



House of Representatives

General Assembly

File No. 513

January Session, 2001

Substitute House Bill No. 6890

House of Representatives, April 30, 2001

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BUSINESS CORPORATIONS AND NONSTOCK CORPORATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (6) of section 33-602 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (6) "Deliver" or "delivery" means any method of delivery used in
4 conventional commercial practice including delivery by hand, mail,
5 commercial delivery and electronic transmission.

6 Sec. 2. Subdivision (10) of section 33-602 of the general statutes is
7 repealed and the following is substituted in lieu thereof:

8 (10) "Electronic transmission" or "electronically transmitted" means
9 any process of communication not directly involving the physical
10 transfer of paper that is suitable for the retention, retrieval and
11 reproduction of information by the recipient. [and which does not
12 directly involve the physical transfer of paper.]

13 Sec. 3. Subdivision (27) of section 33-602 of the general statutes is
14 repealed and the following is substituted in lieu thereof:

15 (27) "Sign" or "signature" includes any manual, facsimile, [or]
16 conformed or electronic signature.

17 Sec. 4. Section 33-603 of the general statutes is repealed and the
18 following is substituted in lieu thereof:

19 (a) Notice under sections 33-600 to 33-998, inclusive, as amended by
20 this act, shall be in writing unless oral notice is reasonable under the
21 circumstances. [Written notice includes notice by electronic
22 transmission.] Notice by electronic transmission is written notice.

23 (b) Notice may be communicated in person, by mail or other
24 method of delivery, or by telephone, voice mail or other electronic
25 means. If these forms of personal notice are impracticable, notice may
26 be communicated by a newspaper of general circulation in the area
27 where published or by radio, television or other form of public
28 broadcast communication.

29 (c) Written notice by a domestic or foreign corporation to its
30 shareholder, if in a comprehensible form, is effective (1) upon deposit
31 in the United States mail, [as evidenced by the postmark,] if mailed
32 postage prepaid and correctly addressed to the shareholder's address
33 shown in the corporation's current record of shareholders, or (2) when
34 electronically transmitted to the shareholder in a manner authorized
35 by the shareholder.

36 (d) Written notice to a domestic or foreign corporation authorized to
37 transact business in this state may be addressed to its registered agent
38 at its registered office or to the corporation or its secretary at its
39 principal office shown in its most recent annual report or, in the case of
40 a foreign corporation that has not yet delivered an annual report, in its
41 application for a certificate of authority.

42 (e) Except as provided in subsection (c) of this section, written
43 notice, if in a comprehensible form, is effective at the earliest of the
44 following: (1) When received; (2) five days after its deposit in the
45 United States mail, if mailed postage prepaid and correctly addressed;
46 or (3) on the date shown on the return receipt, if sent by registered or
47 certified mail or a commercial delivery service, return receipt
48 requested, and the receipt is signed by or on behalf of the addressee.

49 (f) Oral notice is effective when communicated if communicated in a
50 comprehensible manner.

51 (g) If sections 33-600 to 33-998, inclusive, as amended by this act,
52 prescribe notice requirements for particular circumstances, those
53 requirements govern. If a certificate of incorporation or bylaw
54 prescribes notice requirements, not inconsistent with this section or
55 other provisions of said sections, those requirements govern.

56 (h) In computing the period of time of any notice required or
57 permitted to be given by sections 33-600 to 33-998, inclusive, as
58 amended by this act, or under the provisions of the certificate of
59 incorporation or bylaws of a corporation or of a resolution of
60 shareholders or directors, the day on which the notice is given shall be
61 excluded, and the day on which the matter noticed is to occur shall be
62 included, in the absence of a contrary provision.

63 Sec. 5. Section 33-608 of the general statutes is repealed and the
64 following is substituted in lieu thereof:

65 (a) A document shall satisfy the requirements of this section, and of
66 any other section that adds to or varies from these requirements, to be
67 entitled to filing by the Secretary of the State.

68 (b) Sections 33-600 to 33-998, inclusive, as amended by this act, shall
69 require or permit filing the document in the office of the Secretary of
70 the State.

71 (c) The document shall contain the information required by sections
72 33-600 to 33-998, inclusive, as amended by this act. It may contain
73 other information as well.

74 (d) The document shall be typewritten or printed or, if [authorized
75 by the Secretary of the State,] electronically transmitted, in a format
76 that can be retrieved or reproduced in typewritten or printed form.

77 (e) The document shall be in the English language. A corporate
78 name need not be in English if written in English letters or Arabic or
79 Roman numerals, and the certificate of existence required of foreign
80 corporations need not be in English if accompanied by a reasonably
81 authenticated English translation.

82 (f) The document shall be executed: (1) By the chairman of the board
83 of directors of a domestic or foreign corporation, by its president or by
84 another of its officers; (2) if directors have not been selected or the
85 corporation has not been formed, by an incorporator; or (3) if the
86 corporation is in the hands of a receiver, trustee or other court-
87 appointed fiduciary, by that fiduciary.

88 (g) The person executing [a] the document shall [, if the document is
89 typewritten or printed,] sign it and state beneath or opposite [his] such
90 person's signature [his] such person's name and the capacity in which
91 [he] such person signs. [or, if the document is electronically
92 transmitted, affirm and authenticate the execution of the document in
93 such manner as the Secretary of the State may prescribe as effective for
94 those purposes.] The document may but need not contain [: (1) The
95 corporate seal, (2) an attestation by the secretary or an assistant
96 secretary, (3) an acknowledgment, verification or proof] a corporate
97 seal, attestation, acknowledgment or verification.

98 (h) If the Secretary of the State has prescribed a mandatory form for
99 the document under section 33-609, the document shall be in or on the
100 prescribed form.

101 (i) The document shall be delivered to the office of the Secretary of
102 the State for filing. Delivery may be made by electronic transmission if
103 and to the extent permitted by the Secretary of the State. If the
104 document is filed in typewritten or printed form and not electronically
105 transmitted, the Secretary of the State may require one exact or
106 conformed copy to be delivered with the document, except as
107 provided in sections 33-662 and 33-928.

108 (j) When the document is delivered to the office of the Secretary of
109 the State for filing, [the document shall be accompanied by] the correct
110 filing fee, and any franchise tax, license fee or penalty required to be
111 paid therewith by sections 33-600 to 33-998, inclusive, as amended by
112 this act, or other law [, unless provision has been made for payment in
113 the manner prescribed] must be paid or provision for payment made
114 in a manner permitted by the Secretary of the State.

115 (k) When any document is required or permitted to be filed or
116 recorded as provided in sections 33-600 to 33-998, inclusive, as
117 amended by this act, the Secretary of the State may in [his] the
118 Secretary of the State's discretion, for good cause, permit a photostatic
119 or other photographic copy of such document to be filed or recorded in
120 lieu of the original instrument. Such filing or recording shall have the
121 same force and effect as if the original instrument had been so filed or
122 recorded.

123 Sec. 6. Subsection (a) of section 33-610 of the general statutes is
124 repealed and the following is substituted in lieu thereof:

125 (a) Except as provided in subsection (b) of this section and
126 subsection (c) of section 33-611, as amended by this act, a document
127 accepted for filing is effective: (1) At the date and time of filing, [on the
128 date it is filed, as evidenced by the Secretary of the State's date and
129 time endorsement on the original document or, when the document is
130 electronically transmitted, as evidenced by electronic means prescribed
131 by the Secretary of the State] as evidenced by such means as the

132 Secretary of the State may use for the purpose of recording
133 [electronically] the date and time of filing; or (2) at the time specified in
134 the document as its effective time on the date it is filed.

135 Sec. 7. Section 33-611 of the general statutes is repealed and the
136 following is substituted in lieu thereof:

137 (a) A domestic or foreign corporation may correct a document filed
138 by the Secretary of the State if (1) the document [(1)] contains an
139 [incorrect statement or (2)] inaccuracy, (2) the document was
140 defectively executed, attested, sealed, verified or acknowledged, or (3)
141 the electronic transmission was defective.

142 (b) A document is corrected: (1) By preparing a certificate of
143 correction that (A) describes the document, including its filing date, or
144 attaches a copy of it to the certificate, (B) specifies the [incorrect
145 statement and the reason it is incorrect or the manner in which the
146 execution was defective] inaccuracy or defect to be corrected, and (C)
147 corrects the [incorrect statement or defective execution] inaccuracy or
148 defect; and (2) by delivering the certificate to the Secretary of the State
149 for filing.

150 (c) A certificate of correction is effective on the effective date of the
151 document it corrects except as to persons relying on the uncorrected
152 document and adversely affected by the correction. As to those
153 persons, a certificate of correction is effective when filed.

154 Sec. 8. Section 33-740 of the general statutes is repealed and the
155 following is substituted in lieu thereof:

156 [(a)] The certificate of incorporation may provide for staggering the
157 terms of directors by dividing the total number of directors into up to
158 five groups, with each group containing approximately the same
159 percentage of the total, as near as may be. In that event, the terms of
160 directors in the first group expire at the first annual shareholders'

161 meeting after their election, the terms of the second group expire at the
162 second annual shareholders' meeting after their election, the terms of
163 the third group, if any, expire at the third annual shareholders'
164 meeting after their election, the terms of the fourth group, if any,
165 expire at the fourth annual shareholders' meeting after their election
166 and the terms of the fifth group, if any, expire at the fifth annual
167 shareholders' meeting after their election. At each annual shareholders'
168 meeting held thereafter, directors shall be chosen for a term of two
169 years, three years, four years or five years, as the case may be, to
170 succeed those whose terms expire.

171 [(b) If a corporation has cumulative voting pursuant to section 33-
172 712, this section shall apply only if there are at least three directors in
173 each group.]

174 Sec. 9. Section 33-749 of the general statutes is repealed and the
175 following is substituted in lieu thereof:

176 (a) [Unless the certificate of incorporation or a bylaw provides
177 otherwise] Except to the extent that the certificate of incorporation or
178 bylaws specifically require that action by the board of directors be
179 taken only at a meeting, action required or permitted by sections 33-
180 600 to 33-998, inclusive, as amended by this act, to be taken [at a board
181 of directors' meeting] by the board of directors may be taken without a
182 meeting if [the action is taken by all members of the board. The action
183 shall be evidenced by one or more written consents describing the
184 action taken, signed by each director, and included in the minutes or
185 filed with the corporate records reflecting the action taken] each
186 director signs a consent describing the action taken or to be taken and
187 delivers it to the corporation.

188 (b) Action taken under this section is [effective when the last
189 director signs the consent, unless the consent specifies a different
190 effective date] the act of the board of directors when one or more
191 consents signed by all the directors are delivered to the corporation.

192 The consent may specify the time at which the action taken thereunder
193 is to be effective. A director's consent may be withdrawn by a
194 revocation signed by the director and delivered to the corporation
195 prior to delivery to the corporation of unrevoked written consents
196 signed by all the directors.

197 (c) A consent signed under this section has the effect of action taken
198 at a meeting [vote] of the board of directors and may be described as
199 such in any document.

200 Sec. 10. Section 33-753 of the general statutes is repealed and the
201 following is substituted in lieu thereof:

202 (a) Unless sections 33-600 to 33-998, inclusive, as amended by this
203 act, the certificate of incorporation or [a bylaw provides] the bylaws
204 provide otherwise, a board of directors may create one or more
205 committees and appoint one or more members of the board of
206 directors to serve on [them. Each committee shall have two or more
207 members, who serve at the pleasure of the board of directors] any such
208 committee.

209 (b) [The] Unless sections 33-600 to 33-998, inclusive, as amended by
210 this act, provide otherwise, the creation of a committee and
211 appointment of members to it shall be approved by the greater of (1) a
212 majority of all the directors in office when the action is taken, or (2) the
213 number of directors required by the certificate of incorporation or
214 bylaws to take action under section 33-752.

