

Agenda for January 25, 2017 Meeting of the Chapter 607 Subcommittee

Article 8 Agenda

1. Section 607.0825 (Committees of the Board of Directors):

- A. Revised version of Section 607.0825 based on discussions at the January 17, 2017 meeting of the Subcommittee:

607.0825. Committees of the board of directors

(1) Unless this chapter, the articles of incorporation or the bylaws provide otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members establish an executive committee and one or more other board committees composed exclusively of one or more directors to perform functions of the board of directors each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:

(a) ~~Approve or recommend to shareholders actions or proposals required by this act to be approved by shareholders~~

(b) ~~Fill vacancies on the board of directors or any committee thereof.~~

(c) ~~Adopt, amend, or repeal the bylaws.~~

(d) ~~Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.~~

(e) ~~Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.~~

(2) Unless this chapter provides otherwise, the establishment of a board committee and the appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under s. 607.0824.

(23) ~~Unless the articles of incorporation or bylaws provide otherwise, Sections ss. 607.0820, 607.0822, 607.0823 and through 607.0824 which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors apply to board committees and their members as well.~~

(4) A board committee may exercise the powers of the board of directors under s. 607.0801, except that a board committee may not:

(a) Authorize or approve the reacquisition of shares unless pursuant to a formula or method, or within limits, prescribed by the board of directors.

(b) Approve, recommend to shareholders, or propose to shareholders action that this chapter requires be approved by shareholders.

(c) Fill vacancies on the board of directors or on any board committees.

(d) Adopt, amend, or repeal bylaws.

(e) Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

(25) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by the director with the standards of conduct described in s. 607.0830, and director conduct while a director is serving on a committee is covered by the standards of s. 607.0830.

~~(36) Each committee must have two or more members who serve at the pleasure of the board of directors. The board of directors, by resolution adopted in accordance with subsection (1), may designate appoint one or more directors as alternate members of any board such committee to fill a vacancy on the committee or who may act in the place and stead of to replace any absent or disqualified member ~~or members at any meeting of such committee during the member's absence or disqualification.~~ If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting, by unanimous action, may appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.~~

~~(4) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.~~

B. Remaining questions to consider:

(1) **The 2016 version of the Model Act has removed subsection (f), which had previously been added to our proposal as new subsection (6). Should this section now be deleted?**

Co-Chairs Conclusion – This section has been retained as part of subsection (5) of the proposed statute.

- (2) **Do we need to carry over subsection (4) from the current Chapter 607 section addressing duties of committee members or should we be silent like in the Model Act or should we add a crossover to 607.0830?**

Co-Chairs Conclusion – A crossover to s. 607.0830 has been added to subsection (5) of the proposed statute.

- (3) **Should we add express language that allows boards to establish other committees that can include persons who are not board members, but to clearly state that such other committees cannot be delegated board functions or authority? Do we need express authority for persons to be appointed to board committees as observers without voting rights?**

Co-Chairs Conclusion – No, but authority to take this action is now included in the proposed commentary to this section.

C. Proposed revised commentary to Section 607.0825:

The language in subsections (1), in subsection (2), in the first sentence of subsection (3), and in subsection (4) of s. 607.0825 has been replaced by the language from subsections (a), (b), (c), (d) and (e) of s. 8.25 of the Model Act, except to the extent discussed below. Of note, this change now allows board committees to be comprised of only one member, unless a greater number is otherwise required in the chapter (such as, for example, in ss. 607.0741 and 607.0832) or in the particular corporation's articles of incorporation or bylaws. The prior law (s. 607.0825(3)) required at least two persons to comprise each board committee.

The matters that may not be delegated to a committee have been changed (i) to retain subsection (1)(d) of the current statute relative to delegation to committees of the right to authorize and approve reacquisition of shares (i.e., redemption payments), to redesignate it as subsection (4)(a) and not to extend that exception to follow the language of subsection (e)(1) of s. 8.25 of the Model Act (covering all "distributions"), (ii) to follow the second, third and fourth matters set forth in subsection (d) of s. 8.25 of the Model Act (which is mostly a reordering of what already appeared in subsection (1)(a) through (c) of the current statute), except that the limited override for filling committee vacancies reflected in the Model Act is added, and (iii) to retain subsection (1)(e) of the current statute, redesignated as subsection (4)(e). By retaining subsection (1)(d) of the current statute (now subsection (4)(a)) relative to delegation to committees of the right to authorize and approve reacquisition of shares (i.e., redemption payments) and not covering all "distributions," a board of a Florida corporation continues to have the ability to delegate to a committee of the board the right to approve a dividend distribution (subject to any limitations and restrictions applicable to the board itself), without the board having to approve the particular distribution or to approve any formula or other parameters with respect to any distribution before it is authorized by a committee.

