

4485

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 3, 2011

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Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Energy

AN ACT to amend the business corporation law, in relation to enacting the "shareholders remote voting act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "shareholders remote voting act".

3     S 2. Paragraphs (b), (c) and (d) of section 602 of the business corpo-  
4     ration law are relettered paragraphs (c), (d) and (e) and a new para-  
5     graph (b) is added to read as follows:

6     (B)(I) EVERY CORPORATION WHOSE SHARES ARE TRADED ON A STOCK EXCHANGE  
7     OR IN THE OVER-THE-COUNTER MARKET SHALL: (1) IMPLEMENT REASONABLE MEAS-  
8     URES TO PROVIDE SHAREHOLDERS NOT PHYSICALLY PRESENT AT A SHAREHOLDERS'  
9     MEETING A REASONABLE OPPORTUNITY TO WITNESS THE PROCEEDINGS OF THE MEET-  
10    ING SUBSTANTIALLY CONCURRENTLY WITH SUCH PROCEEDINGS; AND (2) PROVIDE  
11    REASONABLE MEANS TO ENABLE SHAREHOLDERS TO VOTE OR CAST PROXIES WITH  
12    RESPECT TO MATTERS SUBMITTED TO THE SHAREHOLDERS AT A SHAREHOLDERS'  
13    MEETING BY MEANS OF ELECTRONIC COMMUNICATION.

14    (II) THIS PARAGRAPH MAY ALSO APPLY TO OTHER CORPORATIONS IF THE BOARD  
15    OF DIRECTORS HAS ELECTED TO BE SUBJECT TO THIS PARAGRAPH.

16    (III) NOTHING REQUIRED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH  
17    SHALL LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTIC-  
18    IPATION.

19    (IV) FOR PURPOSES OF THIS PARAGRAPH, "REASONABLE MEASURES" WITH  
20    RESPECT TO WITNESSING PROCEEDINGS SHALL INCLUDE, BUT NOT BE LIMITED TO  
21    AUDIO WEBCAST OR OTHER BROADCAST OF THE MEETING AND FOR VOTING SHALL  
22    INCLUDE BUT NOT BE LIMITED TO TELEPHONIC AND INTERNET VOTING.

23    S 3. Section 605 of the business corporation law, as amended by chap-  
24    ter 746 of the laws of 1963, paragraph (a) as amended by chapter 498 of  
25    the laws of 1998, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 605. Notice of meetings of shareholders.

2 (a) Whenever under the provisions of this chapter shareholders are  
3 required or permitted to take any action at a meeting, notice shall be  
4 given stating the place, date and hour of the meeting, THE MEANS OF  
5 REMOTE COMMUNICATIONS, IF ANY, BY WHICH SHAREHOLDERS AND PROXYHOLDERS  
6 MAY WITNESS THE PROCEEDINGS OF THE MEETING AND VOTE OR CAST PROXIES AT  
7 SUCH MEETING and, unless it is the annual meeting, indicating that it is  
8 being issued by or at the direction of the person or persons calling the  
9 meeting. Notice of a special meeting shall also state the purpose or  
10 purposes for which the meeting is called. Notice of any meeting of  
11 shareholders may be written or electronic. If, at any meeting, action is  
12 proposed to be taken which would, if taken, entitle shareholders  
13 fulfilling the requirements of section 623 OF THIS CHAPTER (Procedure to  
14 enforce shareholder's right to receive payment for shares) to receive  
15 payment for their shares, the notice of such meeting shall include a  
16 statement of that purpose and to that effect and shall be accompanied by  
17 a copy of section 623 OF THIS CHAPTER or an outline of its material  
18 terms. Notice of any meeting shall be given not fewer than ten nor more  
19 than sixty days before the date of the meeting, provided, however, that  
20 such notice may be given by third class mail not fewer than twenty-four  
21 nor more than sixty days before the date of the meeting, to each share-  
22 holder entitled to vote at such meeting. If mailed, such notice is given  
23 when deposited in the United States mail, with postage thereon prepaid,  
24 directed to the shareholder at the shareholder's address as it appears  
25 on the record of shareholders, or, if the shareholder shall have filed  
26 with the secretary of the corporation a request that notices to the  
27 shareholder be mailed to some other address, then directed to him OR HER  
28 at such other address. If transmitted electronically, such notice is  
29 given when directed to the shareholder's electronic mail address as  
30 supplied by the shareholder to the secretary of the corporation or as  
31 otherwise directed pursuant to the shareholder's authorization or  
32 instructions. An affidavit of the secretary or other person giving the  
33 notice or of a transfer agent of the corporation that the notice  
34 required by this section has been given shall, in the absence of fraud,  
35 be prima facie evidence of the facts therein stated.

36 (b) When a meeting is adjourned to another time or place, it shall not  
37 be necessary, unless the by-laws require otherwise, to give any notice  
38 of the adjourned meeting if the time and place to which the meeting is  
39 adjourned AND THE MEANS OF REMOTE COMMUNICATIONS, IF ANY, BY WHICH  
40 SHAREHOLDERS AND PROXYHOLDERS MAY WITNESS THE PROCEEDINGS OF THE MEETING  
41 AND VOTE OR CAST PROXIES AT THE MEETING are announced at the meeting at  
42 which the adjournment is taken, and at the adjourned meeting any busi-  
43 ness may be transacted that might have been transacted on the original  
44 date of the meeting. However, if after the adjournment the board fixes a  
45 new record date for the adjourned meeting, a notice of the adjourned  
46 meeting shall be given to each shareholder of record on the new record  
47 date entitled to notice under paragraph (a) OF THIS SECTION.

48 (C) NOTHING REQUIRED IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL  
49 LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTICIPATION.

50 S 4. This act shall take effect immediately.