

1989

Session Law 89-154

Florida Senate & House of Representatives

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**S 851 GENERAL BILL/CS/1ST ENG by Commerce; Commerce
(Similar CS/H 1347)**

Florida Business Corporation Act; prescribes filing requirements for documents; prescribes powers & duties of Dept. of State; prescribes powers of corporations; prescribes requirements for corporate names & for registering names; provides for corporate officers & their appointment, removal, rights, & duties; provides guidelines for regulation of foreign corporations, for certificates of authority to transact business, & for registered offices & agents, etc. Repeals 607.001-.414. Effective Date: 07/01/90 except s. 84 which is effective 06/27/89.

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03/31/89 SENATE Prefiled
04/14/89 SENATE Introduced, referred to Commerce; Finance, Taxation and Claims -SJ 130
04/28/89 SENATE Extension of time granted Committee Commerce
05/04/89 SENATE On Committee agenda—Commerce, 05/08/89, 1:15 pm, Room-A-(LL-37)
05/08/89 SENATE Comm. Report: CS by Commerce -SJ 293
05/10/89 SENATE CS read first time -SJ 295; Now in Finance, Taxation and Claims -SJ 293
05/12/89 SENATE Extension of time granted Committee Finance, Taxation and Claims
05/18/89 SENATE Withdrawn from Finance, Taxation and Claims -SJ 399; Placed on Calendar
05/25/89 SENATE Placed on Special Order Calendar -SJ 450
05/26/89 SENATE Placed on Special Order Calendar -SJ 477
05/29/89 SENATE Placed on Special Order Calendar -SJ 493; CS passed as amended; YEAS 38 NAYS 0 -SJ 552
05/29/89 HOUSE In Messages
05/31/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 109 NAYS 3 -HJ 946
05/31/89 Ordered enrolled -SJ 624
06/12/89 Signed by Officers and presented to Governor
06/27/89 Approved by Governor; Chapter No. 89-154

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Fentriss <i>DF</i>	Wilkes <i>EW</i>	1. <u>COM</u>	<u>Fav/CS</u>
2. _____	_____	2. <u>FTC</u>	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Corporations

BILL NO. AND SPONSOR:

CS/SB 0851 by
Committee on Commerce

I. SUMMARY:

A. Present Situation:

Chapter 607, Florida Statutes, the Florida General Corporation Act, provides the general regulatory and organizational scheme for corporations doing business in Florida. Chapter 75-250, Laws Of Florida, created ch. 607, F.S., effective January 1, 1976, and repealed ch. 608, F.S., (Corporations and Business Trusts) and ch. 613, F.S., (Foreign Corporations). Chapter 607, F.S., is a modified version, tailored to fit the needs of Florida, of the 1969 edition of the Model Business Corporation Act [hereinafter MBCA] which was originally published in 1950.

In 1987, two laws were enacted that are of significant importance to the corporation code. The first is s.3, ch. 87-245, L.O.F., codified at s.607.014, F.S., amending certain provisions concerning indemnification of officers, directors, employees, and agents. The amendments broaden a corporation's ability to indemnify and clarify the circumstances under which indemnification can be provided. The second is ch. 87-257, L.O.F., codified at ss.607.108, 607.109, and 607.110, F.S., creating provisions designed to correct abuses in the corporate takeover process. The provisions provide, in major part, requirements concerning affiliated transactions involving interested shareholders, powers of disinterested directors, and procedures for control-share acquisitions.

Chapter 607, F.S., provides the basic requirements for the formation, existence, and termination of corporations in Florida, whether domestic or foreign. In addition, it provides basic requirements for shareholders as well as creditors concerning their interactions with corporations. Most of the 129 provisions in this chapter relate to some aspect of the relationships between a corporation and members of the board of directors, shareholders, creditors, other corporations, agents, or the state.

A corporation is an artificial being with no inherent rights or powers. Accordingly, a corporation is granted certain statutory general powers, and it may vary these powers to some degree in the articles of incorporation or bylaws as permitted by law. Examples of the general powers held by a corporation as provided in s.607.011, F.S., include the ability to sue and be sued, the power to purchase, sell, lease, mortgage, or donate its property, the ability to lend money, the ability to enter into contracts, the ability to incur liabilities, the ability to transact business, the right to provide pensions and other benefits for its employees, and the power to "have and exercise all powers necessary or convenient to effect its purposes." Section 607.011(1)(p), F.S. Without these powers, a corporation would be unable to conduct business, and hence, it would not serve any purpose.

Within the framework of these statutory powers, a corporation may vary or refine certain powers by provisions in the articles of incorporation. In accordance with s.607.164, F.S., the articles of incorporation are akin to the company charter, and they must provide, among other things, the corporation's name and its duration, if limited, the initial purpose or purposes of the corporation, the number of shares that may be issued, the name of the initial registered agent, the address of the initial registered office, the number of initial members of the board of directors, and "... any provision, not inconsistent with law, which the incorporator or incorporators may elect to set forth in the articles of incorporation for the regulation of the business and for the conduct of the affairs of the corporation...." Section 607.164(2), F.S.

The power to manage a corporation is vested in a board of directors elected by the shareholders. A director must perform his duties and exercise any powers in good faith and in a manner "he reasonably believes to be in the best interests of the corporation...." Section 607.111(4), F.S. Chapter 607, F.S., contains provisions concerning directors that address such matters as the number, election, and classification of directors; removal of and filling vacancy positions for directors; quorum and voting requirements of the board of directors; conflicts of interest between the corporation and any directors; time, place, and other details of directors' meetings; committees; and action taken by directors without a meeting. Directors are specifically responsible for any declaration of dividends; election and removal of officers (who are responsible for the day to day management of the corporation) to include a president, a secretary, and a treasurer; adopting, amending, and repealing bylaws, and initiation of (confirmation of which is subject to shareholders' vote) certain fundamental changes (such as merger or dissolution) and amendments to the articles of incorporation. In accordance with s. 607.133, F.S., a director may be held liable to the corporation if he votes in favor of declaring a dividend when the corporation is not in a proper position to pay the dividend pursuant to s. 607.137, F.S., purchasing back shares of the corporation when contrary to the requirements of ch. 607, F.S., or distributing assets of a liquidating corporation before complying with the provisions relating to the payment of known creditors.

The shareholders are the residual owners, such ownership being represented by share certificates, of the corporation. As owners, the shareholders have an interest in the performance of the corporation, but their participation in the affairs of the corporation is generally limited to the right to vote on the election of directors, amendments to the articles of incorporation, and fundamental changes. In addition, a shareholder may bring a derivative action pursuant to s. 607.147, F.S., seeking to enforce a right of the corporation where the board of directors has decided not to pursue the cause.

Because of their position as residual owners, when a corporation is dissolved, the shareholders are subject to the provisions of ss.607.274 through 607.287, 607.294, and 607.301, F.S., covering liquidation of the property and assets of a corporation. Shareholders must wait until the claims of creditors are paid before receiving any share of the remaining assets of the corporation. Shareholders may be broken down into classes having different preferences in the event of liquidation and/or restricted voting rights in accordance with the terms set out in the articles of incorporation and pursuant to ss.607.044 and 607.047, F.S.