215 (c) (1) In the case of a corporation with at least one hundred
216 shareholders which is not otherwise required to have an audit
217 committee under federal law or regulation or the regulation of a
218 national securities exchange registered under the Securities Exchange
219 Act of 1934, as amended, the board of directors shall, in the manner
220 provided in subsection (b) of this section, whether or not the bylaws
221 provide for such a committee, designate two or more directors to

222 constitute an audit committee, at least one of whom shall be
223 independent, if the board of directors includes an independent
224 director. A director shall be deemed to be "independent" unless (A)
225 such director, or any spouse, parent or child of such director, or any
226 other corporation, firm or organization in which such director or any
227 such spouse, parent or child has a substantial interest, or any
228 combination thereof, has or at any time during the last two fiscal years
229 of the corporation has had one or more of the following relationships:
230 (i) That of officer or employee of the corporation or of any other
231 corporation, firm or organization which owns a ten per cent or more
232 debt or equity interest in the corporation or in which the corporation
233 owns a ten per cent or more debt or equity interest; (ii) that of
234 ownership of ten per cent or more of the debt or equity of the
235 corporation; or (iii) that of a business or professional relationship with
236 the corporation, other than by reason of the directorship itself, where
237 the amount involved in all transactions which result from such
238 relationship during any fiscal year of the corporation exceeds forty
239 thousand dollars, or where the amount derived from transactions
240 directly between the corporation and such director or such spouse,
241 parent or child exceeds five per cent of such director's annual income,
242 or (B) such director serves as an independent director on the boards of
243 directors of more than five corporations. (2) The audit committee shall
244 perform such functions as the bylaws or a resolution of the board of
245 directors of the corporation may provide, except that if any such
246 corporation engages or proposes to engage an independent public
247 accountant to review the preparation of and render reports on the
248 financial statements of the corporation, notwithstanding any
249 provisions of the bylaws or such resolution, the audit committee shall
250 review, evaluate and advise the board of directors with respect to (A)
251 the proposed engagement and any succeeding engagement of the
252 accountant or any successor, and (B) the functions performed by the
253 accountant pursuant to the terms of the accountant's engagement.

254 (d) The provisions of sections 33-748 to 33-752, inclusive, [shall be

255 applicable] as amended by this act, apply both to committees of the
256 board and their members.

257 (e) To the extent specified by the board of directors or in the
258 certificate of incorporation or bylaws, each committee may exercise the
259 [authority] powers of the board of directors under section 33-735.

260 (f) A committee may not, however: (1) Authorize or approve
261 distributions, except according to a formula or method, or within
262 limits, prescribed by the board of directors; (2) approve or propose to
263 shareholders action that sections 33-600 to 33-998, inclusive, as
264 amended by this act, require be approved by shareholders; (3) fill
265 vacancies on the board of directors or, subject to subsection (h) of this
266 section, on any of its committees; [(4) amend the certificate of
267 incorporation pursuant to section 33-796; (5)] or (4) adopt, amend or
268 repeal bylaws. [; (6) approve a plan of merger not requiring
269 shareholder approval; (7) authorize or approve reacquisition of shares,
270 except according to a formula or method prescribed by the board of
271 directors; or (8) authorize or approve the issuance or sale or contract
272 for sale of shares, or determine the designation and relative rights,
273 preferences and limitations of a class or series of shares, except that the
274 board of directors may authorize a committee or a senior executive
275 officer of the corporation to do so within limits specifically prescribed
276 by the board of directors.]

277 (g) The creation of, delegation of authority to, or action by a
278 committee does not alone constitute compliance by a director with the
279 standards of conduct described in section 33-756.

280 (h) The board of directors may appoint one or more directors as
281 alternate members of any committee to replace any absent or
282 disqualified member during the member's absence or disqualification.
283 If authorized by the certificate of incorporation, the bylaws or the
284 resolution creating the committee, in the event of the absence or
285 disqualification of a member of a committee, the member or members

286 present at any meeting and not disqualified from voting, unanimously,
287 may appoint another director to act in place of the absent or
288 disqualified member.

289 Sec. 11. Section 33-763 of the general statutes is repealed and the
290 following is substituted in lieu thereof:

291 (a) A corporation has the [officers] offices described in its bylaws or
292 [appointed] designated by the board of directors in accordance with
293 the bylaws.

294 (b) [A duly appointed] The board of directors may elect individuals
295 to fill one or more offices of the corporation. An officer may appoint
296 one or more officers [or assistant officers] if authorized by the bylaws
297 or the board of directors.

298 (c) The bylaws or the board of directors shall [delegate] assign to
299 one of the officers responsibility for preparing the minutes of the
300 directors' and shareholders' meetings and for maintaining and
301 authenticating the records of the corporation required to be kept under
302 subsections (a) and (e) of section 33-945.

303 (d) The same individual may simultaneously hold more than one
304 office in a corporation.

305 Sec. 12. Section 33-766 of the general statutes is repealed and the
306 following is substituted in lieu thereof:

307 (a) An officer may resign at any time by delivering notice to the
308 corporation. A resignation is effective when the notice is delivered
309 unless the notice specifies a later effective [date] time. If a resignation
310 is made effective at a later [date] time and the [corporation] board of
311 directors or the appointing officer accepts the future effective [date, its
312 board of directors] time, the board or the appointing officer may fill
313 the pending vacancy before the effective [date] time if the board [of
314 directors] or the appointing officer provides that the successor does not

315 take office until the effective [date] time.

316 (b) [A board of directors may remove any officer] An officer may be
317 removed at any time with or without cause by: (1) The board of
318 directors, (2) the officer who appointed such officer, unless the bylaws
319 provide otherwise, or (3) any other officer if authorized by the bylaws
320 or the board of directors.

321 (c) In this section, "appointing officer" means the officer, including
322 any successor to that officer, who appointed the officer resigning or
323 being removed.

324 Sec. 13. Subsection (c) of section 33-775 of the general statutes is
325 repealed and the following is substituted in lieu thereof:

326 (c) Authorization of indemnification shall be made in the same
327 manner as the determination that indemnification is permissible,
328 except that if there are fewer than two disinterested directors or if the
329 determination is made by special legal counsel, authorization of
330 indemnification shall be made by those entitled under subparagraph
331 (B) of subdivision (2) of subsection (b) of this section to select special
332 legal counsel.

333 Sec. 14. Subsection (a) of section 33-778 of the general statutes is
334 repealed and the following is substituted in lieu thereof:

335 (a) A corporation may, by a provision in its certificate of
336 incorporation or bylaws or in a resolution adopted or a contract
337 approved by its board of directors or shareholders, obligate itself in
338 advance of the act or omission giving rise to a proceeding to provide
339 indemnification in accordance with section 33-771 or advance funds to
340 pay for or reimburse expenses in accordance with section 33-773. Any
341 such obligatory provision shall be deemed to satisfy the requirements
342 for authorization referred to in subsection (c) of section 33-773 and
343 subsection (c) of section 33-775, as amended by this act. Any such

344 provision that obligates the corporation to provide indemnification to
345 the fullest extent permitted by law shall be deemed to obligate the
346 corporation to advance funds to pay for or reimburse expenses in
347 accordance with section 33-773 to the fullest extent permitted by law,
348 unless the provision specifically provides otherwise.

349 Sec. 15. Section 33-855 of the general statutes is repealed and the
350 following is substituted in lieu thereof:

351 As used in sections 33-855 to 33-872, inclusive, as amended by this
352 act:

353 (1) "Affiliate" means a person that directly or indirectly through one
354 or more intermediaries controls, is controlled by or is under common
355 control with another person or is a senior executive thereof. For
356 purposes of subdivision (4) of subsection (b) of section 33-856, as
357 amended by this act, a person is deemed to be an affiliate of its senior
358 executives.

359 (2) "Beneficial shareholder" means a person who is the beneficial
360 owner of shares held in a voting trust or by a nominee on the beneficial
361 owner's behalf.

362 [(1)] (3) "Corporation" means the issuer of the shares held by a
363 [dissenter before the corporate action or the surviving or acquiring
364 corporation by merger or share exchange of that issuer] shareholder
365 demanding appraisal and, for purposes of sections 33-862 to 33-872, as
366 amended by this act, includes the surviving entity in a merger.

367 [(2) "Dissenter" means a shareholder who is entitled to dissent from
368 corporate action under section 33-856 and who exercises that right
369 when and in the manner required by sections 33-860 to 33-868,
370 inclusive.]

371 [(3)] (4) "Fair value" [, with respect to a dissenter's shares,] means
372 the value of the corporation's shares [immediately] determined: (A)

373 Immediately before the effectuation of the corporate action to which
374 the [dissenter objects, excluding any appreciation or depreciation in
375 anticipation of the corporate action] shareholder objects, (B) using
376 customary and current valuation concepts and techniques generally
377 employed for similar businesses in the context of the transaction
378 requiring appraisal, and (C) without discounting for lack of
379 marketability or minority status except, if appropriate, for
380 amendments to the certificate of incorporation pursuant to subdivision
381 (5) of subsection (a) of section 33-856, as amended by this act.

382 [(4)] (5) "Interest" means interest from the effective date of the
383 corporate action until the date of payment, at the [average rate
384 currently paid by the corporation on its principal bank loans or, if
385 none, at a rate that is fair and equitable under all the circumstances]
386 rate of interest on judgments in this state on the effective date of the
387 corporate action.

388 (6) "Preferred shares" means a class or series of shares whose
389 holders have preference over any other class or series with respect to
390 distributions.

391 [(5)] (7) "Record shareholder" means the person in whose name
392 shares are registered in the records of [a] the corporation or the
393 beneficial owner of shares to the extent of the rights granted by a
394 nominee certificate on file with [a] the corporation.

395 [(6)] "Beneficial shareholder" means the person who is a beneficial
396 owner of shares held in a voting trust or by a nominee as the record
397 shareholder.]

398 (8) "Senior executive" means the chief executive officer, chief
399 operating officer, chief financial officer and any individual in charge of
400 a principal business unit or function.

401 [(7)] (9) "Shareholder" means [the] both a record shareholder [or the]

402 and a beneficial shareholder.

403 Sec. 16. Section 33-856 of the general statutes is repealed and the
404 following is substituted in lieu thereof:

405 (a) A shareholder is entitled to [dissent from, and] appraisal rights,
406 and to obtain payment of the fair value of [his] that shareholder's
407 shares, in the event of [,] any of the following corporate actions:

408 (1) Consummation of a [plan of] merger to which the corporation is
409 a party (A) if shareholder approval is required for the merger by
410 section 33-817 [or the certificate of incorporation] and the shareholder
411 is entitled to vote on the merger, except that appraisal rights shall not
412 be available to any shareholder of the corporation with respect to
413 shares of any class or series that remain outstanding after
414 consummation of the merger, or (B) if the corporation is a subsidiary
415 [that is merged with its parent under] and the merger is governed by
416 section 33-818;

417 (2) Consummation of a [plan of] share exchange to which the
418 corporation is a party as the corporation whose shares will be
419 acquired, if the shareholder is entitled to vote on the [plan] exchange,
420 except that appraisal rights shall not be available to any shareholder of
421 the corporation with respect to any class or series of shares of the
422 corporation that is not exchanged;

423 (3) Consummation of a [sale or exchange of all, or substantially all,
424 of the property of the corporation other than in the usual and regular
425 course of business, if the shareholder is entitled to vote on the sale or
426 exchange, including a sale in dissolution, but not including a sale
427 pursuant to court order or a sale for cash pursuant to a plan by which
428 all or substantially all of the net proceeds of the sale will be distributed
429 to the shareholders within one year after the date of sale] disposition of
430 assets pursuant to section 33-831 if the shareholder is entitled to vote
431 on the disposition;

432 (4) An amendment of the certificate of incorporation with respect to
433 a class or series of shares that [materially and adversely affects rights
434 in respect of a dissenter's shares because it: (A) Alters or abolishes a
435 preferential right of the shares; (B) creates, alters or abolishes a right in
436 respect of redemption, including a provision respecting a sinking fund
437 for the redemption or repurchase, of the shares; (C) alters or abolishes
438 a preemptive right of the holder of the shares to acquire shares or other
439 securities; (D) excludes or limits the right of the shares to vote on any
440 matter, or to cumulate votes, other than a limitation by dilution
441 through issuance of shares or other securities with similar voting
442 rights; or (E)] reduces the number of shares of a class or series owned
443 by the shareholder to a fraction of a share if the corporation has the
444 obligation or right to repurchase the fractional share so created; [is to
445 be acquired for cash under section 33-668;] or

446 (5) Any [corporate action taken pursuant to a shareholder vote to
447 the extent the certificate of incorporation, bylaws or a resolution of the
448 board of directors provides that voting or nonvoting shareholders are
449 entitled to dissent and obtain payment for their shares] other merger,
450 share exchange, disposition of assets or amendment to the certificate of
451 incorporation to the extent provided by the certificate of incorporation,
452 the bylaws or a resolution of the board of directors.

