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House Bill 4764 (Substitute H-6 as passed by the House)
Sponsor: Representative Bill Huizenga
House Committee: Commerce
Senate Committee: Commerce and Labor

Date Completed: 6-17-03

CONTENT

The bill would amend the Shareholder Equity Act to specify that the formation of a group would not constitute a "control share acquisition" of an issuing public corporation's shares held by members of that group. If shares did not have voting rights, because the formation of a group after April 1, 1988, was deemed to be a control share acquisition, the bill specifies that those shares would have the same voting rights accorded to them before the formation of the group.

(The Act defines "control share acquisition" as 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 a 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.)

BACKGROUND

Shareholder Equity Act

The Shareholder Equity Act is Chapter 7B (Control Share Acquisitions) of the Business Corporation Act. According to analyses written at the time of its 1988 enactment, the Shareholder Equity Act's aim is to help Michigan public corporations ward off hostile takeover attempts. The Act was modeled after an Indiana statute that had been upheld as constitutional by the U.S. Supreme Court in 1987.

Under the Act, a company's shareholders may limit the power of shares whose acquisition would give the acquiring parties a certain amount of voting power. The Act provides that control shares acquired in a control share acquisition have the same voting rights as the shares were accorded before the 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.

Simon Property Group, Inc., et al. v Taubman Centers, Inc., et al.

The Shareholder Equity Act has become a focus of attention due to a recent decision of the United States District Court for the Eastern District of Michigan in the *Simon* case, which arose out of Simon Property Group's (SPG's) attempt to take over Taubman Centers, Inc. (TCI). Both entities are real estate investment firms with large shopping mall holdings. Simon Property Group is based in Indianapolis and TCI is based in the Detroit area.

Simon Property Group sought judicial intervention after the Taubman family and another shareholder entered into voting agreements that gave them a collective 33.6% of the voting power in TCI: enough to block amendments to TCI's articles of incorporation that would enable SPG to purchase the shares necessary for it to succeed in its takeover bid. The Federal District Court found that the Taubman family had formed a "group" that acquired "control shares" under the Shareholder Equity Act. Accordingly, the Court held that none of the 33.6% could be voted unless voting rights were extended to the shares pursuant to the Act.

After the Court granted SPG's motion for a preliminary injunction, SPG sought to move forward on its bid to acquire all outstanding TCI shares. Upon TCI's motion, the Court then stayed its injunction pending a ruling of the U.S. Court of Appeals for the Sixth Circuit; however, the Court also ordered the Taubman family group to refrain from engaging in any activity that would impede SPG's tender offer.

MCL 450.1791 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.