1988

Session Law 88-111

Florida Senate & House of Representatives

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A bill to be entitled

An act relating to corporations; amending s. 607.109, F.S., which provides requirements with respect to control-share acquisitions; specifying that certain persons shall not be deemed to be part of a "group" or to be an "acquiring person" for purposes of such requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (2) of section 607.109, Florida Statutes, to read:

607.109 Control-share acquisitions.—

(2) "CONTROL-SHARE ACQUISITION."—

(f) For the purpose of this section, persons shall not be deemed to be part of a "group" if such persons join together to exercise or direct the exercise of the voting power of an issuing public corporation (whether through a voting trust, a shareholder agreement, or through other arrangements) and the voting trustee of any voting trust shall not be deemed to be an "acquiring person" if such persons or all the parties to the voting trust:

1. Are related by blood or marriage or are the personal representatives or trustees of such persons; and

2. Such persons were shareholders (or the beneficial owners of shares) of the issuing public corporation (or were trustees, personal representatives, or heirs of such shareholders or beneficial owners) on July 1, 1987, and have continued to be shareholders (or the beneficial owners of shares) of the issuing public corporation (or have been
trustees, personal representatives, or heirs of such shareholders or beneficial owners) since that time.

Section 2. This act shall take effect upon becoming a law.

Amends provisions which provide requirements with respect to control-share acquisitions, to specify that certain family groups shall not be deemed to be part of a "group" or to be an "acquiring person" for purposes of such requirements.
A bill to be entitled
An act relating to corporations; amending s. 607.109, F.S., which provides requirements with respect to control-share acquisitions; specifying that certain persons shall not be deemed to be part of a "group" or to be an "acquiring person" for purposes of such requirements; amending s. 660.41, F.S., relating to certain fiduciary functions of corporations; revising language relating to corporations as transfer agents; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (2) of section 607.109, Florida Statutes, to read:

607.109 Control-share acquisitions.--
(2) "CONTROL-SHARE ACQUISITION."--
(f) For the purpose of this section, persons shall not be deemed to be part of a "group" if such persons join together to exercise or direct the exercise of the voting power of an issuing public corporation (whether through a voting trust, a shareholder agreement, or through other arrangements) and the voting trustee of any voting trust shall not be deemed to be an "acquiring person" if such persons or all the parties to the voting trust:

1. Are related by blood or marriage or are the personal representatives or trustees of such persons; and
2. Such persons were shareholders (or the beneficial owners of shares) of the issuing public corporation (or were

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trustees, personal representatives, or heirs of such shareholders or beneficial owners) on July 1, 1987, and have continued to be shareholders (or the beneficial owners of shares) of the issuing public corporation (or have been trustees, personal representatives, or heirs of such shareholders or beneficial owners) since that time.

Section 2. Subsection (8) of section 660.41, Florida Statutes, is amended to read:

660.41 Corporations: certain fiduciary functions prohibited.--All corporations, except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking associations or federal associations located in this state and having trust powers, are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(8) As fiscal agent, transfer agent, or registrar of any municipal or private corporation, except that this prohibition shall not be so construed as to prevent banks, associations, and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent, or registrar of municipal or private corporations of this state. Nothing herein shall prevent any Florida corporation not a bank, association, or trust company and not having trust powers from being its own fiscal agent, transfer agent, or registrar concerning its own affairs, stock, or securities. Nothing herein shall prevent any Florida corporation, or corporation having its principal place of business in Florida, which is registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the

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Federal Reserve System, or the Securities and Exchange
Commission from acting as a transfer agent for any other
private corporation. Nothing in this section or in any other
law of this state shall be construed to prohibit a foreign
bank, foreign association, or foreign trust company as trustee
of any charitable foundation or endowment, employees' pension,
retirement or profit-sharing trust, alone or together with a
cotrustee, from: Contracting, in this state or elsewhere, with
any person to acquire from such person a part or the entire
interest in a loan which such person proposes to make, has
heretofore made, or hereafter makes, together with a like
interest in any security instrument covering real or personal
property in the state proposed to be given or hereafter or
heretofore given to such person to secure or evidence such
loan; servicing directly or entering into servicing contracts
with persons, and enforcing in this state the obligations
heretofore or hereafter acquired by it in the transaction of
business outside this state or in the transaction of any
business authorized or permitted hereby; or acquiring,
holding, leasing, mortgaging, contracting with respect to, or
otherwise protecting, managing, or conveying property in this
state which has heretofore or may hereafter be assigned,
transferred, mortgaged, or conveyed to it as security for, or
in whole or in part in satisfaction of, a loan or loans made
by it or obligations acquired by it in the transaction of any
business authorized or permitted hereby. However, no such
foreign bank, foreign association, or foreign trust company
shall be deemed to be transacting business in this state,
shall be required to qualify so to do, or shall be deemed to
be unlawfully exercising powers or duties, acting in an
unlawful or prohibited capacity, or violating any of the