453 (b) Notwithstanding subsection (a) of this section, the availability of
454 appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a)
455 of this section shall be limited in accordance with the following
456 provisions:

457 (1) Appraisal rights shall not be available for the holders of shares of
458 any class or series of shares which is: (A) Listed on the New York Stock
459 Exchange or the American Stock Exchange or designated as a National
460 Market System security on an interdealer quotation system by the
461 National Association of Securities Dealers, Inc.; or (B) not so listed or
462 designated but has at least two thousand shareholders and the

463 outstanding shares of such class or series has a market value of at least
464 twenty million dollars, exclusive of the value of such shares held by its
465 subsidiaries, senior executives, directors and beneficial shareholders
466 owning more than ten per cent of such shares.

467 (2) The applicability of subdivision (1) of this subsection shall be
468 determined as of: (A) The record date fixed to determine the
469 shareholders entitled to receive notice of, and to vote at, the meeting of
470 shareholders to act upon the corporate action requiring appraisal
471 rights; or (B) the day before the effective date of such corporate action
472 if there is no meeting of shareholders.

473 (3) Subdivision (1) of this subsection shall not be applicable and
474 appraisal rights shall be available pursuant to subsection (a) of this
475 section for the holders of any class or series of shares who are required
476 by the terms of the corporate action requiring appraisal rights to accept
477 for such shares anything other than cash or shares of any class or any
478 series of shares of any corporation, or any other proprietary interest of
479 any other entity, that satisfies the standards set forth in subdivision (1)
480 of this subsection at the time the corporate action becomes effective.

481 (4) Subdivision (1) of this subsection shall not be applicable and
482 appraisal rights shall be available pursuant to subsection (a) of this
483 section for the holders of any class or series of shares where:

484 (A) Any of the shares or assets of the corporation are being acquired
485 or converted, whether by merger, share exchange or otherwise,
486 pursuant to the corporate action by a person, or by an affiliate of a
487 person, who:

488 (i) Is, or at any time in the one-year period immediately preceding
489 approval by the board of directors of the corporate action requiring
490 appraisal rights was, the beneficial owner of twenty per cent or more
491 of the voting power of the corporation, excluding any shares acquired
492 pursuant to an offer for all shares having voting power if such offer

493 was made within one year prior to the corporate action requiring
494 appraisal rights for consideration of the same kind and of a value
495 equal to or less than that paid in connection with the corporate action;
496 or

497 (ii) Directly or indirectly has, or at any time in the one-year period
498 immediately preceding approval by the board of directors of the
499 corporate action requiring appraisal rights had, the power,
500 contractually or otherwise, to cause the appointment or election of
501 twenty-five per cent or more of the directors to the board of directors
502 of the corporation; or

503 (B) Any of the shares or assets of the corporation are being acquired
504 or converted, whether by merger, share exchange or otherwise,
505 pursuant to such corporate action by a person, or by an affiliate of a
506 person, who is, or at any time in the one-year period immediately
507 preceding approval by the board of directors of the corporate action
508 requiring appraisal rights was, a senior executive or director of the
509 corporation or a senior executive of any affiliate thereof, and that
510 senior executive or director will receive, as a result of the corporate
511 action, a financial benefit not generally available to other shareholders
512 as such, other than:

513 (i) Employment, consulting, retirement or similar benefits
514 established separately and not as part of or in contemplation of the
515 corporate action; or

516 (ii) Employment, consulting, retirement or similar benefits
517 established in contemplation of, or as part of, the corporate action that
518 are not more favorable than those existing before the corporate action
519 or, if more favorable, that have been approved on behalf of the
520 corporation in the same manner as is provided in section 33-783; or

521 (iii) In the case of a director of the corporation who will, in the
522 corporate action, become a director of the acquiring entity in the

523 corporate action or one of its affiliates, rights and benefits as a director
524 that are provided on the same basis as those afforded by the acquiring
525 entity generally to other directors of such entity or such affiliate.

526 (5) For the purposes of subdivision (4) of this subsection, "beneficial
527 owner" means any person who, directly or indirectly, through any
528 contract, arrangement or understanding, other than a revocable proxy,
529 has or shares the power to vote, or to direct the voting of, shares,
530 provided a member of a National Securities Exchange shall not be
531 deemed to be a beneficial owner of securities held directly or indirectly
532 by it on behalf of another person solely because such member is the
533 record holder of such securities if the member is precluded by the rules
534 of such exchange from voting without instruction on contested matters
535 or matters that may affect substantially the rights or privileges of the
536 holders of the securities to be voted. When two or more persons agree
537 to act together for the purpose of voting their shares of the corporation,
538 each member of the group formed thereby shall be deemed to have
539 acquired beneficial ownership, as of the date of such agreement, of all
540 voting shares of the corporation beneficially owned by any member of
541 the group.

542 (c) Notwithstanding any other provision of this section, the
543 certificate of incorporation as originally filed or any amendment
544 thereto may limit or eliminate appraisal rights for any class or series of
545 preferred shares, but any such limitation or elimination contained in
546 an amendment to the certificate of incorporation that limits or
547 eliminates appraisal rights for any of such shares that are outstanding
548 immediately prior to the effective date of such amendment or that the
549 corporation is or may be required to issue or sell thereafter pursuant to
550 any conversion, exchange or other right existing immediately before
551 the effective date of such amendment shall not apply to any corporate
552 action that becomes effective within one year of that date if such action
553 would otherwise afford appraisal rights.

554 [(b)] (d) Where the right to be paid the value of shares is made
555 available to a shareholder by this section, such remedy shall be [his]
556 the exclusive remedy as holder of such shares against the corporate
557 transactions described in this section, whether or not [he] the
558 shareholder proceeds as provided in sections 33-855 to 33-872,
559 inclusive, as amended by this act.

560 Sec. 17. Section 33-857 of the general statutes is repealed and the
561 following is substituted in lieu thereof:

562 (a) A record shareholder may assert [dissenters'] appraisal rights as
563 to fewer than all the shares registered in [his name only if he dissents
564 with respect to all shares beneficially owned by any one person] the
565 record shareholder's name but owned by a beneficial shareholder only
566 if the record shareholder objects with respect to all shares of the class
567 or series owned by the beneficial shareholder and notifies the
568 corporation in writing of the name and address of each [person]
569 beneficial shareholder on whose behalf [he asserts dissenters' rights]
570 appraisal rights are being asserted. The rights of a [partial dissenter]
571 record shareholder who asserts appraisal rights for only part of the
572 shares held of record in the record shareholder's name under this
573 subsection [are] shall be determined as if the shares as to which [he
574 dissents and his] the record shareholder objects and the record
575 shareholder's other shares were registered in the names of different
576 record shareholders.

577 (b) A beneficial shareholder may assert [dissenters'] appraisal rights
578 as to shares of any class or series held on [his] behalf of the shareholder
579 only if such shareholder: (1) [He submits] Submits to the corporation
580 the record shareholder's written consent to the [dissent not later than
581 the time the beneficial shareholder asserts dissenters' rights] assertion
582 of such rights no later than the date referred to in subparagraph (B) of
583 subdivision (2) of subsection (b) of section 33-862, as amended by this
584 act; and (2) [he] does so with respect to all shares of [which he is the

585 beneficial shareholder or over which he has power to direct the vote]
586 the class or series that are beneficially owned by the beneficial
587 shareholder.

588 Sec. 18. Section 33-860 of the general statutes is repealed and the
589 following is substituted in lieu thereof:

590 (a) If proposed corporate action [creating dissenters' rights under
591 section 33-856 is] described in subsection (a) of section 33-856, as
592 amended by this act, is to be submitted to a vote at a shareholders'
593 meeting, the meeting notice shall state that the corporation has
594 concluded that shareholders are, are not or may be entitled to assert
595 [dissenters'] appraisal rights under sections 33-855 to 33-872, inclusive,
596 as amended by this act. [, and be accompanied by a copy of said
597 sections.] If the corporation concludes that appraisal rights are or may
598 be available, a copy of sections 33-855 to 33-872, inclusive, as amended
599 by this act, must accompany the meeting notice sent to those record
600 shareholders entitled to exercise appraisal rights.

601 [(b) If corporate action creating dissenters' rights under section 33-
602 856 is taken without a vote of shareholders, the corporation shall notify
603 in writing all shareholders entitled to assert dissenters' rights that the
604 action was taken and send them the dissenters' notice described in
605 section 33-862.]

606 (b) In a merger pursuant to section 33-818, the parent corporation
607 must notify in writing all record shareholders of the subsidiary who
608 are entitled to assert appraisal rights that the corporate action became
609 effective. Such notice must be sent within ten days after the corporate
610 action became effective and include the materials described in section
611 33-862, as amended by this act.

612 Sec. 19. Section 33-861 of the general statutes is repealed and the
613 following is substituted in lieu thereof:

614 (a) If proposed corporate action [creating dissenters'] requiring
615 appraisal rights under section 33-856, as amended by this act, is
616 submitted to a vote at a shareholders' meeting, a shareholder who
617 wishes to assert [dissenters' rights (1) shall] appraisal rights with
618 respect to any class or series of shares: (1) Must deliver to the
619 corporation before the vote is taken written notice of [his] the
620 shareholder's intent to demand payment [for his shares] if the
621 proposed action is effectuated, and (2) [shall not vote his shares] must
622 not vote, or cause or permit to be voted, any shares of such class or
623 series in favor of the proposed action.

624 (b) A shareholder who does not satisfy the requirements of
625 subsection (a) of this section is not entitled to payment [for his shares]
626 under sections 33-855 to 33-872, inclusive, as amended by this act.

627 Sec. 20. Section 33-862 of the general statutes is repealed and the
628 following is substituted in lieu thereof:

629 (a) If proposed corporate action [creating dissenters' rights under
630 section 33-856 is authorized at a shareholders' meeting, the corporation
631 shall deliver a written dissenters' notice] requiring appraisal rights
632 under subsection (a) of section 33-856, as amended by this act, becomes
633 effective, the corporation must deliver a written appraisal notice and
634 form required by subdivision (1) of subsection (b) of this section to all
635 shareholders who satisfied the requirements of section 33-861, as
636 amended by this act. In the case of a merger under section 33-818, the
637 parent must deliver a written appraisal notice and form to all record
638 shareholders who may be entitled to assert appraisal rights.