Shareholders' voting rights are well developed in ch. 607, F.S. Provisions are made for cumulative voting for directors (if provided in the articles of incorporation), shareholder quorum

and voting, voting by proxy, voting trusts, shareholders' agreements, class voting on amendments to the articles of incorporation, voting on mergers or consolidations, and voting on the sale of all or substantially all of the corporation's assets.

While all of these provisions relating to shareholder voting on the disposition or transfer of assets include a number of guidelines, restrictions, or exclusions, perhaps the most significant areas for this are with respect to mergers and other large scale transfers of a corporation's assets. In certain circumstances, the board of directors can effect a disposition or transfer of most or all of the corporation's assets without a vote of the shareholders. For the protection of the shareholders, ss. 607.244 and 607.247, F.S., provide shareholders with a right to dissent and the procedures for dissenting to a merger, a consolidation, any sale or exchange of all or substantially all assets, and the approval of a control-share acquisition pursuant to s. 607.109(1), F.S.

A corporation functionally begins its existence by issuing shares and receiving funds in return pursuant to s.607.047, F.S. Most corporations issue shares that carry a par value which is generally a nominal and arbitrary figure (often one cent or a fraction of a cent) stated on the face of a certificate. The concept of par value was once important as it represented the amount for which a corporation was liable to a shareholder and the total par value of stock issued was the basis used for a corporation's credit. However, today its use is very limited. In Florida, it is used as one of the bases for imposition of the documentary excise tax, and s. 607.061, F.S., provides that the par value of all shares issued be included in the corporation's balance sheet as stated capital. Shares are most often offered at a price much higher than par value, and s. 607.061, F.S., requires that any amount received in excess of par be carried on the corporation's books as capital surplus. Shares may also be issued with no par value in which case s. 607.061, F.S., provides that a corporation must either allocate the entire amount received to stated capital or the board of directors may determine that some portion be allocated to stated capital and the balance to capital surplus.

Shares are not always paid for in cash, and a corporation is capable of incurring the obligation of issuing shares to a potential stockholder in the future. Because a corporation must account for consideration received for shares in dollar amounts, and the number of shares authorized to be issued is limited and stated in the articles of incorporation pursuant to s. 607.044, F.S., there are statutory provisions dealing with both consideration for shares and obligations to issue shares. First, consideration and payment for shares are dealt with in s. 607.054, F.S., which provides in part that shares may not be issued for future services, and the judgment of the board of directors as to the value of the consideration received is conclusive in the absence of fraud. In essence, shares may be issued for a fair value (relative to the worth of a corporation), and payment may take the form of tangible or intangible property including services already performed.

Second, agreements are often made for the issuance of or possible issuance of shares at some future date. There are generally three ways a corporation becomes obligated to issue stock, and these are shareholders' preemptive rights, subscriptions for shares, and stock rights and options. Preemptive rights, controlled by s. 607.077, F.S., come about when a shareholder is given the right to purchase additional shares to maintain his percentage of ownership in the corporation when the corporation is in the process of issuing more shares. This right must be provided in the articles of incorporation. Subscriptions for shares, provided for in s.

607.051, F.S., are typically used either before a corporation is formed or during the very early stages of existence. To be valid, a subscription must be in writing, signed by the subscriber, and the shares must be either fully paid for or some agreement as to installment of payments must have been reached. Stock rights and options differ from preemptive rights in that the holder of a stock right or option need not already own any shares of the corporation. Pursuant to s. 607.057, F.S., a corporation is authorized to create and issue the right or option to purchase shares at a given price. The stock rights and options provided by corporations of its own shares are typically used as incentives for officers and employees.

These various forms of stock issuance relate back to the internal makeup of a corporation in the manner of valuation of the corporation. Generally, a corporation has assets (property, cash, and inventory), liabilities (debts, accounts payable, and bonds), and equity (stated capital, capital surplus, and any excess in capital). The concerns dealt with in ch. 607, F.S., relate to a corporation's obligation and ability to maintain a proper balance between assets, liabilities, and equity for the benefit of creditors and shareholders in the event of liquidation or sale of a corporation. Such concerns are necessary as a corporation, unlike an individual, can easily be influenced by a large number of competing interests. For instance, while it is the shareholders who own the corporation, it is the board of directors who have the majority of control of what the shareholders own. Because the shareholders are often numerous, there is seldom much organization and consensus among the shareholders as a group, and this tends to dilute their ability to exercise what control they have in an effective manner. Additionally, a shareholder's interest in a corporation is characterized by that shareholder's investment, and the liability for corporate obligations is limited, to that investment (in most cases). Consequently, when the situation arises that a corporation is unable to cover its liabilities and cover the amount of the investment made by the shareholders, the interests of the board, the shareholders, and creditors conflict, and there is a great incentive for shareholders and creditors to exercise whatever power they may have to retrieve whatever is due each one. A great portion of ch. 607, F.S., is devoted to controlling the struggle for power primarily between the board and the shareholders but also between the corporation, the shareholders, and any creditors.

Chapter 607, F.S., provides the courts and the Department of State the authority necessary to resolve conflicts, require maintenance of certain records and standards of performance, and generally require the maintenance of the semblance of order necessary to conduct business and fulfill obligations with respect to corporate activities. These provisions are found scattered throughout ch. 607, F.S.

Aside from the litigation provisions in this chapter, the State, through the Department of State, has the authority to require, among other things, that a corporation maintain a principal or registered office, maintain a registered agent, file certain documents, use certain forms, pay certain fees, file certain reports on a continuing basis, answer interrogatories propounded by the Department of State, and apply for and receive certification or authorization to transact business in advance of any such transactions. Many of these provisions are found in the latter part of ch. 607, F.S., and they represent what is believed to be necessary for the Department of State to administer, where necessary, the rules relating to corporations designed for the protection of shareholders, creditors, and other corporations. The revenue collected for fiscal year 1987-1988 by the Division of

Corporations for corporate filings under ch. 607, F.S., was \$19,560,627.

Generally speaking, a corporation must incorporate by filing with the Department of State and must have a corporate name distinguishable from that of any other registered in the state pursuant to s. 607.024, F.S. A corporation must have and continuously maintain a registered office and registered agent in this state (whether the corporation is foreign or domestic) in accordance with ss. 607.034, 607.037, 607.324, and 607.325, F.S. A corporation must file an annual report with the Department of State between January 1 and July 1 of each year pursuant to s. 607.357, F.S. A corporation doing business in Florida must be available for service of process, notice, or demand on the corporation pursuant to ss. 607.041 and 607.327, F.S. A corporation must maintain certain books and records of accounts, meetings, shareholders, and financial status (including a balance sheet and profit and loss statement) in accordance with s. 607.157, F.S.

B. Effect of Proposed Changes:

The bill re-orders the sections in Florida's corporation code in accordance with the order provided by the Revised Model Business Corporation Act [hereinafter RMBCA], adopted by the American Bar Association in 1984. This facilitates reference to the RMBCA, for use of information found in the commentaries and case law in jurisdictions with an extensive and well-developed body of corporate law. This re-ordering also provides better organization for use by corporations, shareholders, accountants, attorneys, and other parties who may need to use this code.

