



Senate

General Assembly

File No. 423

February Session, 2008

Substitute Senate Bill No. 440

Senate, April 3, 2008

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.

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

1 Section 1. Section 33-855 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

5 (1) "Affiliate" means a person that directly or indirectly through one
6 or more intermediaries controls, is controlled by or is under common
7 control with another person or is a senior executive thereof. For
8 purposes of subdivision (4) of subsection (b) of section 33-856, a person
9 is deemed to be an affiliate of its senior executives.

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

13 (3) "Corporation" means the issuer of the shares held by a
14 shareholder demanding appraisal and, for purposes of sections 33-862
15 to 33-872, inclusive, as amended by this act, includes the surviving
16 entity in a merger.

17 (4) "Fair value" means the value of the corporation's shares
18 determined: (A) Immediately before the effectuation of the corporate
19 action to which the shareholder objects, (B) using customary and
20 current valuation concepts and techniques generally employed for
21 similar businesses in the context of the transaction requiring appraisal,
22 and (C) without discounting for lack of marketability or minority
23 status except, if appropriate, for amendments to the certificate of
24 incorporation pursuant to subdivision (5) of subsection (a) of section
25 33-856.

26 (5) "Interest" means interest from the effective date of the corporate
27 action until the date of payment, at the rate of interest on judgments in
28 this state on the effective date of the corporate action.

29 (6) "Interested transaction" means a corporate action specified in
30 subsection (a) of section 33-856, as amended by this act, other than a
31 merger pursuant to section 33-818, as amended by this act, involving
32 an interested person in which any of the shares or assets of the
33 corporation are being acquired or converted. As used in this definition:
34 (A) "Interested person" means a person, or an affiliate of a person, who
35 at any time during the one-year period immediately preceding
36 approval by the board of directors of the corporate action: (i) Was the
37 beneficial owner of twenty per cent or more of the voting power of the
38 corporation, excluding any shares acquired pursuant to an offer for all
39 shares having voting power if the offer was made within one year
40 prior to the corporate action for consideration of the same kind and of
41 a value equal to or less than that paid in connection with the corporate
42 action; (ii) had the power, contractually or otherwise, to cause the
43 appointment or election of twenty-five per cent or more of the
44 directors to the board of directors of the corporation; or (iii) was a
45 senior executive or director of the corporation or a senior executive of

46 any affiliate thereof, and that senior executive or director will receive,
47 as a result of the corporate action, a financial benefit not generally
48 available to other shareholders as such, other than: (I) Employment,
49 consulting, retirement or similar benefits established separately and
50 not as part of or in contemplation of the corporate action; or (II)
51 employment, consulting, retirement or similar benefits established in
52 contemplation of, or as part of, the corporate action that are not more
53 favorable than those existing before the corporate action or, if more
54 favorable, that have been approved on behalf of the corporation in the
55 same manner as is provided in section 33-783; or (III) in the case of a
56 director of the corporation who will, in the corporate action, become a
57 director of the acquiring entity in the corporate action or one of its
58 affiliates, rights and benefits as a director that are provided on the
59 same basis as those afforded by the acquiring entity generally to other
60 directors of such entity or such affiliate; and (B) "beneficial owner"
61 means any person who, directly or indirectly, through any contract,
62 arrangement or understanding, other than a revocable proxy, has or
63 shares the power to vote, or to direct the voting of, shares; except that a
64 member of a national securities exchange is not deemed to be a
65 beneficial owner of securities held directly or indirectly by it on behalf
66 of another person solely because the member is the record holder of
67 the securities if the member is precluded by the rules of the exchange
68 from voting without instruction on contested matters or matters that
69 may affect substantially the rights or privileges of the holders of the
70 securities to be voted. When two or more persons agree to act together
71 for the purpose of voting their shares of the corporation, each member
72 of the group formed thereby is deemed to have acquired beneficial
73 ownership, as of the date of the agreement, of all voting shares of the
74 corporation beneficially owned by any member of the group.

75 [(6)] (7) "Preferred shares" means a class or series of shares whose
76 holders have preference over any other class or series with respect to
77 distributions.

78 [(7)] (8) "Record shareholder" means the person in whose name
79 shares are registered in the records of the corporation or the beneficial

80 owner of shares to the extent of the rights granted by a nominee
81 certificate on file with the corporation.

82 [(8)] (9) "Senior executive" means the chief executive officer, chief
83 operating officer, chief financial officer and any individual in charge of
84 a principal business unit or function.

85 [(9)] (10) "Shareholder" means both a record shareholder and a
86 beneficial shareholder.

87 Sec. 2. Section 33-862 of the general statutes is repealed and the
88 following is substituted in lieu thereof (*Effective October 1, 2008*):

89 (a) If proposed corporate action requiring appraisal rights under
90 subsection (a) of section 33-856, as amended by this act, becomes
91 effective, the corporation must deliver a written appraisal notice and
92 form required by subdivision (1) of subsection (b) of this section to all
93 shareholders who satisfied the requirements of section 33-861. In the
94 case of a merger under section 33-818, the parent must deliver a
95 written appraisal notice and form to all record shareholders who may
96 be entitled to assert appraisal rights.

97 (b) The appraisal notice [shall] must be sent no earlier than the date
98 the corporate action specified in subsection (a) of section 33-856, as
99 amended by this act, became effective, and no later than ten days after
100 such date, and shall:

101 (1) Supply a form that (A) specifies the first date of [the first] any
102 announcement to shareholders made prior to the date the corporate
103 action became effective of the principal terms of the proposed
104 corporate action, [and] (B) if such announcement was made, requires
105 the shareholder asserting appraisal rights to certify [(A)] whether [or
106 not] beneficial ownership of those shares for which appraisal rights are
107 asserted [were] was acquired before that date, and [(B) that the] (C)
108 requires the shareholder asserting appraisal rights to certify that such
109 shareholder did not vote for or consent to the transaction;

110 (2) State:

111 (A) Where the form must be sent and where certificates for
112 certificated shares must be deposited and the date by which those
113 certificates must be deposited, which date may not be earlier than the
114 date for receiving the required form under subparagraph (B) of this
115 subdivision;

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

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

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

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

132 (3) Be accompanied by a copy of sections 33-855 to 33-872, inclusive,
133 as amended by this act.

134 Sec. 3. Section 33-856 of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective October 1, 2008*):

136 (a) A shareholder is entitled to appraisal rights, and to obtain
137 payment of the fair value of that shareholder's shares, in the event of
138 any of the following corporate actions:

139 (1) Consummation of a merger to which the corporation is a party
140 (A) if shareholder approval is required for the merger by section 33-

141 817 and the shareholder is entitled to vote on the merger, except that
142 appraisal rights shall not be available to any shareholder of the
143 corporation with respect to shares of any class or series that remain
144 outstanding after consummation of the merger, or (B) if the
145 corporation is a subsidiary and the merger is governed by section 33-
146 818, as amended by this act;

147 (2) Consummation of a share exchange to which the corporation is a
148 party as the corporation whose shares will be acquired, if the
149 shareholder is entitled to vote on the exchange, except that appraisal
150 rights shall not be available to any shareholder of the corporation with
151 respect to any class or series of shares of the corporation that is not
152 exchanged;

153 (3) Consummation of a disposition of assets pursuant to section 33-
154 831 if the shareholder is entitled to vote on the disposition;

155 (4) An amendment of the certificate of incorporation with respect to
156 a class or series of shares that reduces the number of shares of a class
157 or series owned by the shareholder to a fraction of a share if the
158 corporation has the obligation or right to repurchase the fractional
159 share so created; or

160 (5) Any other merger, share exchange, disposition of assets or
161 amendment to the certificate of incorporation to the extent provided by
162 the certificate of incorporation, the bylaws or a resolution of the board
163 of directors.

164 (b) Notwithstanding subsection (a) of this section, the availability of
165 appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a)
166 of this section shall be limited in accordance with the following
167 provisions:

168 (1) Appraisal rights shall not be available for the holders of shares of
169 any class or series of shares which is:

170 (A) [Listed on the New York Stock Exchange or the American Stock
171 Exchange or designated as a National Market System security on an

172 interdealer quotation system by the National Association of Securities
173 Dealers, Inc.; or] A covered security under Section 18(b)(1)(A) or (B) of
174 the Securities Act of 1933, as amended;

175 (B) [not so listed or designated but] Traded in an organized market
176 and has at least two thousand shareholders and [the outstanding
177 shares of such class or series has] a market value of at least twenty
178 million dollars, exclusive of the value of such shares held by [its] the
179 corporation's subsidiaries, senior executives, directors and beneficial
180 shareholders owning more than ten per cent of such shares; or

181 (C) Issued by an open-end management investment company
182 registered with the Securities and Exchange Commission under the
183 Investment Company Act of 1940 and may be redeemed at the option
184 of the holder at net asset value.

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

191 (3) Subdivision (1) of this subsection shall not be applicable and
192 appraisal rights shall be available pursuant to subsection (a) of this
193 section for the holders of any class or series of shares who are required
194 by the terms of the corporate action requiring appraisal rights to accept
195 for such shares anything other than cash or shares of any class or any
196 series of shares of any corporation, or any other proprietary interest of
197 any other entity, that satisfies the standards set forth in subdivision (1)
198 of this subsection at the time the corporate action becomes effective.

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

202 (A) Any of the shares or assets of the corporation are being acquired

203 or converted, whether by merger, share exchange or otherwise,
204 pursuant to the corporate action by a person, or by an affiliate of a
205 person, who:

206 (i) Is, or at any time in the one-year period immediately preceding
207 approval by the board of directors of the corporate action requiring
208 appraisal rights was, the beneficial owner of twenty per cent or more
209 of the voting power of the corporation, excluding any shares acquired
210 pursuant to an offer for all shares having voting power if such offer
211 was made within one year prior to the corporate action requiring
212 appraisal rights for consideration of the same kind and of a value
213 equal to or less than that paid in connection with the corporate action;
214 or

215 (ii) Directly or indirectly has, or at any time in the one-year period
216 immediately preceding approval by the board of directors of the
217 corporate action requiring appraisal rights had, the power,
218 contractually or otherwise, to cause the appointment or election of
219 twenty-five per cent or more of the directors to the board of directors
220 of the corporation; or

221 (B) Any of the shares or assets of the corporation are being acquired
222 or converted, whether by merger, share exchange or otherwise,
223 pursuant to such corporate action by a person, or by an affiliate of a
224 person, who is, or at any time in the one-year period immediately
225 preceding approval by the board of directors of the corporate action
226 requiring appraisal rights was, a senior executive or director of the
227 corporation or a senior executive of any affiliate thereof, and that
228 senior executive or director will receive, as a result of the corporate
229 action, a financial benefit not generally available to other shareholders
230 as such, other than:

231 (i) Employment, consulting, retirement or similar benefits
232 established separately and not as part of or in contemplation of the
233 corporate action; or

234 (ii) Employment, consulting, retirement or similar benefits

235 established in contemplation of, or as part of, the corporate action that
236 are not more favorable than those existing before the corporate action
237 or, if more favorable, that have been approved on behalf of the
238 corporation in the same manner as is provided in section 33-783; or

239 (iii) In the case of a director of the corporation who will, in the
240 corporate action, become a director of the acquiring entity in the
241 corporate action or one of its affiliates, rights and benefits as a director
242 that are provided on the same basis as those afforded by the acquiring
243 entity generally to other directors of such entity or such affiliate.