Old subsection (4) has been deleted. The duties of members of board committees are left to the provisions governing the duties of directors under s. 607.0830. A cross reference to this effect has been added in new subsection (5).

By way of clarifying language from s. 8.25 of the Model Act, this section confirms the intent of prior s. 607.0825 to the effect that this section relates only to board committees exercising one or more board functions. This section does not apply to committees that may include officers, employees, or others who are not board members that might be created to deal with non-board issues or to make recommendations for the board or a board committee to consider. Moreover, it does not limit the board's power to designate non-board member observers to attend meetings of board committees. However, no such non-board member observer can be a voting member of a board committee.

- D. For reference, the current statute is contained in Exhibit "A" hereto, the current Model Act provision is contained in Exhibit "B" hereto and the Model Act commentary to this section is contained in Exhibit "C" hereto.
- 2. Section 607.0830 (general standards for directors) - Should subsection (7) (old subsection (5)) be retained or is it now duplicative with the revised version of s. 607.0831?
 - 3. Section 607.0831 (liability of directors):
 - A. The current version of the proposed revision to this section of the FBCA adds language to subsection (1) following the corollary Model Act provision that a director has no liability unless "the party asserting liability establishes that:". This language is not believed to be a substantive change, but rather a clarifying change. However, the Subcommittee intends to request the views of the Business Litigation Committee as to whether this language change is acceptable and not likely to be interpreted as a substantive change in the law.
 - B. The revised statute does not include the words "in a proceeding" and by way of brackets leaves open whether to add the phrase the party asserting liability establishes that," although it was noted that other sections of the FBCA already use similar language, including s. 607.0834 (which uses the words "if it is established" and also includes the words, "In any proceeding commenced under this section....") and s. 607.0850(7) (which uses the word "establishes"). The Subcommittee intends to request the views of the Business Litigation Committee as to whether to include the bracketed language, and, if such language is included, whether to include or omit the words "in a proceeding."
 - C. Subsection (1) of s. 607.0831 provides that a director is not personally liable for damages "to the corporation or any other person" unless the provisions of this section apply. The words "or any person" have been in the statute since 1989 and in the subcommittee's initial review of this section, this language was retained in the statute. The corollary Model Act provision uses the words "to the corporation or its shareholders" rather than the language in the FBCA.

In a recent e-mail to the co-chairs following an e-mail discussion between the co-chairs and Professor Cohn about the history of this provision, Professor Cohn raised the question as whether the FBCA should be changed to adopt the Model Act language. His e-mail to the co-chairs on this topic stated:

Text of Professor Cohn's e-mail

It's curious that this phrase that has been in our statute for so long and is now causing us a bit of wonderment. Inasmuch as the issue has now been raised, it may be appropriate to delete the phrase per the MBCA.

As you know, 607.0831 was the reaction to *Smith v. Van Gorkom* which hit like a bombshell and caused Delaware's 102(b)(7) and our provision which we copied from somewhere else (and we added the phrase). Smith involved substantial director personal liability for undervaluing their target corporation in a cash-out merger. It was a derivative action with recovery to the corporation. The corporate bar's reaction led to the exculpation statutes which were, I believe, intended to provide a significantly higher standard of proof for monetary claims involving director actions that harmed the corporation. Why we added the words "or any other person" I don't know, but what concerns me is that the phrase is too broad and may cause confusion. For example, the exculpation may not be intended apply to director actions that are torts, that involve the improper shifting of assets to avoid creditor claims, that may be grounds for piercing the corporate veil, or personal shareholder claims such as refusal to honor dividend declarations or voting covenants. Yet, as written, the exculpation clause might cause such plaintiffs to jump through the much more substantial hoops of 607.0831, or at least spend time and resources attempting to prove why 607.0831 does not apply. Maybe that is what is intended, but I didn't think so and it doesn't seem to square with its genesis.

Action against directors by either the corporation itself or derivatively by shareholders are covered by the provision without the phrase. Adding the words "shareholders" would raise the problem of legitimate direct (not derivative) actions by shareholders. If it's not shareholders, who else is covered by "any other person"? I don't think that this provision can be used against corporate employees or outsiders who may have tort or contract claims. Bottom line, although the phrase has been in our statute for years without apparent problem, I can see deleting it, or at least the phrase is worth further examination as to purpose.

