



Aida Montano

Bill Analysis

Legislative Service Commission

H.B. 6

123rd General Assembly
(As Introduced)

Reps. D. Miller, Schuler, DePiero, Opfer, Trakas, Ford, Sullivan, Gerberry, Boyd, Jones, Stapleton, O'Brien, Winkler, Mottley, Schuck, Allen, Willamowski, Jacobson

BILL SUMMARY

- Specifies in the General Corporation Law that a proxy may be appointed by a verifiable communication authorized by the person making the appointment.
- Specifies that any transmission that creates a record capable of authentication, including electronic mail or an electronic, telephonic, or other transmission that appoints a proxy, is a sufficient verifiable communication to appoint a proxy.

CONTENT AND OPERATION

Appointment of proxy

Existing law

Under the General Corporation Law, a person who is entitled to attend a shareholders' meeting, to vote at the meeting, or to execute consents, waivers, or releases may be represented or may vote at the meeting, execute consents, waivers, and releases, and exercise any other rights, by proxy or proxies appointed by a writing signed by that person. A telegram or cablegram appearing to have been transmitted by the person appointing the proxy, or a photographic, photostatic, or equivalent reproduction of a writing, appointing a proxy is a sufficient writing. (Sec. 1701.48(A) and (B).)

The bill

The bill specifies that a proxy or proxies may be appointed by a writing signed by the person making the appointment (existing law) or by a verifiable communication authorized by the person making the appointment (added by the

bill) (sec. 1701.48(A)). The bill makes a distinction between the following methods of appointing a proxy or proxies (sec. 1701.48(B)):

(1) A signed writing (existing law). A photographic, photostatic, facsimile transmission (added by the bill), or equivalent reproduction of a writing that is signed by a person as described in "Existing law," above, and that appoints a proxy is a sufficient writing to appoint a proxy.

(2) An authorized verifiable communication. Any transmission creating a record capable of authentication, including, but not limited to, a telegram or cablegram (existing law), electronic mail, or an electronic, telephonic, or other transmission (added by the bill), that appears to have been transmitted by a person as described in "Existing law," above, and that appoints a proxy is a sufficient verifiable communication to appoint a proxy.

The bill provides that no appointment of a proxy is valid after the expiration of 11 months after it is made unless the writing or "verifiable communication" specifies the date on which it is to expire or the length of time it is to continue in force (sec. 1701.48(C)).

Revocation of appointment of proxy

Existing law authorizes the person appointing a proxy, without affecting any vote previously taken, to revoke a revocable appointment by a later appointment received by the corporation or by giving notice of revocation to the corporation in writing or in open meeting. The bill provides that notice of revocation to the corporation also may be given in a "verifiable communication." (Sec. 1701.48(D).)

Powers of proxy

Existing law provides that unless the writing appointing a proxy otherwise provides (sec. 1701.48(F)):

(1) Each proxy has the power of substitution and, if three or more proxies are appointed, a majority of them or of their substitutes may appoint one or more substitutes to act for all.

(2) If more than one proxy is appointed, then (a) with respect to voting or executing consents, waivers, or releases, or objections to consents at a shareholders' meeting, a majority of the proxies who attend the meeting, or if only one attends then that one, may exercise all the voting and consenting authority at the meeting; and if one or more attend and a majority do not agree on any particular issue, each proxy so attending is entitled to exercise that authority with

respect to an equal number of shares, (b) with respect to exercising any other authority, a majority may act for all.

The bill retains these powers of a proxy unless the writing or "verifiable communication" appointing a proxy otherwise provides (sec. 1701.48(F)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 85

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