Some substantive changes are made, but the majority of the changes are either technical in nature to increase efficiency in handling the affairs of a corporation or intended to clarify existing provisions to make the code easier to use and interpret.

Section 1 of the bill adjusts the short title provision to provide a better indication that this act is applicable to business corporations rather than nonbusiness types of corporations.

Section 3 deletes the requirement of notarization for filings as this has been found to be of little use. This section of the bill also requires typewritten documents for filing with the Department of State to alleviate problems with legibility.

Section 4 gives the Department of State the opportunity to require forms for an application for certificate of status, a foreign corporation's application for certificate of authority, a foreign corporation's application for certificate of withdrawal, and an annual report. The Department of State may request that other forms be used, but it may only require the four listed above.

Section 5 revises the fee requirements as recommended by the Department of State, and they reflect the charges necessary to cover the costs of processing the specific documents or requests.

Section 6 is an effort to bring the filing requirements together and locate these in one place in the chapter.

Section 7 creates a provision for correcting documents already filed.

Section 8 describes the filing duties of the Department of State with greater specificity.

Section 9 adds a provision for administrative remedies in addition to the review process in circuit court already provided for appeal from the Department of State's refusal to file a document.

Section 11 provides a procedure for obtaining a certificate from the Department of State declaring that a corporation is either in existence or authorized to transact business in Florida.

Section 12 adds a provision that is already available in s.817.155, F.S., making it a criminal offense to sign a false document. Additionally, a person who has detrimentally relied on a false document where the person signing knew it was false has been provided with a civil remedy offering direct relief under this chapter.

Section 14 adds certain definitions to reflect usage of terms under modern law, and some definitions have been deleted as they have become obsolete.

Section 15 expands the notice provisions to include other circumstances requiring notice. In the past, ch. 607, F.S., has dealt only with notice for shareholders' and directors' meetings.

Section 19 limits any action concerning liability for preincorporation transactions to those persons who did not have actual knowledge that there was no incorporation.

Sections 22 and 25 create provisions for emergency bylaws as well as emergency powers.

Section 31 makes provision for resignation of a registered agent.

Section 35 eliminates the concept of treasury shares, and instead such shares are simply treated as authorized but unissued shares.

Section 38 eliminates the concepts of par value, stated capital, and capital surplus as they no longer serve much of a purpose in modern corporate law. Perhaps the greatest effect of this change for Florida is with the documentary excise tax which is based on the par value at the time of initial issuance of stock. This basis of taxation can easily be changed. In any event, those corporations desiring to continue the use of par value may provide for this in the articles of incorporation.

Section 38 proposes a change to allow for the use of promissory notes as consideration for shares. Currently, the corporation code is unclear on this point, and if there has been a desire to prohibit the use of promissory notes as consideration for shares, it has been left unstated, and corporations have found alternatives to accept this form of consideration. Additionally, a change is proposed to permit the issuance of shares in exchange for a promise to render services in the future. This may presently be accomplished indirectly.

Section 40 makes a clear distinction between a share dividend and cash or property dividends. This is important because the basis for the issuance or payment of either of these is different and should be distinguished. The purpose of these changes is to clarify and simplify the requirements and purpose of these different forms of dividends.

Section 41 reflects a change concerning stock options or rights for directors, officers, and employees. Under the current law, these may be given "as an incentive to service," and this

provision is believed to be difficult to interpret leaving some potential for abuse.

Section 43 adds a provision for the use of shares without certificates. The U.C.C. currently provides for the issuance, registration, and transfer of such uncertificated shares.

Section 44 revises the restrictions on transfer of shares to provide that restraints may be included in the articles, bylaws, or shareholder agreements. Under current Florida law, such restraints may only be included in the articles.

Section 46 expands current Florida law concerning preemptive rights by providing a broad list of rules that are applicable where the articles of incorporation are silent. These rules are intended as guidelines that are not currently articulated.

Section 47 revises current law concerning a corporation's acquisition of its own shares by providing for all forms of repurchase, including nonredeemable shares, rather than just the redemption or purchase of redeemable shares. The elimination of the concept of treasury shares is also included here, and such shares are simply treated as authorized but unissued shares. An exception is made concerning the elimination of treasury shares for those shares in existence on June 30, 1990, in order that such shares held by corporations listed on the New York Stock Exchange may continue to be considered outstanding for listing purposes. Additionally, present law is clarified to provide that shares reacquired maintain any class designation but become undesignated as to series.

Section 48 goes beyond the regulation of dividends to expand the regulation to all distributions (which encompasses dividends and more). A distribution may include a purchase or redemption of shares and other seemingly indirect transfers. Additionally, this section establishes dates necessary to determine whether a director may have liability subject to subsequent claims by creditors and other claimants. This section also provides that shareholders may be considered to be in parity with general creditors with respect to indebtedness issued to such shareholders where the distribution made in the form of a debt instrument was made legitimately and pursuant to this section.

Section 49 adds a provision to the current law stating that failure to hold an annual meeting in the time required by the corporation's bylaws or this act does not invalidate any corporate action or cause a forfeiture or dissolution of the corporation.

Section 51 provides for court-ordered shareholders' meetings of shareholders and includes an enumeration of court powers.

Section 53 creates a provision providing that the purpose or purposes of an annual meeting need not be included in the notice of such meeting unless required by this act or the articles of incorporation.

Section 55 eliminates the provision requiring the record date be set a minimum of ten days prior to the meeting. The maximum time for the record date has been changed from 60 to 70 days before the meeting.

Section 56 eliminates the provision under current law for damages to shareholders where an officer of the corporation fails to produce a list of shareholders. A shareholder may, however, apply to a court to force compliance and postpone the meeting. This section makes clear that its scope is limited to a request by a shareholder of the list of shareholders for the

meeting and that such a request cannot be the basis for invalidation of action taken during the meeting.

Section 57 changes current law by permitting a corporation acting in a fiduciary capacity to vote its own shares. Current law requires that such shares not be counted as outstanding shares but does permit other fiduciaries (such as administrators, executors, guardians, conservators, or receivers) to vote shares. This section also eliminates the current provision relating to the voting rights of shareholders whose shares are pledged.

Section 59 creates a procedure that permits a corporation to recognize the beneficial owner of shares (banks, brokerage firms, for example) as the shareholder. The recognition may be limited.

Section 61 creates a new voting provision requiring that abstentions not be counted rather than counted as negative votes (as is currently done) to more accurately reflect shareholders' positions.

Section 62 creates a provision concerning quorum and voting requirements for class voting through voting groups.

Section 63 revises current law to provide for lesser as well as greater quorum or voting requirements for shareholders. Such requirements must be included in the articles of incorporation.

Section 64 adds a provision to provide for plurality voting for directors.