244 (5) For the purposes of subdivision (4) of this subsection, "beneficial
245 owner" means any person who, directly or indirectly, through any
246 contract, arrangement or understanding, other than a revocable proxy,
247 has or shares the power to vote, or to direct the voting of, shares,
248 provided a member of a National Securities Exchange shall not be
249 deemed to be a beneficial owner of securities held directly or indirectly
250 by it on behalf of another person solely because such member is the
251 record holder of such securities if the member is precluded by the rules
252 of such exchange from voting without instruction on contested matters
253 or matters that may affect substantially the rights or privileges of the
254 holders of the securities to be voted. When two or more persons agree
255 to act together for the purpose of voting their shares of the corporation,
256 each member of the group formed thereby shall be deemed to have
257 acquired beneficial ownership, as of the date of such agreement, of all
258 voting shares of the corporation beneficially owned by any member of
259 the group.]

260 (4) Subdivision (1) of this subsection shall not be applicable and
261 appraisal rights shall be available pursuant to subsection (a) of this
262 section for the holders of any class or series of shares where the
263 corporate action is an interested transaction.

264 (c) Notwithstanding any other provision of this section, the
265 certificate of incorporation as originally filed or any amendment
266 thereto may limit or eliminate appraisal rights for any class or series of
267 preferred shares, but any such limitation or elimination contained in

268 an amendment to the certificate of incorporation that limits or
269 eliminates appraisal rights for any of such shares that are outstanding
270 immediately prior to the effective date of such amendment or that the
271 corporation is or may be required to issue or sell thereafter pursuant to
272 any conversion, exchange or other right existing immediately before
273 the effective date of such amendment shall not apply to any corporate
274 action that becomes effective within one year of that date if such action
275 would otherwise afford appraisal rights.

276 (d) Where the right to be paid the value of shares is made available
277 to a shareholder by this section, such remedy shall be the exclusive
278 remedy as holder of such shares against the corporate [transactions]
279 actions described in this section, whether or not the shareholder
280 proceeds as provided in sections 33-855 to 33-872, inclusive, as
281 amended by this act.

282 Sec. 4. Section 33-698 of the general statutes is repealed and the
283 following is substituted in lieu thereof (*Effective October 1, 2008*):

284 [(a) Any action which, under any provision of sections 33-600 to 33-
285 998, inclusive, may be taken at a meeting of shareholders may be taken
286 without a meeting as follows: (1) By one or more consents in writing,
287 setting forth the action so taken or to be taken, bearing the date of
288 signature and signed by all of the persons who would be entitled to
289 vote upon such action at a meeting, or by their duly authorized
290 attorneys, which action for purposes of this section is hereafter referred
291 to as "unanimous written consent"; or (2) if the certificate of
292 incorporation so provides, by one or more consents in writing, bearing
293 the date of signature and setting forth the action to be taken, signed by
294 persons holding such designated proportion, not less than a majority,
295 of the voting power of shares, or of the shares of any particular class,
296 entitled to vote thereon or to take such action, as may be provided in
297 the certificate of incorporation, or their duly authorized attorneys;
298 except that directors may not be elected by action of shareholders
299 without a meeting of shareholders other than by unanimous written
300 consent, or pursuant to a plan of merger. If action is proposed to be

301 taken by written consent of less than all of such persons, or their duly
302 authorized attorneys, notice in writing of such proposed action shall be
303 given to each person who would be entitled to vote thereon at a
304 meeting held for that purpose. Such notice shall be given in the
305 manner of giving notice of a meeting of shareholders not less than
306 twenty days nor more than fifty days before the date any such
307 consents are to become effective. If not less than five days before the
308 date any such consents are to become effective, the secretary of the
309 corporation shall have received from such persons, or their duly
310 authorized attorneys, holding not less than one-tenth of the voting
311 power of all shares entitled to vote at such a meeting, a demand in
312 writing that such action not be taken by written consent, all persons to
313 whom such notice was given shall be so notified, and the corporation
314 shall not take such proposed action except at a meeting of
315 shareholders. The secretary shall file such consent or consents, or
316 certify the tabulation of such consents and file such certificate, with the
317 minutes of the meetings of the shareholders.]

318 (a) Action required or permitted under any provision of sections 33-
319 600 to 33-998, inclusive, as amended by this act, to be taken at a
320 shareholders' meeting may be taken without a meeting if the action is
321 taken by all the shareholders entitled to vote on the action. The action
322 must be evidenced by one or more written consents bearing the date of
323 signature and describing the action taken, signed by all the
324 shareholders entitled to vote on the action and delivered to the
325 corporation for inclusion in the minutes or filing with the corporate
326 records.

327 (b) The certificate of incorporation may provide that any action
328 required or permitted by any provision of sections 33-600 to 33-998,
329 inclusive, as amended by this act, to be taken at a shareholders'
330 meeting may be taken without a meeting, and without prior notice, if
331 consents in writing setting forth the action so taken are signed by the
332 holders of outstanding shares having not less than the minimum
333 number of votes that would be required to authorize or take the action
334 at a meeting at which all shares entitled to vote on the action were

335 present and voted. The written consent shall bear the date of signature
336 of the shareholder who signs the consent and be delivered to the
337 corporation for inclusion in the minutes or filing with the corporate
338 records.

339 [(b)] (c) If not otherwise fixed under section [33-697 or] 33-701, and
340 if prior board action is not required respecting the action to be taken
341 without a meeting, the record date for determining the shareholders
342 entitled to take action without a meeting [is the date the first
343 shareholder signs the consent under subsection (a) of this section] shall
344 be the first date on which a signed written consent is delivered to the
345 corporation. If not otherwise fixed under section 33-701 and if prior
346 board action is required respecting the action to be taken without a
347 meeting, the record date shall be the close of business on the day the
348 resolution of the board taking such prior action is adopted. No written
349 consent shall be effective to take the corporate action referred to
350 therein unless, within sixty days of the earliest date [appearing] on
351 which a consent delivered to the corporation [in the manner] as
352 required by this section was signed, written consents signed by
353 [shareholders sufficient in number to take corporate action are
354 received by] the holders of shares having sufficient votes to take the
355 action have been delivered to the corporation. A written consent may
356 be revoked by a writing to that effect [, provided such revocation shall
357 not be effective if it is received by the corporation after the corporation
358 has received a sufficient number of unrevoked written consents to take
359 corporate action] delivered to the corporation before unrevoked
360 written consents sufficient to take the corporate action are delivered to
361 the corporation.

362 [(c)] (d) A consent signed [under] pursuant to the provisions of this
363 section has the effect of a [meeting] vote taken at a meeting and may be
364 described as such in any document. Unless the certificate of
365 incorporation, the bylaws or a resolution of the board of directors
366 provides for a reasonable delay to permit tabulation of written
367 consents, the action taken by written consent shall be effective when
368 written consents signed by the holders of shares having sufficient

369 votes to take the action are delivered to the corporation.

370 (e) If any provision of sections 33-600 to 33-998, inclusive, as
371 amended by this act, requires that notice of a proposed action be given
372 to nonvoting shareholders and the action is to be taken by written
373 consent of the voting shareholders, the corporation must give its
374 nonvoting shareholders written notice of the action not more than ten
375 days after (1) written consents sufficient to take the action have been
376 delivered to the corporation, or (2) such later date that tabulation of
377 consents is completed pursuant to an authorization under subsection
378 (d) of this section. The notice must reasonably describe the action taken
379 and contain or be accompanied by the same material that, under any
380 provision of sections 33-600 to 33-998, inclusive, as amended by this
381 act, would have been required to be sent to nonvoting shareholders in
382 a notice of a meeting at which the proposed action would have been
383 submitted to the shareholders for action.

384 (f) If action is taken by less than unanimous written consent of the
385 voting shareholders, the corporation must give its nonconsenting
386 voting shareholders written notice of the action not more than ten days
387 after (A) written consents sufficient to take the action have been
388 delivered to the corporation, or (B) such later date that tabulation of
389 consents is completed pursuant to an authorization under subsection
390 (d) of this section. The notice must reasonably describe the action taken
391 and contain or be accompanied by the same material that, under any
392 provision of sections 33-600 to 33-998, inclusive, as amended by this
393 act, would have been required to be sent to voting shareholders in a
394 notice of a meeting at which the action would have been submitted to
395 the shareholders for action.

396 (g) The notice requirements in subsections (e) and (f) of this section
397 shall not delay the effectiveness of actions taken by written consent,
398 and a failure to comply with such notice requirements shall not
399 invalidate actions taken by written consent, provided this subsection
400 shall not be deemed to limit judicial power to fashion any appropriate
401 remedy in favor of a shareholder adversely affected by a failure to give

402 such notice within the required time period.

403 (h) An electronic transmission may be used to consent to an action,
404 if the electronic transmission contains or is accompanied by
405 information from which the corporation can determine the date on
406 which the electronic transmission was signed and that the electronic
407 transmission was authorized by the shareholder, the shareholder's
408 agent or the shareholder's attorney-in-fact.

409 (i) Delivery of a written consent to the corporation under this
410 section is delivery to the corporation's registered agent at its registered
411 office or to the secretary of the corporation at its principal office.

412 Sec. 5. Section 33-695 of the general statutes is repealed and the
413 following is substituted in lieu thereof (*Effective October 1, 2008*):

414 (a) [A] Unless directors are elected by written consent in lieu of an
415 annual meeting as permitted by section 33-698, as amended by this act,
416 a corporation shall hold a meeting of shareholders annually at a time
417 stated in or fixed in accordance with the bylaws, provided, if a
418 corporation's certificate of incorporation authorizes shareholders to
419 cumulate their votes when electing directors pursuant to section 33-
420 712, as amended by this act, directors may not be elected by less than
421 unanimous written consent.

422 (b) Annual shareholders' meetings may be held in or out of this state
423 at the place stated in or fixed in accordance with the bylaws. If no place
424 is stated in or fixed in accordance with the bylaws, annual meetings
425 shall be held at the corporation's principal office.