639 (b) The [dissenters'] appraisal notice shall be sent no earlier than the
640 date the corporate action became effective and no later than ten days
641 after [the corporate action was taken] such date and shall:

642 [(1) State where the payment demand must be sent and where and
643 when certificates for certificated shares must be deposited;

644 (2) Inform holders of uncertificated shares to what extent transfer of
645 the shares will be restricted after the payment demand is received;

646 (3) Supply a form for demanding payment that includes the date of
647 the first announcement to news media or to shareholders of the terms
648 of the proposed corporate action and requires that the person asserting
649 dissenters' rights certify whether or not he acquired beneficial
650 ownership of the shares before that date;

651 (4) Set a date by which the corporation must receive the payment
652 demand, which date may not be fewer than thirty nor more than sixty
653 days after the date the subsection (a) of this section notice is delivered;
654 and]

655 (1) Supply a form that specifies the date of the first announcement to
656 shareholders of the principal terms of the proposed corporate action
657 and requires the shareholder asserting appraisal rights to certify (A)
658 whether or not those shares for which appraisal rights are asserted
659 were acquired before that date, and (B) that the shareholder did not
660 vote for the transaction;

661 (2) State:

662 (A) Where the form must be sent and where certificates for
663 certificated shares must be deposited and the date by which those
664 certificates must be deposited, which date may not be earlier than the
665 date for receiving the required form under subparagraph (B) of this
666 subdivision;

667 (B) A date by which the corporation must receive the form which
668 date may not be fewer than forty nor more than sixty days after the
669 date the appraisal notice and form under subsection (a) of this section
670 are sent, and state that the shareholder shall have waived the right to
671 demand appraisal with respect to the shares unless the form is
672 received by the corporation by such specified date;

673 (C) The corporation's estimate of the fair value of the shares;

674 (D) That, if requested in writing, the corporation will provide, to the
675 shareholder so requesting, within ten days after the date specified in
676 subparagraph (B) of this subdivision, the number of shareholders who
677 return the forms by the specified date and the total number of shares
678 owned by them; and

679 (E) The date by which the notice to withdraw under section 33-863,
680 as amended by this act, must be received, which date must be within
681 twenty days after the date specified in subparagraph (B) of this
682 subdivision; and

683 [(5)] (3) Be accompanied by a copy of sections 33-855 to 33-872,
684 inclusive, as amended by this act.

685 Sec. 21. Section 33-863 of the general statutes is repealed and the
686 following is substituted in lieu thereof:

687 (a) A shareholder [sent a dissenters' notice described in section 33-
688 862 must demand payment, certify whether he] who receives notice
689 pursuant to section 33-862, as amended by this act, and who wishes to
690 exercise appraisal rights must certify on the form sent by the
691 corporation whether the beneficial owner of such shares acquired
692 beneficial ownership of the shares before the date required to be set
693 forth in the [dissenters'] notice pursuant to subdivision [(3)] (1) of
694 subsection (b) of said section. [and deposit his certificates in
695 accordance with the terms of the notice.] If a shareholder fails to make
696 this certification, the corporation may elect to treat the shareholder's
697 shares as after-acquired shares under section 33-867, as amended by
698 this act. In addition, a shareholder who wishes to exercise appraisal
699 rights must execute and return the form and, in the case of certificated
700 shares, deposit the shareholder's certificates in accordance with the
701 terms of the notice by the date referred to in the notice pursuant to
702 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,

703 as amended by this act. Once a shareholder deposits the shareholder's
704 certificates or, in the case of uncertificated shares, returns the executed
705 forms, the shareholder loses all rights as a shareholder, unless the
706 shareholder withdraws pursuant to subsection (b) of this section.

707 [(b) The shareholder who demands payment and deposits his share
708 certificates under subsection (a) of this section retains all other rights of
709 a shareholder until these rights are cancelled or modified by the taking
710 of the proposed corporate action.

711 (c) A shareholder who does not demand payment or deposit his
712 share certificates where required, each by the date set in the dissenters'
713 notice, is not entitled to payment for his shares under sections 33-855
714 to 33-872, inclusive.]

715 (b) A shareholder who has complied with subsection (a) of this
716 section may nevertheless decline to exercise appraisal rights and
717 withdraw from the appraisal process by so notifying the corporation in
718 writing by the date set forth in the appraisal notice pursuant to
719 subparagraph (E) of subdivision (2) of subsection (b) of section 33-862,
720 as amended by this act. A shareholder who fails to so withdraw from
721 the appraisal process may not thereafter withdraw without the
722 corporation's written consent.

723 (c) A shareholder who does not execute and return the form and, in
724 the case of certificated shares, deposit the shareholder's share
725 certificates where required, each by the date set forth in the notice
726 described in subsection (b) of section 33-862, as amended by this act,
727 shall not be entitled to payment under sections 33-855 to 33-872,
728 inclusive, as amended by this act.

729 Sec. 22. Section 33-865 of the general statutes is repealed and the
730 following is substituted in lieu thereof:

731 (a) Except as provided in section 33-867, [as soon as the proposed

732 corporate action is taken, or upon receipt of a payment demand,] as
733 amended by this act, within thirty days after the form required by
734 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,
735 as amended by this act, is due the corporation shall pay [each
736 dissenter] in cash to those shareholders who complied with subsection
737 (a) of section 33-863, as amended by this act, the amount the
738 corporation estimates to be the fair value of [his] their shares, plus
739 [accrued] interest.

740 (b) The payment to each shareholder pursuant to subsection (a) of
741 this section shall be accompanied by:

742 (1) [The corporation's] Financial statements of the corporation that
743 issued the shares to be appraised, consisting of a balance sheet as of
744 the end of a fiscal year ending not more than sixteen months before the
745 date of payment, an income statement for that year, a statement of
746 changes in shareholders' equity for that year and the latest available
747 interim financial statements, if any;

748 [(2) a statement of the corporation's estimate of the fair value of the
749 shares; (3) an explanation of how the interest was calculated; (4) a
750 statement of the dissenter's right to demand payment under section 33-
751 868; and (5) a copy of sections 33-855 to 33-872, inclusive.]

752 (2) A statement of the corporation's estimate of the fair value of the
753 shares which estimate must equal or exceed the corporation's estimate
754 given pursuant to subparagraph (C) of subdivision (2) of subsection (b)
755 of section 33-862, as amended by this act; and

756 (3) A statement that shareholders described in subsection (a) of this
757 section have the right to demand further payment under section 33-
758 868, as amended by this act, and that if any such shareholder does not
759 do so within the time period specified therein, such shareholder shall
760 be deemed to have accepted such payment in full satisfaction of the
761 corporation's obligations under sections 33-855 to 33-872, as amended

762 by this act.

763 Sec. 23. Section 33-867 of the general statutes is repealed and the
764 following is substituted in lieu thereof:

765 (a) A corporation may elect to withhold payment required by
766 section 33-865, as amended by this act, from [a dissenter unless he was
767 the beneficial owner of the shares] any shareholder who did not certify
768 that beneficial ownership of all of the shareholder's shares for which
769 appraisal rights are asserted was acquired before the date set forth in
770 the [dissenters' notice as the date of the first announcement to news
771 media or to shareholders of the terms of the proposed corporate
772 action] appraisal notice sent pursuant to subdivision (1) of subsection
773 (b) of section 33-862, as amended by this act.

774 [(b) To the extent the corporation elects to withhold payment under
775 subsection (a) of this section, after taking the proposed corporate
776 action, it shall estimate the fair value of the shares, plus accrued
777 interest, and shall pay this amount to each dissenter who agrees to
778 accept it in full satisfaction of his demand. The corporation shall send
779 with its offer a statement of its estimate of the fair value of the shares,
780 an explanation of how the interest was calculated and a statement of
781 the dissenter's right to demand payment under section 33-868.]

782 (b) If the corporation elected to withhold payment under subsection
783 (a) of this section, it must, within thirty days after the form required by
784 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,
785 as amended by this act, is due, notify all shareholders who are
786 described in subsection (a) of this section:

787 (1) Of the information required by subdivision (1) of subsection (b)
788 of section 33-865, as amended by this act;

789 (2) Of the corporation's estimate of fair value pursuant to
790 subdivision (2) of subsection (b) of section 33-865, as amended by this

791 act;

792 (3) That such shareholders may accept the corporation's estimate of
793 fair value, plus interest, in full satisfaction of their demands or demand
794 payment under section 33-868, as amended by this act;

795 (4) That those shareholders who wish to accept such offer must so
796 notify the corporation of their acceptance of the corporation's offer
797 within thirty days after receiving the offer; and

798 (5) That those shareholders who do not satisfy the requirements for
799 demanding payment under section 33-868, as amended by this act,
800 shall be deemed to have accepted the corporation's offer.

801 (c) Within ten days after receiving the shareholder's acceptance
802 pursuant to subsection (b) of this section, the corporation must pay in
803 cash the amount it offered under subdivision (2) of subsection (b) of
804 this section to each shareholder who agreed to accept the corporation's
805 offer in full satisfaction of the shareholder's demand.

806 (d) Within forty days after sending the notice described in
807 subsection (b) of this section, the corporation must pay in cash the
808 amount it offered to pay under subdivision (2) of subsection (b) of this
809 section to each shareholder described in subdivision (5) of subsection
810 (b) of this section.

811 Sec. 24. Section 33-868 of the general statutes is repealed and the
812 following is substituted in lieu thereof:

813 [(a) A dissenter may notify the corporation in writing of his own
814 estimate of the fair value of his shares and amount of interest due, and
815 demand payment of his estimate, less any payment under section 33-
816 865, or reject the corporation's offer under section 33-867 and demand
817 payment of the fair value of his shares and interest due, if:

818 (1) The dissenter believes that the amount paid under section 33-865

819 or offered under section 33-867 is less than the fair value of his shares
820 or that the interest due is incorrectly calculated;

821 (2) The corporation fails to make payment under section 33-865
822 within sixty days after the date set for demanding payment; or

823 (3) The corporation, having failed to take the proposed action, does
824 not return the deposited certificates or release the transfer restrictions
825 imposed on uncertificated shares within sixty days after the date set
826 for demanding payment.

827 (b) A dissenter waives his right to demand payment under this
828 section unless he notifies the corporation of his demand in writing
829 under subsection (a) of this section within thirty days after the
830 corporation made or offered payment for his shares.]

831 (a) A shareholder paid pursuant to section 33-865, as amended by
832 this act, who is dissatisfied with the amount of the payment must
833 notify the corporation in writing of the shareholder's estimate of the
834 fair value of the shares and demand payment of that estimate, plus
835 interest, less any payment under section 33-865, as amended by this
836 act. A shareholder offered payment under section 33-867, as amended
837 by this act, who is dissatisfied with that offer must reject the offer and
838 demand payment of the shareholder's stated estimate of the fair value
839 of the shares plus interest.

840 (b) A shareholder who fails to notify the corporation in writing of
841 the shareholder's demand to be paid the shareholder's stated estimate
842 of the fair value of the shares plus interest under subsection (a) of this
843 section within thirty days after receiving the corporation's payment
844 under section 33-865, as amended by this act, or offer of payment
845 under section 33-867, as amended by this act, waives the right to
846 demand payment under this section and shall be entitled only to the
847 payment made under section 33-865, as amended by this act, or the
848 payment offered under section 33-867, as amended by this act.

849 Sec. 25. Section 33-871 of the general statutes is repealed and the
850 following is substituted in lieu thereof:

851 (a) If a shareholder makes demand for payment under section 33-
852 868, as amended by this act, which remains unsettled, the corporation
853 shall commence a proceeding within sixty days after receiving the
854 payment demand and petition the court to determine the fair value of
855 the shares and accrued interest. If the corporation does not commence
856 the proceeding within the sixty-day period, it shall pay [each dissenter
857 whose demand remains unsettled the amount demanded] in cash to
858 each shareholder the amount the shareholder demanded pursuant to
859 section 33-868, as amended by this act, plus interest.