Section 65 modifies a shareholder's right, by requiring a proper purpose, to inspect a list of those shareholders and the number of shares owned in any voting trust. Disclosure requirements concerning identity of members of the voting trust and their respective shares participating in the voting trust have been included in this section to eliminate the possibility of creating secret combinations of shareholders through voting trusts for the purpose of acquiring control of a corporation.

Section 67 adds a provision permitting a court to dismiss a derivative proceeding where the good faith of the group bringing the suit cannot be shown.

In addition, this proposed revision requires a shareholder to make a demand on the board of directors before bringing a derivative action. For the purpose of bringing such an action, the shareholder must be able to establish that the demand was refused or ignored.

Section 71 creates a provision for election of directors by voting groups. This is indicated indirectly under current Florida law.

Section 73 changes the provision for staggered terms for directors by providing that directors may be divided into three classes rather than four. This brings the Florida provision in line with the New York Stock Exchange rule that permits listing for stock of those corporations whose board is divided into three or less classes.

Sections 74 and 76 create procedures for resignation of directors and the replacement of the resigned director either by the remaining directors or the shareholders.

Section 82 provides that the articles of incorporation may authorize a quorum of the board to consist of one-third of the directors.

Section 83 removes the limits imposed on committees of the board of directors concerning the power to designate candidates for the office of director.

Section 84 adds a provision to the existing duties of a director to permit a director, in the discharge of his duties, to consider social, economic, legal, or other factors on employees, suppliers, customers, the communities and society, and the economy of the state and the nation in making corporate decisions.

Section 88 adds a two-year statute of limitations for proceedings against directors for liability for unlawful distributions.

Section 89 simplifies the requirements for certain officers by providing that a corporation must have those officers required by the bylaws rather than specifying a president, secretary, and treasurer as does the current law.

Section 91 adds a provision for resignation of officers.

Section 98 creates a provision allowing directors to make minor amendments without shareholder action where these amendments do not affect substantive rights of the shareholders.

Section 99 adds a provision permitting the board of directors to condition adoption of amendments to the articles of incorporation by the shareholders on any basis.

Section 107 permits shareholders to amend the bylaws to provide for a greater quorum or voting requirement and such an amendment in a bylaw may not be amended or repealed by the board of directors. Such an amendment must be by a vote meeting that greater requirement.

Section 109 no longer recognizes consolidations as they are generally thought to be obsolete. The new provisions have been drafted to provide for mergers and share exchanges. Under these new provisions, the effective date may be set for any time after the filing of the articles of merger. Additionally, it is no longer required that changes in the articles of incorporation of the surviving corporation be set forth in the plan of merger.

Section 112 provides for a short form merger without shareholder vote where the "acquiring" corporation owns at least 80 percent of the outstanding shares of the corporation to be acquired. Current law permits this for a corporation owning at least 90 percent. This form of merger is permitted for a subsidiary merging into a parent corporation, a parent merging into a subsidiary, or a subsidiary merging into another subsidiary.

Section 116 creates a provision permitting the sale, lease, or exchange of all or substantially all a corporation's assets without shareholder approval if the transaction is in the usual and regular course of business. This should benefit corporations whose primary business involves the sale or lease of assets (real estate development, for example). For other corporations, a transaction involving all or substantially all assets would not be in the usual and regular course of business and therefore would not be permitted without shareholder approval.

Sections 119 and 120 represent some changes regarding those corporate actions giving rise to dissenters' rights for shareholders. Some efforts have been made to increase some of the existing rights given to dissenting shareholders.

Section 121 expands the provision for dissolution of a corporation by incorporators or directors by providing that dissolution may be permitted without shareholder action before commencement of business or before issuance of shares.

Sections 123, 128, and 134 change existing law with regard to dissolution of a corporation by providing that the articles of dissolution may be filed at the beginning of the "winding up" process rather than at the end which has been the Florida provision in the past.

Section 124 changes current law concerning revocation of dissolution by permitting filing of articles of revocation of dissolution after filing of articles of dissolution. Additionally, the proposed revision permits an authorization of dissolution to provide that revocation may be effected by action of the board alone.

Section 125 changes existing law by providing that directors, officers, and agents of voluntarily dissolved corporations will not incur personal liability based on their status with a dissolved corporation as distinguished from a non-dissolved corporation. This may be somewhat in conflict with existing Florida case law finding personal liability for officers, directors, or agents of an involuntarily dissolved (as opposed to voluntarily dissolved, as provided above) corporation for actions between the date of dissolution and reinstatement. This will most likely involve very different circumstances than a voluntary dissolution.

Section 126 revises the law with respect to claims of creditors against a dissolved corporation. A procedure is proposed to permit shareholders to benefit from a three year statute of limitations where the prescribed notice is given to known creditors. Under current Florida law, a corporation is required to notify all known creditors after the vote authorizing dissolution and before filing the articles of dissolution, and any action or proceeding must begin within three years of the date of dissolution.

Section 127 provides for administrative dissolution when the stated period of duration of a corporation expires.

Section 128 provides for additional requirements in an administrative dissolution by requiring that the grounds for dissolution be set forth in both the original notice and the dissolution certificate where it has only been required in the original notice in the past. A change in procedure has been made to permit commencement of administrative dissolution to be by mail rather than formal service for certain circumstances such as failure to file an annual report or maintain a registered agent or office.

Section 130 creates a provision to allow a corporation to appeal a denial of reinstatement.

Section 131 changes the provision for grounds for judicial dissolution from the current law to limit the state's powers to grounds that relate to compliance with and non-abuse of the fundamental aspects of corporate existence.

Section 136 adds a provision requiring a foreign corporation to obtain a certificate of authority prior to doing business in Florida.

Section 143 revises the procedure for changing a registered agent or office of a foreign corporation by requiring filing of a statement of change with the Department of State.

Section 147 imposes a 30-day limit on a foreign corporation operating without a registered agent or office where there has previously been no time limit.

Section 150 requires that a corporation keep certain records of corporate action and only maintain (as opposed to storing over time) accounting records. Under current law, accounting records must be kept for longer than just the current period.

Section 151 makes an addition with respect to inspection rights held by shareholders providing that a corporation may impose reasonable costs for copying on a requesting shareholder. Current Florida law is silent on this point. This section provides an absolute right for all shareholders to inspect and copy those records deemed basic to a person's status as a shareholder. This is an expansion of current law in that Florida law requires a showing of proper purpose and inspection is only available to shareholders meeting certain percentage and time of ownership requirements.

Section 154 requires a corporation to prepare a statement of cash flows in addition to a balance sheet and income statement.

Section 155 requires a corporation issuing or authorizing the issuance of shares for future services to report this in writing to shareholders including the number of shares and the consideration for those shares.

Section 156 modifies the requirements for providing the Department of State with an annual report by requiring that the information be current on the date the report is executed rather than December 31 preceding the filing.

Section 168 provides that this act shall take effect July 1, 1990.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

For corporations and other private parties using the corporation code, it will be necessary to adjust their method of handling filings and reporting to the extent this has been changed. For some corporations, such as large corporations, the adjustment should be minimal in that such corporations already prepare a host of accounting reports for large numbers of shareholders and to comply with federal securities laws. For smaller corporations, the burden will be greater at the beginning as they will need to modify some systems to some degree, and they may need to provide for some reports they have not needed in the past (such as statement of cash flows). Such changes should create only conversion costs rather than ongoing increased costs.