426 (c) The failure to hold an annual meeting at the time stated in or
427 fixed in accordance with a corporation's bylaws does not affect the
428 validity of any corporate action.

429 Sec. 6. Section 33-697 of the general statutes is repealed and the
430 following is substituted in lieu thereof (*Effective October 1, 2008*):

431 (a) The superior court for the judicial district where a corporation's

432 principal office or, if none in this state, its registered office is located
433 may summarily order a meeting to be held: (1) On application of any
434 shareholder of the corporation entitled to participate in an annual
435 meeting if an annual meeting was not held or action by written consent
436 in lieu thereof did not become effective within the earlier of six months
437 after the end of the corporation's fiscal year or fifteen months after its
438 last annual meeting; or (2) on application of a shareholder who signed
439 a demand for a special meeting valid under section 33-696, if: (A)
440 Notice of the special meeting was not given within thirty days after the
441 date the demand was delivered to the corporation's secretary; or (B)
442 the special meeting was not held in accordance with the notice.

443 (b) The court may fix the time and place of the meeting, determine
444 the shares entitled to participate in the meeting, specify a record date
445 for determining shareholders entitled to notice of and to vote at the
446 meeting, prescribe the form and content of the meeting notice, fix the
447 quorum required for specific matters to be considered at the meeting,
448 or direct that the votes represented at the meeting constitute a quorum
449 for action on those matters, and enter other orders necessary to
450 accomplish the purpose or purposes of the meeting.

451 Sec. 7. Section 33-712 of the general statutes is repealed and the
452 following is substituted in lieu thereof (*Effective October 1, 2008*):

453 (a) Unless otherwise provided in the certificate of incorporation,
454 directors are elected by a plurality of the votes cast by the shares
455 entitled to vote in the election at a meeting at which a quorum is
456 present.

457 (b) Shareholders do not have a right to cumulate their votes for
458 directors unless the certificate of incorporation so provides.

459 (c) A statement included in the certificate of incorporation that "all
460 or a designated voting group of shareholders are entitled to cumulate
461 their votes for directors", or words of similar import, means that the
462 shareholders designated are entitled to multiply the number of votes
463 they are entitled to cast by the number of directors for whom they are

464 entitled to vote and cast the product for a single candidate or distribute
465 the product among two or more candidates.

466 (d) Shares otherwise entitled to vote cumulatively may not be voted
467 cumulatively at a particular meeting unless: (1) The meeting notice or
468 proxy statement accompanying the notice states conspicuously that
469 cumulative voting is authorized; or (2) a shareholder who has the right
470 to cumulate [his] votes gives notice to the corporation not less than
471 forty-eight hours before the time set for the meeting of [his] the
472 shareholder's intent to cumulate [his] votes during the meeting, and, if
473 one shareholder gives this notice, all other shareholders in the same
474 voting group participating in the election are entitled to cumulate their
475 votes without giving further notice.

476 Sec. 8. Section 33-860 of the general statutes is repealed and the
477 following is substituted in lieu thereof (*Effective October 1, 2008*):

478 (a) [If proposed] Where any corporate action [described] specified in
479 subsection (a) of section 33-856, as amended by this act, is to be
480 submitted to a vote at a shareholders' meeting, the meeting notice
481 [shall] must state that the corporation has concluded that the
482 shareholders are, are not or may be entitled to assert appraisal rights
483 under sections 33-855 to 33-872, inclusive, as amended by this act. If
484 the corporation concludes that appraisal rights are or may be available,
485 a copy of sections 33-855 to 33-872, inclusive, as amended by this act,
486 must accompany the meeting notice sent to those record shareholders
487 entitled to exercise appraisal rights.

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

494 (c) Where any corporate action specified in subsection (a) of section
495 33-856, as amended by this act, is to be approved by written consent of

496 the shareholders pursuant to section 33-698, as amended by this act:

497 (1) Written notice that appraisal rights are, are not or may be
498 available must be given to each record shareholder from whom a
499 consent is solicited at the time consent of such shareholder is first
500 solicited and, if the corporation has concluded that appraisal rights are
501 or may be available, must be accompanied by a copy of sections 33-855
502 to 33-872, inclusive, as amended by this act; and

503 (2) Written notice that appraisal rights are, are not or may be
504 available must be delivered together with the notice to nonvoting and
505 nonconsenting shareholders required by subsections (e) and (f) of
506 section 33-698, as amended by this act, may include the materials
507 described in section 33-862, as amended by this act, and, if the
508 corporation has concluded that appraisal rights are or may be
509 available, must be accompanied by a copy of sections 33-855 to 33-872,
510 inclusive, as amended by this act.

511 Sec. 9. Section 33-861 of the general statutes is repealed and the
512 following is substituted in lieu thereof (*Effective October 1, 2008*):

513 (a) If [proposed] a corporate action [requiring appraisal rights
514 under] specified in subsection (a) of section 33-856, as amended by this
515 act, is submitted to a vote at a shareholders' meeting, a shareholder
516 who wishes to assert appraisal rights with respect to any class or series
517 of shares: (1) Must deliver to the corporation, before the vote is taken,
518 written notice of the shareholder's intent to demand payment if the
519 proposed action is effectuated, and (2) must not vote, or cause or
520 permit to be voted, any shares of such class or series in favor of the
521 proposed action.

522 (b) If a corporate action specified in subsection (a) of section 33-856,
523 as amended by this act, is to be approved by less than unanimous
524 written consent, a shareholder who wishes to assert appraisal rights
525 with respect to any class or series of shares must not execute a consent
526 in favor of the proposed action with respect to that class or series of
527 shares.

528 [(b)] (c) A shareholder who [does not] fails to satisfy the
529 requirements of subsection (a) or (b) of this section is not entitled to
530 payment under sections 33-855 to 33-872, inclusive, as amended by this
531 act.

532 Sec. 10. Section 33-863 of the general statutes is repealed and the
533 following is substituted in lieu thereof (*Effective October 1, 2008*):

534 (a) A shareholder who receives notice pursuant to section 33-862, as
535 amended by this act, and who wishes to exercise appraisal rights must
536 [certify on] sign and return the form sent by the corporation and, in the
537 case of certificated shares, deposit the shareholder's certificates in
538 accordance with the terms of the notice by the date referred to in the
539 notice pursuant to subparagraph (B) of subdivision (2) of subsection
540 (b) of section 33-862, as amended by this act. In addition, if applicable,
541 the shareholder must certify on the form whether the beneficial owner
542 of such shares acquired beneficial ownership of the shares before the
543 date required to be set forth in the notice pursuant to subdivision (1) of
544 subsection (b) of [said] section 33-862, as amended by this act. If a
545 shareholder fails to make this certification, the corporation may elect to
546 treat the shareholder's shares as after-acquired shares under section 33-
547 867, as amended by this act. [In addition, a shareholder who wishes to
548 exercise appraisal rights must execute and return the form and, in the
549 case of certificated shares, deposit the shareholder's certificates in
550 accordance with the terms of the notice by the date referred to in the
551 notice pursuant to subparagraph (B) of subdivision (2) of subsection
552 (b) of section 33-862.] Once a shareholder deposits [the] that
553 shareholder's certificates or, in the case of uncertificated shares, returns
554 the [executed] signed forms, [the] that shareholder loses all rights as a
555 shareholder, unless the shareholder withdraws pursuant to subsection
556 (b) of this section.

557 (b) A shareholder who has complied with subsection (a) of this
558 section may nevertheless decline to exercise appraisal rights and
559 withdraw from the appraisal process by so notifying the corporation in
560 writing by the date set forth in the appraisal notice pursuant to

561 subparagraph (E) of subdivision (2) of subsection (b) of section 33-862,
562 as amended by this act. A shareholder who fails to so withdraw from
563 the appraisal process may not thereafter withdraw without the
564 corporation's written consent.

565 (c) A shareholder who does not [execute] sign and return the form
566 and, in the case of certificated shares, deposit [the] that shareholder's
567 share certificates where required, each by the date set forth in the
568 notice described in subsection (b) of section 33-862, as amended by this
569 act, shall not be entitled to payment under sections 33-855 to 33-872,
570 inclusive, as amended by this act.

571 Sec. 11. Subsection (a) of section 33-867 of the general statutes is
572 repealed and the following is substituted in lieu thereof (*Effective*
573 *October 1, 2008*):

574 (a) A corporation may elect to withhold payment required by
575 section 33-865, as amended by this act, from any shareholder who was
576 required to, but did not certify that beneficial ownership of all of the
577 shareholder's shares for which appraisal rights are asserted was
578 acquired before the date set forth in the appraisal notice sent pursuant
579 to subdivision (1) of subsection (b) of section 33-862, as amended by
580 this act.

581 Sec. 12. Section 33-739 of the general statutes is repealed and the
582 following is substituted in lieu thereof (*Effective October 1, 2008*):

583 (a) The terms of the initial directors of a corporation expire at the
584 first shareholders' meeting at which directors are elected.

585 (b) The terms of all other directors expire at the next or, if their
586 terms are staggered in accordance with section 33-740, at the applicable
587 second, third, fourth or fifth, annual shareholders' meeting following
588 their election [unless their terms are staggered under section 33-740]
589 except to the extent (1) provided in section 13 of this act if a bylaw
590 electing to be governed by that section is in effect, or (2) a shorter term
591 is specified in the certificate of incorporation in the event of a director

592 nominee failing to receive a specified vote for election.

593 (c) A decrease in the number of directors does not shorten an
594 incumbent director's term.

595 (d) The term of a director elected to fill a vacancy expires at the next
596 shareholders' meeting at which directors are elected.

597 (e) [Despite] Except to the extent otherwise provided in the
598 certificate of incorporation or under section 13 of this act if a bylaw
599 electing to be governed by that section is in effect, despite the
600 expiration of a director's term, [he] the director continues to serve until
601 [his] the director's successor is elected and qualifies or until there is a
602 decrease in the number of directors.

