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LAW/KR

SENATE, No. 895

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 1, 2010

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Co-Sponsored by:

Assemblyman Chivukula, Assemblywoman Rodriguez and Assemblyman Wisniewski

SYNOPSIS

Eliminates 10 day advance notification of proposed effective date of certain shareholder action.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/16/2010)

1 AN ACT concerning certain actions taken by shareholders without a
2 meeting and amending N.J.S.14A:5-6.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.14A:5-6 is amended to read as follows:

8 14A:5-6. Action by shareholders without a meeting.

9 (1) Any action required or permitted to be taken at a meeting of
10 shareholders by this act or the certificate of incorporation or bylaws
11 of a corporation, may be taken without a meeting if all the
12 shareholders entitled to vote thereon consent thereto in writing,
13 except that in the case of any action to be taken pursuant to
14 **[Chapter 10 of this act]** N.J.S.14A:10-1 et seq., such action may be
15 taken without a meeting only if all shareholders consent thereto in
16 writing or if all shareholders entitled to vote thereon consent thereto
17 in writing and the corporation provides to all other shareholders the
18 advance notification required by paragraph **[14A:5-6(2)](b)** of
19 subsection 2 of this section.

20 (2) Except as otherwise provided in the certificate of
21 incorporation and subject to the provisions of this subsection, any
22 action required or permitted to be taken at a meeting of
23 shareholders by this act, the certificate of incorporation, or bylaws,
24 other than the annual election of directors, may be taken without a
25 meeting, without prior notice and without a vote, upon the written
26 consent of shareholders who would have been entitled to cast the
27 minimum number of votes which would be necessary to authorize
28 such action at a meeting at which all shareholders entitled to vote
29 thereon were present and voting.

30 (a) If any shareholder shall have the right to dissent from the
31 proposed action, pursuant to **[Chapter 11 of this act]** N.J.S.14A:11-
32 1 et seq., the board shall fix a date on which written consents are to
33 be tabulated; in any other case, it may fix a date for tabulation. If
34 no date is fixed, consents may be tabulated as they are received. No
35 consent shall be counted which is received more than 60 days after
36 the date of the board action authorizing the solicitation of consents
37 or, in a case in which consents, or proxies for consents, are solicited
38 from all shareholders who would have been entitled to vote at a
39 meeting called to take such action, more than 60 days after the date
40 of mailing of solicitation of consents, or proxies for consents.

41 (b) Except as provided in **[subsection 14A:5-6(2)(c)]** paragraph
42 (c) of this subsection, the corporation, upon receipt and tabulation
43 of the requisite number of written consents, shall promptly notify
44 all non-consenting shareholders, who would have been entitled to
45 notice of a meeting to vote upon such action, of the action
46 consented to, the proposed effective date of such action, and any

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 conditions precedent to such action. **【Such】** In the case of any
2 action taken pursuant to N.J.S.14A:10-1 et seq., such notification
3 shall be given at least 20 days in advance of the proposed effective
4 date of such action **【in the case of any action taken pursuant to**
5 **Chapter 10 of this act, and at least 10 days in advance in the case of**
6 **any other action】**. Any shareholder who did not consent,
7 personally, or by proxy, to any action which he has a right to
8 dissent from as provided in **【Chapter 11 of this act】** N.J.S.14A:11-1
9 et seq. shall in such notice also be informed that he has the right to
10 dissent and to be paid the fair value of his shares, provided he files
11 with the corporation a written notice of dissent as required by
12 subsection (1) of N.J.S.14A:11-2【(1)】 within 20 days from the date
13 of giving of the notice, or such greater period of time as may be
14 granted by the corporation, and outlining briefly, with particular
15 reference to the time periods within which actions must be taken,
16 the procedures set forth in **【Chapter 11 of this act】** N.J.S.14A:11-1
17 et seq. with which he must comply in order to assert and enforce
18 such right.