On the other hand, some savings may be experienced in light of the fact that par value and related concepts are no longer necessary. One of the purposes of this revision is to increase efficiency and provide a more workable code for today's corporate structure.

B. Government:

The Department of State, Division of Corporations, has indicated that these changes will not cause any increase or decrease in the filing fees collected.

The elimination of par value may require a change in the basis for taxation for the documentary excise tax imposed pursuant to s.201.05., F.S. There is currently a provision in this section for taxing shares that do not carry a par value as this is not

uncommon in issuing stock. In any event, the revenue generated by this tax does not represent a substantial amount.

III. COMMENTS:

As of February, 1989, the following states have either begun a review process, proposed legislation, or passed legislation based on the RMBCA: Alabama, Arkansas, Connecticut, Florida, Georgia, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin.

IV. AMENDMENTS:

None.

STORAGE NAME: s851-f.com
DATE: 06/14/89

HOUSE OF REPRESENTATIVES
COMMERCE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 851
RELATING TO: The Florida Business Corporation Act
SPONSOR(S): Commerce Committee
EFFECTIVE DATE: July 1, 1990
DATE BECAME LAW: June 27, 1989
CHAPTER #: 89-154, Laws of Florida
COMPANION BILL(S): CS/HB 1347
OTHER COMMITTEES OF REFERENCE: (1) Finance, Taxation & Claims
(2)

I. SUMMARY:

The committee substitute is a revision of the Florida Business Corporation Act, chapter 607, F.S. The revision is patterned after the Revised Model Business Corporation Act, which was developed in 1984. The CS seeks to reorganize as well as update the corporate law of Florida in order to conform the law to contemporary corporate practice. Essentially the committee substitute is a restatement of existing law.

Due to the complex subject matter of the committee substitute the staff analysis is organized according to a topical basis. Each section of the bill which proposed a change to present law is discussed within that framework.

PART I
GENERAL PROVISIONS
(Sections 1-15, Pages 3-15)

A. PRESENT SITUATION:

The Florida General Corporation Act (Act) requires each domestic and foreign corporation authorized to transact business in Florida to file with the Department of State (department) an annual report. The report must be duly executed and contain information as prescribed by law including the corporate name and address, the name and address of each officer and director, and the date of incorporation (s. 607.357, F.S.). The department also serves as the depository for other corporate documents for which filing fees are charged (s. 607.361, F.S.). In general,

the department has been granted the statutory power and authority necessary to administer the Act.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Renames the title as the "Florida Business Corporation Act," to more accurately reflect that the Act does not apply to nonbusiness corporations.

Section 3: Authorizes the filing of non-notarized corporate documents with the department.

Section 4: Authorizes the department to prescribe standardized forms for filing purposes.

Section 6: Consolidates the rules pertaining to the effective time and date of filed documents and permits a delayed effective date of up to 90 days after a document is filed. The bill also provides a 60 day grace period for the correcting of defective filings without losing the original effective date. The bill distinguishes between the filing of articles of incorporation and the commencement of corporate existence.

Section 7: Provides that a domestic or foreign corporation may correct a document filed by the department within 10 business days of filing the document if the document contains an incorrect statement or was defectively executed.

Section 8: Requires the department to return a document, which it refused to file, to the corporation within 15 days after the document was received for filing.

Section 9: Provides for an alternative method of judicial review when the department refuses to file a document.

Section 14: Provides definitions for various terms including "business day," "distribution," "principal office," and "record date."

**PART II
INCORPORATION
(Sections 16-22, Pages 17-20)**

A. PRESENT SITUATION:

One or more persons may act as the incorporator or incorporators of a corporation by signing and delivering articles of incorporation to the department (s. 607.161, F.S.). Corporate existence begins upon the filing of the articles of incorporation with the department, unless otherwise specified in the articles of incorporation (s. 607.167, F.S.). After corporate existence has begun, the board of directors must hold an organizational meeting for the purpose of adopting by laws, electing officers, and transacting business (s. 607.174, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 19: Provides that anyone acting on behalf of the corporation and having actual knowledge that there was no incorporation, will be jointly and severally liable for all liabilities created during such time.

Section 22: Authorizes the board of directors to adopt emergency bylaws to be effective only in the event of an emergency. An emergency exists if a quorum of the corporation's directors cannot assemble because of a catastrophic event.

**PART III
PURPOSES AND POWERS
(Sections 23-26, Pages 21-25)**

A. PRESENT SITUATION:

A corporation may be organized for any lawful purpose (s. 607.007, F.S.). Additionally, a corporation has statutorily enumerated powers including the power to have perpetual succession, to sue and be sued, and to purchase and convey property (s. 607.011, F.S.). No act of a corporation will be held invalid by reason of the fact that the corporation was without capacity to do such act (s. 607.021, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 25: Authorizes the board of directors, during an emergency, to modify lines of authority and relocate the principal office. During an emergency, notice of a meeting of the board of directors may be given in any practicable manner and officers present at the meeting may be deemed to be directors. Corporate action taken in good faith during an emergency is binding and may not be used to impose liability.

**PART IV
NAME
(Sections 27-29, Pages 26-27)**

A. PRESENT SITUATION:

The name of a corporation must contain the word "corporation," "company," or "incorporated," or such other word, abbreviation, affix, prefix, or suffix that will clearly indicate it is a corporation. The name of the corporation must be distinguishable from the names of all other entities registered in Florida (s. 607.024, F.S.).

B. EFFECT OF PROPOSED CHANGES:

The provisions of the committee substitute which pertain to the

corporate name are substantially similar to present law.

PART V
OFFICE AND AGENT
(Sections 30-32, Pages 28-31)

A. PRESENT SITUATION:

A corporation must have and continuously maintain in Florida a registered office and a registered agent. The registered agent may be an individual resident, a domestic corporation, or a foreign corporation authorized to transact business in Florida. The business office of the registered agent must be identical with the registered office of the corporation. A registered agent must file a statement in writing with the department accepting his appointment as a registered agent (s. 607.034, F.S.).

Each corporation must keep its registered office open from 10:00 a.m. to 12:00 p.m. each day except weekends and legal holidays. One or more agents on whom process may be served must be available in the office during such hours. The corporation must post a sign in the office in a conspicuous place designating the name of the corporation and the registered agent (s. 48.091, F.S.). A corporation may change its registered office or its registered agent by filing with the department a statement to that effect (s. 607.037, F.S.).

B. EFFECT OF PROPOSED CHANGES:

The provisions of the committee substitute which pertain to a corporation's registered office and registered agent are substantially similar to present law.

PART VI
SHARES AND DISTRIBUTIONS
(Sections 33-48, Pages 32-46)

A. PRESENT SITUATION:

A corporation has the power to create and issue the number of shares of stock stated in the articles of incorporation. Shares may be divided into one or more classes (i.e. preferred or common stock) (s. 607.044, F.S.). If provided by the articles of incorporation, preferred shares may be divided and issued in series (s. 607.047, F.S.). A corporation may also issue fractions of a share (s. 607.071, F.S.).