603 Sec. 13. (NEW) (*Effective October 1, 2008*) (a) Unless the certificate of
604 incorporation specifically prohibits the adoption of a bylaw pursuant
605 to this section, alters the vote specified in subsection (a) of section 33-
606 712 of the general statutes, as amended by this act, or provides for
607 cumulative voting, a public corporation may elect in its bylaws to be
608 governed in the election of directors as follows:

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

613 (2) To be elected, a nominee must have received a plurality of the
614 votes cast by holders of shares entitled to vote in the election at a
615 meeting at which a quorum is present, provided a nominee who is
616 elected but receives more votes against than for election shall serve as
617 a director for a term that shall terminate on the date that is the earlier
618 of (A) ninety days from the date on which the voting results are
619 determined pursuant to subdivision (5) of subsection (b) of section 33-
620 713 of the general statutes, or (B) the date on which an individual is
621 selected by the board of directors to fill the office held by such director,
622 which selection shall be deemed to constitute the filling of a vacancy

623 by the board to which section 33-744 of the general statutes applies.
624 Subject to subdivision (3) of this subsection, a nominee who is elected
625 but receives more votes against than for election shall not serve as a
626 director beyond the ninety-day period specified in subparagraph (A)
627 of this subdivision; and

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

631 (b) Subsection (a) of this section does not apply to an election of
632 directors by a voting group if (1) at the expiration of the time fixed
633 under a provision requiring advance notification of director
634 candidates, or (2) absent such a provision, at a time fixed by the board
635 of directors which is not more than fourteen days before notice is given
636 of the meeting at which the election is to occur, there are more
637 candidates for election by the voting group than the number of
638 directors to be elected, one or more of whom are properly proposed by
639 shareholders. An individual shall not be considered a candidate for
640 purposes of this subsection if the board of directors determines before
641 the notice of meeting is given that such individual's candidacy does
642 not create a bona fide election contest.

643 (c) A bylaw electing to be governed by this section may be repealed:

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

646 (2) If adopted by the board of directors, by the board of directors or
647 the shareholders.

648 Sec. 14. Section 33-741 of the general statutes is repealed and the
649 following is substituted in lieu thereof (*Effective October 1, 2008*):

650 (a) A director may resign at any time by delivering a written [notice]
651 resignation to the board of directors [, the chairman of the board of
652 directors] or its chairperson or to the secretary of the corporation.

653 (b) A resignation is effective when the [notice] resignation is
654 delivered unless the [notice] resignation specifies a later effective date
655 or an effective date determined upon the happening of an event or
656 events. A resignation that is conditioned upon failing to receive a
657 specified vote for election as a director may provide that it is
658 irrevocable.

659 Sec. 15. Subsection (b) of section 33-744 of the general statutes is
660 repealed and the following is substituted in lieu thereof (*Effective*
661 *October 1, 2008*):

662 (b) If the vacant office was held by a director elected by a voting
663 group of shareholders, only the holders of shares of that voting group
664 are entitled to vote to fill the vacancy if it is filled by the shareholders,
665 and only the directors elected by that voting group are entitled to fill
666 the vacancy if it is filled by the directors.

667 Sec. 16. Subsection (b) of section 33-806 of the general statutes is
668 repealed and the following is substituted in lieu thereof (*Effective*
669 *October 1, 2008*):

670 (b) A corporation's board of directors may amend or repeal the
671 corporation's bylaws unless: (1) The certificate of incorporation, [or]
672 section 33-808 or, if applicable, section 13 of this act reserves [such] that
673 power exclusively to the shareholders in whole or part; or (2) the
674 shareholders [,] in amending, repealing or adopting a [particular]
675 bylaw [,] expressly provide that the board of directors may not amend,
676 repeal or reinstate that bylaw.

677 Sec. 17. Section 33-602 of the general statutes is repealed and the
678 following is substituted in lieu thereof (*Effective October 1, 2008*):

679 As used in sections 33-600 to 33-998, inclusive, as amended by this
680 act, and sections 13 and 22 of this act:

681 (1) "Address" means location as described by the full street number,
682 if any, street, city or town, state or country and not a mailing address
683 such as a post office box.

684 (2) "Authorized shares" means the shares of all classes a domestic or
685 foreign corporation is authorized to issue.

686 (3) "Certificate of incorporation" means the original certificate of
687 incorporation or restated certificate of incorporation, and all
688 amendments thereto, and all certificates of merger or consolidation. In
689 the case of a specially chartered corporation, "certificate of
690 incorporation" means the special charter of the corporation, including
691 any portions of the charters of its predecessor companies which have
692 continuing effect, and any amendments to the charter made by special
693 act or pursuant to general law. In the case of a corporation formed
694 before January 1, 1961, or of a specially chartered corporation,
695 "certificate of incorporation" includes those portions of any other
696 corporate instruments or resolutions of current application in which
697 are set out provisions of the sort which either (A) are required by
698 sections 33-600 to 33-998, inclusive, as amended by this act, to be
699 embodied in the certificate of incorporation, or (B) are expressly
700 permitted by sections 33-600 to 33-998, inclusive, as amended by this
701 act, to be operative only if included in the certificate of incorporation.
702 It also includes what were, prior to January 1, 1961, designated at law
703 as agreements of association, articles of incorporation, charters and
704 other such terms.

705 (4) "Conspicuous" means so written that a reasonable person against
706 whom the writing is to operate should have noticed it. For example,
707 printing in italics or boldface or contrasting color, or typing in capitals
708 or underlined, is conspicuous.

709 (5) "Corporation" or "domestic corporation" means a corporation
710 with capital stock, which is not a foreign corporation, incorporated
711 under the laws of this state, whether general law or special act and
712 whether before or after January 1, 1997.

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

716 (7) "Distribution" means a direct or indirect transfer of money or
717 other property, except its own shares, or incurrence of indebtedness by
718 a corporation to or for the benefit of its shareholders in respect of any
719 of its shares. A distribution may be in the form of a declaration or
720 payment of a dividend; a purchase, redemption or other acquisition of
721 shares; a distribution of indebtedness; or otherwise.

722 (8) "Document" includes anything delivered to the office of the
723 Secretary of the State for filing under sections 33-600 to 33-998,
724 inclusive, as amended by this act.

725 (9) "Effective date of notice" is defined in section 33-603.

726 (10) "Electronic transmission" or "electronically transmitted" means
727 any process of communication not directly involving the physical
728 transfer of paper that is suitable for the retention, retrieval and
729 reproduction of information by the recipient.

730 (11) "Employee" includes an officer but not a director. A director
731 may accept duties that make him also an employee.

732 (12) "Entity" includes a corporation and foreign corporation;
733 nonprofit corporation; profit and nonprofit unincorporated
734 association; business trust, estate, partnership, limited liability
735 company, trust and two or more persons having a joint or common
736 economic interest; and state, United States or foreign government.

737 (13) "Expenses" means reasonable expenses of any kind that are
738 incurred in connection with a matter including, but not limited to,
739 reasonable counsel fees.

740 [(13)] (14) "Facts objectively ascertainable" outside of a plan or filed
741 document is defined in subsection (l) of section 33-608.

742 [(14)] (15) "Foreign corporation" means a corporation incorporated
743 under a law other than the law of this state.

744 [(15)] (16) "Governmental subdivision" includes authority, county,

745 district and municipality.

746 [(16)] (17) "Includes" denotes a partial definition.

747 [(17)] (18) "Individual" includes the estate of an incompetent or
748 deceased individual.

749 [(18)] (19) "Means" denotes an exhaustive definition.

750 [(19)] (20) "Notice" is defined in section 33-603.

751 [(20)] (21) "Person" includes individual and entity.

752 [(21)] (22) "Principal office" of a domestic corporation means the
753 address of the principal office of such corporation in this state, if any,
754 as the same appears in the last annual report, if any, filed by such
755 corporation with the Secretary of the State. If no principal office so
756 appears, the corporation's "principal office" means the address in this
757 state of the corporation's registered agent for service as last shown on
758 the records of the Secretary of the State. In the case of a domestic
759 corporation which has not filed such an annual report or appointment
760 of registered agent for service, the "principal office" means the address
761 of the principal place of business of such corporation in this state, if
762 any, and if such corporation has no place of business in this state, its
763 "principal office" shall be the office of the Secretary of the State.

764 [(22)] (23) "Proceeding" includes civil suit and criminal,
765 administrative and investigatory action.

766 [(23)] (24) "Public corporation" means a corporation that has shares
767 listed on a national securities exchange or regularly traded in a market
768 maintained by one or more members of a national or affiliated
769 securities association.

770 [(24)] (25) "Qualified director" is defined in section 33-605.

771 [(25)] (26) "Record date" means the date established under sections
772 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, as
773 amended by this act, on which a corporation determines the identity of

774 its shareholders and their shareholdings for purposes of sections 33-
775 600 to 33-998, inclusive, as amended by this act. The determinations
776 shall be made as of the close of business on the record date unless
777 another time for doing so is specified when the record date is fixed.

778 [(26)] (27) "Secretary" means the corporate officer to whom under
779 the bylaws or by the board of directors is delegated responsibility
780 under subsection (c) of section 33-763 for custody of the minutes of the
781 meetings of the board of directors and of the shareholders and for
782 authenticating records of the corporation.

783 [(27)] (28) "Secretary of the State" means the Secretary of the State of
784 Connecticut.

785 [(28)] (29) "Shares" means the units into which the proprietary
786 interests in a corporation are divided.

787 [(29)] (30) "Shareholder" means the person in whose name shares are
788 registered in the records of a corporation or the beneficial owner of
789 shares to the extent of the rights granted by a nominee certificate on
790 file with a corporation.

791 [(30)] (31) "Sign" or "signature" includes any manual, facsimile,
792 conformed or electronic signature.

793 [(31)] (32) "State", when referring to a part of the United States,
794 includes a state and commonwealth, and their agencies and
795 governmental subdivisions, and a territory and insular possession, and
796 their agencies and governmental subdivisions, of the United States.

797 [(32)] (33) "Subscriber" means a person who subscribes for shares in
798 a corporation, whether before or after incorporation.

799 [(33)] (34) "United States" includes any district, authority, bureau,
800 commission, department and other agency of the United States.

801 [(34)] (35) "Voting group" means all shares of one or more classes or
802 series that under the certificate of incorporation or sections 33-600 to

803 33-998, inclusive, as amended by this act, are entitled to vote and be
804 counted together collectively on a matter at a meeting of shareholders.
805 All shares entitled by the certificate of incorporation or said sections to
806 vote generally on the matter are for that purpose a single voting group.

807 [(35)] (36) "Voting power" means the current power to vote in the
808 election of directors.

809 Sec. 18. Section 33-726 of the general statutes is repealed and the
810 following is substituted in lieu thereof (*Effective October 1, 2008*):

811 On termination of the derivative proceeding the court may:

812 (1) Order the corporation to pay the plaintiff's [reasonable expenses,
813 including attorney's fees,] expenses incurred in the proceeding if it
814 finds that the proceeding has resulted in a substantial benefit to the
815 corporation;

816 (2) Order the plaintiff to pay any defendant's [reasonable expenses,
817 including attorney's fees,] expenses incurred in defending the
818 proceeding if it finds that the proceeding was commenced or
819 maintained without reasonable cause or for an improper purpose; or

820 (3) Order a party to pay an opposing party's [reasonable expenses,
821 including attorney's fees,] expenses incurred because of the filing of a
822 pleading, motion or other paper, if it finds that the pleading, motion or
823 other paper was not well grounded in fact, after reasonable inquiry, or
824 warranted by existing law or a good faith argument for the extension,
825 modification or reversal of existing law and was interposed for an
826 improper purpose, such as to harass or [to] cause unnecessary delay or
827 needless increase in the cost of litigation.

