

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1500

INTRODUCER: Senator Fasano

SUBJECT: Corporations

DATE: March 24, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/1 amendment
2.	Treadwell	Maclure	JU	Pre-meeting
3.	_____	_____	FT	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill permits corporations to furnish shareholders annual financial statements by electronic transmission, in addition to the current practice of providing the statements by regular mail.

In addition, this bill allows a corporation that has an outstanding class of securities to fulfill the requirement of furnishing annual financial statements by complying with 17 C.F.R. 240.14a-3(b), as amended, which requires corporations to furnish annual financial reports to security holders in a format specified under 17 C.F.R. 240.14a-16, as amended, whether by mail or by electronic transmission.

This bill substantially amends section 607.1620, Florida Statutes.

II. Present Situation:

Section 607.1620(3), F.S., requires corporations for profit to mail financial statements to shareholders within 120 days after the close of each fiscal year.¹ Current law specifies that

¹ This provision was modeled after s. 16.20 of the revised Model Business Corporation Act.

financial statements must be “mailed,” which limits the ability of corporations to provide shareholders financial statements through alternative means, such as through electronic transmission.² “Mail” is defined in s. 607.01401(17), F.S., as “the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.”

Section 607.1620(1), F.S., allows a corporation’s shareholders to waive the corporation’s obligation to furnish annual financial statements, but only if approved by the shareholders by resolution and within 120 days of the close of the corporation’s fiscal year.

Several states, including Alaska, Georgia, Pennsylvania, Arizona, and California, currently allow corporations to provide shareholders with financial statements or annual reports through electronic transmission.³ California specifically permits corporations to satisfy annual reporting requirements by meeting the Security and Exchange Commission reporting requirements specified under 17 C.F.R. 240.14a-3(b), as amended, and 17 C.F.R. 240.14a-16, as amended.⁴

The Securities and Exchange Commission (SEC) provides for the electronic transmission of corporations’ financial statements, called “e-proxy” rules, under 17 C.F.R. 240.14a-3(b), as amended, and 17 C.F.R. 240.14a-16, as amended.⁵ The SEC prescribes mandatory “e-proxy” rules that delineate the manner in which proxy materials for securities registered under Section 12 of the Securities Exchange Act of 1934 must be provided to security holders. Under these rules, corporations must post proxy materials on a publicly accessible website and must provide paper or email copies of the posted materials upon a security holder’s request. Specifically, a corporation can either choose to use the “full set delivery option” or “notice of Internet availability of proxy materials” option to deliver proxy materials.

The “notice of Internet availability” option requires corporations to post their proxy materials on an Internet website and send a notice to security holders to inform them of the electronic availability of the proxy materials, at least 40 days before the security holders’ meeting.⁶ Corporations that follow this option must respond to security holder requests for copies, including a security holder’s permanent request for paper or e-mail copies of proxy materials for all security holder meetings.⁷

The “full set delivery option” allows a corporation to deliver a full set of proxy materials to security holders, along with the notice of Internet availability of proxy materials, at least 40 days before the security holders’ meeting.⁸ If a corporation chooses this option, it need not prepare and deliver a separate notice if the materials contain all of the information required by the e-

² Section 607.1620(3), F.S.

³ See A.S. s. 10.06.433, Ga. Code Ann. ss. 14-3-1620 and 14-2-1620, 15 Pa. C.S.A. s. 1554, A.R.S. s. 10-1620, and Cal. Corp. Code s. 1501.

⁴ See Cal. Corp. Code s. 1501(a)(4).

⁵ Information provided by the Florida Bar Business Law Section (document on file with Judiciary Committee).

⁶ See 17 C.F.R. 240.14a-3(a)(1) and John Koegel, *Shareholder Voting Goes Green With 'E-Proxy' Rule Amendments* (Aug. 1, 2008), <http://www.allbusiness.com/legal/banking-law-banking-finance-regulation/11579823-1.html> (last visited Mar. 20, 2009).

⁷ See Koegel, *supra* note 6.

⁸ *Id.*

proxy rules to appear in the notice and proxy statement.⁹ Moreover, corporations do not have to respond to requests for copies, as is required under the notice of Internet availability option.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 607.1620, F.S., which relates to financial statements for shareholders, to allow corporations for profit to furnish annual financial statements to shareholders by electronic transmission or by mail. The addition of “electronic transmission” to this section broadens the methods by which a corporation can provide financial statements to shareholders.

“Electronic transmission” is defined in s. 607.01401(9), F.S., as:

any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions through the Internet.

A new subsection (5) is created to allow a corporation to furnish annual financial statements by mail or electronic transmission. It also allows a corporation that has an outstanding class of securities to satisfy the annual requirement of furnishing financial statements to shareholders by complying with 17 C.F.R. s. 240.14a-3(b), as amended.¹¹ This provision, in conjunction with 17 C.F.R. s. 240.14a-16, as amended, requires a corporation to furnish annual reports to security holders in a certain format and under specified time requirements and allows for reports to be provided through an electronic medium.¹² These federal rules are often referred to as “e-proxy” rules.¹³

Section 2 provides that the act shall take effect upon becoming law and has a prospective application provision providing that the law will apply to all fiscal years ending on or after December 31, 2008. This would allow not for profit corporations to file financial statements by electronic transmission or take advantage of the federal “e-proxy” rules not only prospectively for financial statements furnished after the date of enactment, but also retroactively with respect to fiscal years ending on or after December 31, 2008.

Other Potential Implications:

In the United States, the average U.S. office employee uses approximately 9,999 sheets of paper each year, totaling about 27 pounds of paper per person.¹⁴ Each sheet of paper used has less than a 5-percent chance of containing recycled fibers and has a 50-percent chance of ending up in a

⁹ *Id.*

¹⁰ *Id.*

¹¹ This section of the bill is similar to a provision in California’s corporation code. See Cal. Corp. Code s. 1501(a)(4).

¹² See 17 C.F.R. s. 240.14a-3(b)(2)(ii) for format specifications of reports delivered through an electronic medium.

¹³ See Koegel, *supra* note 6.

¹⁴ See Resource Conservation Alliance, *Paper Consumption*, available at <http://www.woodconsumption.org/products/paper.pdf> (last visited Mar. 20, 2009).

landfill or incinerator.¹⁵ To the extent this bill gives corporations an option to use the Internet to furnish shareholders financial statements instead of printing and mailing those statements, this bill has the potential to save valuable natural resources and is environmentally friendly.¹⁶

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Corporations may reduce printing and mailing costs by choosing to use the Internet to furnish financial statements to shareholders.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Should this bill become law, it may be an incentive for corporations to move their businesses to Florida, as opposed to another state, because of the potential cost-effectiveness of this law.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

¹⁵ *Id.*

¹⁶ Koegel, *supra* note 6.

None.

B. Amendments:

Barcode 107672 by Commerce on March 10, 2009:

Clarifies that corporations may furnish annual financial statements to shareholders by mail, electronic transmission, or if the corporation is already required to furnish statements in a certain manner by federal law, then by that prescribed manner if the corporation so chooses.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