860 (b) The corporation shall commence the proceeding in the superior
861 court for the judicial district where a corporation's principal office or, if
862 none, its registered office in this state [, its registered office] is located.
863 If the corporation is a foreign corporation without a registered office in
864 this state, it shall commence the proceeding in the superior court for
865 the judicial district where the principal office or registered office of the
866 domestic corporation that merged with [or whose shares were
867 acquired by] the foreign corporation was located at the time of the
868 transaction.

869 (c) The corporation shall make all [dissenters] shareholders, whether
870 or not residents of this state, whose demands remain unsettled parties
871 to the proceeding as in an action against their shares and all parties
872 must be served with a copy of the petition. Nonresidents may be
873 served by registered or certified mail or by publication as provided by
874 law.

875 (d) The jurisdiction of the court in which the proceeding is
876 commenced under subsection (b) of this section is plenary and
877 exclusive. The court may appoint one or more persons as appraisers to
878 receive evidence and recommend a decision on the question of fair
879 value. The appraisers shall have the powers described in the order

880 appointing them, or in any amendment to it. The [dissenters]
881 shareholders demanding appraisal rights are entitled to the same
882 discovery rights as parties in other civil proceedings. There shall be no
883 right to a jury trial.

884 (e) Each [dissenter] shareholder made a party to the proceeding is
885 entitled to judgment (1) for the amount, if any, by which the court
886 finds the fair value of [his] the shareholder's shares, plus interest,
887 exceeds the amount paid by the corporation to the shareholder for
888 such shares, or (2) for the fair value, plus [accrued] interest, of [his
889 after-acquired] the shareholder's shares for which the corporation
890 elected to withhold payment under section 33-867, as amended by this
891 act.

892 Sec. 26. Section 33-872 of the general statutes is repealed and the
893 following is substituted in lieu thereof:

894 (a) The court in an appraisal proceeding commenced under section
895 33-871, as amended by this act, shall determine all costs of the
896 proceeding, including the reasonable compensation and expenses of
897 appraisers appointed by the court. The court shall assess the costs
898 against the corporation, except that the court may assess costs against
899 all or some of the [dissenters] shareholders demanding appraisal, in
900 amounts the court finds equitable, to the extent the court finds [the
901 dissenters] such shareholders acted arbitrarily, vexatiously or not in
902 good faith [in demanding payment under section 33-868] with respect
903 to the rights provided by sections 33-855 to 33-872, inclusive, as
904 amended by this act.

905 (b) The court in an appraisal proceeding may also assess the fees
906 and expenses of counsel and experts for the respective parties, in
907 amounts the court finds equitable: (1) Against the corporation and in
908 favor of any or all [dissenters] shareholders demanding appraisal if the
909 court finds the corporation did not substantially comply with the
910 requirements of sections 33-860 to 33-868, inclusive, as amended by

911 this act; or (2) against either the corporation or a [dissenter]
912 shareholder demanding appraisal, in favor of any other party, if the
913 court finds that the party against whom the fees and expenses are
914 assessed acted arbitrarily, vexatiously or not in good faith with respect
915 to the rights provided by sections 33-855 to 33-872, inclusive, as
916 amended by this act.

917 (c) If the court in an appraisal proceeding finds that the services of
918 counsel for any [dissenter] shareholder were of substantial benefit to
919 other [dissenters] shareholders similarly situated, and that the fees for
920 those services should not be assessed against the corporation, the court
921 may award to [these] such counsel reasonable fees to be paid out of the
922 amounts awarded the [dissenters] shareholders who were benefited.

923 (d) To the extent the corporation fails to make a required payment
924 pursuant to section 33-865, as amended by this act, 33-867, as amended
925 by this act, or 33-868, as amended by this act, the shareholder may sue
926 directly for the amount owed and, to the extent successful, shall be
927 entitled to recover from the corporation all costs and expenses of the
928 suit, including counsel fees.

929 Sec. 27. Section 33-947 of the general statutes is repealed and the
930 following is substituted in lieu thereof:

931 (a) A shareholder's agent or attorney has the same inspection and
932 copying rights as the shareholder [he represents] represented.

933 (b) The right to copy records under section 33-946 includes, if
934 reasonable, the right to receive copies [made by photographic,] by
935 xerographic or other means, including copies through an electronic
936 transmission if available and so requested by the shareholder.

937 (c) The corporation may comply at its expense with a shareholder's
938 demand to inspect the record of shareholders under subdivision (3) of
939 subsection (b) of section 33-946 by providing the shareholder with a

940 list of shareholders that was compiled no earlier than the date of the
941 shareholder's demand.

942 [(c)] (d) The corporation may impose a reasonable charge, covering
943 the costs of labor and material, for copies of any documents provided
944 to the shareholder. The charge may not exceed the estimated cost of
945 production, [or] reproduction or transmission of the records.

946 [(d) The corporation may comply with a shareholder's demand to
947 inspect the record of shareholders under subdivision (3) of subsection
948 (b) of section 33-946 by providing him with a list of its shareholders
949 that was compiled no earlier than the date of the shareholder's
950 demand.]

951 Sec. 28. (NEW) (a) A director of a corporation is entitled to inspect
952 and copy the books, records and documents of the corporation at any
953 reasonable time to the extent reasonably related to the performance of
954 the director's duties as a director, including duties as a member of a
955 committee, but not for any other purpose or in any manner that would
956 violate any duty to the corporation.

957 (b) The superior court for the judicial district where the
958 corporation's principal office or, if none in this state, its registered
959 office is located may order inspection and copying of the books,
960 records and documents at the corporation's expense, upon application
961 of a director who has been refused such inspection rights, unless the
962 corporation establishes that the director is not entitled to such
963 inspection rights. The court shall dispose of an application under this
964 subsection on an expedited basis.

965 (c) If an order is issued, the court may include provisions protecting
966 the corporation from undue burden or expense, and prohibiting the
967 director from using information obtained upon exercise of the
968 inspection rights in a manner that would violate a duty to the
969 corporation, and may also order the corporation to reimburse the

970 director for the director's costs, including reasonable counsel fees,
971 incurred in connection with the application.

972 Sec. 29. (NEW) (a) Whenever notice is required to be given under
973 any provision of sections 33-600 to 33-998, inclusive, of the general
974 statutes, as amended by this act, to any shareholder, such notice shall
975 not be required to be given if:

976 (1) Notice of two consecutive annual meetings, and all notices of
977 meetings during the period between such two consecutive annual
978 meetings, have been sent to such shareholder at such shareholder's
979 address as shown on the records of the corporation and have been
980 returned undeliverable; or

981 (2) All, but not less than two, payments of dividends on securities
982 during a twelve-month period, or two consecutive payments of
983 dividends on securities during a period of more than twelve months,
984 have been sent to such shareholder at such shareholder's address as
985 shown on the records of the corporation and have been returned
986 undeliverable.

987 (b) If any such shareholder delivers to the corporation a written
988 notice setting forth such shareholder's current address, the
989 requirement that notice be given to such shareholder shall be
990 reinstated.

991 Sec. 30. Subdivision (9) of section 33-1002 of the general statutes is
992 repealed and the following is substituted in lieu thereof:

993 (9) "Deliver" or "delivery" means any method of delivery used in
994 conventional commercial practice including delivery by hand, mail,
995 commercial delivery and electronic transmission.

996 Sec. 31. Subdivision (13) of section 33-1002 of the general statutes is
997 repealed and the following is substituted in lieu thereof:

998 (13) "Electronic transmission" or "electronically transmitted" means
999 any process of communication not directly involving the physical
1000 transfer of paper that is suitable for the retention, retrieval and
1001 reproduction of information by the recipient. [and which does not
1002 directly involve the physical transfer of paper.]

1003 Sec. 32. Subdivision (29) of section 33-1002 of the general statutes is
1004 repealed and the following is substituted in lieu thereof:

1005 (29) "Sign" or "signature" includes any manual, facsimile, [or]
1006 conformed or electronic signature.

1007 Sec. 33. Section 33-1003 of the general statutes is repealed and the
1008 following is substituted in lieu thereof:

1009 (a) Notice under sections 33-1000 to 33-1290, inclusive, as amended
1010 by this act, shall be in writing unless oral notice is reasonable under the
1011 circumstances. [Written notice includes notice by electronic
1012 transmission.] Notice by electronic transmission is written notice.

1013 (b) Notice may be communicated in person, by mail or other
1014 method of delivery, or by telephone, voice mail or other electronic
1015 means. If these forms of personal notice are impracticable, notice may
1016 be communicated by a newspaper of general circulation in the area
1017 where published, or by radio, television or other form of public
1018 broadcast communication.

1019 (c) Written notice by a domestic or foreign corporation to its
1020 member, if in a comprehensible form, is effective (1) upon deposit in
1021 the United States mail, [as evidenced by the postmark,] if mailed
1022 postage prepaid and correctly addressed to the member's address
1023 shown in the corporation's current record of members, or (2) when
1024 electronically transmitted to the member in a manner authorized by
1025 the member.

1026 (d) Written notice to a domestic or foreign corporation authorized to

1027 conduct affairs in this state may be addressed to its registered agent at
1028 its registered office or to the corporation or its secretary at its principal
1029 office shown in its most recent annual report or, in the case of a foreign
1030 corporation that has not yet delivered an annual report, in its
1031 application for a certificate of authority.

1032 (e) Except as provided in subsection (c), written notice, if in a
1033 comprehensible form, is effective at the earliest of the following: (1)
1034 When received; (2) five days after its deposit in the United States mail,
1035 if mailed postage prepaid and correctly addressed; or (3) on the date
1036 shown on the return receipt, if sent by registered or certified mail or a
1037 commercial delivery service, return receipt requested, and the receipt
1038 is signed by or on behalf of the addressee.

1039 (f) Oral notice is effective when communicated if communicated in a
1040 comprehensible manner.

1041 (g) If sections 33-1000 to 33-1290, inclusive, as amended by this act,
1042 prescribe notice requirements for particular circumstances, those
1043 requirements govern. If a certificate of incorporation or bylaw
1044 prescribes notice requirements, not inconsistent with this section or
1045 other provisions of said sections, those requirements govern.

1046 (h) In computing the period of time of any notice required or
1047 permitted to be given by sections 33-1000 to 33-1290, inclusive, as
1048 amended by this act, or under the provisions of the certificate of
1049 incorporation or bylaws of a corporation or of a resolution of members
1050 or directors, the day on which the notice is given shall be excluded,
1051 and the day on which the matter noticed is to occur shall be included,
1052 in the absence of a contrary provision.

1053 Sec. 34. Section 33-1004 of the general statutes is repealed and the
1054 following is substituted in lieu thereof:

1055 (a) A document shall satisfy the requirements of this section, and of

1056 any other section that adds to or varies from these requirements, to be
1057 entitled to filing by the Secretary of the State.

1058 (b) Sections 33-1000 to 33-1290, inclusive, as amended by this act,
1059 shall require or permit filing the document in the office of the Secretary
1060 of the State.

1061 (c) The document shall contain the information required by sections
1062 33-1000 to 33-1290, inclusive, as amended by this act. It may contain
1063 other information as well.

1064 (d) The document shall be typewritten or printed or, if [authorized
1065 by the Secretary of the State,] electronically transmitted, in a format
1066 that can be retrieved or reproduced in typewritten or printed form.

1067 (e) The document shall be in the English language. A corporate
1068 name need not be in English if written in English letters or Arabic or
1069 Roman numerals, and the certificate of existence required of foreign
1070 corporations need not be in English if accompanied by a reasonably
1071 authenticated English translation.

1072 (f) The document shall be executed: (1) By the chairman of the board
1073 of directors of a domestic or foreign corporation, by its president or by
1074 another of its officers; (2) if directors have not been selected or the
1075 corporation has not been formed, by an incorporator; or (3) if the
1076 corporation is in the hands of a receiver, trustee or other court-
1077 appointed fiduciary, by that fiduciary.