828 Sec. 19. Section 33-872 of the general statutes is repealed and the
829 following is substituted in lieu thereof (*Effective October 1, 2008*):

830 (a) The court in an appraisal proceeding commenced under section
831 33-871 shall determine all court costs of the proceeding, including the
832 reasonable compensation and expenses of appraisers appointed by the

833 court. The court shall assess the court costs against the corporation,
834 except that the court may assess court costs against all or some of the
835 shareholders demanding appraisal, in amounts the court finds
836 equitable, to the extent the court finds such shareholders acted
837 arbitrarily, vexatiously or not in good faith with respect to the rights
838 provided by sections 33-855 to 33-872, inclusive, as amended by this
839 act.

840 (b) The court in an appraisal proceeding may also assess the [fees
841 and expenses of counsel and experts for] expenses of the respective
842 parties, in amounts the court finds equitable: (1) Against the
843 corporation and in favor of any or all shareholders demanding
844 appraisal if the court finds the corporation did not substantially
845 comply with the requirements of sections 33-860 to 33-868, inclusive, as
846 amended by this act; or (2) against either the corporation or a
847 shareholder demanding appraisal, in favor of any other party, if the
848 court finds that the party against whom the [fees and] expenses are
849 assessed acted arbitrarily, vexatiously or not in good faith with respect
850 to the rights provided by sections 33-855 to 33-872, inclusive, as
851 amended by this act.

852 (c) If the court in an appraisal proceeding finds that the [services of
853 counsel for] expenses incurred by any shareholder were of substantial
854 benefit to other shareholders similarly situated, and that [the fees for
855 those services] such expenses should not be assessed against the
856 corporation, the court may [award to such counsel reasonable fees to]
857 direct that such expenses be paid out of the amounts awarded the
858 shareholders who were benefited.

859 (d) To the extent the corporation fails to make a required payment
860 pursuant to section 33-865, 33-867, as amended by this act, or 33-868,
861 the shareholder may sue directly for the amount owed and, to the
862 extent successful, shall be entitled to recover from the corporation all
863 [costs and] expenses of the suit. [, including counsel fees.]

864 Sec. 20. Subsection (c) of section 33-948 of the general statutes is
865 repealed and the following is substituted in lieu thereof (*Effective*

866 *October 1, 2008*):

867 (c) If the court orders inspection and copying of the records
868 demanded, it shall also order the corporation to pay the shareholder's
869 [costs, including reasonable attorney's fees,] expenses incurred to
870 obtain the order unless the corporation proves that it refused
871 inspection in good faith because it had a reasonable basis for doubt
872 about the right of the shareholder to inspect the records demanded.

873 Sec. 21. Subsection (c) of section 33-949 of the general statutes is
874 repealed and the following is substituted in lieu thereof (*Effective*
875 *October 1, 2008*):

876 (c) If an order is issued, the court may include provisions protecting
877 the corporation from undue burden or expense, and prohibiting the
878 director from using information obtained upon exercise of the
879 inspection rights in a manner that would violate a duty to the
880 corporation, and may also order the corporation to reimburse the
881 director for the director's [costs, including reasonable counsel fees,]
882 expenses incurred in connection with the application.

883 Sec. 22. (NEW) (*Effective October 1, 2008*) (a) A corporation has
884 delivered written notice or any other report or statement under any
885 provision of sections 33-600 to 33-998, inclusive, of the general statutes
886 or the 2008 supplement to the general statutes, as amended by this act,
887 the certificate of incorporation or the bylaws to all shareholders who
888 share a common address if:

889 (1) The corporation delivers one copy of the notice, report or
890 statement to the common address;

891 (2) The corporation addresses the notice, report or statement to
892 those shareholders either as a group, to each of those shareholders
893 individually or to the shareholders in a form to which each of those
894 shareholders has consented; and

895 (3) Each of those shareholders consents to delivery of a single copy
896 of such notice, report or statement to the shareholders' common

897 address. Any such consent shall be revocable by any of such
898 shareholders who delivers written notice of revocation to the
899 corporation. If such written notice of revocation is delivered, the
900 corporation shall begin providing individual notices, reports or other
901 statements to the revoking shareholder no later than thirty days after
902 delivery of the written notice of revocation.

903 (b) Any shareholder who fails to object by written notice to the
904 corporation, within sixty days of written notice by the corporation of
905 its intention to send single copies of notices, reports or statements to
906 shareholders who share a common address as permitted by subsection
907 (a) of this section, shall be deemed to have consented to receiving such
908 single copy at the common address.

909 Sec. 23. Section 33-896 of the general statutes is repealed and the
910 following is substituted in lieu thereof (*Effective October 1, 2008*):

911 (a) The superior court for the judicial district where the
912 corporation's principal office or, if none in this state, its registered
913 office, is located may dissolve a corporation:

914 (1) In a proceeding by a shareholder if it is established that: (A) (i)
915 The directors are deadlocked in the management of the corporate
916 affairs, (ii) the shareholders are unable to break the deadlock, and (iii)
917 irreparable injury to the corporation is threatened or being suffered or
918 the business and affairs of the corporation can no longer be conducted
919 to the advantage of the shareholders generally, because of the
920 deadlock; (B) the directors or those in control of the corporation have
921 acted, are acting or will act in a manner that is illegal, oppressive or
922 fraudulent; (C) the shareholders are deadlocked in voting power and
923 have failed, for a period that includes at least two consecutive annual
924 meeting dates, to elect successors to directors whose terms have
925 expired; or [(B)] (D) the corporate assets are being misapplied or
926 wasted;

927 (2) In a proceeding by a creditor if it is established that: (A) The
928 creditor's claim has been reduced to judgment, the execution on the

929 judgment returned unsatisfied and the corporation is insolvent; or (B)
930 the corporation has admitted in writing that the creditor's claim is due
931 and owing and the corporation is insolvent; or

932 (3) In a proceeding by the corporation to have its voluntary
933 dissolution continued under court supervision.

934 [(b) The superior court for the judicial district where the
935 corporation's principal office or, if none in this state, its registered
936 office, is located shall dissolve a corporation: (1) In a proceeding by a
937 holder or holders of shares having voting power sufficient under the
938 circumstances to dissolve the corporation pursuant to the certificate of
939 incorporation; (2) in a proceeding by a shareholder or a director when
940 it is established that (A) under the provisions of sections 33-600 to 33-
941 998, inclusive, or of the certificate of incorporation or bylaws, the
942 directors are deadlocked in the management of the corporate affairs
943 and the shareholders are unable to break the deadlock or (B) the
944 shareholders are deadlocked in voting power for the election of
945 directors and for that reason have been unable at the next preceding
946 annual meeting to elect successors to directors whose term would
947 normally have expired upon the election of their successors.]

948 (b) Subdivision (1) of subsection (a) of this section shall not apply in
949 the case of a corporation that, on the date of the filing of the
950 proceeding, has shares that are: (A) Listed on the New York Stock
951 Exchange, the American Stock Exchange or any exchange owned or
952 operated by the NASDAQ Stock Market LLC, or listed or quoted on a
953 system owned or operated by the National Association of Securities
954 Dealers, Inc.; or (B) not so listed or quoted, but are held by at least
955 three hundred shareholders and the shares outstanding have a market
956 value of at least twenty million dollars exclusive of the value of such
957 shares held by the corporation's subsidiaries, senior executives,
958 directors and beneficial shareholders owning more than ten per cent of
959 such shares. As used in this subsection, "beneficial shareholder" has
960 the meaning specified in subdivision (2) of section 33-855, as amended
961 by this act.

962 Sec. 24. Subsection (d) of section 33-897 of the general statutes is
963 repealed and the following is substituted in lieu thereof (*Effective*
964 *October 1, 2008*):

965 (d) Within ten days of the commencement of a proceeding under
966 subdivision (1) of subsection (a) of section 33-896, as amended by this
967 act, to dissolve a corporation, [that is not a public corporation,] the
968 corporation must send to all shareholders, other than the petitioner, a
969 notice stating that the shareholders are entitled to avoid the dissolution
970 of the corporation by electing to purchase the petitioner's shares under
971 section 33-900, as amended by this act, and accompanied by a copy of
972 said section.

973 Sec. 25. Section 33-898 of the general statutes is repealed and the
974 following is substituted in lieu thereof (*Effective October 1, 2008*):

975 (a) [A] Unless an election to purchase has been filed under section
976 33-900, as amended by this act, a court in a judicial proceeding brought
977 to dissolve a corporation may appoint one or more receivers to wind
978 up and liquidate, or one or more custodians to manage, the business
979 and affairs of the corporation. The court shall hold a hearing, after
980 notifying all parties to the proceeding and any interested persons
981 designated by the court, before appointing a receiver or custodian. The
982 court appointing a receiver or custodian has [exclusive] jurisdiction
983 over the corporation and all of its property wherever located.

984 (b) The court may appoint an individual or a domestic or foreign
985 corporation authorized to transact business in this state as a receiver or
986 custodian. The court may require the receiver or custodian to post
987 bond, with or without sureties, in an amount the court directs.

988 (c) The court shall describe the powers and duties of the receiver or
989 custodian in its appointing order, which may be amended from time to
990 time. Among other powers: (1) The receiver (A) may dispose of all or
991 any part of the assets of the corporation wherever located, at a public
992 or private sale, if authorized by the court, and (B) may sue and defend
993 in his own name as receiver of the corporation in all courts of this state;

994 (2) the custodian may exercise all of the powers of the corporation,
995 through or in place of its board of directors or officers, to the extent
996 necessary to manage the affairs of the corporation in the best interests
997 of its shareholders and creditors.

998 (d) The court during a receivership may redesignate the receiver a
999 custodian, and during a custodianship may redesignate the custodian
1000 a receiver, if doing so is in the best interests of the corporation, its
1001 shareholders and creditors.

1002 (e) The court from time to time during the receivership or
1003 custodianship may order compensation paid and [expense
1004 disbursements or reimbursements made] expenses paid or reimbursed
1005 to the receiver or custodian [and his counsel] from the assets of the
1006 corporation or proceeds from the sale of the assets.