19 (c) The corporation need not provide the notification required
20 by paragraph **【14A:5-6(2)】(b)** of this subsection if it

21 (i) solicits written consents or proxies for consents from all
22 shareholders who would have been entitled to vote at a meeting
23 called to take such action, and at the same time gives notice of the
24 proposed action to all other shareholders who would have been
25 entitled to notice of a meeting called to vote upon such action;

26 (ii) advises all shareholders, if any, who are entitled to dissent
27 from the proposed action, as provided in **【Chapter 11 of this act】**
28 N.J.S.14A:11-1 et seq., of their right to do so and to be paid the fair
29 value of their shares, provided they file with the corporation before
30 the date fixed for tabulation of the written consents a written notice
31 of dissent as required by subsection (1) of N.J.S.14A:11-2【(1)】, and
32 outlining briefly, with particular reference to the time periods
33 within which actions must be taken, the procedures set forth in
34 **【Chapter 11 of this act】** N.J.S.14A:11-1 et seq. with which they
35 must comply in order to assert and enforce such right; and

36 (iii) in the case of any proposed action to be taken pursuant to
37 N.J.S.14A:10-1 et seq., fixes a date for tabulation of consents not
38 less than 20 days, **【in the case of any proposed action to be taken**
39 **pursuant to Chapter 10 of this act, or not less than 10 days in the**
40 **case of any other proposed action,】** and not more than 60 days, after
41 the date of mailing of solicitations of consents or proxies for
42 consents.

43 (d) Any consent obtained pursuant to paragraph **【14A:5-**
44 **6(2)】(c)** of this subsection may be revoked at any time prior to the
45 day fixed for tabulation of consents. Any other consent may be
46 revoked at any time prior to the day on which the proposed action

1 could be taken upon compliance with paragraph **[14A:5-6(2)](b)** of
2 this subsection. No revocation shall be effective unless in writing
3 and until received by the corporation at the place fixed for receipt
4 of consents or, if none, at the main business office or headquarters
5 of the corporation.

6 (3) Whenever action is taken pursuant to subsection **[14A:5-**
7 **6](1)** or **[14A:5-6](2)** of this section, the written consents of the
8 shareholders consenting thereto or the written report of inspectors
9 appointed to tabulate such consents shall be filed with the minutes
10 of proceedings of shareholders.

11 (4) Any action taken pursuant to subsection **[14A:5-6](1)** or
12 **[14A:5-6](2)** of this section shall have the same effect for all
13 purposes as if such action had been taken at a meeting of the
14 shareholders.

15 (5) If any other provision of this act requires the filing of a
16 certificate upon the taking of an action by shareholders, and such
17 action is taken in the manner authorized by subsection **[14A:5-**
18 **6](1)** or **[14A:5-6](2)** of this section, such certificate shall state
19 that such action was taken without a meeting pursuant to the written
20 consents of the shareholders and shall set forth the number of shares
21 represented by such consents.

22 (cf: P.L.1995, c.279, s.4)

23

24 2. This act shall take effect immediately.

25

26

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STATEMENT

28

29 This bill eliminates the 10 day waiting period for certain
30 shareholder actions not concerning mergers and acquisition activity
31 governed by N.J.S.14A:10-1 et seq. This 10 day waiting period can,
32 at times, create inefficiencies in transactions and delay closings
33 while the notice period runs.

34 As an example, this type of delay can occur when the certificate
35 of incorporation needs to be amended in connection with a private
36 placement of stock to increase the number of authorized shares or to
37 create a new class of stock. The bill eliminates that type of delay.

38 The bill makes New Jersey law consistent with Section 228 of
39 the Delaware General Corporation Law for shareholder approvals
40 that do not involve mergers and acquisitions, as Delaware does not
41 require any waiting period once notice of the non-unanimous
42 approval is provided to the non-consenting shareholders.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 895

STATE OF NEW JERSEY

DATED: FEBRUARY 4, 2010

The Senate Commerce Committee reports favorably Senate Bill No. 895.