1078 (g) The person executing [a] the document shall [, if the document is
1079 typewritten or printed,] sign it and state beneath or opposite [his] such
1080 person's signature [his] such person's name and the capacity in which
1081 [he] such person signs. [or, if the document is electronically
1082 transmitted, affirm and authenticate the execution of the document in
1083 such manner as the Secretary of the State may prescribe as effective for
1084 those purposes.] The document may but need not contain [: (1) The

1085 corporate seal, (2) an attestation by the secretary or an assistant
1086 secretary, (3) an acknowledgment, verification or proof] a corporate
1087 seal, attestation, acknowledgment or verification.

1088 (h) If the Secretary of the State has prescribed a mandatory form for
1089 the document under section 33-1005, the document shall be in or on
1090 the prescribed form.

1091 (i) The document shall be delivered to the office of the Secretary of
1092 the State for filing. Delivery may be made by electronic transmission if
1093 and to the extent permitted by the Secretary of the State. If the
1094 document is filed in typewritten or printed form and not electronically
1095 transmitted, the Secretary of the State may require one exact or
1096 conformed copy to be delivered with the document, except as
1097 provided in sections 33-1052 and 33-1218.

1098 (j) When the document is delivered to the office of the Secretary of
1099 the State for filing, [the document shall be accompanied by] the correct
1100 filing fee, and any franchise tax, license fee or penalty required to be
1101 paid therewith by sections 33-1000 to 33-1290, inclusive, as amended
1102 by this act, or other law, [unless provision has been made for payment
1103 in the manner prescribed] must be paid or provision for payment
1104 made in a manner permitted by the Secretary of the State.

1105 (k) When any document is required or permitted to be filed or
1106 recorded as provided in sections 33-1000 to 33-1290, inclusive, as
1107 amended by this act, the Secretary of the State may in [his] the
1108 Secretary of the State's discretion, for good cause, permit a photostatic
1109 or other photographic copy of such document to be filed or recorded in
1110 lieu of the original instrument. Such filing or recording shall have the
1111 same force and effect as if the original instrument had been so filed or
1112 recorded.

1113 Sec. 35. Subsection (a) of section 33-1006 of the general statutes is
1114 repealed and the following is substituted in lieu thereof:

1115 (a) Except as provided in subsection (b) of this section and
1116 subsection (c) of section 33-1007, as amended by this act, a document
1117 accepted for filing is effective: (1) At the date and time of filing, [on the
1118 date it is filed, as evidenced by the Secretary of the State's date and
1119 time endorsement on the original document or, when the document is
1120 electronically transmitted, as evidenced by electronic means prescribed
1121 by the Secretary of the State] as evidenced by such means as the
1122 Secretary of the State may use for the purpose of recording
1123 [electronically] the date and time of filing; or (2) at the time specified in
1124 the document as its effective time on the date it is filed.

1125 Sec. 36. Section 33-1007 of the general statutes is repealed and the
1126 following is substituted in lieu thereof:

1127 (a) A domestic or foreign corporation may correct a document filed
1128 by the Secretary of the State if (1) the document [(1)] contains an
1129 [incorrect statement or (2)] inaccuracy, (2) the document was
1130 defectively executed, attested, sealed, verified or acknowledged, or (3)
1131 the electronic transmission was defective.

1132 (b) A document is corrected: (1) By preparing a certificate of
1133 correction that (A) describes the document, including its filing date, or
1134 attaches a copy of it to the certificate, (B) specifies the [incorrect
1135 statement and the reason it is incorrect or the manner in which the
1136 execution was defective] inaccuracy or defect to be corrected, and (C)
1137 corrects the [incorrect statement or defective execution] inaccuracy or
1138 defect; and (2) by delivering the certificate of correction to the
1139 Secretary of the State for filing.

1140 (c) A certificate of correction is effective on the effective date of the
1141 document it corrects except as to persons relying on the uncorrected
1142 document and adversely affected by the correction. As to those
1143 persons, a certificate of correction is effective when filed.

1144 Sec. 37. Section 33-1086 of the general statutes is repealed and the

1145 following is substituted in lieu thereof:

1146 [(a)] The certificate of incorporation may provide for staggering the
1147 terms of directors, other than ex-officio directors, by dividing the total
1148 number of directors, other than ex-officio directors, into up to five
1149 groups, with each group containing approximately the same
1150 percentage of the total, as near as may be. In that event, the terms of
1151 directors in the first group expire at the first annual meeting of
1152 members or, in the case of a corporation without members entitled to
1153 vote for directors, at the first annual meeting of the board of directors,
1154 after their election, the terms of the second group expire at the second
1155 such annual meeting of members or directors after their election, the
1156 terms of the third group, if any, expire at the third such annual
1157 meeting of members or directors after their election, the terms of the
1158 fourth group, if any, expire at the fourth such annual meeting of
1159 members or directors after their election, and the terms of the fifth
1160 group, if any, expire at the fifth such annual meeting of members or
1161 directors after their election. At each such annual meeting thereafter,
1162 directors shall be chosen for a term of two years, three years, four years
1163 or five years, as the case may be, to succeed those whose terms expire.

1164 [(b) If a corporation has cumulative voting pursuant to section 33-
1165 1077, this section shall apply only if there are at least three directors in
1166 each group.]

1167 Sec. 38. Section 33-1097 of the general statutes is repealed and the
1168 following is substituted in lieu thereof:

1169 (a) [Unless the] Except to the extent that the certificate of
1170 incorporation or bylaws [provide otherwise] specifically require that
1171 action by the board of directors be taken only at a meeting, action
1172 required or permitted by sections 33-1000 to 33-1290, inclusive, as
1173 amended by this act, to be taken [at a board of directors' meeting] by
1174 the board of directors may be taken without a meeting if [the action is
1175 taken by all members of the board. The action shall be evidenced by

1176 one or more written consents describing the action taken, signed by
1177 each director, and included in the minutes or filed with the corporate
1178 records reflecting the action taken] each director signs a consent
1179 describing the action taken or to be taken and delivers it to the
1180 corporation.

1181 (b) Action taken under this section is [effective when the last
1182 director signs the consent, unless the consent specifies a different
1183 effective date] the act of the board of directors when one or more
1184 consents signed by all the directors are delivered to the corporation.
1185 The consent may specify the time at which the action taken thereunder
1186 is to be effective. A director's consent may be withdrawn by a
1187 revocation signed by the director and delivered to the corporation
1188 prior to delivery to the corporation of unrevoked written consents
1189 signed by all the directors.

1190 (c) A consent signed under this section has the effect of action taken
1191 at a meeting [vote] of the board of directors and may be described as
1192 such in any document.

1193 Sec. 39. Section 33-1101 of the general statutes is repealed and the
1194 following is substituted in lieu thereof:

1195 (a) Unless sections 33-1000 to 33-1290, inclusive, as amended by this
1196 act, the certificate of incorporation or the bylaws provide otherwise, a
1197 board of directors may create one or more committees and appoint one
1198 or more members of the board of directors to serve on [them. Each
1199 committee shall have two or more directors, who serve at the pleasure
1200 of the board of directors] any such committee.

1201 (b) [The] Unless sections 33-1000 to 33-1290, inclusive, as amended
1202 by this act, provide otherwise, the creation of a committee and
1203 appointment of directors to it shall be approved by the greater of (1) a
1204 majority of all the directors in office when the action is taken, or (2) the
1205 number of directors required by the certificate of incorporation or

1206 bylaws to take action under section 33-1100.

1207 (c) [Sections] The provisions of sections 33-1095 to 33-1100,
1208 inclusive, [shall be applicable] as amended by this act, apply both to
1209 committees of the board and their directors.

1210 (d) To the extent specified by the board of directors or in the
1211 certificate of incorporation or bylaws, each committee may exercise the
1212 [authority] powers of the board of directors under section 33-1080.

1213 (e) A committee may not, however: (1) Approve or recommend to
1214 members action that sections 33-1000 to 33-1290, inclusive, as amended
1215 by this act, require be approved by members; (2) fill vacancies on the
1216 board of directors or, subject to subsection (g) of this section, on any of
1217 its committees; [(3) amend the certificate of incorporation; (4)] (3)
1218 adopt, amend or repeal bylaws; [(5)] (4) approve a plan of merger; [(6)]
1219 (5) approve a sale, lease, exchange or other disposition of all, or
1220 substantially all, of the property of a corporation, other than (A) in the
1221 usual and regular course of affairs of the corporation, or (B) a
1222 mortgage, pledge or other encumbrance described in subdivision (2) of
1223 subsection (a) of section 33-1165; or [(7)] (6) approve a proposal to
1224 dissolve.

1225 (f) The creation of, delegation of authority to, or action by a
1226 committee does not alone constitute compliance by a director with the
1227 standards of conduct described in section 33-1104.

1228 (g) The board of directors may appoint one or more directors as
1229 alternate directors of any committee to replace any absent or
1230 disqualified director during the director's absence or disqualification.
1231 If authorized by the certificate of incorporation, the bylaws or the
1232 resolution creating the committee, in the event of the absence or
1233 disqualification of a director of a committee, the director or directors
1234 present at any meeting and not disqualified from voting, may, by
1235 unanimous vote, appoint another director to act in place of the absent

1236 or disqualified director.

1237 Sec. 40. Section 33-1109 of the general statutes is repealed and the
1238 following is substituted in lieu thereof:

1239 (a) A corporation has the [officers] offices described in its bylaws.
1240 Officers shall be appointed or elected at such time and in such manner
1241 as may be prescribed by the bylaws and, in the absence of applicable
1242 bylaws, shall be [appointed] elected by the directors.

1243 (b) [A duly appointed] An officer may appoint one or more officers
1244 [or assistant officers] if authorized by the bylaws or the board of
1245 directors.

1246 (c) The bylaws or the board of directors shall [delegate] assign to
1247 one of the officers responsibility for preparing the minutes of the
1248 directors' and members' meetings and for maintaining and
1249 authenticating the records of the corporation required to be kept under
1250 subsections (a) and (e) of section 33-1235.

1251 (d) The same individual may simultaneously hold more than one
1252 office in a corporation.

1253 Sec. 41. Section 33-1112 of the general statutes is repealed and the
1254 following is substituted in lieu thereof:

1255 (a) An officer may resign at any time by delivering notice to the
1256 corporation. A resignation is effective when the notice is delivered
1257 unless the notice specifies a later effective [date] time. If a resignation
1258 is made effective at a later [date] time and the [corporation] board of
1259 directors or the appointing officer accepts the future effective [date, its
1260 board of directors] time, the board or the appointing officer may fill
1261 the pending vacancy before the effective [date] time if the board [of
1262 directors] or the appointing officer provides that the successor does not
1263 take office until the effective [date] time.

1264 (b) [A board of directors may remove any officer] An officer may be
1265 removed at any time with or without cause by: (1) The board of
1266 directors; (2) the officer who appointed such officer, unless the bylaws
1267 provide otherwise; or (3) any other officer if authorized by the bylaws
1268 or the board of directors.

1269 (c) In this section, "appointing officer" means the officer, including
1270 any successor to that officer, who appointed the officer resigning or
1271 being removed.

1272 Sec. 42. Subsection (c) of section 33-1121 of the general statutes is
1273 repealed and the following is substituted in lieu thereof:

1274 (c) Authorization of indemnification shall be made in the same
1275 manner as the determination that indemnification is permissible,
1276 except that if there are fewer than two disinterested directors or if the
1277 determination is made by special legal counsel, authorization of
1278 indemnification shall be made by those entitled under subparagraph
1279 (B) of subdivision (2) of subsection (b) of this section to select special
1280 legal counsel.