1007 Sec. 26. Subsection (a) of section 33-899 of the general statutes is
1008 repealed and the following is substituted in lieu thereof (*Effective*
1009 *October 1, 2008*):

1010 (a) If after a hearing the court determines that one or more grounds
1011 for judicial dissolution described in section 33-896, as amended by this
1012 act, exist, it may [, in the case of the grounds specified in subsection (a)
1013 of said section, and shall, in the case of grounds specified in subsection
1014 (b) of said section,] enter a decree dissolving the corporation and
1015 specifying the effective date of the dissolution, and the clerk of the
1016 court shall deliver a certified copy of the decree to the Secretary of the
1017 State, who shall file it.

1018 Sec. 27. Section 33-900 of the general statutes is repealed and the
1019 following is substituted in lieu thereof (*Effective October 1, 2008*):

1020 (a) In a proceeding under subdivision (1) of subsection (a) of section
1021 33-896, as amended by this act, to dissolve a corporation, [that is not a
1022 public corporation,] the corporation may elect or, if it fails to elect, one
1023 or more shareholders may elect to purchase all shares owned by the
1024 petitioning shareholder at the fair value of the shares. An election

1025 pursuant to this section shall be irrevocable unless the court
1026 determines that it is equitable to set aside or modify the election.

1027 (b) An election to purchase pursuant to this section may be filed
1028 with the court at any time within ninety days after the filing of the
1029 petition under subdivision (1) of subsection (a) [or subdivision (2) of
1030 subsection (b)] of section 33-896, as amended by this act, or at such
1031 later time as the court in its discretion may allow. If the election to
1032 purchase is filed by one or more shareholders, the corporation shall,
1033 within ten days thereafter, give written notice to all shareholders, other
1034 than the petitioner. The notice must state the name and number of
1035 shares owned by the petitioner and the name and number of shares
1036 owned by each electing shareholder and must advise the recipients of
1037 their right to join in the election to purchase shares in accordance with
1038 this section. Shareholders who wish to participate must file notice of
1039 their intention to join in the purchase no later than thirty days after the
1040 effective date of the notice to them. All shareholders who have filed an
1041 election or notice of their intention to participate in the election to
1042 purchase thereby become parties to ownership of shares as of the date
1043 the first election was filed, unless they otherwise agree or the court
1044 otherwise directs. After an election has been filed by the corporation or
1045 one or more shareholders, the proceeding under subdivision (1) of
1046 subsection (a) [or subdivision (2) of subsection (b)] of section 33-896, as
1047 amended by this act, may not be discontinued or settled, nor may the
1048 petitioning shareholder sell or otherwise dispose of his shares, unless
1049 the court determines that it would be equitable to the corporation and
1050 the shareholders, other than the petitioner, to permit such
1051 discontinuance, settlement, sale or other disposition.

1052 (c) If, within sixty days of the filing of the first election, the parties
1053 reach agreement as to the fair value and terms of purchase of the
1054 petitioner's shares, the court shall enter an order directing the purchase
1055 of petitioner's shares upon the terms and conditions agreed to by the
1056 parties.

1057 (d) If the parties are unable to reach an agreement as provided for in

1058 subsection (c) of this section, the court, upon application of any party,
1059 shall stay the proceedings under subdivision (1) of subsection (a) [or
1060 subdivision (2) of subsection (b)] of section 33-896, as amended by this
1061 act, and determine the fair value of the petitioner's shares as of the day
1062 before the date on which the petition was filed or as of such other date
1063 as the court deems appropriate under the circumstances.

1064 (e) Upon determining the fair value of the shares, the court shall
1065 enter an order directing the purchase upon such terms and conditions
1066 as the court deems appropriate, which may include payment of the
1067 purchase price in installments, where necessary in the interests of
1068 equity, provision for security to assure payment of the purchase price
1069 and any additional costs, fees and expenses as may have been
1070 awarded, and, if the shares are to be purchased by shareholders, the
1071 allocation of shares among them. In allocating the petitioner's shares
1072 among holders of different classes of shares, the court should attempt
1073 to preserve the existing distribution of voting rights among holders of
1074 different classes insofar as practicable and may direct that holders of a
1075 specific class or classes shall not participate in the purchase. Interest
1076 may be allowed at the rate and from the date determined by the court
1077 to be equitable, but if the court finds that the refusal of the petitioning
1078 shareholder to accept an offer of payment was arbitrary or otherwise
1079 not in good faith, no interest shall be allowed. In a proceeding under
1080 subdivision (1) of subsection (a) of section 33-896, as amended by this
1081 act, if the court finds that the petitioning shareholder had probable
1082 grounds for relief under said subdivision, it may award to the
1083 petitioning shareholder reasonable fees and expenses of counsel and of
1084 any experts employed by him.

1085 (f) Upon entry of an order under subsection (c) or (e) of this section,
1086 the court shall dismiss the petition to dissolve the corporation under
1087 section 33-896, as amended by this act, and the petitioning shareholder
1088 shall no longer have any rights or status as a shareholder of the
1089 corporation, except the right to receive the amounts awarded to him by
1090 the order of the court which shall be enforceable in the same manner as
1091 any other judgment.

1092 (g) The purchase ordered pursuant to subsection (e) of this section
1093 shall be made within ten days after the date the order becomes final
1094 unless before that time the corporation files with the court a notice of
1095 its intention to adopt a certificate of dissolution pursuant to sections
1096 33-881 and 33-882, which certificate of dissolution must then be
1097 adopted and filed within fifty days thereafter. Upon filing of such
1098 certificate of dissolution, the corporation shall be dissolved in
1099 accordance with the provisions of sections 33-884 to 33-887, inclusive,
1100 and the order entered pursuant to subsection (e) of this section shall no
1101 longer be of any force or effect, except that the court may award the
1102 petitioning shareholder reasonable fees and expenses in accordance
1103 with the provisions of the last sentence of subsection (e) of this section
1104 and the petitioner may continue to pursue any claims previously
1105 asserted on behalf of the corporation.

1106 (h) Any payment by the corporation pursuant to an order under
1107 subsection (c) or (e) of this section, other than an award of fees and
1108 expenses pursuant to subsection (e) of this section, is subject to the
1109 provisions of section 33-687.

1110 Sec. 28. Section 33-818 of the general statutes is repealed and the
1111 following is substituted in lieu thereof (*Effective October 1, 2008*):

1112 (a) A domestic parent corporation that owns shares of a domestic or
1113 foreign subsidiary corporation that carry at least ninety per cent of the
1114 voting power of each class and series of the outstanding shares of the
1115 subsidiary that have voting power may merge the subsidiary into itself
1116 or into another such subsidiary, or merge itself into the subsidiary,
1117 without the approval of the board of directors or shareholders of the
1118 subsidiary, unless (1) the certificate of incorporation of any of the
1119 corporations otherwise provides, and (2) in the case of a foreign
1120 subsidiary, approval by the foreign subsidiary's board of directors or
1121 shareholders is required by the law under which the subsidiary is
1122 organized. [or by which it is governed.]

1123 (b) If under subsection (a) of this section approval of a merger by
1124 the subsidiary's shareholders is not required, [under subsection (a) of

1125 this section,] the parent corporation shall, within ten days after the
1126 effective date of the merger, notify each of the subsidiary's
1127 shareholders that the merger has become effective.

1128 (c) Except as provided in subsections (a) and (b) of this section, a
1129 merger between a parent and a subsidiary shall be governed by the
1130 provisions of sections 33-815 to 33-829, inclusive, applicable to mergers
1131 generally.

1132 Sec. 29. Section 33-770 of the general statutes is repealed and the
1133 following is substituted in lieu thereof (*Effective October 1, 2008*):

1134 As used in sections 33-770 to 33-779, inclusive:

1135 (1) "Corporation" includes any domestic or foreign predecessor
1136 entity of a corporation in a merger.

1137 (2) "Director" or "officer" means an individual who is or was a
1138 director or officer, respectively, of a corporation or who, while a
1139 director or officer of the corporation, is or was serving at the
1140 corporation's request as a director, officer, partner, trustee, employee
1141 or agent of another domestic or foreign corporation, partnership, joint
1142 venture, trust, employee benefit plan or other entity. A director or
1143 officer is considered to be serving an employee benefit plan at the
1144 corporation's request if the individual's duties to the corporation also
1145 impose duties on, or otherwise involve services by, the individual to
1146 the plan or to participants in or beneficiaries of the plan. "Director" or
1147 "officer" includes, unless the context requires otherwise, the estate or
1148 personal representative of a director or officer.

1149 [(3) "Expenses" include counsel fees.]

1150 [(4)] (3) "Liability" means the obligation to pay a judgment,
1151 settlement, penalty, fine, including an excise tax assessed with respect
1152 to an employee benefit plan, or reasonable expenses incurred with
1153 respect to a proceeding.

1154 [(5)] (4) "Official capacity" means: (A) When used with respect to a

1155 director, the office of director in a corporation; and (B) when used with
1156 respect to an officer, as contemplated in section 33-776, the office in a
1157 corporation held by the officer. "Official capacity" does not include
1158 service for any other domestic or foreign corporation or any
1159 partnership, joint venture, trust, employee benefit plan or other entity.

1160 [(6)] (5) "Party" means an individual who was, is, or is threatened to
1161 be made, a defendant or respondent in a proceeding.

1162 [(7)] (6) "Proceeding" means any threatened, pending or completed
1163 action, suit or proceeding, whether civil, criminal, administrative,
1164 arbitratative or investigative and whether formal or informal.

1165 Sec. 30. Subsection (c) of section 33-951 of the general statutes is
1166 repealed and the following is substituted in lieu thereof (*Effective*
1167 *October 1, 2008*):

1168 (c) Such corporation shall [mail] deliver the annual financial
1169 statements to each shareholder within one hundred twenty days after
1170 the close of each fiscal year. Thereafter, on written request from a
1171 shareholder [who was not mailed] to whom the statements were not
1172 delivered, the corporation shall [mail him] deliver to such shareholder
1173 the latest financial statements. Any delivery of financial statements by
1174 electronic transmission permitted by this section must be in a manner
1175 authorized by the shareholder. A public corporation may fulfill its
1176 responsibilities under this subsection by delivering the specified
1177 financial statements, or otherwise making them available, in any
1178 manner permitted by the applicable rules and regulations of the
1179 United States Securities and Exchange Commission.