A subscription (or contract) for shares of a corporation yet to be organized is irrevocable for 6 months, unless otherwise provided by the terms of the agreement or unless all subscribers consent. A subscription is unenforceable unless it is in writing and signed by the subscriber (s. 607.051, F.S.).

Shares of stock may be issued by the corporation for consideration determined by the board of directors. In the absence of fraud, the judgment of the board of directors as to the value of the consideration received for shares is conclusive. However, future services may not constitute payment for the issuance of shares (s. 607.054, F.S.).

A holder of shares is under no obligation to the corporation or its creditors, other than the obligation to pay the full consideration for such shares (s. 607.074, F.S.). A corporation may issue rights or options entitling the shareholders to purchase shares of any class (s. 607.057, F.S.). Unless the articles provide otherwise, the board of directors may declare dividends on its shares in cash, property or its own shares, except when the corporation is insolvent or the payment of such dividends would render the corporation insolvent (s. 607.137, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 35: Eliminates the concept of treasury stock and confirms that any shares reacquired by the corporation are not considered outstanding.

Section 38: Eliminates the concepts of par value, stated capital and capital surplus. The bill expands the types of consideration currently acceptable for the issuance of shares. The board may authorize shares for consideration consisting of a benefit to the corporation, promissory notes, contracts for services to be performed and other securities of the corporation.

Section 40: Distinguishes between a share dividend and a cash or property dividend.

Section 41: Extends the discretion of the board of directors regarding consideration to stock rights and options.

Section 43: Authorizes the board of directors to issue shares of stock without certificates.

Section 44: Revises the restrictions on transfer of shares to provide that restraints may be included in the articles, bylaws, or shareholder agreements.

Section 46: Expands current law concerning preemptive rights by providing a list of rules that are applicable in the absence of contrary article provisions.

Section 47: Revises current law concerning a corporation's acquisition of its own shares by providing for all forms of repurchase, including nonredeemable shares, rather than just the redemption or purchase of redeemable shares. Eliminates the concept of treasury shares. Such shares are simply treated as authorized by unissued shares. Clarifies that shares reacquired retain their class or series characteristics.

Section 48: Expands the regulation of dividends to all distributions. A distribution is defined (see s. 14) to include a direct or indirect transfer of money or other property or the incurrence of indebtedness by a corporation for the benefit of its shareholders. Additionally, this section establishes dates necessary to determine whether a director may have liability subject to subsequent claims by creditors and other claimants. Parity is provided to the indebtedness issued to shareholders equal to that of general creditors.

PART VII
SHAREHOLDERS
(Sections 49-67, Pages 48-70)

A. PRESENT SITUATION:

Shareholders are the owners of the corporation through the acquisition of the corporation's stock. Shareholders have an interest in the performance of the corporation, although their participation in the affairs of the corporation is generally limited to exercising their right to vote on the election of directors, amendments to the articles of incorporation, and on fundamental changes in the corporation's structure and existence. Shareholders must meet at least annually at a place stated in the bylaws or, when not inconsistent with the bylaws, in the meeting notice. Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all shares entitled to vote at the meeting, or by such other persons authorized in the articles of incorporation or the bylaws (s. 607.084, F.S.).

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or in proxy, constitutes a quorum (s. 607.094, F.S.). Each outstanding share, regardless of class, is entitled to one vote on each matter. At an election of directors, cumulative voting may be authorized by the articles of incorporation (s. 607.097, F.S.). Cumulative voting allows a shareholder to give to one or more candidates as many votes as the number of directors to be elected multiplied by the number of his shares. Shareholders may create a voting trust for the purpose of conferring upon a trustee the right to vote their shares for a period not to exceed 10 years (s. 607.104, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 49: Provides that annual shareholder meetings will be held at a corporation's principle office if not stated or fixed in the bylaws. Failure to hold the annual meeting at the stated time will not invalidate any corporate action or cause a forfeiture or dissolution of the corporation.

Section 51: Provides for court-ordered shareholders' meetings in certain circumstances. The court may determine those shareholders entitled to participate in a special meeting.

Section 53: Authorizes a corporation to hold an annual meeting without specifying the purpose for the meeting.

Section 54: Provides that attendance at a meeting waives objection to the consideration of a particular matter that is not within the purpose or purposes of the meeting notice, unless the shareholder objects to the consideration of the matter when presented.

Section 55: Provides that the board may set a "future date" as the record date. The record date is the date on which a person must be registered in the stock book of a corporation in order to vote on company officers.

Section 56: Eliminates the provision under current law for damages to shareholders where an officer of the corporation fails to produce a list of shareholders. A shareholder may, however, apply to a court to force compliance and postpone the meeting.

Section 57: Authorizes a corporation acting in a fiduciary capacity to vote its own shares. Eliminates the current provision relating to the voting rights of shareholders whose shares are pledged.

Section 59: Creates a procedure that permits a corporation to recognize the beneficial owner of shares as the shareholder. The recognition may be limited.

Section 60: Establishes guidelines that prevent a corporation, its officers and agents to accept written instruments as evidence of action by its shareholders.

Section 61: Creates the practice of counting favorable votes against negatives in approving a shareholder action. Abstentions are treated as neutral rather than negative.

Section 62: Authorizes class voting through the concept of voting groups.

Section 63: Revises current law to provide for lesser as well as greater quorum or voting requirements for shareholders. Such requirements must be included in the articles of incorporation.

Section 65: Modifies a shareholder's right, by requiring a proper purpose, to inspect a list of those shareholders and the number of shares owned in any voting trust.

Section 67: Authorizes the court to dismiss a derivative proceeding, if a designated group has made a determination in good faith, after conducting a reasonable investigation, that the maintenance of the suit is not in best interests of the corporation. The group making the determination will consist of independent directors or independent persons appointed by the court.

PART VIII
DIRECTORS AND OFFICERS
(Sections 68-93, Pages 72-88)

A. PRESENT SITUATION:

All corporate powers are exercised by the board of directors, except as provided by law or the articles of incorporation. A director of a Florida corporation can be a nonresident and nonshareholder. A director is charged to perform his duties in good faith and in a manner in which he reasonably believes to be in the best interests of the corporation (s. 607.111, F.S.). A director is not personally liable for monetary damages for any corporate action unless he breached or failed to perform his duties and the breach or failure to perform constituted a violation of criminal law, or another statutorily specified activity (s. 607.1645, F.S.).

Meetings of the board of directors may be held out-of-state. Regular meetings of the board of directors may be held with or without notice, as prescribed in the bylaws. Written notice as to the time and place of special meetings must be given to each director at least two days before the meeting unless the bylaws provide otherwise (s. 607.131, F.S.).

The officers of a corporation consist of a president, a secretary and a treasurer. Officers are elected by the board of directors. Officers perform management duties as provided by the bylaws or determined by a resolution of the board (s. 607.151, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 71: Authorizes the election of directors by voting groups.