1281 Sec. 43. Subsection (a) of section 33-1124 of the general statutes is
1282 repealed and the following is substituted in lieu thereof:

1283 (a) [A provision treating a corporation's indemnification of or (a)] A
1284 corporation may, by a provision in its certificate of incorporation or
1285 bylaws or in a resolution adopted or a contract approved by its board
1286 of directors or members, obligate itself in advance of the act or
1287 omission giving rise to a proceeding to provide indemnification in
1288 accordance with section 33-1117 or advance funds to pay for or
1289 reimburse expenses in accordance with section 33-1119. Any such
1290 obligatory provision shall be deemed to satisfy the requirements for
1291 authorization referred to in subsection (c) of section 33-1119 and
1292 subsection (c) of section 33-1121, as amended by this act. Any such
1293 provision that obligates the corporation to provide indemnification to

1294 the fullest extent permitted by law shall be deemed to obligate the
1295 corporation to advance funds to pay for or reimburse expenses in
1296 accordance with section 33-1119 to the fullest extent permitted by law,
1297 unless the provision specifically provides otherwise.

1298 Sec. 44. Section 33-1237 of the general statutes is repealed and the
1299 following is substituted in lieu thereof:

1300 (a) A member's agent or attorney has the same inspection and
1301 copying rights as the member [~~he represents~~] represented.

1302 (b) The right to copy records under section 33-1236 includes, if
1303 reasonable, the right to receive copies [~~made by photographic,~~] by
1304 xerographic or other means, including copies through an electronic
1305 transmission if available and so requested by the member.

1306 (c) The corporation may comply at its expense with a member's
1307 demand to inspect the membership list under subdivision (3) of
1308 subsection (b) of section 33-1236 by providing the member with a
1309 membership list that was compiled no earlier than the date of the
1310 member's demand.

1311 [(c)] (d) The corporation may impose a reasonable charge, covering
1312 the costs of labor and material, for copies of any documents provided
1313 to the member. The charge may not exceed the estimated cost of
1314 production, [or] reproduction or transmission of the records.

1315 [(d)] The corporation may comply with a member's demand to
1316 inspect the record of members under subdivision (3) of subsection (b)
1317 of section 33-1236 by providing him with a list of its members that was
1318 compiled no earlier than the date of the member's demand.]

1319 Sec. 45. (NEW) (a) A director of a corporation is entitled to inspect
1320 and copy the books, records and documents of the corporation at any
1321 reasonable time to the extent reasonably related to the performance of
1322 the director's duties as a director, including duties as a member of a

1323 committee, but not for any other purpose or in any manner that would
1324 violate any duty to the corporation.

1325 (b) The superior court for the judicial district where the
1326 corporation's principal office or, if none in this state, its registered
1327 office is located may order inspection and copying of the books,
1328 records and documents at the corporation's expense, upon application
1329 of a director who has been refused such inspection rights, unless the
1330 corporation establishes that the director is not entitled to such
1331 inspection rights. The court shall dispose of an application under this
1332 subsection on an expedited basis.

1333 (c) If an order is issued, the court may include provisions protecting
1334 the corporation from undue burden or expense, and prohibiting the
1335 director from using information obtained upon exercise of the
1336 inspection rights in a manner that would violate a duty to the
1337 corporation, and may also order the corporation to reimburse the
1338 director for the director's costs, including reasonable counsel fees,
1339 incurred in connection with the application.

1340 Sec. 46. (NEW) (a) Whenever notice is required to be given under
1341 any provision of sections 33-1000 to 33-1290, inclusive, of the general
1342 statutes, as amended by this act, to any member, such notice shall not
1343 be required to be given if notice of two consecutive annual meetings,
1344 and all notices of meetings during the period between such two
1345 consecutive annual meetings, have been sent to such member at such
1346 member's address as shown on the records of the corporation and have
1347 been returned undeliverable.

1348 (b) If any such member delivers to the corporation written notice
1349 setting forth such member's current address, the requirement that
1350 notice be given to such member shall be reinstated.

1351 Sec. 47. Sections 33-864, 33-866, 33-952 and 33-1242 of the general
1352 statutes are repealed.

1353 Sec. 48. This act shall take effect from its passage.

Statement of Legislative Commissioners:

Language concerning appraisal rights for any shares that the corporation is or may be required to issue or sell pursuant to any conversion, exchange or other right, which had been inadvertently omitted in the preparation of the bill, was restored to subsection (c) of section 16.

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Office of the Secretary of the State, Judicial Department

Municipal Impact: None

Explanation

State Impact:

The bill makes a variety of changes to laws governing stock and non-stock corporations which results in no fiscal impact to the Office of the Secretary of the State. The bill eliminates the right for a jury trial for dissatisfied shareholders, which may result in workload decrease for the courts, which results in no fiscal impact.

OLR Bill Analysis

sHB 6890

***AN ACT CONCERNING BUSINESS CORPORATIONS AND
NONSTOCK CORPORATIONS.***

SUMMARY:

This bill makes numerous changes to the laws governing stock and nonstock corporations. These changes affect:

1. electronic signatures;
2. notice to shareholders or members;
3. the form, effective date, and correction of documents filed with the secretary of the state;
4. staggered terms for directors;
5. board of directors' actions taken without a meeting;
6. board of director committees;
7. selection, duties, resignation, and removal of corporate officers;
8. indemnification of directors; and
9. directors' rights to inspect and copy corporate records.

Also, the bill eliminates the duty of stock corporations to notify missing shareholders of their actions and meetings under certain circumstances.

Current law gives shareholders the right to dissent from and obtain payment for the fair value of their shares following certain corporate actions such as consolidations, mergers, reorganizations, or amendments to certificates of incorporation that materially and

adversely affect their rights. The bill retains this right but calls it appraisal rights instead of dissenter's rights. It narrows the situations where appraisal and payment of fair value are required by restricting the categories that already exist and by creating a new exception for stocks that have a ready and reliable market for sale (ie, a market exception). It also establishes more detailed rules to govern this right.

The bill also allows a corporation's articles of incorporation to eliminate or limit appraisal rights for holders of one or more series or classes of preferred shares.

Finally, the bill makes several technical changes.

EFFECTIVE DATE: Upon passage

ELECTRONIC SIGNATURES

The bill explicitly allows electronic signatures to satisfy the requirement for a signature in the stock and non-stock corporation laws.

WRITTEN NOTICE TO STOCKHOLDERS

Under current law, a corporation's written notice to its stockholders or members is effective when deposited in the U.S. mail, as endorsed by a postmark, if mailed postage prepaid to the address shown in the corporation's books. The bill eliminates the requirement for it to be endorsed by a postmark in order to be effective when deposited.

DOCUMENTS SUBMITTED TO SECRETARY OF STATE

The bill requires corporation documents electronically transmitted to the secretary of the state to be in a format that can be retrieved or reproduced in typewritten or printed form.

If a document is filed in typewritten or printed form, the bill authorizes the secretary of the state to require that one exact or conformed copy be delivered with it.

CORRECTING FILED DOCUMENTS

The bill allows corporations to correct documents filed with the secretary of the state if the electronic transmission was defective. Under current law, a document is corrected by preparing and delivering to the secretary of state a certificate of correction that specifies either (1) the incorrect statement and the reason it is incorrect or the (2) way the execution was defective and corrects the statement or execution. The bill instead requires that the certificate specify the inaccuracy or defect to be corrected and corrects it.

STAGGERED TERMS FOR DIRECTORS

By law, corporations may stagger the terms of their directors by dividing the total number of directors into two to five groups. Each group must contain about the same percentage of the total, to the extent possible. The bill allows corporations that permit cumulative voting to provide for staggered terms even if fewer than three directors are in each group.

BOARD ACTION WITHOUT MEETING

Under current law, unless the certificate of corporation or bylaws provide otherwise, a board of directors may take action without a meeting if (1) the action is taken by all the board members, (2) each director signs a written consent describing the action taken, and (3) the consent documents are included in the corporate minutes or records. The bill eliminates the requirement that the consent documents be included in the corporate minutes or records. Instead it requires that the documents be delivered to the corporation. Also, the bill makes the action effective on delivery to the corporation of all signed consent documents instead of when the last director signs the consent document. As under current law, the consent documents may specify a different effective date.

The bill allows a director to withdraw his consent by a signed revocation delivered to the corporation before consents signed by all the directors are delivered.

COMMITTEES

The bill authorizes board of director committees consisting of one board member. It allows committees to authorize or approve distributions according to a formula or method or within limits established by the board of directors.

By eliminating statutory prohibitions, the bill allows committees to:

1. amend the corporation's certificate of incorporation under the same conditions as the board can;
2. approve a merger plan not requiring shareholder approval;
3. authorize or approve the reacquisition of shares without a formula or method the board establishes; and
4. (a) authorize or approve the issuance of, sale of, or contract for the sale of shares or (b) determine the designation and relative rights, preferences, and limitations of a class or series of shares without the board's explicit authority, within limits the board specifies.

The bill authorizes the board to appoint directors as alternate members of any committee to replace absent or disqualified members. It authorizes committee members, by the unanimous vote of committee members present at a meeting, and not disqualified to appoint another director to act in place of a disqualified or absent member. A committee can do so only if the certificates of incorporation, bylaws, or resolution that created the committee authorizes it.

OFFICERS

The bill authorizes the board of directors of a stock corporation to elect people to fill corporate offices, and it requires the board of a nonstock corporation to elect them unless the bylaws provide otherwise.

The bill requires the bylaws or board to assign an officer the duty to maintain records the law requires corporations to keep. These include such things as minutes of shareholder and board meetings, actions taken by shareholders or the board without a meeting, and actions taken by board committees.

RESIGNATION AND REMOVAL OF OFFICERS

By law, a corporate officer may resign by delivering a notice to the corporation. The bill specifies that when a resignation notice specifies an effective time, the board or the officer who appointed the resigning officer may fill the pending vacancy before the effective date. Unless the bylaws provide otherwise, the bill authorizes the removal of a corporate officer by (1) the officer who appointed him or by any successor of the appointing officer or (2) any other officer authorized to do so by the board or by-laws.

DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION

By law, under certain circumstances, corporations may indemnify directors for losses and expenses they incur in any threatened, pending, or completed lawsuit or other proceeding against them in their capacity as directors even if they were not completely successful on the merits.

Under the bill, when special legal counsel determines that indemnification is permissible because of the circumstances, the actual authorization to indemnify must be made by a majority vote of the entire board, including members who are not disinterested.

By law, a “disinterested” board member is one who is not a party to the lawsuit or other legal proceeding in question and does not have a financial, family, professional, or employment relationship with the director whose indemnification is the subject of the vote.

The bill specifies that when a corporation obligates itself in advance to indemnify a director to the fullest extent the law permits, it does not have to subsequently approve indemnification for a particular legal proceeding, as long as it determines that indemnification is permissible. By law, a corporation may obligate itself to indemnify directors in its certificate of incorporation or bylaws, or by resolution the board or shareholders adopt.

SHAREHOLDER’S OR MEMBER’S RIGHT TO COPY CORPORATE RECORDS

The bill specifies that a shareholder's or member's right to copy corporate records includes the right to receive copies electronically if the shareholder or member asks to receive them this way.

The bill also specifies that if a corporation complies with a shareholder's or member's request to inspect the record of shareholders or members by providing him with a list compiled in response to the request, it must be at the corporation's expense.

DIRECTOR'S RIGHT TO INSPECT AND COPY BOOKS

The bill gives corporate directors the right to inspect and copy corporation books, records, and documents at any reasonable time if inspecting and copying them reasonably relate to their duties as directors. It specifies that a director may not do such copying and inspecting for any other purpose or in a way that would violate a duty to the corporation. A director refused this right may apply to Superior Court.