1180 Sec. 31. Subsection (d) of section 33-756 of the general statutes is
1181 repealed and the following is substituted in lieu thereof (*Effective*
1182 *October 1, 2008*):

1183 (d) For purposes of sections 33-817, 33-830, 33-831, 33-841 and 33-
1184 844, a director of a corporation which has a class of voting stock
1185 registered pursuant to Section 12 of the Securities Exchange Act of

1186 1934, as the same has been or hereafter may be amended from time to
 1187 time, in addition to complying with the provisions of subsections (a) to
 1188 (c), inclusive, of this section, [shall] may consider, in determining what
 1189 he or she reasonably believes to be in the best interests of the
 1190 corporation, (1) the long-term as well as the short-term interests of the
 1191 corporation, (2) the interests of the shareholders, long-term as well as
 1192 short-term, including the possibility that those interests may be best
 1193 served by the continued independence of the corporation, (3) the
 1194 interests of the corporation's employees, customers, creditors and
 1195 suppliers, and (4) community and societal considerations including
 1196 those of any community in which any office or other facility of the
 1197 corporation is located. A director may also in his or her discretion
 1198 consider any other factors he or she reasonably considers appropriate
 1199 in determining what he or she reasonably believes to be in the best
 1200 interests of the corporation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	33-855
Sec. 2	<i>October 1, 2008</i>	33-862
Sec. 3	<i>October 1, 2008</i>	33-856
Sec. 4	<i>October 1, 2008</i>	33-698
Sec. 5	<i>October 1, 2008</i>	33-695
Sec. 6	<i>October 1, 2008</i>	33-697
Sec. 7	<i>October 1, 2008</i>	33-712
Sec. 8	<i>October 1, 2008</i>	33-860
Sec. 9	<i>October 1, 2008</i>	33-861
Sec. 10	<i>October 1, 2008</i>	33-863
Sec. 11	<i>October 1, 2008</i>	33-867(a)
Sec. 12	<i>October 1, 2008</i>	33-739
Sec. 13	<i>October 1, 2008</i>	New section
Sec. 14	<i>October 1, 2008</i>	33-741
Sec. 15	<i>October 1, 2008</i>	33-744(b)
Sec. 16	<i>October 1, 2008</i>	33-806(b)
Sec. 17	<i>October 1, 2008</i>	33-602
Sec. 18	<i>October 1, 2008</i>	33-726
Sec. 19	<i>October 1, 2008</i>	33-872
Sec. 20	<i>October 1, 2008</i>	33-948(c)

Sec. 21	<i>October 1, 2008</i>	33-949(c)
Sec. 22	<i>October 1, 2008</i>	New section
Sec. 23	<i>October 1, 2008</i>	33-896
Sec. 24	<i>October 1, 2008</i>	33-897(d)
Sec. 25	<i>October 1, 2008</i>	33-898
Sec. 26	<i>October 1, 2008</i>	33-899(a)
Sec. 27	<i>October 1, 2008</i>	33-900
Sec. 28	<i>October 1, 2008</i>	33-818
Sec. 29	<i>October 1, 2008</i>	33-770
Sec. 30	<i>October 1, 2008</i>	33-951(c)
Sec. 31	<i>October 1, 2008</i>	33-756(d)

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various changes to corporate procedures and governance that have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 440*****AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.*****SUMMARY:**

The bill eliminates appraisal rights for the holders of shares of any class or series of shares that is issued by an open-end management investment company registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 and may be redeemed at the holder's option at net asset value. It also requires shareholders asserting appraisal rights to certify that they did not consent to the underlying transaction that created the appraisal right. It requires additional information to be provided to shareholders where any corporate action that triggers appraisal rights is to be approved by written consent of the shareholders instead of by a meeting. The bill allows electronic transmissions to be used to consent to an action, if they contain or are accompanied by, information from which the corporation can determine the date on which they were signed and were authorized by the shareholders or their agents or attorneys-in-fact.

The bill permits instead of requires a director of a corporation with publicly traded stock, to consider certain factors when determining what he or she reasonably believes to be in the corporation's best interests when considering mergers, consolidations, sale of corporate assets, or business combinations.

The bill requires corporations to deliver, instead of mail, annual financial statements to each shareholder within 120 days after the close of each fiscal year. It specifies that any delivery of financial statements by electronic transmission must be in a manner the shareholder

authorizes. The bill specifies that a public corporation may satisfy its requirements by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable SEC rules and regulations.

With certain exceptions, the bill authorizes a public corporation to adopt a bylaw that allows its directors to be elected by a “more votes for than against” system, under which a director who does not receive more votes for than against his or her election, but still wins a plurality of votes, may only serve for 90 days as a director.

The bill allows a corporation to deliver one copy of a written notice, any other report or statement required by the Business Corporation Act, the certificate of incorporation, or the bylaws to all shareholders who share a common address under certain circumstances.

The bill limits shareholder suits for judicial dissolution of a corporation to private, as opposed to publicly traded, corporations; eliminates the court’s duty to dissolve under certain circumstances; and permits the court to do so under other circumstances.

The bill establishes a definition of “expenses” for the Business Corporation Act. It defines “expenses” as reasonable expenses of any kind that are incurred in connection with a matter, including reasonable attorney’s fees. It uses this term instead of terms like counsel fees and fees and expenses that currently appear in the act. These provisions involve derivative proceedings, appraisal rights cases, court ordered inspection of corporate records by shareholders or directors, court-proceedings to dissolve the corporation, and indemnification.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2008

APPRAISAL RIGHTS

§ 2 & 10 — *Appraisal Notice of Intent to Demand Payment and Reply*

Under current law, the appraisal notice must supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify (1) whether or not those shares for which appraisal rights are asserted were acquired before that date, and (2) that the shareholder did not vote for the transaction. The bill also requires the corporation to supply a form that specifies the first date of any announcement of the principal terms of the proposed transaction before the transaction became effective. The bill also requires the shareholder to certify that the shareholder did not consent to the transaction. It also makes some technical changes to this provision.

By law, a shareholder who receives notice and who wishes to exercise appraisal rights must certify on the form whether the beneficial owner of the shares acquired beneficial ownership before the date required to be specified in the notice. The bill specifies that the owner must sign the form and, in the case of certificated shares, include the certificates.

§ 3 — Right to Appraisal

Current law specifies certain situations for which appraisal rights are not available. The bill adds to these situations. Specifically, it makes appraisal rights unavailable for the holders of shares of any class or series of shares that (1) is issued by an open-end management investment company registered with the SEC under the Investment Company Act of 1940 and (2) may be redeemed at the holder's option at net asset value.

§ 8 — Written Consent for Corporate Actions That Trigger Appraisal Rights-Required Notices

Where any corporate action (such as a merger) that triggers appraisal rights is to be approved by written consent of the shareholders, the bill requires that the corporation provide written notice that appraisal rights are, are not, or may be available to each record shareholder from whom a consent is solicited when shareholder

consent is first solicited. If the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of state statutes dealing with appraisal rights. The bill also requires that the corporation deliver written notice to non-voting and non-consenting shareholders that appraisal rights are, are not, or may be available. If it has concluded that appraisal rights are or may be available, it must include by a copy of state statutes dealing with appraisal rights.

§9 — Consent for Approved Action, Assertion of Appraisal Rights

If a corporate action specified is to be approved by less than unanimous written consent, a shareholder who wants to assert appraisal rights with respect to any class or series of shares may not execute a consent in favor of the proposed action with respect to that class or series of shares.

§ 11 — Withholding of Payment

Under current law, a corporation may elect to withhold payment from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal. The bill specifies that this only applies to shareholders who are required to certify.

SHAREHOLDERS' MEETINGS

§ 4 — Actions without Meetings

The law allows any action that may be taken at a shareholders meeting to be taken without a meeting under certain circumstances.

Current law permits such an action by one or more consents in writing, setting forth the action taken or to be taken, bearing the date of signature and signed by all of the persons who would be entitled to vote on the action at a meeting, or by their duly authorized attorneys. The bill requires that the consents be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

Consents by Less Than Unanimous Approval

Under current law, if the certificate of incorporation authorizes it, an action may be taken by one or more consents in writing, bearing the signature date and setting forth the action to be taken, signed by persons holding the designated proportion, but not less than a majority, of the voting power of shares, or of the shares of any particular class, entitled to vote or to take the action, as may be provided in the certificate of incorporation, or their duly authorized attorneys.

The bill instead specifies that the certificate of incorporation may provide that any action required or permitted by law to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.

Current law specifies that directors may not be elected by action of shareholders without a meeting of shareholders other than by unanimous written consent or pursuant to a merger plan. The bill eliminates this requirement.

The law requires that if action is proposed to be taken by written consent of less than all of such persons, or their duly authorized attorneys, notice in writing of the proposed action must be given to each person who would be entitled to vote at a meeting held for that purpose. The bill requires that written consent bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

Current law requires that the notice be given in the manner of giving notice of a meeting of shareholders not less than 20 days or more than 50 days before the date any consents are to become effective. The bill eliminates these required time frames.

Under current law, if no less than five days before the date any such consents are to become effective, the secretary of the corporation has received from the shareholders, or their duly authorized attorneys, holding at least one-tenth of the voting power of all shares entitled to vote at such a meeting, a demand in writing that the action not be taken by written consent, all persons to whom such notice was given must be so notified, and the corporation may not take the proposed action except at a meeting of shareholders. The bill eliminates this requirement.

Record Date for Determining the Shareholders Entitled to Take Action

Under current law, if not otherwise fixed by the court in connection with a court-ordered meeting (CGS § 33-697) or in the bylaws (CGS § 33-701), the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent.

The bill instead establishes the record date as the first date on which a signed written consent is delivered to the corporation, if the date is otherwise fixed in the bylaws. The bill also provides that if not otherwise set in the bylaws, and if prior board action is required respecting the action to be taken without a meeting, the record date is the close of business on the day the board resolved to take the prior action.

Under current law, no written consent to take the corporate action is effective unless written consents signed by shareholders sufficient in number to take corporate action are received by the corporation within 60 days of the earliest date appearing on a consent delivered to the corporation.

The bill instead specifies that written consents are ineffective unless, within 60 days of the earliest date on which a consent delivered to the corporation was signed, written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation.

Effect of a Signed Consent

By law, a signed consent has the effect of a meeting vote and may be described as such in any document.

The bill specifies that unless the certificate of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

Non-Voting Shareholders

Under the bill, if any provision of law requires that notice of a proposed action be given to non-voting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its non-voting shareholders written notice of the action within 10 days of:

1. delivery to the corporation of written consents sufficient to take the action, or
2. whatever date when tabulation of consents is completed as authorized by the bill.

The bill requires that the notice reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the Business Corporation Act, would have been required to be sent to non-voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

Action by Less than Unanimous Consent

If action is taken by less than unanimous written consent of the voting shareholders, the bill requires corporations to give its non-consenting voting shareholders written notice of the action within 10 days of:

1. the delivery to the corporations of written consents sufficient to take the action , or
2. the later date when tabulation of consents is completed as authorized by the bill.