This bill eliminates the 10-day waiting period for certain shareholder actions not concerning mergers and acquisition activity governed by N.J.S.14A:10-1 et seq. This 10-day waiting period can, at times, create inefficiencies in transactions and delay closings while the notice period runs.

As an example, this type of delay can occur when the certificate of incorporation needs to be amended in connection with a private placement of stock to increase the number of authorized shares or to create a new class of stock. The bill eliminates any such delay.

The bill makes New Jersey law consistent with section 228 of the “General Corporation Law of the State of Delaware,” 8 Del. Code s.232, concerning shareholder approvals that do not involve mergers and acquisitions, as Delaware does not require any such waiting period once notice of the non-unanimous approval of the activity is provided to the non-consenting shareholders.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

SENATE, No. 895

STATE OF NEW JERSEY

DATED: MARCH 11, 2010

The Assembly Commerce and Economic Development Committee reports favorably Senate Bill No. 895.

This bill eliminates the 10-day waiting period for certain shareholder actions not concerning mergers and acquisition activity governed by N.J.S.14A:10-1 et seq. This 10-day waiting period can, at times, create inefficiencies in transactions and delay closings while the notice period runs.

As an example, this type of delay can occur when the certificate of incorporation needs to be amended in connection with a private placement of stock to increase the number of authorized shares or to create a new class of stock. The bill eliminates any such delay.

The bill makes New Jersey law consistent with section 228 of the “General Corporation Law of the State of Delaware,” 8 Del. Code s.232, concerning shareholder approvals that do not involve mergers and acquisitions, as Delaware does not require any such waiting period once notice of the non-unanimous approval of the activity is provided to the non-consenting shareholders.

ASSEMBLY, No. 2420

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MARCH 4, 2010

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Co-Sponsored by:

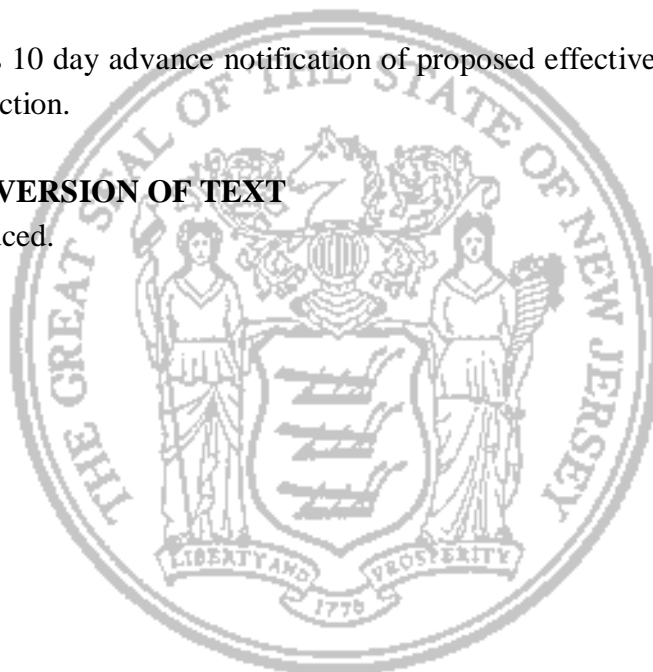
Assemblyman Chivukula, Assemblywoman Rodriguez and Assemblyman Wisniewski

SYNOPSIS

Eliminates 10 day advance notification of proposed effective date of certain shareholder action.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/5/2010)

1 AN ACT concerning certain actions taken by shareholders without a
2 meeting and amending N.J.S.14A:5-6.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.14A:5-6 is amended to read as follows:

8 14A:5-6. Action by shareholders without a meeting.

9 (1) Any action required or permitted to be taken at a meeting of
10 shareholders by this act or the certificate of incorporation or bylaws
11 of a corporation, may be taken without a meeting if all the
12 shareholders entitled to vote thereon consent thereto in writing,
13 except that in the case of any action to be taken pursuant to
14 **[Chapter 10 of this act]** N.J.S.14A:10-1 et seq., such action may be
15 taken without a meeting only if all shareholders consent thereto in
16 writing or if all shareholders entitled to vote thereon consent thereto
17 in writing and the corporation provides to all other shareholders the
18 advance notification required by paragraph **[14A:5-6(2)](b)** of
19 subsection 2 of this section.

20 (2) Except as otherwise provided in the certificate of
21 incorporation and subject to the provisions of this subsection, any
22 action required or permitted to be taken at a meeting of
23 shareholders by this act, the certificate of incorporation, or bylaws,
24 other than the annual election of directors, may be taken without a
25 meeting, without prior notice and without a vote, upon the written
26 consent of shareholders who would have been entitled to cast the
27 minimum number of votes which would be necessary to authorize
28 such action at a meeting at which all shareholders entitled to vote
29 thereon were present and voting.

30 (a) If any shareholder shall have the right to dissent from the
31 proposed action, pursuant to **[Chapter 11 of this act]** N.J.S.14A:11-
32 1 et seq., the board shall fix a date on which written consents are to
33 be tabulated; in any other case, it may fix a date for tabulation. If
34 no date is fixed, consents may be tabulated as they are received. No
35 consent shall be counted which is received more than 60 days after
36 the date of the board action authorizing the solicitation of consents
37 or, in a case in which consents, or proxies for consents, are solicited
38 from all shareholders who would have been entitled to vote at a
39 meeting called to take such action, more than 60 days after the date
40 of mailing of solicitation of consents, or proxies for consents.

41 (b) Except as provided in **[subsection 14A:5-6(2)(c)]** paragraph
42 (c) of this subsection, the corporation, upon receipt and tabulation
43 of the requisite number of written consents, shall promptly notify
44 all non-consenting shareholders, who would have been entitled to

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 notice of a meeting to vote upon such action, of the action
2 consented to, the proposed effective date of such action, and any
3 conditions precedent to such action. **【Such】** In the case of any
4 action taken pursuant to N.J.S.14A:10-1 et seq., such notification
5 shall be given at least 20 days in advance of the proposed effective
6 date of such action **【in the case of any action taken pursuant to**
7 **Chapter 10 of this act, and at least 10 days in advance in the case of**
8 **any other action】**. Any shareholder who did not consent,
9 personally, or by proxy, to any action which he has a right to
10 dissent from as provided in **【Chapter 11 of this act】** N.J.S.14A:11-1
11 et seq. shall in such notice also be informed that he has the right to
12 dissent and to be paid the fair value of his shares, provided he files
13 with the corporation a written notice of dissent as required by
14 subsection (1) of N.J.S.14A:11-2【(1)】 within 20 days from the date
15 of giving of the notice, or such greater period of time as may be
16 granted by the corporation, and outlining briefly, with particular
17 reference to the time periods within which actions must be taken,
18 the procedures set forth in **【Chapter 11 of this act】** N.J.S.14A:11-1
19 et seq. with which he must comply in order to assert and enforce
20 such right.

21 (c) The corporation need not provide the notification required
22 by paragraph **【14A:5-6(2)】(b)** of this subsection if it

23 (i) solicits written consents or proxies for consents from all
24 shareholders who would have been entitled to vote at a meeting
25 called to take such action, and at the same time gives notice of the
26 proposed action to all other shareholders who would have been
27 entitled to notice of a meeting called to vote upon such action;

28 (ii) advises all shareholders, if any, who are entitled to dissent
29 from the proposed action, as provided in **【Chapter 11 of this act】**
30 N.J.S.14A:11-1 et seq., of their right to do so and to be paid the fair
31 value of their shares, provided they file with the corporation before
32 the date fixed for tabulation of the written consents a written notice
33 of dissent as required by subsection (1) of N.J.S.14A:11-2【(1)】, and
34 outlining briefly, with particular reference to the time periods
35 within which actions must be taken, the procedures set forth in
36 **【Chapter 11 of this act】** N.J.S.14A:11-1 et seq. with which they
37 must comply in order to assert and enforce such right; and

38 (iii) in the case of any proposed action to be taken pursuant to
39 N.J.S.14A:10-1 et seq., fixes a date for tabulation of consents not
40 less than 20 days, **【in the case of any proposed action to be taken**
41 **pursuant to Chapter 10 of this act, or not less than 10 days in the**
42 **case of any other proposed action,】** and not more than 60 days, after
43 the date of mailing of solicitations of consents or proxies for
44 consents.

45 (d) Any consent obtained pursuant to paragraph **【14A:5-**
46 **6(2)】(c)** of this subsection may be revoked at any time prior to the
47 day fixed for tabulation of consents. Any other consent may be

1 revoked at any time prior to the day on which the proposed action
2 could be taken upon compliance with paragraph **[14A:5-6(2)](b)** of
3 this subsection. No revocation shall be effective unless in writing
4 and until received by the corporation at the place fixed for receipt
5 of consents or, if none, at the main business office or headquarters
6 of the corporation.

7 (3) Whenever action is taken pursuant to subsection **[14A:5-**
8 **6](1)** or **[14A:5-6](2)** of this section, the written consents of the
9 shareholders consenting thereto or the written report of inspectors
10 appointed to tabulate such consents shall be filed with the minutes
11 of proceedings of shareholders.

12 (4) Any action taken pursuant to subsection **[14A:5-6](1)** or
13 **[14A:5-6](2)** of this section shall have the same effect for all
14 purposes as if such action had been taken at a meeting of the
15 shareholders.

16 (5) If any other provision of this act requires the filing of a
17 certificate upon the taking of an action by shareholders, and such
18 action is taken in the manner authorized by subsection **[14A:5-**
19 **6](1)** or **[14A:5-6](2)** of this section, such certificate shall state
20 that such action was taken without a meeting pursuant to the written
21 consents of the shareholders and shall set forth the number of shares
22 represented by such consents.

23 (cf: P.L.1995, c.279, s.4)

24
25 2. This act shall take effect immediately.

26
27
28 STATEMENT

29
30 This bill eliminates the 10 day waiting period for certain
31 shareholder actions not concerning mergers and acquisition activity
32 governed by N.J.S.14A:10-1 et seq. This 10 day waiting period can,
33 at times, create inefficiencies in transactions and delay closings
34 while the notice period runs.

35 As an example, this type of delay can occur when the certificate
36 of incorporation needs to be amended in connection with a private
37 placement of stock to increase the number of authorized shares or to
38 create a new class of stock. The bill eliminates that type of delay.

39 The bill proposes recommendations made by the New Jersey
40 Corporate and Business Law Study Commission. The bill makes
41 New Jersey consistent with Section 228 of the Delaware General
42 Corporation Law for shareholder approvals that do not involve
43 mergers and acquisitions, as Delaware does not require any waiting
44 period once notice of the non-unanimous approval is provided to the
45 non-consenting shareholders.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2420

STATE OF NEW JERSEY

DATED: MARCH 11, 2010

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 2420.

This bill eliminates the 10-day waiting period for certain shareholder actions not concerning mergers and acquisition activity governed by N.J.S.14A:10-1 et seq. This 10-day waiting period can, at times, create inefficiencies in transactions and delay closings while the notice period runs.

As an example, this type of delay can occur when the certificate of incorporation needs to be amended in connection with a private placement of stock to increase the number of authorized shares or to create a new class of stock. The bill eliminates any such delay.

The bill makes New Jersey law consistent with section 228 of the "General Corporation Law of the State of Delaware," 8 Del. Code s.232, concerning shareholder approvals that do not involve mergers and acquisitions, as Delaware does not require any such waiting period once notice of the non-unanimous approval of the activity is provided to the non-consenting shareholders.