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provisions of this section or of any other law of this state solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; further, nothing herein shall be construed as authorizing or permitting any foreign bank, association, or trust company to maintain an office within this state.

Section 3. This act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 615

The committee substitute permits certain registered corporations who have their principal place of business in Florida to act as transfer agents.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

The general regulatory and organizational structure for corporations operating within the State of Florida is set forth in ch. 607, F.S., Corporations. During the 1987 Legislative Session, HB 358 was passed which established statutory provisions regulating business takeovers. Additionally, the Florida law provides protection for minority (dissenting) shareholders who oppose the formation of the new corporation (from the takeover).

As a response to the overwhelming number of hostile takeover attempts confronting the Florida economy, the Control Share Acquisition Act was enacted which conditions the control of a corporation on the approval of a majority of the disinterested shareholders. The statute protects the shareholders of Florida corporations by affording them, when a takeover offer is made, an opportunity to decide collectively whether the resulting change in voting control of the corporation would be desirable. By giving them the right to approve or disapprove the acquisition of control, the statute seeks to place the independent investor on an equal footing with the takeover bidder.

Florida law prohibits control shares of an issuing public corporation acquired in a control share acquisition from having voting rights unless approved by a vote of a majority of all the shares entitled to vote, excluding interested shares. This vote is in addition to any vote of a class or series of shares otherwise required.

- Control shares are shares that, when added to all other shares which a person owns or has the power to vote, would fall within any of the following ranges of voting power: 1/5 to 1/3; 1/3 to a majority; a majority.
- Control share acquisition means the acquisition of the ownership of or the power to vote outstanding control shares.
- Interested shares are shares which any of the following persons has the right to vote: an acquiring person or member of a group with respect to a control share acquisition; any officer of the issuing corporation; and, any director who is also an employee of the issuing public corporation. These shares are not counted in the special approval process.

Under present law, it is possible to conclude that family members who vote their shares together as constituting a "group." If the families are held to constitute a group for
purposes of the Act, the formation of such a group would fall under the purview of the control share acquisition language of the statute. Accordingly, the members of such a family group would be prevented from voting their shares until approval of the other shareholders is obtained.

For example, members of Family F have held stock in Corporation C for 15 years. Family F holds 42 percent of the voting stock in Corporation C, with seven family members owning 6 percent of the stock individually. The remaining stock is widely-held. The family members decide on the directors whom they would like to elect and vote their shares in favor of those nominees. Shareholder S, a 1 percent shareholder, objects claiming that Family F is a "group" under the Act. Shareholder S files suit to prevent Family F from voting their shares until a shareholders meeting is held on the subject pursuant to the Act. If shareholder S's claim is upheld, members of Family F may not vote their shares until the other shareholders approve.

Section 660.41, F.S., prohibits corporations, except certain banks, associations, and trust companies from exercising certain fiduciary functions. Subsection (8) of such section permits certain registered Florida corporations to act as a transfer agent for any other private corporation.

B. Effect of Proposed Changes:

This bill amends s. 607.109(2), F.S., to exclude family groups holding stock prior to the effective date of the control share acquisition provision from the definition of a "group," in order to avoid the applicability of the statute to situations where family members vote their shares together.

Section 607.109(2)(f), F.S., provides that persons shall not be deemed to be a part of a "group" if they join together to vote their shares in an issuing public corporation and the voting trustee of such persons shall not deemed to be an "acquiring person" if the following conditions are present:

(1) the persons are related by blood or marriage or are trustees or representatives of such persons; and,

(2) the persons were shareholders or trustees, personal representatives, or heirs of such shareholders before the effective date of the Act, July 1, 1987, and continued in that status.

The bill also provides that the provisions of s. 660.41, F.S., do not prohibit a corporation which has its principal place of business in Florida and which is registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Securities and Exchange Commission from acting as a transfer agent for any other private corporation.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill furthers the policy of the Act by encouraging a stable corporate governance. It eliminates the potential increased vulnerability of Florida corporations with large family shareholders to takeovers by outsiders or minority shareholders. Additionally, this bill clarifies present law which is likely to reduce the possibility of litigation in this area.

Certain corporations having their principal place of business in Florida who wish to act as transfer agents may experience the positive economic impact of additional business in this state.
B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
A bill to be entitled
An act relating to corporations; amending s
607.109, F.S, which provides requirements with
respect to control-share acquisitions;
specifying that certain persons shall not be
deemed to be part of a "group" or to be an
"acquiring person" for purposes of such
requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (2) of
section 607.109, Florida Statutes, to read:

607.109 Control-share acquisitions --
(2) "CONTROL-SHARE ACQUISITION"--
(f) For the purpose of this section, persons shall not
be deemed to be part of a "group" if such persons join
together to exercise or direct the exercise of the voting
power of an issuing public corporation (whether through a
voting trust, a shareholder agreement, or through other
arrangements) and the voting trustee of any voting trust shall
not be deemed to be an "acquiring person" if such persons or
all the parties to the voting trust:

1. Are related by blood or marriage or are the
personal representatives or trustees of such persons; and
2. Such persons were shareholders (or the beneficial
owners of shares) of the issuing public corporation (or were
trustees, personal representatives, or heirs of such
shareholders or beneficial owners) on July 1, 1987, and have
continued to be shareholders (or the beneficial owners of
shares) of the issuing public corporation (or have been
trustees, personal representatives, or heirs of such
shareholders or beneficial owners) since that time.

Section 2. This act shall take effect upon becoming a
law.

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HOUSE SUMMARY

Amends provisions which provide requirements with respect
to control-share acquisitions, to specify that certain
family groups shall not be deemed to be part of a "group"
or to be an "acquiring person" for purposes of such
requirements.

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

House Bill 654 amends Chapter 607, Florida Statutes, Corporations, to specify that certain family members who join together to exercise their voting power shall not be deemed to be part of a "group" for purposes of the requirements under the Control-share Acquisition section of Chapter 607, F.S. Likewise, the voting trustee of such members shall not be deemed to be an "acquiring person" as defined in s. 607.109, F.S.

A. PRESENT SITUATION:

The general regulatory and organizational structure for corporations operating within the State of Florida is set forth in Chapter 607, F.S., Corporations. During the 1987 Legislative Session, House Bill 358 was passed which established statutory provisions regulating business takeovers. Additionally, the Florida law provides protection for minority (dissenting) shareholders who oppose the formation of the new corporation (from the takeover).

As a response to the overwhelming number of hostile takeover attempts confronting the Florida economy, the Control Share Acquisition Act was enacted which conditions the control of a corporation on the approval of a majority of the disinterested shareholders. The statute protects the shareholders of Florida corporations by affording them, when a takeover offer is made, an opportunity to decide collectively whether the resulting change in voting control of the corporation would be desirable. By giving them the right to approve or disapprove the acquisition of control, the statute seeks to place the independent investor on an equal footing with the takeover bidder.

Florida law prohibits control shares of an issuing public corporation acquired in a control share acquisition from having voting rights unless approved by a vote of a majority of all the shares entitled to vote,
excluding interested shares. This vote is in addition to any vote of a class or series of shares otherwise required.

- Control shares are shares that, when added to all other shares which a person owns or has the power to vote, would fall within any of the following ranges of voting power: 1/5 to 1/3; 1/3 to a majority; a majority.

- Control share acquisition means the acquisition of the ownership of or the power to vote outstanding control shares.

- Interested shares are shares which any of the following persons has the right to vote: an acquiring person or member of a group with respect to a control share acquisition; any officer of the issuing corporation; and, any director who is also an employee of the issuing public corporation. These shares are not counted in the special approval process.

