

LEGISLATIVE HISTORY CHECKLIST  
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(Corporation Law)

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LAWS OF: 1995 CHAPTER: 279

BILL NO: A2155

SPONSOR(S): Solomon and Russo

DATE INTRODUCED: September 19, 1994

COMMITTEE: ASSEMBLY Labor

SENATE: ---

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Second reprint enacted

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SENATE: June 22, 1995

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HEARINGS: No

974.90/ New Jersey. Corporate and Business Law Study Commission.  
B969 Annual report of the New Jersey Corporate and Business  
Law Study Commission..., January 6, 1994.  
Trenton, 1994.

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[SECOND REPRINT]  
ASSEMBLY, No. 2155

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1994

By Assemblymen SOLOMON and RUSSO

1 AN ACT revising certain provisions of the law of corporations,  
2 allowing the merger or consolidation of corporations with  
3 certain other business entities <sup>1</sup>[and] <sup>1</sup> amending and  
4 supplementing Title 14A of the New Jersey Statutes <sup>1</sup>and  
5 amending the title and body of P.L.1973, c.367<sup>1</sup>.  
6

7 BE IT ENACTED by the Senate and General Assembly of the  
8 State of New Jersey:

9 1. N.J.S.14A:1-2.1 is amended to read as follows:

10 14A:1-2.1. Definitions

11 As used in this act, unless the context otherwise requires, the  
12 term:

13 (a) "Act" or "this act" means the "New Jersey Business  
14 Corporation Act" and includes all amendments and supplements  
15 thereto.

16 (b) "Attorney General" means the Attorney General of New  
17 Jersey.

18 (c) "Authorized shares" means the shares of all classes and  
19 series which the corporation is authorized to issue.

20 (d) "Board" means board of directors. "Entire board" means  
21 the total number of directors which the corporation would have if  
22 there were no vacancies.

23 (e) "Bonds" includes secured and unsecured bonds, debentures,  
24 notes and other written obligations for the payment of money.

25 (f) "Certificate of incorporation" includes:

26 (i) the original certificate of incorporation or any other  
27 instrument filed or issued under any statute to form a domestic  
28 or foreign corporation, as amended, supplemented or restated by  
29 certificates of amendment, merger or consolidation or by other  
30 certificates or instruments filed or issued under any statute; and

31 (ii) a special act or charter creating a domestic or foreign  
32 corporation, as amended, supplemented or restated.

33 (g) "Corporation" or "domestic corporation" means a  
34 corporation for profit organized under this act, or existing on its  
35 effective date and theretofore organized under any other law of  
36 this State for a purpose or purposes for which a corporation may  
37 be organized under this act.

38 (h) "Director" means any member of the governing board of a  
39 corporation, whether designated as director, trustee, manager,  
40 governor, or by any other title.

41 (i) "Foreign corporation" means a corporation for profit  
42 organized under laws of a jurisdiction other than this State for a

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALA committee amendments adopted March 23, 1995.

<sup>2</sup> Assembly amendments adopted in accordance with Governor's  
recommendations September 18, 1995.

1 purpose or purposes for which a corporation may be organized  
2 under this act.

3 (j) "Resolution" means any action taken or authority granted  
4 by the shareholders, the board, or a committee of the board,  
5 regardless of whether evidenced by a formal resolution.

6 (k) "Secretary of State" means the Secretary of State of New  
7 Jersey.

8 (l) "Shareholder" means one who is a holder of record of shares  
9 in a corporation.

10 (m) "Shares" means the units into which the proprietary  
11 interests in a corporation are divided.

12 (n) "Subscriber" means one who subscribes for shares in a  
13 corporation, whether before or after incorporation.

14 (o) "Subsidiary" means a domestic or foreign corporation  
15 whose outstanding shares are owned directly or indirectly by  
16 another domestic or foreign corporation in such number as to  
17 entitle the holder at the time to elect a majority of its directors  
18 without regard to voting power which may thereafter exist upon a  
19 default, failure or other contingency.

20 (p) "Treasury shares" means shares of a corporation which  
21 have been issued, and have been subsequently acquired by the  
22 corporation under circumstances which do not result in  
23 cancellation. Treasury shares are issued shares, but not  
24 outstanding shares.

25 (q) "Other business entity" means a partnership <sup>1</sup>[(general or  
26 limited)]<sup>1</sup> or limited liability company, whether organized under  
27 the laws of this State or under the laws of any other state or  
28 foreign jurisdiction.

29 (r) "Votes cast" means all votes cast in favor of and against a  
30 particular proposition, but shall not include abstentions.

31 (cf: N.J.S.14A:1-2.1)

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

33 14A:1-6. Execution, filing and recording of documents.

34 (1) If a document relating to a domestic or foreign corporation  
35 is required or permitted to be filed in the office of the Secretary  
36 of State under this act:

37 (a) The document shall be in the English language, shall be  
38 typed or machine printed, except that the corporate name need  
39 not be in the English language if written in English letters or  
40 Arabic or Roman numerals, and except that this requirement  
41 shall not apply to a certificate of good standing under paragraph  
42 14A:2-4(2)(b), section 14A:2-5, or subsection 14A:13-4 (2).

43 (b) The filing shall be accomplished by delivering the document  
44 to the office of the Secretary of State, together with the fees  
45 and any accompanying documents required by law. Thereupon,  
46 the Secretary of State shall endorse the document with the word  
47 "Filed" with his official title and shall file it in his office. Each  
48 document accepted for filing shall be deemed filed as of the  
49 latest date and time of receipt stamped upon it pursuant to  
50 subsection [(1)] (7) of this section. If a document was erroneously  
51 rejected for filing by the Secretary of State or for any other  
52 reason the latest "received" date would not properly reflect the  
53 filing date, the Secretary of State shall, upon request, mark the  
54 document "Filed" as of the correct date.

1 (c) The transaction in connection with which the document has  
2 been filed shall be effective at the time of filing, unless a  
3 subsequent effective time is set forth in such document pursuant  
4 to any other provision of this act, in which case such transaction  
5 shall be effective at the time so specified, which shall in no event  
6 be later than 90 days after the date of filing.

7 (2) If a document relating to a domestic corporation or a  
8 foreign corporation is required or permitted to be filed under this  
9 act and is also required by this act to be executed on behalf of  
10 such corporation, the document shall be signed by the chairman  
11 of the board, or the president or a vice-president. The name of  
12 any person so signing such a document, and the capacity in which  
13 he signs, shall be stated beneath or opposite his signature. The  
14 document may, but need not, contain

15 (a) The corporate seal; or

16 (b) An attestation by the secretary or an assistant secretary of  
17 the corporation; or

18 (c) An acknowledgment or proof.

19 If the corporation is in the hands of a receiver, trustee, or  
20 other court appointed officer, the document shall be signed by  
21 such fiduciary or the majority of them, if there are more than  
22 one.

23 (3) (Deleted by amendment, P.L.1988, c.94.)

24 (4) The Secretary of State shall record all documents,  
25 excepting annual reports, which relate to or in any way affect  
26 corporations, and which are required or permitted by law to be  
27 filed in his office. The recording may be effected by typewritten  
28 copy, or by photographic, microphotographic or microfilming  
29 process, or in such other manner as may be provided by law. Such  
30 records shall be kept in a place separate and away from the place  
31 where the originals are filed.

32 (5) If any instrument filed with the Secretary of State under  
33 any provision of this act is an inaccurate record of the corporate  
34 action therein referred to, or was defectively or erroneously  
35 executed, such instrument may be corrected by filing with the  
36 Secretary of State a certificate of correction executed on behalf  
37 of the corporation. The certificate of correction shall specify  
38 the inaccuracy or defect to be corrected and shall set forth the  
39 correction. The instrument so corrected shall be deemed to have  
40 been effective in its corrected form as of its original filing date  
41 except as to persons who relied upon the inaccurate portion of  
42 the certificate and who are adversely affected by the correction;  
43 the correction shall be effective as to such persons as of the  
44 effective date of filing of the certificate of correction.

45 (6) Whenever this act requires that any certificate, report or  
46 statement made, published or recorded by any corporation,  
47 domestic or foreign, state the residence or post office address of  
48 any incorporator, shareholder, director or officer, there may be  
49 furnished in the document either the home address or the business  
50 address of the person.

51 (7) All documents submitted or resubmitted to the Secretary  
52 of State shall be stamped immediately with the word "Received"  
53 together with the date and time of receipt.

54 (cf: P.L.1988, c.94, s.2)

1 3. N.J.S.14A:1-10 is amended to read as follows:

2 14A:1-10. Filing documents by telecopy

3 (1) The Secretary of State may accept for filing by means of  
4 telecopy any document required or permitted to be filed in the  
5 office of the Secretary of State [except those requiring an  
6 original signature].

7 (2) The Secretary of State shall charge a fee for the filing of a  
8 document by telecopy, which fee shall be in addition to the usual  
9 fee charged for filing the document.

10 (3) "Telecopy" means any method or means adopted by the  
11 Secretary of State for the transmission or receipt of facsimile  
12 documents.