The notice must reasonably describe the action taken and contain or be accompanied by the same material that would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

The bill specifies that these notice requirements do not delay the effectiveness of actions taken by written consent, and a failure to comply with them does not invalidate those actions taken. But the bill specifies that it does not limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time.

Electronic Transmissions

The bill allows electronic transmissions to be used to consent to an action, if they contain or are accompanied by information from which the corporation can determine the date on which they were signed and that they were authorized by the shareholders or their agent or attorney-in-fact.

Delivery of Consents

The bill specifies that the delivery of a written consent to the corporation is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

§§ 4 & 5 — CUMULATIVE VOTING, ELECTION OF DIRECTORS BY CONSENTS

Current law specifies that directors may not be elected by action of shareholders without a meeting of shareholders other than by unanimous written consent, or pursuant to a merger plan. The bill eliminates this requirement.

The bill specifies that directors may not be elected by less than unanimous written consent if a corporation's certificate of incorporation authorizes shareholders to cumulate their votes when electing directors.

§ 6 — COURT-ORDERED MEETING

Under current law, the Superior Court for the judicial district where a corporation's principal office or, if the office is not in Connecticut, its registered office is located may summarily order a meeting to be held on application of any shareholder entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting. The bill provides that the court may do so only if directors were not elected by written consent in lieu of such a meeting during that same time period.

DIRECTORS

§ 12 — *Term of Office*

By law, the terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected, and the terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered. The bill specifies that the terms may be shorter if the certificate of incorporation provides for it or a public corporation's bylaws, adopted under the bill's authority, provides otherwise (§ 14).

Under current law, despite the expiration of a director's term, he or she continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors. The bill specifies that a corporation's certificate of incorporation or a public corporation's bylaws adopted under this bill may provide otherwise (§ 14).

§ 13 — *Election of Directors of a Public Corporation*

Under current law, unless a public corporation's certificate of incorporation provides otherwise, directors are elected by a plurality of votes cast by shares entitled to vote at a meeting at which a quorum

is present.

With certain exceptions, the bill authorizes a public corporation to elect in its bylaws to choose directors as follows:

1. each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;
2. the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for his or her election; and
3. to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present.

But the bill requires that a nominee who is elected but receives more votes against than for must serve as a director for a term that ends on the date that is the earlier of

1. 90 days from the date on which the voting results are determined or
2. the date on which an individual is selected by the board of directors to fill the office held by the director, which selection must be deemed to constitute the filling of a vacancy by the board.

A nominee who is elected but receives more votes against than for his or her election may not serve as a director beyond the 90-day period.

The bill specifies that a public corporation may not adopt such bylaws if the certificate of incorporation specifically prohibits it, alters the vote specified by law to elect directors, or provides for cumulative voting. The bill also specifies that the bylaw does not apply if there are

more candidates for election than the number of directors to be elected, one or more of whom are properly proposed by shareholders.

The bill specifies that an individual may not be considered a candidate for an election of directors if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

The bill also specifies that if a corporation originally adopts such a bylaw by vote of the shareholders, it may be repealed only by the shareholders, unless the bylaw otherwise provides. If adopted by the board of directors, it may be repealed by the board of directors or the shareholders.

§ 14 — Resignation of a Director

Under current law, a director may resign at any time by delivering a written notice to the board of directors or its chairperson. The bill instead requires that the director deliver a written resignation instead of a notice, and permits it to also be delivered to the corporation's secretary.

Under current law, a resignation is effective when delivered unless it specifies a later effective date. The bill also allows it to specify an effective date determined upon the occurrence of an event or events.

The bill also provides that a resignation conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

§ 15 — Election of Directors by Directors

By law, if the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders. The bill specifies that only the directors elected by that voting group are entitled to fill the vacancy if it is filled by directors.

DISSOLUTION

§ 23 — Court-Ordered Dissolution

The bill eliminates the requirement that the Superior Court dissolve a corporation in a proceeding by a holder or holders of shares having voting power sufficient under the circumstances to dissolve the corporation pursuant to the certificate of incorporation.

The bill also eliminates the requirement that the court dissolve a corporation if a shareholder or a director establishes certain facts in a lawsuit he or she brings. The bill permits, instead of requiring the court to do so under similar but not identical circumstances.

Specifically, the bill eliminates the requirement that the court dissolve a corporation in a proceeding by a shareholder or a director when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock. Instead it permits, instead of requires, the court to dissolve a corporation if in a suit by a shareholder, and not a director, it is established that in addition, irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

The bill also eliminates the requirement that the court dissolve a corporation in a proceeding by a shareholder or a director when it is established that the shareholders are deadlocked in voting power for the election of directors and are unable at the next annual meeting to elect successors to directors whose terms would normally have expired upon the election of their successors. The bill authorizes, instead of requires, the court to do so in a proceeding by a shareholder, and not a director, if it is established that the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

The bill eliminates the court's authority in certain circumstances and duty in other circumstances in a suit by a shareholder or director if on

the date of the proceeding is filed, the corporation has shares that are:

1. listed on the New York Stock Exchange, the American Stock Exchange, or any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc.; or
2. not so listed or quoted, but held by at least 300 shareholders and the shares outstanding have a market value of at least \$20 million, excluding the value of shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of the shares.

§ 25 — Court's Jurisdiction in Dissolution Proceedings

Under current law, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the corporation's business and affairs. The bill gives a court appointing a receiver or custodian jurisdiction, instead of exclusive jurisdiction, over the corporation and all of its property, wherever located.

§ 22 — NOTICE TO SHAREHOLDERS

The bill specifies that a corporation has delivered written notice or any other report or statement under any provision of the law, the certificate of incorporation, or the bylaws to all shareholders who share a common address if:

1. the corporation delivers one copy of the notice, report or statement to the common address;
2. the corporation addresses the notice, report, or statement to those shareholders as a group, to each one individually, or in a form to which each of those shareholders has consented; and
3. each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common

address.

The bill permits any such consent to be revocable by any of the shareholders who delivers written notice of revocation to the corporation. If the notice is delivered, the corporation must begin providing individual notices, reports, or other statements to the revoking shareholder within 30 days after delivery.

Under the bill, any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by the bill, is deemed to have consented to receiving a single copy at the common address.

§ 28 — MERGER

Under current law, a domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least 90% of the voting power of each class and series of the subsidiary's outstanding shares that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, unless:

1. the certificate of incorporation of any of the corporations provides otherwise, and
2. in the case of a foreign subsidiary, approval by the foreign subsidiary's board of directors or shareholders is required by the law under which the subsidiary is organized

The bill specifies that a domestic parent may do so without the approval of the board of directors or shareholders of the subsidiary.

§ 17 — EXPENSES

The bill establishes a definition of "expenses" for the Business Corporation Act. It defines "expenses" as reasonable expenses of any kind that are incurred in connection with a matter, including

reasonable attorney's fees. It uses this term instead of terms like counsel fees, and fees and expenses that currently appear in the act. These provisions involve derivative proceedings (§ 18), appraisal rights cases (§ 19), court-ordered inspection of corporate records by shareholders or directors (§§ 20 & 21), court proceedings to dissolve the corporation (§ 25), and indemnification (§ 29).

§ 30 — DELIVERY OF FINANCIAL STATEMENTS BY ELECTRONIC TRANSMISSION

By law, a corporation, except a corporation required to file financial reports with the banking commissioner, the insurance commissioner, or the Department of Public Utility Control, must furnish its shareholders' with annual financial statements that include certain information.

Under current law, corporations must mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year. Upon written request from a shareholder who was not mailed the statements, the corporation must mail him or her the latest financial statements. The bill requires corporations to deliver rather than mail this information.

It specifies that any delivery of financial statements by electronic transmission must be in a manner the shareholder authorizes. The bill specifies that a public corporation may satisfy its requirements by delivering the specified financial statements, or otherwise making them available, in any manner permitted by applicable SEC rules and regulations.

§ 31 — DIRECTOR'S DUTY TO CONSIDER CERTAIN FACTORS

By law, a director must discharge his or her duties as a director (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he or she reasonably believes to be in the corporation's best interests.

Under current law, a director of a publicly traded corporations

stocks, must consider certain factors when determining what he or she reasonably believes to be in the corporation's best interests when considering mergers, consolidations, sale of corporate assets, or business combinations. The bill permits, instead of requires, directors to consider these factors.

The factors are:

1. the corporation's long-term as well as the short-term interests;
2. the shareholders' interests, long-term as well as short-term, including the possibility that those interests may be best served by the corporation's continued independence;
3. the interests of the corporation's employees, customers, creditors, and suppliers; and
4. community and societal considerations including those of any community in which any corporate office or other facility is located.

The law, unchanged by the bill, continues to allow a director to also consider any other factors he or she reasonably considers appropriate in determining what is in the corporation's best interests.

BACKGROUND

Appraisal and Payment Rights

By law a shareholder is entitled to have his shares appraised and to obtain payment of the fair value for those shares, in the event of any of the following corporate actions:

1. a merger to which the corporation is a party if (a) shareholder approval is required for the merger by law and the shareholder is entitled to vote on the merger, except that appraisal rights are not available to any shareholder with respect to shares of any class or series that remain outstanding after the merger is consummated, or (b) the corporation is a subsidiary and the merger is governed by the law that controls the merger of a

- domestic parent corporation and a domestic or foreign subsidiary (CGS § 33-818);
2. a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;
 3. a disposition of assets leaving no significant business activity (see CGS § 33-831) if the shareholder is entitled to vote on the disposition;
 4. an amendment of the certificate of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or
 5. any other merger, share exchange, disposition of assets, or amendment to the certificate of incorporation to the extent provided by the certificate of incorporation, the bylaws, or a resolution of the board of directors.

Open-End Management Investment Company

State law does not define an “open end management company.” But, under federal law, “open-end company” means a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer (15 USC §80a-5). Apparently, it is a portfolio of securities professionally managed by the sponsoring management company or investment company, which issues shares to investors. The manager must create shares when money is invested and redeem shares as requested by shareholders.

Cumulative Voting

Cumulative voting is a type of voting process that helps strengthen

the ability of minority shareholders to elect a director. This method allows shareholders to cast all of their votes for a single nominee for the board of directors when the company has multiple openings on its board. In contrast, in “regular” or “statutory” voting, shareholders may not give more than one vote per share to any single nominee. For example, if the election is for four directors and someone holds 500 shares (with one vote per share), under the regular method he or she could vote a maximum of 500 shares for any one candidate (giving the shareholder 2,000 votes total - 500 votes per each of the four candidates). With cumulative voting, the shareholder could choose to vote all 2,000 votes for one candidate, 1,000 each to two candidates, or otherwise divide his or her votes.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/17/2008)