Section 73: Revises the provision for staggered terms for directors by providing that directors may be divided into three classes rather than four. This brings the Florida provision in line with the New York Stock Exchange rule that permits listing for stock of those corporations whose board is divided into three or less classes.

Section 74: Creates procedures for resignation of directors and the replacement of the resigned director.

Section 76: Provides that a vacancy on the board may be filled by either a vote of the remaining directors or the shareholders.

Section 82: Provides that the articles of incorporation may authorize a quorum of the board to consist of one-third of the directors.

Section 83: Removes the limits imposed on committees of the

board of directors concerning the power to designate candidates for the office of director.

Section 84: Identifies factors that a director may consider in performing his duties.

Section 88: Provides a two-year statute of limitations for proceedings against directors for unlawful distributions.

Section 89: Provides that a corporation will have the officers described in its bylaws or appointed by the board of directors. There is no longer a requirement for specific officers.

**PART IX
AFFILIATED TRANSACTIONS
AND CONTROL-SHARE ACQUISITIONS
(Sections 94-96, Pages 95-115)**

A. PRESENT SITUATION:

An affiliated transaction is a merger or consolidation of the corporation or any subsidiary of the corporation with an interested shareholder or a corporation which is an affiliate or associate of the interested shareholder. An affiliated transaction also includes a sale or other disposition of a specified financial amount with an interested shareholder or subsidiary (s. 607.108, F.S.).

A control share acquisition is an acquisition by a person of the ownership or power entitling such person to direct the exercise of voting power of issued and outstanding control shares. Control shares are shares which would enable a person to exercise voting power of the issuing corporation in the election of directors within a designated range of voting power (s. 607.109, F.S.).

B. EFFECT OF PROPOSED CHANGES:

The provisions of the committee substitute which pertain to affiliated transactions and control share acquisitions are substantially similar to present law.

**PART X
AMENDMENT OF ARTICLES OF
INCORPORATION AND BYLAWS
(Sections 97-108, Pages 117-125)**

A. PRESENT SITUATION:

A corporation may amend its articles of incorporation provided the amendment contains a provision which could have been contained in the original articles filed at the time of making the amendment. Through the amendatory process a corporation can change its name, its period of duration, its corporate purposes

and the number of shares it has authority to issue (s. 607.177, F.S.).

If no shares have been issued, an amendment to the articles can be adopted by a vote of the majority of directors. However, once shares have been issued, the articles of amendment must be adopted by a vote of the shareholders. An amendment can also be adopted by a written statement agreed to by all of the directors and shareholders (s. 607.181, F.S.).

Articles of amendment must be executed by the corporation and delivered to the department (s. 607.187, F.S.). The amendment becomes effective upon the filing of the articles of amendment to the department (s. 607.191, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 99: Authorizes the board of directors to condition the adoption of amendments to the articles of incorporation by the shareholders.

Section 107: Permits shareholders to amend the bylaws to provide for a greater quorum or voting requirement. Such an amendment may not be amended or repealed by the board of directors.

**PART XI
MERGER AND SHARE EXCHANGE
(Sections 109-115, Pages 126-135)**

A. PRESENT SITUATION:

Two or more domestic corporations may merge into one corporation pursuant to a plan of merger. The plan of merger must be approved by the board of directors of each corporation. The plan of merger must state the names of the corporation, the terms of the merger, the basis of converting the shares of each corporation and any effected changes in the articles of incorporation of the surviving corporation (s. 607.214, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 109: Provides for mergers and share exchanges. Consolidations are no longer recognized as a separate form of amalgamation. The effective date of a merger may be set at any time after the filing of the articles of merger. There is no explicit requirement for the contents of the articles of merger.

Section 112: Provides for a short form merger without

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shareholder vote where the "acquiring" corporation owns at least 80 percent of the outstanding shares of the corporation to be acquired. Current law permits this for a corporation owning at least 90 percent. This form of merger is permitted for a subsidiary merging into a parent corporation, a parent merging into a subsidiary, or a subsidiary merging into another subsidiary.

PART XII
SALE OF ASSETS
(Sections 116-117, Page 137)

A. PRESENT SITUATION:

Unless otherwise provided by the articles of incorporation, the mortgage or pledge of corporate property for the purpose of securing payment or performance of a contract may be made upon terms and conditions authorized by the board of directors. Shareholder authorization or consent is not required (s. 607.237, F.S.). A sale, lease, or disposition of the property of a corporation may be made upon the terms and conditions as authorized by a vote of the shareholders. However, the board may abandon the transaction without shareholder approval (s. 607.241, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 116: Creates a provision permitting the sale, lease, or exchange of all or substantially all of a corporation's assets without shareholder approval if the transaction is in the usual and regular course of business. This should benefit corporations whose primary business involves the sale or lease of assets.

PART XIII
DISSENTERS RIGHTS
(Sections 118-120, Pages 140-143)

A. PRESENT SITUATION:

Shareholders have the right to dissent from any corporate plan of merger or consolidation or any sale or exchange of all or substantially all of the corporate property or the approval of a control share acquisition. Shareholders are not entitled to a right of dissent if the corporation's stock is registered on a national securities exchange or held of record by 2,000 or more shareholders. Additionally, there are no dissenter's rights for sales pursuant to a court order, cash sales when net proceeds will be distributed within one year and for shareholders of a surviving corporation in a merger if a vote of its shareholders

is not necessary to authorize the merger (s. 607.244, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 118: Provides definitions for sections 119 and 120 of the terms "corporation," "fair value," and "shareholders authorization date."

Section 119: Authorizes a corporation to set forth in its articles of incorporation any other corporate action for which a voting or nonvoting shareholder may be granted dissenter's rights.

Section 120: Codifies that the corporation must give notice to shareholders as to their dissenter's rights. Also, clarifies that shareholders will receive notice of their dissenter's rights if the action is authorized by written consent.

**PART XIV
DISSOLUTION
(Sections 121-135, Pages 149-167)**

A. PRESENT SITUATION:

A corporation which has not commenced business and issued any shares may be voluntarily dissolved by the incorporator before the organizational meeting. After the organizational meeting a director may voluntarily dissolve such a corporation (s. 607.251, F.S.). A corporation may also be voluntarily dissolved by written consent of all of its shareholders (s. 607.254, F.S.). Finally, a corporation may be voluntarily dissolved by the act of the corporation if a majority of shareholders adopt a resolution to that effect. Upon the adoption of such a resolution the corporation must file articles of dissolution with the department.

A corporation may be dissolved involuntarily by the court in an action filed by the Department of Legal Affairs if it procured its articles of incorporation through fraud, has exceeded its authority, transacted business in an illegal manner, or has abused its powers (s. 607.271, F.S.).

A corporation may also be dissolved involuntarily by the department if the corporation has failed to:

1. file its annual report;
2. appoint a registered agent;
3. file a notice of change of registered office or agent; or

4. answer truthfully interrogatories propounded by the department.

B. EFFECT OF PROPOSED CHANGES:

Section 121: Provides that dissolution may be permitted without shareholder action before commencement of business or issuance of shares.