Under present law, it is possible to conclude that family members who vote their shares together as constituting a "group". If the families are held to constitute a group for purposes of the Act, the formation of such a group would fall under the purview of the control share acquisition language of the statute. Accordingly, the members of such a family group would be prevented from voting their shares until approval of the other shareholders is obtained.

For example, members of Family F have stock in Corporation C for 15 years. Family F holds 42% of the voting stock in Corporation C, with seven family members owning six percent of the stock individually. The remaining stock is widely-held. The family members decide on the directors whom they would like to elect and vote their shares in favor of those nominees. Shareholder S, a 1% shareholder, objects claiming that Family F is a "group" under the Act. Shareholder S files suit to prevent Family F from voting their shares until a shareholders meeting is held on the subject pursuant to the Act. If shareholder S's claim is upheld, members of Family F may not vote their shares until the other shareholders approve.

B. EFFECT OF PROPOSED CHANGES:

Furthering the purpose of the Control Share Acquisition Act to reduce the ability of corporate raiders to acquire control of Florida corporations to the possible detriment of the shareholders and to the possible detriment of economic activity in the overall Florida economy, this bill will protect family shareholders in Florida corporations. Amending s. 607.109(2), F.S., House Bill 654 excludes family groups holding stock prior to the effective date of the control share acquisition provision from the definition of a "group", in order to avoid the applicability of the statute to situations where family members vote their shares together.

Section 607.109(2)(f), F.S., provides that persons shall not be deemed to be a part of a "group" if they join together to vote their shares in an issuing public corporation and the voting trustee of such persons
shall not be deemed to be an "acquiring person" if the following conditions are present:

(1) the persons are related by blood or marriage or are trustees or representatives of such persons; and,

(2) the persons were shareholders or trustees, personal representatives, or heirs of such shareholders before the effective date of the act, July 1, 1987, and continued in that status.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There is no significant impact on the private sector as it relates to costs.
2. Direct Private Sector Benefits:

House Bill 654 furthers the policy of the Act by encouraging a stable corporate governance. It eliminates the potential increased vulnerability of Florida corporations with large family shareholders to takeovers by outsiders or minority shareholders. Additionally, this bill clarifies present law which is likely to reduce the possibility of litigation in this area.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

House Bill 654 has no negative impact on the State Comprehensive Plan.

IV. COMMENTS:

None.

V. AMENDMENTS:

Two amendments were adopted by the Full Committee on Commerce to provide that a corporation having its principal place of business in Florida and registered with specified entities is not prevented from acting as a transfer agent for any other private corporation. The second amendment is a title amendment.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Beryl Roberts

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:
I. SUMMARY:

House Bill 654 amends Chapter 607, Florida Statutes, Corporations, to specify that certain family members who join together to exercise their voting power shall not be deemed to be part of a "group" for purposes of the requirements under the Control-share Acquisition section of Chapter 607, F.S. Likewise, the voting trustee of such members shall not be deemed to be an "acquiring person" as defined in s. 607.109, F.S.

A. PRESENT SITUATION:

The general regulatory and organizational structure for corporations operating within the State of Florida is set forth in Chapter 607, F.S., Corporations. During the 1987 Legislative Session, House Bill 358 was passed which established statutory provisions regulating business takeovers. Additionally, the Florida law provides protection for minority (dissenting) shareholders who oppose the formation of the new corporation (from the takeover).

As a response to the overwhelming number of hostile takeover attempts confronting the Florida economy, the Control Share Acquisition Act was enacted which conditions the control of a corporation on the approval of a majority of the disinterested shareholders. The statute protects the shareholders of Florida corporations by affording them, when a takeover offer is made, an opportunity to decide collectively whether the resulting change in voting control of the corporation would be desirable. By giving them the right to approve or disapprove the acquisition of control, the
statute seeks to place the independent investor on an equal footing with the takeover bidder.

Florida law prohibits control shares of an issuing public corporation acquired in a control share acquisition from having voting rights unless approved by a vote of a majority of all the shares entitled to vote, excluding interested shares. This vote is in addition to any vote of a class or series of shares otherwise required.

- Control shares are shares that, when added to all other shares which a person owns or has the power to vote, would fall within any of the following ranges of voting power: 1/5 to 1/3; 1/3 to a majority; a majority.

- Control share acquisition means the acquisition of the ownership of or the power to vote outstanding control shares.