13 (cf: N.J.S.14A:1-10)

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

15 14A:5-6. Action by shareholders without a meeting

16 (1) Any action required or permitted to be taken at a meeting  
17 of shareholders by this act or the certificate of incorporation or  
18 by-laws of a corporation, may be taken without a meeting if all  
19 the shareholders entitled to vote thereon consent thereto in  
20 writing, except that in the case of any action to be taken  
21 pursuant to Chapter 10 of this act, such action may be taken  
22 without a meeting only if all shareholders consent thereto in  
23 writing or if all shareholders entitled to vote thereon consent  
24 thereto in writing and the corporation provides to all other  
25 shareholders the advance notification required by paragraph  
26 14A:5-6(2)(b).

27 (2) Except as otherwise provided in the certificate of  
28 incorporation and subject to the provisions of this subsection, any  
29 action required or permitted to be taken at a meeting of  
30 shareholders by this act, the certificate of incorporation, or  
31 by-laws, other than the annual election of directors, may be  
32 taken without a meeting, without prior notice and without a vote,  
33 upon the written consent of shareholders who would have been  
34 entitled to cast the minimum number of votes which would be  
35 necessary to authorize such action at a meeting at which all  
36 shareholders entitled to vote thereon were present and voting.

37 (a) If any shareholder shall have the right to dissent from the  
38 proposed action, pursuant to Chapter 11 of this act, the board  
39 shall fix a date on which written consents are to be tabulated; in  
40 any other case, it may fix a date for tabulation. If no date is  
41 fixed, consents may be tabulated as they are received. No  
42 consent shall be counted which is received more than 60 days  
43 after the date of the board action authorizing the solicitation of  
44 consents or, in a case in which consents, or proxies for consents,  
45 are solicited from all shareholders who would have been entitled  
46 to vote at a meeting called to take such action, more than 60  
47 days after the date of mailing of solicitation of consents, or  
48 proxies for consents.

49 (b) Except as provided in subsection 14A:5-6(2)(c), the  
50 corporation, upon receipt and tabulation of the requisite number  
51 of written consents, shall promptly notify all non-consenting  
52 shareholders, who would have been entitled to notice of a  
53 meeting to vote upon such action, of the action consented to, the  
54 proposed effective date of such action, and any conditions

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

17 (c) The corporation need not provide the notification required  
18 by paragraph 14A:5-6(2)(b) if it

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

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

35 (iii) fixes a date for tabulation of consents not less than 20  
36 days, in the case of any proposed action to be taken pursuant to  
37 Chapter 10 of this act, or not less than 10 days in the case of any  
38 other proposed action, and not more than 60 days, after the date  
39 of mailing of solicitations of consents or proxies for consents.

40 (d) Any consent obtained pursuant to paragraph 14A:5-6(2)(c)  
41 may be revoked at any time prior to the day fixed for tabulation  
42 of consents. Any other consent may be revoked at any time prior  
43 to the day on which the proposed action could be taken upon  
44 compliance with paragraph 14A:5-6(2)(b). No revocation shall be  
45 effective unless in writing and until received by the corporation  
46 at the place fixed for receipt of consents or, if none, at the main  
47 business office or headquarters of the corporation.

48 (3) Whenever action is taken pursuant to subsection 14A:5-6(1)  
49 or 14A:5-6(2), the written consents of the shareholders  
50 consenting thereto or the written report of inspectors appointed  
51 to tabulate such consents shall be filed with the minutes of  
52 proceedings of shareholders.

53 (4) Any action taken pursuant to subsection 14A:5-6(1) or  
54 14A:5-6(2) shall have the same effect for all purposes as if such

1 action had been taken at a meeting of the shareholders.

2 (5) If any other provision of this act requires the filing of a  
3 certificate upon the taking of an action by shareholders, and such  
4 action is taken in the manner authorized by subsection 14A:5-6(1)  
5 or 14A:5-6(2), such certificate shall state that such action was  
6 taken without a meeting pursuant to the written consents of the  
7 shareholders and shall set forth the number of shares represented  
8 by such consents.

9 (cf: P.L.1973, c.366, s.12)

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

11 14A:5-7. Fixing record date.

12 (1) The by-laws may provide for fixing, or in the absence of  
13 such a provision the board may fix, in advance, a date as the  
14 record date for determining the corporation's shareholders with  
15 regard to any corporate action or event and, in particular, for  
16 determining the shareholders entitled to

17 (a) notice of or to vote at any meeting of shareholders or any  
18 adjournment thereof;

19 (b) give a written consent to any action without a meeting; or

20 (c) receive payment of any dividend or allotment of any right.

21 The record date may in no case be more than 60 days prior to the  
22 shareholders' meeting or other corporate action or event to  
23 which it relates. The record date for a shareholders' meeting  
24 may not be less than 10 days before the date of the meeting. The  
25 record date to determine shareholders entitled to give a written  
26 consent may not be more than 60 days before the date fixed for  
27 tabulation of the consents or, if no date has been fixed for  
28 tabulation, more than 60 days before the last day on which  
29 consents received may be counted.

30 (2) If no record date is fixed

31 (a) the record date for a shareholders' meeting shall be the  
32 close of business on the day next preceding the day on which  
33 notice is given, or, if no notice is given, the day next preceding  
34 the day on which the meeting is held; and

35 (b) the record date for determining shareholders for any  
36 purpose other than that specified in paragraph 14A:5-7(2)(a) shall  
37 be at the close of business on the day on which the resolution of  
38 the board relating thereto is adopted; and

39 (c) the record date for determining shareholders entitled to  
40 consent to corporate action in writing without a meeting, when  
41 no prior action by the board of directors is required by this act,  
42 shall be the first date on which a signed written consent setting  
43 forth the action taken or proposed to be taken is delivered to the  
44 corporation by delivery to its registered office in this State, its  
45 principal place of business, or an officer or agent of the  
46 corporation having custody of the book in which proceedings of  
47 meetings of shareholders are recorded.

48 (3) When a determination of shareholders of record for a  
49 shareholders' meeting has been made as provided in this section,  
50 such determination shall apply to any adjournment thereof, unless  
51 the board fixes a new record date under this section for the  
52 adjourned meeting.

53 (cf: P.L.1973, c.366, s.13)

54 6. N.J.S.14A:5-29 is amended to read as follows:

1 14A:5-29. Preemptive rights.

2 (1) The shareholders of corporations organized after January 1,  
3 1969 shall not have preemptive rights unless the certificate of  
4 incorporation provides otherwise. The shareholders of  
5 corporations organized prior to January 1, 1969 shall have  
6 preemptive rights unless a by-law duly adopted by the  
7 shareholders prior to that date or the certificate of incorporation  
8 provides otherwise. Any corporation may alter or abolish  
9 preemptive rights by amendment to its certificate of  
10 incorporation.

11 (2) Any corporation may elect to grant its shareholders  
12 preemptive rights. An election may be made by including in the  
13 certificate of incorporation a statement to the effect that the  
14 shareholders shall have preemptive rights.

15 (3) Unless otherwise provided in the certificate of  
16 incorporation, the effect of shareholders having preemptive  
17 rights shall be as follows:

18 (a) Upon the issuance for cash of shares, or options to purchase  
19 shares, of the same class as those held by a shareholder, the  
20 shareholder shall have a right to acquire a pro rata portion of  
21 such shares or options so issued according to the number of shares  
22 of such class held by him. Such preemptive right shall extend to  
23 shares, obligations or other securities, however described, which  
24 are convertible into shares of the same class as those held by the  
25 shareholder.

26 (b) Shares, obligations or other securities of the corporation  
27 which are subject to preemptive rights as herein provided shall  
28 not be deemed to be issued for cash within the meaning of this  
29 section if cash constitutes only a part of the consideration  
30 received by the corporation.

31 (c) A shareholder may waive his preemptive right; a waiver of  
32 a preemptive right, when evidenced by a writing, shall be binding  
33 upon the shareholder notwithstanding it is given without  
34 consideration.

35 (d) No shareholder shall have a preemptive right to acquire  
36 shares, obligations or other securities as herein provided, which

37 (i) are issued pursuant to a plan of merger or consolidation;

38 (ii) are issued pursuant to [subsection 14A:7-7(2) or] Chapter 8  
39 of this act;

40 (iii) are issued to satisfy conversion or option rights, however  
41 evidenced, granted by the corporation;

42 (iv) are issued pursuant to a plan of reorganization approved by  
43 a court pursuant to a statute of this State or of the United  
44 States; or

45 (v) are part of the shares, obligations or other securities  
46 authorized in the original certificate of incorporation and are  
47 issued within six months from the effective date of such  
48 certificate.

49 (e) Upon the proposed issuance of shares, obligations or other  
50 securities subject to preemptive rights, the board shall cause  
51 notice to be given to each shareholder of record entitled to  
52 preemptive rights. The notice shall set forth (i) the amount of  
53 shares, obligations or other securities with respect to which the  
54 shareholder has a preemptive right and the method used to



1 determine that amount;

2 (ii) the price and other terms and conditions upon which the  
3 shareholder may purchase such shares, obligations or other  
4 securities; and

5 (iii) the time within which and the method by which the  
6 shareholder must exercise the right.

7 The notice shall be given at least 30 days prior to the time  
8 within which the shareholder must exercise the right.

9 (f) Shares, obligations or other securities subject to  
10 preemptive rights, which are not acquired by shareholders in the  
11 exercise of their preemptive rights may, for a period not  
12 exceeding one year after the date limited by the directors for the  
13 exercise of such preemptive rights, be issued, sold, or optioned to  
14 such person or persons as the board may determine, at a price not  
15 less than that at which they were offered to such shareholders.  
16 Any such shares, obligations or other securities not so issued, sold  
17 or optioned during such one-year period, shall at the expiration of  
18 such period again be subject to preemptive rights of shareholders.  
19 (cf: P.L.1988, c.94, s.23)

20 7. N.J.S.14A:5-30 is amended to read as follows:

21 14A:5-30. Liability of subscribers and shareholders.

22 (1) A holder of or subscriber for shares of a corporation shall  
23 be under no obligation to the corporation or its creditors to pay  
24 for such shares other than the obligation to pay to the  
25 corporation the unpaid portion of the consideration for which  
26 such shares were issued or to be issued, which in no event shall be  
27 less than the amount of the consideration for which such shares  
28 could be lawfully issued.

29 (2) Unless otherwise provided in the articles of incorporation,  
30 a shareholder of a corporation is not personally liable for the acts  
31 of the corporation, except that a shareholder may become  
32 personally liable by the reason of his own acts or conduct.

33 (3) A person holding stock in a fiduciary or representative  
34 capacity shall not be personally liable to the corporation as the  
35 holder of or subscriber for shares of a corporation but the estate  
36 and funds in his hands shall be so liable.

37 [(3)] (4) Any person becoming an assignee or transferee of  
38 shares or of a subscription for shares in good faith and without  
39 knowledge or notice that the full consideration therefor has not  
40 been paid shall not be liable to the corporation or its creditors for  
41 any unpaid portion of such consideration, but the original holder  
42 or subscriber and any assignee or transferee prior to an  
43 assignment or transfer to a person taking in good faith and  
44 without such knowledge or notice shall remain liable therefor.

45 [(4)] (5) No pledgee or other holder of shares as collateral  
46 security shall be liable as a shareholder.

47 (cf: N.J.S.14A:5-30)

48 8. N.J.S.14A:7-15.1 is amended to read as follows:

49 14A:7-15.1. Share dividends, share divisions and combinations.

50 (1) A corporation may effect a share dividend or a division or  
51 combination of its shares in the manner hereinafter set forth. As  
52 used in this section, the terms "division" and "combination" mean  
53 dividing or combining shares of any class or series, whether issued  
54 or unissued, into a greater or lesser number of shares of the same

1 class or series.

2 (2) Except as otherwise provided in the certificate of  
3 incorporation, a share dividend, a division or combination may be  
4 effected by action of the board alone; except that any division  
5 which adversely affects the shares of another class shall be made  
6 by amendment. The board in effecting a share dividend,  
7 combination or division shall have authority to amend the  
8 certificate of incorporation to increase or decrease the par value  
9 of shares, increase or decrease the number of authorized shares  
10 and to make any other change necessary or appropriate to assure  
11 that the rights or preferences of the holders of outstanding shares  
12 of any class or series will not be adversely affected by such  
13 combination or division. Notwithstanding the foregoing sentence,  
14 the board shall not have the authority to amend the certificate of  
15 incorporation, and shareholder approval for the amendment shall  
16 be required in accordance with subsection 14A:9-2(4) and section  
17 14A:9-3, if as a result of the amendment:

18 (a) The rights or preferences of the holders of outstanding  
19 shares of any class or series will be adversely affected; or

20 (b) The percentage of authorized shares that remains unissued  
21 after the share dividend, division or combination will exceed the  
22 percentage of authorized shares that was unissued before the  
23 share dividend, division or combination.

24 (3) If a share dividend, division or combination is effected by  
25 board action without shareholder approval and includes an  
26 amendment of the certificate of incorporation, there shall be  
27 executed on behalf of the corporation and filed in the office of  
28 the Secretary of State a certificate of amendment setting forth

29 (a) The name of the corporation;

30 (b) The date of adoption by the board of the resolution  
31 approving the dividend, division or combination;

32 (c) That the amendment to the certificate of incorporation  
33 will not adversely affect the rights or preferences of the holders  
34 of outstanding shares of any class or series and will not result in  
35 the percentage of authorized shares that remains unissued after  
36 the share dividend, division or combination exceeding the  
37 percentage of authorized shares that was unissued before the  
38 share dividend, division or combination;

39 (d) The class or series and number of shares thereof subject to  
40 the dividend, division or combination and the number of shares to  
41 be issued on the dividend or into which they are to be divided or  
42 combined;

43 (e) The amendment of the certificate of incorporation made in  
44 connection with the dividend, division or combination; and

45 (f) If the dividend, division or combination is to become  
46 effective at a time subsequent to the time of filing, the date,  
47 which may not exceed 90 days from the date of filing, when the  
48 same is to become effective.

49 (4) If a share dividend, division or combination is effected by  
50 action of the board and the shareholders, there shall be executed  
51 on behalf of the corporation and filed in the office of the  
52 Secretary of State a certificate of amendment as provided in  
53 subsection 14A:9-4(3), which certificate shall set forth, in  
54 addition to all information required by said subsection, the

1 information required by paragraph 14A:7-15.1(3)(d).

2 (5) Upon a combination becoming effective, the authorized  
3 shares of the class or series subject thereto shall be reduced by  
4 the same percentage by which the issued shares of such class or  
5 series were reduced as a result of the combination unless the  
6 certificate of incorporation otherwise provides or the  
7 combination was approved by the shareholders in accordance with  
8 subsection 14A:9-2(4) and section 14A:9-3.

9 (6) (Deleted by amendment, P.L.1988, c.94.)

10 (cf: P.L.1988, c.94, s.46)

11 9. N.J.S.14A:7-16 is amended to read as follows:

12 14A:7-16. Acquisitions of a corporation's own shares.

13 (1) Subject to the provisions of section [14A:7-14] 14A:7-14.1,  
14 a corporation may acquire its own shares.

15 (2) (Deleted by amendment, P.L.1988, c.94.)

16 (3) (Deleted by amendment, P.L.1988, c.94.)

17 (4) (Deleted by amendment, P.L.1988, c.94.)

18 (5) No acquisition of its own shares shall be made by a  
19 corporation

20 (a) Contrary to any restrictions contained in the certificate of  
21 incorporation;

22 (b) (Deleted by amendment, P.L.1988, c.94.)

23 (c) Unless after such acquisition there remain outstanding one  
24 or more classes or series of shares possessing, among them  
25 collectively, voting rights and unlimited residual rights as to  
26 dividends and distribution of assets on liquidation; or

27 (d) In the case of redeemable shares and within the period of  
28 their redeemability, at a price greater than the applicable  
29 redemption price plus, in the case of shares entitled to  
30 cumulative dividends, the dividends which would have accrued to  
31 the next dividend date following the date of acquisition.

32 (6) (Deleted by amendment, P.L.1988, c.94.)

33 (7) Unless the certificate of incorporation otherwise provides,  
34 a corporation may acquire its shares whether or not the net  
35 assets remaining after the transaction are less than the aggregate  
36 amount of the preferences of outstanding shares in the assets of  
37 the corporation upon liquidation.

38 (8) In connection with an agreement to acquire its shares, a  
39 corporation may grant a security interest in the acquired shares  
40 to secure an obligation to pay for the acquisition. The shares  
41 shall not be deemed to be reacquired by the corporation and  
42 cancelled on its books until the obligation of the corporation is  
43 fully paid or discharged.

44 (9) A corporation may acquire or agree to acquire its shares,  
45 notwithstanding that the acquisition would constitute a  
46 distribution prohibited under section 14A:7-14.1, if all or part of  
47 the purchase price is deferred until such time as the payment  
48 would not constitute a prohibited distribution.

49 (cf: P.L.1988, c.94, s.47)

50 10. N.J.S.14A:7-18 is amended to read as follows:

51 14A:7-18. Cancellation of reacquired shares.

52 (1) When shares of a corporation are reacquired by purchase,  
53 by redemption or by their conversion into other shares of the  
54 corporation, the reacquisition shall effect their cancellation,

1 unless the board determines that the shares shall be treasury  
2 shares or the by-laws so provide. In addition, any shares which  
3 were treasury shares on or before [January 1, 1987] December 1,  
4 1988, shall continue to be treasury shares unless cancelled by the  
5 board. The board may cancel treasury shares at any time. Upon  
6 their cancellation, shares shall be restored to the status of  
7 authorized but unissued shares, unless the certificate of  
8 incorporation, or the plan of merger or consolidation in the case  
9 of shares acquired by the corporation pursuant to Chapter 11 of  
10 this act, provides that such shares shall not be reissued, in which  
11 case a certificate of amendment to the certificate of  
12 incorporation shall be filed, pursuant to a resolution of the board,  
13 reducing the authorized number of shares by the number of shares  
14 so cancelled.

15 (2) The certificate of amendment reducing the authorized  
16 shares shall be executed on behalf of the corporation and filed in  
17 the office of the Secretary of State not later than 30 days after  
18 the cancellation of the reacquired shares not to be reissued. The  
19 statement shall set forth:

20 (a) The name of the corporation;

21 (b) The number of shares cancelled, itemized by classes and  
22 series, and the date of adoption of the resolution of the board  
23 cancelling such shares;

24 (c) The aggregate number of authorized shares, itemized by  
25 classes and series, after giving effect to such cancellation;

26 (d) A statement that the certificate of incorporation or plan of  
27 merger provides that the shares cancelled shall not be reissued;  
28 and

29 (e) That the certificate of incorporation is amended by  
30 decreasing the aggregate number of shares which the corporation  
31 is authorized to issue by the number of shares cancelled.

32 (f) (Deleted by amendment, P.L.1988, c.94.)

33 (3) (Deleted by amendment, P.L.1988, c.94.)

34 (4) A certificate of amendment reducing the authorized shares  
35 because of the conversion of convertible shares shall be filed only  
36 if the certificate of incorporation provides that such shares shall  
37 not be reissued. The certificate of amendment shall set forth the  
38 information required by subsection 14A:7-18(2) and in the case of  
39 cancellation of converted shares, the certificate of amendment  
40 shall be filed not later than 90 days after the close of the fiscal  
41 year in which the shares were reacquired.

42 (5) Nothing contained in this section shall be construed to  
43 forbid a cancellation of shares or a reduction of authorized shares  
44 in any other manner permitted by this act.

45 (cf: P.L.1988, c.94, s.48)

46 11. N.J.S.14A:9-2 is amended to read as follows:

47 14A:9-2. Procedure to amend certificate of incorporation.

48 (1) Before the organization meeting of the board, the  
49 incorporators may amend the certificate of incorporation by  
50 complying with subsection 14A:9-4(1).

51 (2) Amendment of the certificate of incorporation by action of  
52 the board is provided for in subsection 14A:4-3(1), subsection  
53 14A:5-21(4), subsection 14A:7-2(4), [subsection 14A:7-6(4),]  
54 subsection 14A:7-9(4), subsection 14A:7-15.1(3), and subsections

1 14A:7-18(1) and 14A:7-18(4). Amendment of the certificate of  
2 incorporation by action of the registered agent to change the  
3 registered office is provided for in subsection 14A:4-3(3).

4 (3) An amendment of the certificate of incorporation pursuant  
5 to a plan of merger may be made in the manner provided in  
6 Chapter 10 of this act.

7 (4) All other amendments of the certificate of incorporation  
8 shall be made in the following manner:

9 (a) The board shall approve the proposed amendment and  
10 direct that it be submitted to a vote at a meeting of the  
11 shareholders.

12 (b) Written notice setting forth the proposed amendment or a  
13 summary of the changes to be effected thereby shall be given to  
14 each shareholder of record entitled to vote thereon within the  
15 time and in the manner provided in this act for the giving of  
16 notice of meetings of shareholders.

17 (c) At such meeting a vote of shareholders entitled to vote  
18 thereon shall be taken on the proposed amendment. The proposed  
19 amendment shall be adopted upon receiving the affirmative vote  
20 of a majority of the votes cast by the holders of shares entitled  
21 to vote thereon and, in addition, if any class or series of shares is  
22 entitled to vote thereon as a class, the affirmative vote of a  
23 majority of the votes cast in each class vote; except that, in the  
24 case of a corporation organized prior to January 1, 1969, the  
25 proposed amendment shall be adopted upon receiving the  
26 affirmative vote of two-thirds of the votes so cast. The voting  
27 requirements of this section shall be subject to such greater  
28 requirements as are provided in this act for specific amendments,  
29 or as may be provided in the certificate of incorporation.

30 (d) Subject to the provisions of section 14A:5-12, a corporation  
31 organized prior to January 1, 1969 may adopt the majority voting  
32 requirements prescribed in paragraph 14A:9-2(4)(c) by  
33 amendment of its certificate of incorporation adopted by the  
34 affirmative vote of two-thirds of the votes cast by the holders of  
35 shares entitled to vote thereon.

36 (e) Any number of amendments may be acted upon at one  
37 meeting.

38 (f) Upon adoption, a certificate of amendment shall be filed in  
39 the office of the Secretary of State as provided in section  
40 14A:9-4.

41 (cf: P.L.1988, c.94, s.53)

42 12. N.J.S.14A:10-1 is amended to read as follows:

43 14A:10-1. Procedure for merger.

44 (1) Any two or more domestic corporations, or any one or more  
45 domestic corporations and any one or more other business  
46 entities, may merge into one of such corporations or other  
47 business entities pursuant to a plan of merger approved in the  
48 manner provided in this act.

49 (2) The board of each corporation shall approve a plan of  
50 merger setting forth

51 (a) The names of the corporations or other business entities  
52 proposing to merge, and the name of the corporation or other  
53 business entity into which they propose to merge, which is  
54 hereinafter designated as the surviving corporation or surviving

1 other business entity;

2 (b) The terms and conditions of the proposed merger, including  
3 a statement of any amendments in the certificate of  
4 incorporation of the surviving corporation to be effected by such  
5 merger which amendments may be set forth in and effected by a  
6 restated certificate of incorporation which may be filed as an  
7 additional document together with the certificate of merger;

8 (c) The manner and basis of converting the shares of each  
9 corporation into shares, obligations, or other securities of the  
10 surviving corporation or of the surviving other business entity, or  
11 of any other corporation or other business entity, or, in whole or  
12 in part, into cash or other property; and

13 (d) Such other provisions with respect to the proposed merger  
14 as are deemed necessary or desirable.

15 (cf: P.L.1988, c.94, s.56)

16 13. N.J.S.14A:10-2 is amended to read as follows:

17 14A:10-2. Procedure for consolidation.

18 (1) Any two or more domestic corporations, or any one or more  
19 corporations and any one or more other business entities, may  
20 consolidate into a new corporation or other business entity  
21 pursuant to a plan of consolidation approved in the manner  
22 provided in this act.

23 (2) The board of each corporation shall approve a plan of  
24 consolidation setting forth

25 (a) the names of the corporations proposing to consolidate, and  
26 the name of the new corporation or other business entity into  
27 which they propose to consolidate, which is hereinafter  
28 designated as the new corporation or new business entity;

29 (b) the terms and conditions of the proposed consolidation;

30 (c) the manner and basis of converting the shares of each  
31 corporation into shares, obligations or other securities of the new  
32 corporation or new business entity, or of any other corporation or  
33 business entity to, in whole or in part, into cash or other property;

34 (d) with respect to the new corporation, all of the statements  
35 required to be set forth in the certificate of incorporation for  
36 corporations organized under this act, except that it shall not be  
37 necessary to set forth the name and address of each incorporator;  
38 and

39 (e) such other provisions with respect to the proposed  
40 consolidation as are deemed necessary or desirable.

41 (cf: P.L.1973, c.366, s.52)

42 14. N.J.S.14A:10-4.1 is amended to read as follows:

43 14A:10-4.1. Certificate of merger or consolidation.

44 (1) After approval of the plan of merger or consolidation, a  
45 certificate of merger or a certificate of consolidation shall be  
46 executed on behalf of each corporation. The certificate shall set  
47 forth

48 (a) The name of the surviving or new corporation or new other  
49 business entity and the names of the merging or consolidating  
50 corporations or other business entities;

51 (b) The plan of merger or the plan of consolidation;

52 (c) The date or dates of approval by the shareholders of each  
53 corporation of the plan of merger or the plan of consolidation;

54 (d) As to each corporation whose shareholders are entitled to

1 vote, the number of shares entitled to vote thereon, and, if the  
2 shares of any class or series are entitled to vote thereon as a  
3 class, the designation and number of shares entitled to vote  
4 thereon of each class or series;

5 (e) As to each corporation whose shareholders are entitled to  
6 vote, the number of shares voted for and against the plan,  
7 respectively, and, if the shares of any class are entitled to vote  
8 as a class, the number of shares of each class or series voted for  
9 and against the plan, respectively; and

10 (f) In the case of a merger governed by subsection 14A:10-3  
11 (4), that the plan of merger was approved by the board of  
12 directors of the surviving corporation and that no vote of the  
13 shareholders of the surviving corporation was required because of  
14 the applicability of that subsection; and

15 (g) If, pursuant to subsection 14A:10-4.1(2), the merger is to  
16 become effective at a time subsequent to the date of filing with  
17 the Secretary of State, the date when the merger is to become  
18 effective.

19 (2) The executed original and a copy of the certificate shall be  
20 filed in the office of the Secretary of State and the merger or  
21 consolidation shall become effective upon the date of the filing  
22 or at a later time, not to exceed 90 days after the date of filing,  
23 as may be set forth in the certificate. The Secretary of State  
24 shall, upon filing, forward the copy of the certificate to the  
25 Director of the Division of Taxation.

26 (cf: N.J.S.14A:10-4.1)

27 15. N.J.S.14A:10-5.1 is amended to read as follows:

28 14A:10-5.1. Merger of subsidiary corporation.

29 (1) A domestic corporation owning at least 90% of the  
30 outstanding shares of each class and series of another domestic  
31 corporation or corporations, may merge the other corporation or  
32 corporations into itself, or may merge itself, or itself and any  
33 subsidiary corporation or corporations, into any subsidiary  
34 corporation, without approval of the shareholders of any of the  
35 corporations, except as provided in subsections 14A:10-5.1(5) and  
36 14A:10-5.1(6). The board of the parent corporation shall approve  
37 a plan of merger setting forth those matters required to be set  
38 forth in plans of merger under section 14A:10-1. Approval by the  
39 board of any subsidiary corporation shall not be required.

40 (2) If the parent corporation owns less than 100% of the  
41 outstanding shares of each subsidiary corporation, it shall mail to  
42 each minority shareholder of record of each subsidiary  
43 corporation, unless waived in writing, a copy or a summary of the  
44 plan of merger. The parent corporation shall also mail to each  
45 shareholder who, under Chapter 11 of this act, is entitled to  
46 dissent, a statement informing the shareholder that he has the  
47 right to dissent and to be paid the fair value of his shares, and  
48 outlining briefly, with particular reference to the time periods  
49 within which actions shall be taken, the procedures set forth in  
50 Chapter 11 of this act with which he shall comply in order to  
51 assert and enforce that right.

52 (3) A certificate of merger shall be executed on behalf of the  
53 parent corporation. The certificate shall set forth:

54 (a) The name of the surviving corporation and the names of the

- 1 merged corporations;
- 2 (b) The plan of merger;
- 3 (c) The date of approval by the board of the parent corporation  
4 of the plan of merger;
- 5 (d) The number of outstanding shares of each class and series  
6 of each subsidiary corporation which is a party to the merger and  
7 the number of shares of each class and series owned by the parent  
8 corporation;
- 9 (e) If the parent corporation owns less than 100% of the  
10 outstanding shares of each subsidiary corporation, the date of the  
11 mailing of a copy or a summary of the plan of merger to minority  
12 shareholders of each subsidiary corporation; or if all the  
13 shareholders have waived the mailing in writing, a statement that  
14 the waiver has been obtained;
- 15 (f) If approval of the shareholders of the parent corporation is  
16 required by subsection 14A:10-5.1(6), the information as to the  
17 corporation required by paragraphs [14A:10-4.1(1)(b) and  
18 14A:10-4.1(1)(c)] 14A:10-4.1(1)(d) and (e); and
- 19 (g) If, pursuant to subsection 14A:10-5.1(4), the merger is to  
20 become effective at a time subsequent to the date of filing with  
21 the Secretary of State, the date when the merger is to become  
22 effective.
- 23 (4) The executed original and a copy of the certificate shall be  
24 filed in the office of the Secretary of State and the merger shall  
25 become effective upon the date of the filing or at a later time,  
26 not to exceed 90 days from the date of filing, as may be set forth  
27 in the certificate. The Secretary of State shall, upon filing,  
28 forward the copy of the certificate to the Director of the  
29 Division of Taxation.
- 30 (5) Approval of the shareholders of any subsidiary corporation  
31 shall be obtained pursuant to its certificate of incorporation, if  
32 the certificate requires approval of a merger by the affirmative  
33 vote of the holders of more than the percentage of the shares of  
34 any class or series of the corporation then owned by the parent  
35 corporation.
- 36 (6) Approval of the shareholders of the parent corporation  
37 shall be obtained:
- 38 (a) Whenever its certificate of incorporation requires  
39 shareholder approval of a merger; or
- 40 (b) Pursuant to section 14A:10-3 where
- 41 (i) the plan of merger contains a provision which would change  
42 any part of the certificate of incorporation of the parent  
43 corporation into which a subsidiary corporation is being merged,  
44 unless the change is one that can be made by the board without  
45 shareholder approval as referred to in subsection 14A:9-2(2); or
- 46 (ii) a subsidiary corporation is to be the surviving corporation.
- 47 (7) The grant of the power to merge under this section shall  
48 not preclude the effectuation of any merger as elsewhere  
49 provided in this Chapter.
- 50 (cf: N.J.S.14A:10-5.1)
- 51 16. N.J.S.14A:10-11 is amended to read as follows:
- 52 14A:10-11. Sale or other disposition of assets other than in  
53 regular course of business.
- 54 (1) A sale, lease, exchange, or other disposition of all, or



1 substantially all, the assets of a corporation, if not in the usual  
2 and regular course of its business as conducted by such  
3 corporation, may be made upon such terms and conditions and for  
4 such consideration, which may consist in whole or in part of  
5 money or property, real or personal, including shares, bonds, or  
6 other securities of any other corporation, domestic or foreign, as  
7 may be authorized in the following manner:

8 (a) The board shall recommend such sale, lease, exchange, or  
9 other disposition and direct that it be submitted to a vote at a  
10 meeting of shareholders.

11 (b) Written notice shall be given not less than 20 nor more than  
12 60 days before such meeting to each shareholder of record,  
13 whether or not entitled to vote at such meeting, in the manner  
14 provided in this act for the giving of notice of meetings of  
15 shareholders. Such notice shall include, or shall be accompanied  
16 by

17 (i) a statement summarizing the principal terms of the  
18 proposed transaction; and (ii) a statement informing shareholders  
19 who, under Chapter 11 of this act, are entitled to dissent, that  
20 they have the right to dissent and to be paid the fair value of  
21 their shares and outlining briefly, with particular reference to the  
22 time periods within which actions must be taken, the procedures  
23 set forth in Chapter 11 of this act with which they must comply  
24 in order to assert and enforce such right.

25 (c) At such meeting the shareholders may approve such sale,  
26 lease, exchange, or other disposition and may fix, or may  
27 authorize the board to fix, any or all of the terms and conditions  
28 thereof and the consideration to be received by the corporation  
29 therefor. Such sale, lease, exchange or other disposition shall be  
30 approved upon receiving the affirmative vote of a majority of the  
31 votes cast by the holders of shares entitled to vote thereon, and,  
32 in addition, if any class or series of shares is entitled to vote  
33 thereon as a class, the affirmative vote of a majority of the votes  
34 cast in each class vote; except that, in the case of a corporation  
35 organized prior to January 1, 1969, the sale, lease, exchange, or  
36 other disposition shall be approved upon receiving the affirmative  
37 vote of two-thirds of the votes so cast.

38 (d) Subject to the provisions of section 14A:5-12, a corporation  
39 organized prior to January 1, 1969, may adopt the majority voting  
40 requirements prescribed in paragraph 14A:10-11(1)(c) by an  
41 amendment of its certificate of incorporation adopted by the  
42 affirmative vote of two-thirds of the votes cast by the holders of  
43 shares entitled to vote thereon.

44 (2) Notwithstanding such approval or authorization by the  
45 shareholders, the board may abandon such sale, lease, exchange,  
46 or other disposition of assets, subject to the rights of third  
47 parties under any contracts relating thereto, without further  
48 action by the shareholders.

49 (3) The sale, lease, exchange, or other disposition of all, or  
50 substantially all, the assets of one or more subsidiaries of a  
51 corporation, if not in the usual and regular course of business as  
52 conducted by such subsidiary or subsidiaries, shall be treated as a  
53 disposition within the meaning of subsection 14A:10-11(1) if the  
54 subsidiary or subsidiaries constitute all, or substantially all, the

1 assets of the corporation.

2 (4) Notwithstanding the provisions of subsection (1) of this  
3 section, a parent corporation may, upon such terms and  
4 conditions and for such consideration as may be determined by its  
5 board, transfer any or all of its assets to any corporation, all of  
6 the outstanding shares of which are owned, directly or indirectly,  
7 by the parent corporation, and, unless the certificate of  
8 incorporation of the parent corporation otherwise requires, no  
9 approval or authorization by the shareholders of the parent  
10 corporation shall be required.

11 (cf: P.L.1988, c.94, s.61)

12 17. N.J.S.14A:11-11 is amended to read as follows:

13 14A:11-11. Disposition of shares acquired by corporation.

14 (1) The shares of a dissenting shareholder in a transaction  
15 described in [paragraph 14A:11-1(1)(b) and the shares of a  
16 dissenting shareholder of the surviving corporation in a merger]  
17 subsection 14A:11-1(1) shall become reacquired by the  
18 corporation which issued them or by the surviving corporation, as  
19 the case may be, upon the payment of the fair value of shares.  
20 [Such shares shall be cancelled if reacquired out of stated capital  
21 or if the plan of merger so requires; otherwise they shall become  
22 treasury shares.]

23 (2) [In a merger or consolidation, if the surviving or new  
24 corporation pays out of surplus the fair value of the shares of  
25 dissenting shareholders of the merged or constituent corporation,  
26 the shares of the surviving or new corporation into which such  
27 shares would have been converted under the plan of merger or  
28 consolidation shall become treasury shares of such corporation,  
29 unless the plan shall provide otherwise.] [Deleted by amendment,  
30 P.L. , c. .]

31 (3) In an acquisition of shares pursuant to section 14A:10-9 or  
32 section 14A:10-13, the shares of a dissenting shareholder shall  
33 become the property of the acquiring corporation upon the  
34 payment by the acquiring corporation of the fair value of such  
35 shares. Such payment may be made, with the consent of the  
36 acquiring corporation, by the corporation which issued the shares,  
37 in which case the shares so paid for shall become reacquired by  
38 the corporation which issued them and shall be cancelled.

39 (cf: N.J.S.14A:11-11)

40 18. N.J.S.14A:12-3 is amended to read as follows:

41 14A:12-3. Dissolution without a meeting of shareholders.

42 A corporation may be dissolved by the consent of all its  
43 shareholders entitled to vote thereon. Notice of dissolution  
44 pursuant to this section shall be provided to all shareholders not  
45 entitled to vote thereon, not less than 10 nor more than 60 days  
46 before the filing of the certificate of dissolution, in the manner  
47 provided in this act for the giving of notice of meetings of  
48 shareholders. To effect such dissolution, all [such] shareholders  
49 entitled to vote thereon shall sign and file in the office of the  
50 Secretary of State a certificate of dissolution which shall state

51 (a) the name of the corporation;

52 (b) the name of the registered agent of the corporation;

53 (c) the location of the registered office of the corporation;

54 (d) the names of its directors and officers;

1 (e) that the corporation is dissolved; and  
2 (f) that the certificate has been signed in person or by proxy  
3 by all the shareholders of the corporation entitled to vote thereon.  
4 (cf: N.J.S.14A:12-3)

5 19. N.J.S.14A:12-4 is amended to read as follows:

6 14A:12-4. Dissolution pursuant to action of board and  
7 shareholders.

8 (1) A corporation may be dissolved by action of its board and  
9 its shareholders as provided in this section.

10 (2) The board shall recommend that the corporation be  
11 dissolved, and direct that the question of dissolution be submitted  
12 to a vote at a meeting of shareholders.

13 (3) [Notice] Written notice of the meeting shall be given not  
14 less than 10 nor more than 60 days before the meeting to each  
15 shareholder of record whether or not entitled to vote at such  
16 meeting [within the time and] in the manner provided in this act  
17 for the giving of notice of meetings of shareholders.

18 (4) At such meeting, a vote of the shareholders shall be taken  
19 on the proposed dissolution. Such dissolution shall be approved  
20 upon receiving the affirmative vote of a majority of the votes  
21 cast by the holders of shares of the corporation entitled to vote  
22 thereon, and, in addition, if any class or series is entitled to vote  
23 thereon as a class, the affirmative vote of a majority of the votes  
24 cast in each class vote; except that, in the case of a corporation  
25 organized prior to the effective date of this act, the proposed  
26 dissolution shall be approved upon receiving the affirmative vote  
27 of two-thirds of the votes so cast. The voting requirements of  
28 this section shall be subject to such greater requirements as may  
29 be provided in the certificate of incorporation.

30 (5) Subject to the provisions of section 14A:5-12, a corporation  
31 organized prior to [the effective date of this act] January 1, 1969  
32 may adopt the majority voting requirements prescribed in  
33 subsection 14A:12-4(4) by an amendment of its certificate of  
34 incorporation adopted by the affirmative vote of two-thirds of  
35 the votes cast by the holders of shares entitled to vote thereon.

36 (6) If dissolution is approved as provided in this section, a  
37 certificate of dissolution shall be executed on behalf of the  
38 corporation and shall be filed in the office of the Secretary of  
39 State. The certificate shall set forth

40 (a) the name of the corporation;

41 (b) the name of the registered agent of the corporation;

42 (c) the location of the registered office of the corporation;

43 (d) the names of the corporation's directors and officers;

44 (e) the text of the board resolution authorizing the dissolution;

45 (f) the date and place of the meeting of shareholders called to  
46 vote upon the dissolution;

47 (g) the number of outstanding shares of the corporation  
48 entitled to vote on the dissolution, and, if the shares of any class  
49 or series are entitled to vote as a class, the designation and  
50 number of outstanding shares of each such class and series; and

51 (h) the number of shares represented at the meeting, the  
52 number of shares voted for and voted against the dissolution, and,  
53 if the shares of any class or series are entitled to vote as a class,  
54 the number of shares of each such class and series voted for and

1 voted against the dissolution.

2 (cf: N.J.S.14A:12-4)

3 20. N.J.S.14A:12-8 is amended to read as follows:

4 14A:12-8. Effective time of dissolution.

5 A corporation is dissolved

6 (a) when the period of duration stated in the corporation's  
7 certificate of incorporation expires and the corporation files a  
8 certificate of dissolution in the office of the Secretary of State  
9 pursuant to section 14A:12-5.1; or

10 (b) upon the proclamation of the Secretary of State issued  
11 pursuant to section 54:11-2 of the Revised Statutes; or

12 (c) when a certificate of dissolution is filed in the office of the  
13 Secretary of State pursuant to sections 14A:12-2, 14A:12-3,  
14 14A:12-4 or 14A:12-5, except when a later time not to exceed  
15 [30] 90 days after the date of filing is specified in the certificate  
16 of dissolution; or

17 (d) when a judgment of forfeiture of corporate franchises or of  
18 dissolution is entered by a court of competent jurisdiction.

19 (cf: P.L.1973, c.366, s.68)

20 21. N.J.S.14A:11-1 is amended to read as follows:

21 14A:11-1. Right of shareholders to dissent

22 (1) Any shareholder of a domestic corporation shall have the  
23 right to dissent from any of the following corporate actions

24 (a) Any plan of merger or consolidation to which the  
25 corporation is a party, provided that, unless the certificate of  
26 incorporation otherwise provides

27 (i) a shareholder shall not have the right to dissent from any  
28 plan of merger or consolidation with respect to shares

29 (A) of a class or series which is listed on a national securities  
30 exchange or is held of record by not less than 1,000 holders on the  
31 record date fixed to determine the shareholders entitled to vote  
32 upon the plan of merger or consolidation; or

33 (B) for which, pursuant to the plan of merger or consolidation,  
34 he will receive (x) cash, (y) shares, obligations or other securities  
35 which, upon consummation of the merger or consolidation, will  
36 either be listed on a national securities exchange or held of  
37 record by not less than 1,000 holders, or (z) cash and such  
38 securities;

39 (ii) a shareholder of a surviving corporation shall not have the  
40 right to dissent from a plan of merger, if the merger did not  
41 require for its approval the vote of such shareholders as provided  
42 in section 14A:10-5.1 or in subsections 14A:10-3(4), 14A:10-7(2)  
43 or 14A:10-7(4); or

44 (b) Any sale, lease, exchange or other disposition of all or  
45 substantially all of the assets of a corporation not in the usual or  
46 regular course of business as conducted by such corporation,  
47 other than a transfer pursuant to subsection (4) of  
48 N.J.S.14A:10-11, provided that, unless the certificate of  
49 incorporation otherwise provides, the shareholder shall not have  
50 the right to dissent

51 (i) with respect to shares of a class or series which, at the  
52 record date fixed to determine the shareholders entitled to vote  
53 upon such transaction, is listed on a national securities exchange  
54 or is held of record by not less than 1,000 holders; or

1 (ii) from a transaction pursuant to a plan of dissolution of the  
2 corporation which provides for distribution of substantially all of  
3 its net assets to shareholders in accordance with their respective  
4 interests within one year after the date of such transaction,  
5 where such transaction is wholly for

6 (A) cash; or

7 (B) shares, obligations or other securities which, upon  
8 consummation of the plan of dissolution will either be listed on a  
9 national securities exchange or held of record by not less than  
10 1,000 holders; or

11 (C) cash and such securities; or

12 (iii) from a sale pursuant to an order of a court having  
13 jurisdiction.

14 (2) Any shareholder of a domestic corporation shall have the  
15 right to dissent with respect to any shares owned by him which  
16 are to be acquired pursuant to section 14A:10-9.

17 (3) A shareholder may not dissent as to less than all of the  
18 shares owned beneficially by him and with respect to which a  
19 right of dissent exists. A nominee or fiduciary may not dissent on  
20 behalf of any beneficial owner as to less than all of the shares of  
21 such owner with respect to which the right of dissent exists.

22 (4) A corporation may provide in its certificate of  
23 incorporation that holders of all its shares, or of a particular  
24 class or series thereof, shall have the right to dissent from  
25 specified corporate actions in addition to those enumerated in  
26 subsection 14A:11-1(1), in which case the exercise of such right  
27 of dissent shall be governed by the provisions of this Chapter.<sup>1</sup>

28 (cf: P.L.1988, c.94, s.64)

29 <sup>1</sup>22. Section 1 of P.L.1973, c.367 (C.54:50-12) is amended to  
30 read as follows:

31 1. As used in this [act,] P.L.1973, c.367 (C.54:50-12 et seq.):

32 a. "taxes" means all taxes, fees, penalties, and interest owing  
33 under any State tax law;

34 b. "foreign corporation" means any corporation other than a  
35 domestic corporation which is subject to taxation under any State  
36 tax law;

37 c. "business entity" means corporation, partnership or limited  
38 liability company, whether organized under the laws of this State  
39 or under the laws of any other state or foreign jurisdiction, which  
40 is subject to taxation under any State tax law.<sup>1</sup>

41 (cf: P.L.1973, c.367, s.1)

42 <sup>1</sup>23. Section 2 of P.L.1973, c.367 (C.54:50-13) is amended to  
43 read as follows:

44 2. Until all taxes owing by it have been paid, or provided for as  
45 set forth in section 4 of [this act,] P.L.1973, c.367 (C.54:50-15):

46 a. no domestic or foreign corporation shall merge or  
47 consolidate into a foreign corporation not authorized to transact  
48 business in this State; and

49 b. no domestic corporation shall dissolve and no domestic or  
50 foreign corporation shall distribute any of its assets in dissolution  
51 or liquidation to any shareholder unless

52 (1) one or more domestic corporations or foreign corporations  
53 authorized to transact business in this State are owners in the  
54 aggregate of 50% or more of all classes of such corporation's

1 capital stock and, prior to such dissolution or distribution, all  
2 such holders of the corporation's capital stock jointly and  
3 severally undertake in writing to pay all such taxes on or before  
4 the date such taxes are payable; or

5 (2) such corporate action is pursuant to a plan of  
6 reorganization under which a domestic corporation or a foreign  
7 corporation authorized to transact business in this State has  
8 purchased, or is about to purchase, all, or substantially all, of the  
9 assets of such corporation in exchange for shares of its capital  
10 stock and has undertaken in writing to pay all such taxes on or  
11 before the date such taxes are payable; and

12 c. no business entity shall merge or consolidate into any other  
13 business entity <sup>2</sup>]; except that this subsection shall not apply to  
14 any corporation subject to the provisions of subsections a. or b. of  
15 this section] other than a domestic corporation or a foreign  
16 corporation authorized to transact business in this State<sup>2, 1</sup>

17 (cf: P.L.1973, c.367, s.2)

18 <sup>1</sup>24. Section 3 of P.L.1973, c.367 (C.54:50-14) is amended to  
19 read as follows:

20 3. The Secretary of State shall not:

21 a. accept for filing a certificate of dissolution of a domestic  
22 corporation;

23 b. issue a certificate of withdrawal of a foreign corporation,  
24 unless such withdrawal is effected by its merger or consolidation  
25 into a domestic corporation or a foreign corporation authorized  
26 to transact business in this State; [or]

27 c. accept for filing a certificate of merger or consolidation of  
28 a domestic corporation into a foreign corporation not authorized  
29 to transact business in this State; or

30 d. accept for filing a certificate of merger or consolidation of  
31 any business entity into any other business entity <sup>2</sup>]; except that  
32 this subsection shall not apply to any corporation subject to  
33 subsection a., b. or c. of this section] other than a domestic  
34 corporation or a foreign corporation authorized to transact  
35 business in this State<sup>2</sup>;

36 unless the [corporation] business entity files with the Secretary  
37 of State a certificate issued by the Director of the Division of  
38 Taxation dated not earlier than 45 days prior to the effective  
39 date of the [corporate] business entity action evidencing that the  
40 [corporation's] business entity's taxes have been paid or provided  
41 for.<sup>1</sup>

42 (cf: P.L.1973, c.367, s.3)

43 <sup>1</sup>25. Section 4 of P.L.1973, c.367 (C.54:50-15) is amended to  
44 read as follows:

45 4. The Director of the Division of Taxation shall, upon  
46 application, issue a certificate evidencing that a [corporation's]  
47 business entity's taxes have been paid or provided for if:

48 a. In his judgment the amount which has been deposited or paid  
49 on account by [such corporation] the business entity is adequate  
50 to cover estimated taxes up to the date of the relevant  
51 [corporate] business entity action; or

52 b. In a case in which the [corporate] action taken or proposed  
53 to be taken is one of the exceptions specified in paragraph (1) or  
54 (2) of subsection b. of section 2 of P.L.1973, c.367 (C.54:50-13),

1 the application for such certificate is accompanied by

2 (1) An opinion signed by an attorney-at-law of the State of  
3 New Jersey, who states that he is familiar with the facts of the  
4 transaction and that the requirements for such exception have  
5 been met and

6 (2) The written undertaking of the corporation or corporations  
7 assuming the tax liability; or

8 c. The application for such certificate is accompanied by

9 (1) A written undertaking from another [domestic corporation,  
10 or foreign corporation] business entity authorized to transact  
11 business in this State, to pay all taxes of the applicant  
12 [corporation] business entity on or before the date such taxes are  
13 payable and

14 (2) A certification that the [corporation] business entity  
15 making such undertaking has a net worth or capital, as the case  
16 may be, not less than 10 times the amount of all taxes paid by the  
17 applicant [corporation] business entity during the last complete  
18 year in which it filed tax returns with the State of New Jersey.

19 The Director of the Division of Taxation shall be entitled to  
20 receive as a fee for the issuance of such certificate the sum of  
21 \$25.00.<sup>1</sup>

22 (cf: P.L.1987, c.76, s.13)

23 <sup>1</sup>26. Section 5 of P.L.1973, c.367 (C.54:50-16) is amended to  
24 read as follows:

25 5. The Director of the Division of Taxation may require, as a  
26 condition of issuing a certificate evidencing that a  
27 [corporation's] business entity's taxes have been paid or provided  
28 for, evidence by affidavit or otherwise that any foreign  
29 [corporation] business entity not qualified to transact business in  
30 this State, which is a party to the transaction causing the  
31 [corporation] business entity to seek such a certificate, has paid  
32 all taxes, if any, owing by it.<sup>1</sup>

33 (cf: P.L.1973, c.367, s.5)

34 <sup>1</sup>27. Section 6 of P.L.1973, c.367 (C.54:50-17) is amended to  
35 read as follows:

36 6. Any written undertaking or certificate to be filed by a  
37 [corporation] business entity with the Director of the Division of  
38 Taxation as provided in [this section] P.L.1973, c.367 (C.54:50-12  
39 et seq.) shall be executed under oath on its behalf by its  
40 president, vice president, [or] treasurer, partner, member or  
41 manager.<sup>1</sup>

42 (cf: P.L.1973, c.367, s.6)

43 <sup>1</sup>28. Section 7 of P.L.1973, c.367 (C.54:50-18) is amended to  
44 read as follows:

45 7. Any officer [or] , director, partner, member or manager of a  
46 [corporation] business entity who is instrumental in a  
47 [corporation] business entity violating section 2 of [this act]  
48 P.L.1973, c.367 (C.54:50-13), or in a [corporation] business entity  
49 filing any certification under paragraph (2) of subsection [4c(2)] c.  
50 of [this act] section 4 of P.L.1973, c.367 (C.54:50-15) which is  
51 materially false, shall be personally liable for payment of the  
52 [corporation's] business entity's taxes, if such taxes are not paid  
53 by the taxpayer [corporation] business entity, or by the  
54 [corporation] business entity which has undertaken to pay them,

1 when due and payable. The amount of such personal liability shall  
2 be recoverable by the State in any court of competent  
3 jurisdiction and the Director of the Division of Taxation shall  
4 have such additional remedies for the enforcement of such  
5 personal liability as may be available under any law of this State.<sup>1</sup>  
6 (cf: P.L.1973, c.367, s.7)

7 <sup>1</sup>29. The title of P.L.1973, c.367 is amended to read as follows:  
8 **AN ACT** concerning tax procedure in connection with the  
9 dissolution, merger or consolidation of corporations and certain  
10 other business entities in certain cases, supplementing the  
11 State Tax Uniform Procedure Law, chapter 50 of Title 54 of  
12 the Revised Statutes and repealing R.S. 54:50-11 and section  
13 12 of the "Corporation Business Tax Act(1945)," approved April  
14 13, 1945 (C.54:10A-12).<sup>1</sup>

15 (cf: P.L.1973, c.367, title)

16 <sup>1</sup>[21.] 30.<sup>1</sup> (New section) (1) A domestic corporation may  
17 merge or consolidate with one or more other business entities in  
18 the following manner:

19 (a) Each domestic corporation shall comply with the provisions  
20 of chapter 10 of Title 14A of the New Jersey Statutes with  
21 respect to the merger or consolidation of domestic corporations  
22 and each other business entity shall comply with the applicable  
23 provisions of the laws of the jurisdiction under which it is  
24 organized.

25 (b) The certificate of merger or consolidation required by  
26 section 14A:10-4.1 shall be executed on behalf of each domestic  
27 corporation and each other business entity and, in addition to the  
28 information required by subsection 14A:10-4.1(1), shall set forth  
29 that the applicable provisions of the laws of the jurisdiction under  
30 which each other business entity was organized have been, or  
31 upon compliance with filing and recording requirements will have  
32 been, complied with.

33 (c) If the surviving business entity or new business entity  
34 meets the definition of "other business entity" pursuant to  
35 section <sup>2</sup>[(r)] (q)<sup>2</sup> of N.J.S.14A:1-2.1 is organized under the laws  
36 of another state or foreign jurisdiction and is to transact business  
37 in this State, it shall comply with the provisions of the laws of  
38 this State with respect to foreign partnerships <sup>1</sup>[(whether general  
39 or limited)]<sup>1</sup> or foreign limited liability companies, as  
40 appropriate, and, whether or not it is to transact business in this  
41 State, the certificate of merger or consolidation required by  
42 section 14A:10-4.1 shall, in addition to other required  
43 information, set forth

44 (i) an agreement by such foreign business entity that it may be  
45 served with process in this State in any proceeding for the  
46 enforcement of any obligation of any domestic corporation or any  
47 other business entity, previously amenable to suit in this State,  
48 which is a party to such merger or consolidation, and in any  
49 proceeding for the enforcement of the rights of a dissenting  
50 shareholder of any such domestic corporation against the  
51 surviving or new corporation; and

52 (ii) an irrevocable appointment by such foreign business entity  
53 of the Secretary of State of this State as its agent to accept  
54 service of process in any such proceeding, and the post office



1 address, within or without this State, to which the Secretary of  
2 State shall mail a copy of the process in such proceeding;

3 (iii) an agreement by such foreign business entity that it will  
4 promptly pay to the dissenting shareholders of any such domestic  
5 corporation the amount, if any, to which they shall be entitled  
6 under the provisions of <sup>1</sup>[this act] chapter 11 of Title 14A of the  
7 New Jersey Statutes<sup>1</sup> with respect to the rights of dissenting  
8 shareholders.

9 (2) The provisions of subsection 14A:10-3(4) shall apply to a  
10 merger in which the surviving corporation is a domestic  
11 corporation.

12 (3) If the surviving or new corporation is a domestic  
13 corporation, the effect of such merger or consolidation shall be  
14 the same as in the case of the merger or consolidation of  
15 domestic corporations. If the surviving or new corporation is any  
16 other business entity, the effect of such merger or consolidation  
17 shall be the same as in the case of the merger or consolidation of  
18 domestic corporations except insofar as provided otherwise in the  
19 laws under which such other business entity is organized.