Section 123: Provides that the articles of dissolution may be filed at the beginning of the dissolution process rather than at the end.

Section 124: Revises revocation of dissolution by permitting the filing of articles of revocation of dissolution after the filing of articles of dissolution. Additionally, an authorization of dissolution may provide that revocation may be effected by action of the board alone.

Section 125: Provides that directors, officers, and agents of voluntarily dissolved corporations will not incur personal liability based on their status with a dissolved corporation as distinguished from a non-dissolved corporation.

Section 126: Creates a procedure that permits shareholders to benefit from a three year statute of limitations following the effective date of dissolution.

Section 127: Provides for administrative dissolution when the stated period of duration of a corporation expires.

Section 128: Provides for additional requirements in an administrative dissolution by requiring that the grounds for dissolution be set forth in both the original notice and dissolution certificate. Permits commencement of administrative dissolution by mail rather than formal service, under certain circumstances.

Section 130: Creates a provision to allow a corporation to appeal a denial of reinstatement.

Section 131: Revises the grounds for judicial dissolution. The court may dissolve a corporation in a proceeding by the Department of Legal Affairs if it is established that: 1. the corporation obtained its articles through fraud; 2. the corporation has continued to exceed or abuse its authority; or 3. the corporation continues to retain a director, officer, or registered agent who has been convicted of a drug related felony.

**PART XV
FOREIGN CORPORATIONS
(Sections 136-149, Pages 167-180)**

A. PRESENT SITUATION:

No foreign corporation has the right to transact business in Florida until it has filed an application to do so with the department (s. 607.304, F.S.). If a foreign corporation changes its name or its purpose it must make application to the department within 30 days (s. 607.337, F.S.).

Each foreign corporation authorized to transact business in Florida must continuously maintain in the state a registered office and a registered agent (s. 607.324, F.S.). A foreign corporation authorized to transact business in Florida may withdraw from the state upon filing an application for withdrawal with the department (s. 607.341, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 136: Clarifies that obtaining a certificate of authority is a prerequisite to doing business in Florida.

Section 143: Revises the procedure for changing a registered agent or office of a foreign corporation.

Section 147: Authorizes the department to revoke a foreign corporation's certificate of authority if the corporation is without a registered agent for 30 days or fails to notify the department of a material change regarding its registered office and agent within 30 days of such change.

**PART XVI
RECORDS AND REPORTS
(Sections 150-156, Pages 181-188)**

A. PRESENT SITUATION:

Every corporation is required to keep correct and complete books and records as well as minutes of the proceedings of its shareholders. A record of the names and addresses of all shareholders must be kept at the corporation's registered office, principal place of business, or office of its transfer agent (s. 607.157, F.S.).

B. EFFECT OF PROPOSED CHANGES:

Section 150: Requires that a corporation keep certain records of corporate action and only maintain (as opposed to storing over time) accounting records.

Section 151: Revises inspection rights held by shareholders. Provides an absolute right for all shareholders to inspect and copy those records deemed basic to a person's status as a shareholder.

Section 154: Requires a corporation to prepare a statement of cash flows in addition to a balance sheet and income statement.

Section 155: Requires a corporation issuing or authorizing the

authorized and the consideration for those shares.

PART XVII
MISCELLANEOUS PROVISIONS
(Sections 157-168, Pages 190-204)

Section 157: Provides that the provisions of the bill apply to all domestic corporations in existence on the effective date of the act.

Section 158: Provides that the provisions of the bill apply to foreign corporations authorized to transact business in Florida on the effective date of the act. However, such corporations are not required to obtain a new certificate of authority.

Section 159: Provides that the provisions of the bill apply to commerce with foreign nations as permitted by the United States Constitution.

Section 160: Requirements are set forth for the domestication of a non-United States corporation.

Section 161: Sets forth procedures for the conversion of a for-profit corporation that is engaged solely in carrying out professional services to a professional service corporation.

Section 162: Recreates the Corporations Trust Fund within the Division of Corporations of the Department of State.

Section 163: Provides estoppel (i.e. anyone acting as a corporation may not use lack of legal organization as a defense to an action against them as a corporation).

Section 164: Provides that the repeal of a statute by the act does not effect any action taken before its repeal.

Section 165: Provides the duties and responsibilities of a registered agent.

Section 166: Repeals the provisions of chapter 607.

Section 167: Provides a severability clause.

Section 168: Provides an effective date of July 1, 1990, except for section 84 which will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

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

The elimination of par value may result in a positive fiscal impact on state revenue. Currently, there exists a documentary excise tax on each original issue of stock. The tax rate is .15 per \$100 of face (par) value or .15 per \$100 of the actual value when the certificate is issued without face (par) value. By eliminating par value all stock will be issued at actual value and taxed accordingly.

In the event actual value exceeds par value there should be a positive fiscal impact. The exact amount is unknown at this time.

2. Recurring or Annualized Continuation Effects:

The effect of eliminating the concept of par value in 1. above will have a recurring effect with every new issuance of stock.

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

The Department of State has advised that the bill should have no fiscal impact on their operations.

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:

Corporations authorized to do business in Florida may incur certain administrative expenses in complying with the reporting requirements.

2. Direct Private Sector Benefits:

Corporations authorized to do business in Florida will enjoy the benefits of the updated law which is better organized and more compatible with modern business practices.

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

The revised law may attract more corporations to do business in Florida. Employment markets may benefit as more companies transact business in Florida.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

To the extent the committee substitute may foster economic growth, it is consistent with the State Comprehensive Plan (s. 187.201(22), F.S.).

IV. COMMENTS:

By updating Florida's corporation law the committee substitute furthers those policies in the House Policy Statement relating to assisting business expansion.

V. LEGISLATIVE HISTORY:

A. ENACTED BILL:

Senate Bill 851 was prefiled on 3/31/89. The bill was reported favorably on 5/8/89 by the Commerce Committee as a committee substitute (SJ 00293). The bill was then referred to the Committee on Finance, Taxation & Claims where it was withdrawn on 5/18/89 (SJ 00399) and placed on the calendar. The bill passed the Senate on 5/29/89 by a vote of 38-0 (SJ 00552). On 5/31/89, the bill was placed on the House Calendar and passed by a vote of 109-3 (HJ 00946). On 6/12/89, the bill was presented to the Governor.

B. DISPOSITION OF COMPANION:

House Bill 1347 was prefiled by Representatives Trammell and L. Diaz-Balart on 3/24/89. On 5/1/89, the bill was reported by the Commerce Committee as a committee substitute (HJ 00338). The bill was withdrawn from the Committee on Finance & Taxation on 5/9/89 (HJ 00432). The bill was then withdrawn from the Appropriations Committee on 5/19/89 (HJ 00548) and placed on the calendar. On 6/3/89, CS/HB 1347 died on the calendar.

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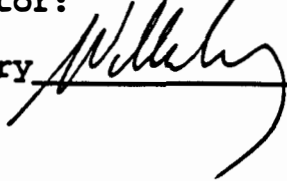
VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Robert A. Henderson 

Staff Director:

William Leary 

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:
