines the request was made in bad faith or for an improper purpose.

⁷⁰ S. 627.1620, F.S.

The bill provides that a shareholder may enforce his or her right to review the corporation's financial documents in a circuit court in the applicable county. The corporation has the burden of demonstrating that its refusal to furnish its financial documents to a shareholder and any restrictions placed on the distribution of its financial documents are reasonable and made in good faith. Reimbursement of attorney fees and costs is available to a prevailing party in such an enforcement proceeding.

Conforming Changes⁷¹

The bill makes conforming, non-substantive changes to ss. 607.0101-607.0102; 607.0121-607.0122; 607.0203-607.0204; 607.0207; 607.0302-307.0304; 607.0403; 607.0505; 607.0621-607.0623; 607.0625, 607.0605-607.0606; 607.0722; 607.0725-607.0728; 607.0730; 607.0801; 607.0803-607.0804; 607.0807-607.0808; 607.0820; 607.0824; 607.0831; 607.0833; 607.0842; 607.0902; 607.1004-607.1008; 607.1020-607.1021; 607.1303-607.1333; 607.1432-607.1433; 607.1435; 607.1501; 607.1503-607.1505; 607.1520; 607.1530; and 607.1622, F.S.

These changes include altering references from:

- "Act" to "chapter;"
- "Department of State" to "department;"
- "Attorney General" to "Department of Legal Affairs;"
- "Stock" to "shares;"
- "Corporation's directors" to "board of directors;"
- "Executed" to "signed;" and
- "Listed on a national securities exchange" to "registered pursuant to s. 12 of the Securities Act of 1934."

The bill also makes conforming changes to Parts II and III of ch. 607, F.S.; and chs. 331; 339; 605; 617; 620; 621; 631; 658; 662; 663; and 694, F.S.

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.

⁷¹ Sections 1-2, 4, 5, 18-19, 22, 25-26, 30, 37, 42-44, 46-49, 56-57, 62, 65-57, 69, 83, 85-86, 89-90, 93, 96, 100, 102, 104, 106, 117, 122-126, 128-129, 163-173, 191-192, 194, 197, 200-202, 210, 214, 225, and 232-293, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will affect how corporations, foreign and domestic, do business in this state, which may have an indeterminate economic impact on these corporations.

D. FISCAL COMMENTS:

None.