20 <sup>1</sup>[22.] 31.<sup>1</sup> This act shall take effect immediately <sup>1</sup>, except  
21 that sections 12, 13, 14, and 30 shall remain inoperative until the  
22 90th day following the date of enactment<sup>1</sup>.

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Allows the merger of corporations with certain other business  
28 entities and requires tax clearance certificates therefor.

1 address, within or without this State, to which the Secretary of  
2 State shall mail a copy of the process in such proceeding:

3 (iii) an agreement by such foreign business entity that it will  
4 promptly pay to the dissenting shareholders of any such domestic  
5 corporation the amount, if any, to which they shall be entitled  
6 under the provisions of this act with respect to the rights of  
7 dissenting shareholders.

8 (2) The provisions of subsection 14A:10-3(4) shall apply to a  
9 merger in which the surviving corporation is a domestic  
10 corporation.

11 (3) If the surviving or new corporation is a domestic  
12 corporation, the effect of such merger or consolidation shall be  
13 the same as in the case of the merger or consolidation of  
14 domestic corporations. If the surviving or new corporation is any  
15 other business entity, the effect of such merger or consolidation  
16 shall be the same as in the case of the merger or consolidation of  
17 domestic corporations except insofar as provided otherwise in the  
18 laws under which such other business entity is organized.

19 22. This act shall take effect immediately.  
20  
21

## 22 STATEMENT 23

24 This bill makes changes to the "New Jersey Business  
25 Corporation Act" recommended by the New Jersey Corporate and  
26 Business Law Study Commission. The bill allows domestic  
27 corporations to merge or consolidate into one or more "other  
28 business entities" as long as they comply with certain  
29 requirements set forth in the bill. The bill defines "other  
30 business entities" as partnerships (general or limited) or limited  
31 liability companies, whether organized under the laws of this  
32 State or under the laws of any other state or foreign jurisdiction.

33 The bill also defines the term "votes cast" to mean the total  
34 votes cast in favor of and against a particular proposition,  
35 excluding abstentions. Shareholder votes on at least the  
36 following types of propositions require either a majority or two  
37 thirds of the "votes cast": amendments to the certificate of  
38 incorporation; dissolution; and the sale or other disposition of  
39 business assets.

40 The bill clarifies that certain actions which may be taken upon  
41 the written consent of shareholders without a meeting of  
42 shareholders, may also be taken without prior notice to the  
43 shareholders and without a vote by the shareholders.

44 The bill also provides for the fixing of a record date for  
45 determining the shareholders entitled to consent to corporate  
46 action in writing without a meeting, when no prior action by the  
47 board of directors is required. The record date for this type of  
48 action is the date on which a signed written consent setting forth  
49 the action taken or proposed to be taken is delivered to the  
50 corporation by delivery to its registered office in this State, its  
51 principal place of business, or an officer or agent of the  
52 corporation having custody of the book in which proceedings of  
53 meetings of shareholders are recorded.

54 The bill provides that shareholders of corporations organized

1 prior to January 1, 1969 shall have preemptive rights unless a  
2 by-law duly adopted by the shareholders prior to that date or the  
3 certificate of incorporation provides otherwise. The bill provides  
4 that unless otherwise provided in the articles of incorporation, a  
5 shareholder of a corporation is not personally liable for the acts  
6 of the corporation, except that a shareholder may become  
7 personally liable by reason of the shareholder's own acts or  
8 conduct.

9 The bill requires that any division of shares which adversely  
10 affects the shares of another class of shares is to be made by  
11 amendment to the certificate of incorporation. The bill specifies  
12 the type of notice which shall be given to shareholders in the case  
13 of dissolution pursuant to action of the board and shareholders,  
14 and in the case of dissolution without a meeting of shareholders.  
15 The bill also provides that a certificate of dissolution may  
16 provide for a dissolution date within ninety days after the  
17 certificate of dissolution has been filed with the Secretary of  
18 State.

19 The bill also allows a parent corporation under certain  
20 conditions to transfer any or all of its assets to any corporation,  
21 all of the outstanding shares of which are owned by the parent  
22 corporation, without approval or authorization of the  
23 shareholders of the parent corporation.

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28 Revises certain provisions of the law governing corporations and  
29 allows the merger or consolidation of corporations with certain  
30 other business entities.

ASSEMBLY LABOR, BUSINESS AND INDUSTRY COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2155**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 23, 1995

The Assembly Labor, Business and Industry Committee reports favorably, Assembly, No. 2155, with committee amendments.

This bill makes changes to the "New Jersey Business Corporation Act" recommended by the New Jersey Corporate and Business Law Study Commission. The bill allows domestic corporations to merge or consolidate into one or more "other business entities" as long as they comply with certain requirements set forth in the bill. The bill defines "other business entities" as partnerships or limited liability companies, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction.

The bill also defines the term "votes cast" to mean the total votes cast in favor of and against a particular proposition, excluding abstentions. Shareholder votes on at least the following types of propositions require either a majority or two thirds of the "votes cast": amendments to the certificate of incorporation; dissolution; and the sale or other disposition of business assets.

The bill clarifies that certain actions which may be taken upon the written consent of shareholders without a meeting of shareholders, may also be taken without prior notice to the shareholders and without a vote by the shareholders.

The bill also provides for the fixing of a record date for determining the shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required. The record date for this type of action is the date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this State, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

The bill provides that shareholders of corporations organized prior to January 1, 1969 shall have preemptive rights unless a by-law duly adopted by the shareholders prior to that date or the certificate of incorporation provides otherwise. The bill provides that unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts of the corporation, except that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

The bill requires that any division of shares which adversely affects the shares of another class of shares is to be made by amendment to the certificate of incorporation. The bill specifies

the type of notice which shall be given to shareholders in the case of dissolution pursuant to action of the board and shareholders, and in the case of dissolution without a meeting of shareholders. The bill also provides that a certificate of dissolution may provide for a dissolution date within ninety days after the certificate of dissolution has been filed with the Secretary of State.

The bill also allows a parent corporation under certain conditions to transfer any or all of its assets to any corporation, all of the outstanding shares of which are owned by the parent corporation, without approval or authorization of the shareholders of the parent corporation.

The committee amended the bill to provide the following: that sections 12, 13, 14 and 30 shall remain inoperative until the 90th day following the date of enactment; that shareholders in a parent corporation have no right to dissent when the board of directors transfers assets to a wholly owned subsidiary; to require that tax clearance certificates be obtained by other business entities before they merge or consolidate into other business entities; to clarify that "other business entity" includes all partnerships. The term also includes limited liability partnerships, which are a type of general partnership; and, technical amendments were made to the bill.

ASSEMBLY BILL NO. 2155  
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2155 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill makes a number of amendments to the New Jersey Business Corporation Act (the "Act"), based on the recommendations of the New Jersey Corporate and Business Law Study Commission (the "Commission"). The bill allows domestic corporations to merge or consolidate into one or more other business entities as long as they comply with certain requirements set forth in the bill.

The bill also requires that a business entity pay its taxes in full and obtain a tax-clearance or other certificate from the Division of Taxation before it may merge with another entity.

In addition to changing the law on mergers, the bill makes further changes to the Act according to the Commission's recommendations. These changes update and amend the Act in a variety of ways.

B. Recommended Action

I commend the Legislature for recognizing the need to keep New Jersey's Business Corporation Act up-to-date with the ever-changing business world and for giving business entities much-needed flexibility. However, the bill prohibits mergers between business entities unless their taxes are paid in full or, in the case of domestic or qualified foreign corporations, otherwise provided for, and requires those entities to obtain a tax-clearance or other certificate before they may merge. I am

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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advised that that provision effectively eliminates an exemption to that requirement that has existed for several years.

Under current law, a business entity that merges into either a domestic corporation or a foreign corporation licensed to do business in New Jersey is not required to obtain a tax-clearance or other certificate or to demonstrate that its taxes are paid in full. However, the language of the Committee amendment unintentionally eliminates that exemption because it requires a tax-clearance certificate, or other certification that taxes are either paid in full or otherwise provided for, from any business entity that merges into any other business entity.

The definition of "other business entity" includes both domestic and foreign corporations. Therefore, without a specific exemption for domestic corporations and foreign corporations licensed to do business in New Jersey, those entities will once again be subject to the requirements that all taxes be paid in full and that they obtain a tax-clearance or other certificate before they can merge.

Consequently, I recommend that the bill be amended to retain the exemption that domestic corporations and foreign corporations that are authorized to transact business in this State currently enjoy.

Therefore, I herewith return Assembly Bill No. 2155 (First Reprint) and recommend that it be amended as follows:

Page 21, Section 23, Line 13: Delete "; except that this subsection shall not apply to any"; insert "other than a domestic corporation or a foreign corporation authorized to transact business in this State"

Page 21, Section 23, Lines 14-15: Delete in their entirety

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EXECUTIVE DEPARTMENT

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Page 21, Section 24, Line 30: Delete ";except that"; insert "other than a domestic corporation or a foreign corporation authorized to transact business in this State"

Page 21, Section 24, Lines 31-32: Delete in their entirety

Page 23, Section 30, Line 32: Delete "(r)"; insert "(q)"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Margaret M. Foti

Chief Counsel to the Governor