- Interested shares are shares which any of the following persons has the right to vote: an acquiring person or member of a group with respect to a control share acquisition; any officer of the issuing corporation; and, any director who is also an employee of the issuing public corporation. These shares are not counted in the special approval process.

Under present law, it is possible to conclude that family members who vote their shares together as constituting a "group". If the families are held to constitute a group for purposes of the Act, the formation of such a group would fall under the purview of the control share acquisition language of the statute. Accordingly, the members of such a family group would be prevented from voting their shares until approval of the other shareholders is obtained.

For example, members of Family F have stock in Corporation C for 15 years. Family F holds 42% of the voting stock in Corporation C, with seven family members owning six percent of the stock individually. The remaining stock is widely-held. The family members decide on the directors whom they would like to elect and vote their shares in favor of those nominees. Shareholder S, a 1% shareholder, objects claiming that Family F is a "group" under the Act. Shareholder S files suit to prevent Family F from voting their shares until a shareholders meeting is held on the subject pursuant to the Act. If shareholder S's claim is upheld, members of Family F may not vote their shares until the other shareholders approve.

B. EFFECT OF PROPOSED CHANGES:

Furthering the purpose of the Control Share Acquisition Act to reduce the ability of corporate raiders to acquire control of Florida corporations to the possible detriment of the shareholders and to the possible detriment of economic activity in the overall Florida economy, this bill will protect family shareholders in Florida corporations. Amending s. 607.109(2), F.S., House Bill 654 excludes family groups holding stock prior to the effective date of the control share acquisition provision from the definition of a "group", in order to avoid the applicability of the statute to situations where family members vote their shares together.
Section 607.109(2)(f), F.S., provides that persons shall not be deemed to be a part of a "group" if they join together to vote their shares in an issuing public corporation and the voting trustee of such persons shall not be deemed to be an "acquiring person" if the following conditions are present:

(1) the persons are related by blood or marriage or are trustees or representatives of such persons; and,

(2) the persons were shareholders or trustees, personal representatives, or heirs of such shareholders before the effective date of the act, July 1, 1987, and continued in that status.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
1. **Direct Private Sector Costs:**

There is no significant impact on the private sector as it relates to costs.

2. **Direct Private Sector Benefits:**

House Bill 654 furthers the policy of the Act by encouraging a stable corporate governance. It eliminates the potential increased vulnerability of Florida corporations with large family shareholders to takeovers by outsiders or minority shareholders. Additionally, this bill clarifies present law which is likely to reduce the possibility of litigation in this area.

3. **Effects on Competition, Private Enterprise, and Employment Markets:**

None.

D. **FISCAL COMMENTS:**

None.

III. **LONG RANGE CONSEQUENCES:**

House Bill 654 has no negative impact on the State Comprehensive Plan.

IV. **COMMENTS:**

**LEGISLATIVE HISTORY:**

**Enacted Bill:**

House Bill 654 was prefiled by Representative Rush on March 18, 1988 and referred to the Committee on Commerce. On April 20, the bill was recommended favorably by the Subcommittee with two amendments which provide that a corporation having its principal place of business in Florida and registered with specified entities is not prevented from acting as a transfer agent for any other private corporation. The second amendment was a title amendment. The Full Committee reported the bill favorably as amended on May 2 (HJ 00302). On May 10, the bill was placed on the Special Order Calendar and read a second time on May 16 (HJ 00478). House Bill 654 was read a third time the following day and passed as amended by a vote of 113-0 (HJ 00504). The bill was immediately certified and sent in Messages to the Senate (HJ 00504). On May 19, the bill was referred to the Senate Committee on Commerce (SJ 00355). House Bill 654, after being withdrawn from Commerce and substituted for CS/SB 615, passed unanimously (SJ 00403). After the bill was ordered enrolled, it was signed by the Officers and presented to the Governor (HJ 01281).

**Disposition of Companion:**

Senate Bill 615 was prefiled on March 30, 1988 by Senator Grant and referred to the Committee on Commerce. On May 2, the bill was reported favorably as a committee substitute and placed on the Calendar (SJ 00229). The bill was placed on the Special Order Calendar on May 25, and the identical House bill was substituted for the Senate bill, which was laid on the table (SJ 00403).
VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Beryl Roberts

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:

Staff Director: H. Fred Varn