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SFA**BILL ANALYSIS**

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Senate Bill 218 (as introduced 2-26-03)
Sponsor: Senator Jason E. Allen
Committee: Commerce and Labor

Date Completed: 3-4-03

CONTENT

The bill would amend the Business Corporation Act to do all of the following:

- Prohibit a corporation, if its board were divided into classes with staggered terms of office, from amending its articles of incorporation to reduce the term of a director, amend or repeal a provision dividing the board into classes, or change the number of directors, without the prior approval of a majority of the directors then serving, unless the corporation's articles provided otherwise.**
- Specify that, for a corporation whose board was divided into classes, shareholders could remove directors only for cause, unless the articles allowed removal without cause.**
- Require that a proposed amendment to a corporation's articles be adopted by the board of directors, if that corporation had publicly traded stock.**
- Allow the directors of a corporation (as well as the shareholders) to grant control shares acquired in a control share acquisition the same voting rights as the shares had before the control share acquisition.**

Staggered Terms

The Act allows a corporation's articles of incorporation or a bylaw adopted by the shareholders to provide that the board is divided into two or three classes, with staggered terms of office.

Under the bill, unless the articles provided otherwise, if a board were divided into classes, the corporation could not amend its articles or bylaws to reduce the term of office of a director, amend or repeal a provision dividing the board into classes, or increase or decrease the number of directors without the prior approval of a majority of the directors then in office.

The Act allows the shareholders to remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only for cause. Under the bill, for a corporation whose board was divided into classes, shareholders could remove directors only for cause, unless the articles allowed removal without cause.

Publicly Traded Corporation

The Act allows a corporation's board of directors to adopt certain amendments to the articles of incorporation without shareholder action, and requires shareholder approval for other amendments to the articles, except as otherwise provided in the Act.

The bill specifies that a proposed amendment to a corporation's articles would have to be adopted by the board of directors, if the corporation had securities registered under Section 12 of the Federal Securities Exchange Act (15 USC 78l). (That is, adoption by the board would be required if the corporation had publicly traded stock.)

Board Approval of Control Shares

Under the Act, control shares acquired in a control share acquisition have the same voting rights as the shares were accorded before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing corporation. To be approved, a resolution must be adopted by all of the following:

- A majority of the votes cast by the shareholders entitled to vote on the resolution.
- If the control share acquisition would result in any action requiring a vote as class or series, a majority of the votes cast by the shareholders of that class or series.
- A majority of the votes cast by the shareholders entitled to vote and a majority of the votes cast by the shareholders of each class or series entitled to vote as a class or series, excluding all interested shares.

Under the bill, a resolution granting voting rights to control shares acquired in a control share acquisition would have to be approved either by the shareholders or by the corporation's board of directors. For approval by the directors, a resolution would have to be approved by either of the following:

- If before or at the time of a control share acquisition, by a majority of the directors.
- If after a control share acquisition, by a majority of those directors in office at the time of the approval who also were directors at the time of the control share acquisition.

("Control share acquisition" means the acquisition by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

"Control shares" refers to shares that, except for restrictions imposed by the Act, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person to exercise or direct the exercise of voting power in the election of directors within any of the following ranges of voting power:

- One-fifth or more but less than one-third of all voting power.
- One-third or more but less than a majority of all voting power.
- A majority of all voting power.)

MCL 450.1506 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.