The court may order inspection and copying at the corporation's expense unless the corporation establishes that the director is not entitled to do so. The Superior Court for the judicial district where the corporation's principal office is located has jurisdiction. If the corporation does not have a principal office in Connecticut, the Superior Court for the judicial district where its registered office is located has jurisdiction. The bill requires the court to handle the matter on an expedited basis. The court may protect the corporation from undue burden or expense, and it may prohibit the director from using information in a way that would violate a duty to the corporation. It may also order the corporation to reimburse the director for his application costs, including reasonable counsel fees.

NOTICE TO SHAREHOLDERS

The bill eliminates the statutory duty of corporations to give notice to shareholders if:

1. notice of two consecutive annual meetings, and all notices of meetings during the period between these two annual meetings, have been sent to the shareholder at the address shown on the

corporation's records and they have been returned as undeliverable and

2. all (at least two) payments of dividends on securities during a 12-month period or two consecutive dividend payments during a period of more than 12 months have been sent to the shareholder at the address shown on the corporation's records and have been returned as undeliverable.

If the shareholder delivers to the corporation a written notice with his current address, the statutory requirements for notice again apply.

APPRAISAL RIGHTS

Market Exception to Appraisal Rights

The bill makes appraisal rights unavailable for holders of shares that (1) are listed on the New York Stock Exchange or the American Stock Exchange or designated as a National Market System Security or on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (2) have at least 2,000 shareholders and the outstanding shares of each class or series have a market value of \$20 million or more, not counting the value of shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of the shares.

Whether this exception applies is determined as of either (1) the date selected to determine the shareholders entitled to receive notice of, and to vote at, the shareholders meeting to decide upon the corporate action requiring appraisal rights or (2) the day before the effective date of the corporate action if there is no shareholder's meeting. But this exception does not apply and appraisal rights are available for any shareholders required by the corporate action to accept for their shares anything other than (1) cash or (2) shares of any corporation or any other ownership interest of any other entity that satisfies the market exception to appraisal under the bill.

Market Exception-Conflict of Interest Transactions

The market exception to appraisal rights does not apply and appraisal

rights are available for shareholders where the corporate action is by a person, or his affiliate who:

1. directly or indirectly has, or at any time during the one-year period immediately before board approval of the corporate action requiring appraisal rights, had the power to appoint or elect or the power to cause the appointment or election of at least 25% of the corporation's board of directors or
2. is, or at any time during the one-year period right before the board's approval of the corporate action requiring appraisal rights, was the beneficial owner of at least 20% of the corporation's voting power.

The 20% share cannot include any shares acquired (1) under an offer for all voting shares if the offer was made within that one-year period and (2) for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action creating the appraisal rights.

The bill defines "beneficial owner" as anyone who, directly or indirectly, through any means other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares. But the bill specifies that a member of a National Securities Exchange is not a beneficial owner of securities he holds for someone else merely because the member is the record holder, if the exchange's rules prevent him from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted.

The bill defines "affiliate" as a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive of an affiliate.

"Senior executives" include the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

The market exception also does not apply and appraisal rights are

available if any corporate shares or assets are being acquired or converted pursuant to a corporate action by a person, or his affiliate, (1) who is, or during the one-year period right before the board approved the corporate action requiring appraisal rights was a senior executive or director of the corporation or a senior executive of the corporation's affiliate and (2) will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders.

A financial benefit does not count, and the market exception applies if:

1. the benefits consist of employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action in question;
2. these benefits are established in contemplation of, or as part of, the corporate action that (a) are not more favorable than those existing before the corporate action or (b) if more favorable, have been approved on behalf of the corporation by directors meeting the standard of independence and in the same manner as is provided for conflicting interest transactions generally under current law; or
3. in the situation of a corporate director, who will, in the corporate action in question, become a director of the entity acquiring the corporation or of one of its affiliates, where the rights and benefits as director that he acquires are provided on the same basis as those given by the acquirer generally to its other directors.

Elimination of Appraisal Rights for Preferred Shares

The bill allows a corporation's certificate of incorporation as originally filed or amended to limit or eliminate appraisal rights for any class or series of preferred shares. But any such amendment does not apply to any corporate action that becomes effective within one year of the amendment's effective date, if the action would otherwise affect appraisal rights.

Elimination Of Appraisal Rights In Mergers

The bill eliminates appraisal rights in the case of a merger with respect to shares of any class or series that remain outstanding after the

merger. It also eliminates appraisal rights where a corporation's certificate of incorporation requires shareholder approval, but the law does not.

The bill also eliminates appraisal rights for shareholders of corporations where shares will be acquired by another corporation under a share exchange for any shares of any class or series of shares that are not exchanged.

SALE OR EXCHANGE OF ALL CORPORATE PROPERTY

Leases

The bill includes appraisal rights where the disposition of all or most property is by lease other than in the usual and regular course of business. Current law does not explicitly trigger this right where the disposition is by lease.

Appraisal Rights-Certificate Of Incorporation

The bill requires that for an amendment to a certificate of incorporation to trigger appraisal rights, it must be for a class or series of shares. It also eliminates appraisal rights for an amendment to a certificate of incorporation that materially and adversely affects the rights of a person's shares because it:

1. changes or abolishes a preferential right of the shares;
2. creates, changes, or abolishes a redemption right, including a right relating to a sinking fund to redeem or repurchase shares;
3. changes or abolishes a shareholder's preemptive right to acquire shares of other securities; or
4. excludes or limits the right of share holders to vote on any matter or to cumulative voting, other than a limitation by dilution by issuing shares or other securities with similar voting rights.

Under current law, a shareholder has dissenter's rights if an amendment reduces the number of shares he owns to a fraction of a

share, if the fractional share is acquired for cash by the corporation. The bill instead makes appraisal rights apply if an amendment reduces the number of shares of a class or series to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share.

Under current law, dissenter's rights apply with respect to any other corporate action taken pursuant to a shareholder's vote to the extent the certificate of incorporation, bylaws, or board resolution provides that voting or non voting shareholders are entitled to dissent and obtain payment.

The bill instead limits appraisal rights to any other amendment to the certificate of incorporation, merger, share exchange, or disposition of assets to the extent provided by the certificate of incorporation, bylaws, or board resolution.

Appraisal Rights For Nominees And Beneficial Owners

Record Shareholders

The bill authorizes a record shareholder (a person in whose name shares are registered such as a broker) to assert appraisal rights for fewer than all the shares registered in his name. He may do so only if he notifies the corporation in writing of the name and address of each record shareholder on whose behalf he asserts appraisal rights.

Current law allows the record shareholder to assert appraisal rights for all the shares the beneficial shareholder owns or for which he has the power to direct the vote. The bill instead allows him to do so for shares of any class or series held on behalf of a beneficial shareholder. Thus, he may do so for one class or series and not be forced to do so for shares held in a different class or series.

Beneficial Shareholders

The bill allows beneficial shareholders to assert appraisal rights just as current law allows them to assert dissenter's rights. But the bill gives them more time to submit to the corporation the record shareholder's written consent. Under current law, they must submit the written

consent no later than the time they assert their dissenter's rights. The bill instead allows them to submit it by the date the corporation sets for getting back from shareholders asserting appraisal rights the appraisal notice and form it sent to them.

Notice Of Appraisal Rights

Under the bill, if a proposed corporate action described by the bill as creating appraisal rights will be submitted to a vote at a shareholder's meeting, the meeting notice must state that the shareholders are, are not, or may be entitled to assert appraisal rights. If the corporation concludes that appraisal rights are, or may be available, it must include with the notice to shareholders entitled to exercise them a copy of the law relating to appraisal rights. This is the same as current law's requirements relating to dissenter's rights. But current law does not require that the notice indicate the corporation's conclusion that the shareholders do not have these rights.

Under the bill, a beneficial shareholder who delivers to the corporation a written notice of his intention to demand payment for his shares may not cause or permit to be voted any shares of the class or series in question at the shareholder's meeting concerning the issue that required appraisal rights.

Notice To Those Demanding Appraisal Rights And Form To Be Used

The bill, as well as current law, requires the corporation to provide shareholders with certain information and a form to exercise their right to demand payment.

The bill specifies that the corporation may not send the notice before the corporate action in question becomes effective.

The bill imposes additional requirements for the form the corporations must send to affected shareholders. Specifically, it must also:

1. require the shareholder to certify he did not vote for the corporate transaction in question;

2. state the corporation's estimate of the value of the shares;
3. specify a date by which the corporation must receive the form which may not be less than 40 nor more than 60 days after it sent the notice and form to the shareholders, and specify that shareholders waive their right to payment unless the corporation receives the form by this specified date;
4. state that if requested in writing, it will provide to the requester, within 10 days after the date it specifies to receive the form, the number of shareholders who returned the form on time and the total number of shares these shareholders own; and
5. specify the date by which a shareholder who wishes to withdraw his request for payment must do so, which must be within 20 days after the date the corporation sets for receiving notices from shareholders.

Duty To Demand Payments And Right To Withdraw

As under current law, a shareholder who receives this notice from the corporation must certify certain information and return the form to the corporation by the required date in order to retain his right to demand payment from the corporation.

The bill permits a shareholder who has complied to decline to exercise his rights and to withdraw from the appraisal process by notifying the corporation in writing by the date the corporation specified for withdrawal in the notice it sent to the shareholder. A shareholder who does not withdraw by this date may subsequently withdraw only with the corporation's written consent.

As under current law, a shareholder who does not sign and return the form as required loses his right to force the corporation to pay him for his shares.

Payment

Current law requires a corporation to pay the amount it estimates as the fair market value of the shares as soon as it takes the proposed

corporate action or when it receives a payment demand from the shareholder. The bill instead requires that a corporation pay this amount within 30 days after the form it sent the shareholder was due back to it. The bill specifies payment in cash.

As under current law, statements and information must accompany the payment. The bill requires that this include a statement that if the shareholder does not demand further payments by a certain date he, is deemed to have accepted the payment as full satisfaction for his claim.

After-Acquired Shares

Both current law and the bill allow a corporation to treat beneficial shareholders who acquired their shares after the public announcement of the corporate transaction was made differently from those who acquired them before. The bill establishes a time-frame for corporate action and imposes a duty on the corporation to give these shareholders a notice containing certain information within 30 days after the date it set for receiving the form it sent all shareholders who might be entitled to appraisal rights.

The form must notify shareholders (1) of the corporation's estimate of the fair value of their shares; (2) that they may accept this amount plus interest in full satisfaction of their demands or demand an amount they believe constitutes fair value; (3) that those wishing to accept the offer must notify the corporation within 30 days after receiving the offer; and (4) that those shareholders who do not satisfy the bill's requirements for demanding appraisal rights will be deemed to have accepted the corporation's offer.

The form must also be accompanied by financial statements of the corporation that issued the shares consisting of the balance sheet as of the end of a fiscal year before the date of the proposed payments, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

The bill requires the corporation to pay in cash (1) the amount it offered within 10 days after the shareholder accepts the offer in full satisfaction of his demands and (2) those who did not satisfy the

requirements for demanding appraisal rights the amount it offered to pay them within 40 days after sending this notice.

Court Action

With minor changes, the bill establishes essentially the same procedure for dissatisfied shareholders to go to court as contained in current law. It eliminates the right to a jury trial. If the corporation is a foreign corporation (organized under another state’s laws), the court case may be filed in the Superior Court for the Judicial District where the principal office of the Connecticut corporation it merged with was located at the time of the transaction that created the appraisal rights. Under current law, the court case may also be filed where the Connecticut corporation’s registered office is located. The bill also permits the filing where the registered office was located at the time of the transaction that created the appraisal rights.

Court Costs And Counsel Fees

The bill authorizes shareholders to sue the corporation directly for an amount it failed to pay them as required by the bill. The bill gives successful shareholders the right to recover all costs and expenses of such a lawsuit, including counsel fees, from the corporation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0