Should we modify subsection (1) to follow the Model Act language?

- D. The language in subsection (1)(b)2., as revised is believed to be unclear and is different from the language in s. 605.04093(1)(b)2. The following alternative language has been suggested:

2. Circumstances under which the a transaction at issue is one from which the director derived an improper personal benefit, either directly or indirectly;

or

2. A circumstance under which the transaction at issue is one from which the director derived an improper personal benefit, either directly or

indirectly, and was authorized, approved, ratified or engaged in by the corporation;

Is the proposed revised language correct and which proposed version of the revised language should be used?

- E. Subsection (3)(b) deals with situations where a transaction in which a director derives a personal benefit was approved in a certain manner. Rather than repeat language in this subsection about how that transaction was approved, a cross reference to s. 607.0832(3)(a)1. or 2. has been added. Those subsections of s. 607.0832 lay out how director conflict of interest transactions must be approved in order to pass muster under that statute.

Is everyone comfortable with this change?

4. Section 607.0832 (director conflicts of interest) – Revised s. 607.0832 ultimately requires a finding that a transaction is fair of the corporation, whether or not approved by a disinterested board or disinterested shareholders, although the burden of proving the fairness or unfairness of the transaction may shift because of the approval obtained. However, the current statute could be read to say that if a transaction is approved by a disinterested board or by disinterested shareholders, it is not void or voidable, regardless of whether or not fair to the corporation. Although there may be case law in other states that ignores the “or” and reads this statute to require “fairness” in all cases, we believe that there is no case law in Florida on this topic.

The current proposal follows what was adopted in Chapter 605. Should we make them parallel and thus, arguably, implement a change from current law under Chapter 607?

5. Section 607.08401 (required officers) - should we change wording to duties (see commentary)
6. Section 8.42 of the RMBCA (standards of conduct for officers). We still need to decide whether to add this section to the statute.
7. Section 607.0843. Additional changes have been made to subsection (a) of s. 8.43 of the Model Act. If these changes are made, they would revise s. 607.0843(1) as follows:

(1) An officer may resign at any time by delivering a written notice to the board of directors, or its chair, or to the appointing officer or the secretary corporation. A resignation is effective as provided in s. 607.0141(5) when the notice is delivered unless the notice specifies a later effective time provides for a delayed effectiveness, including effectiveness determined upon a future event or events. If effectiveness of a resignation is made effective at a later time stated to be delayed and the corporation board of directors or the appointing officer accepts the delay, future effective datetime, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness but the new officer may not take office until the vacancy occurs. effective datetime if the board of directors or the appointing officer provides that the successor does not take office until the effective datetime.

8. Indemnification – Since we added a definition of “expenses” in s. 607.01401 that includes the concept of reasonableness, do we still need the definition of “expenses” that is in s. 607.0850?
9. Section 607.0802 (Qualifications of Directors) – In an earlier discussion, the Subcommittee decided to include as new subsections (2) and (3) the following language from the corollary section of the Model Act dealing with the effects of changes in the qualifications of a director or a director nominee on currently serving directors. One of the co-chairs has requested that the subcommittee reconsider this decision.

Subsections (2) and (3) as currently in the Master Draft of Articles 1-8 read as follows:

(2) A qualification for nomination for director prescribed before a person’s nomination shall apply to such person at the time of nomination. A qualification for nomination for director prescribed after a person’s nomination shall not apply to such person with respect to such nomination.

(3) A qualification for director prescribed before a director has been elected or appointed may apply only at the time an individual becomes a director or may apply during a director’s term. A qualification prescribed after a director has been elected or appointed shall not apply to that director before the end of that director's term.

Should we reconsider the decision to include subsections (2) and (3) in s. 607.0802?

Derivative Action Provisions of Article 7 (ss. 607.0741-607.0748) and MBCA s. 7.29A

1. With respect to s. 607.0744 (special litigation committee), there was discussion when this provision was originally considered relative to whether a special litigation committee under Chapter 607 should be obligated to file its report with the court (as required for LLCs by s. 605.0804). The subcommittee needs to make a final determination on this issue.
2. With respect to proposed s. 607.0746 (Proceeds and expenses), the following issues are raised in the comments:
 - A. Florida's current provision requires only "any relief" as a basis for awarding expenses. In order to create a firmer standard yet still retain judicial discretion, it has been suggested that the Florida provision be modified to read "taking into account the benefit and the relief obtained on behalf of the corporation as a result of the proceeding."
 - B. The language in RMBCA Section 7.46(2) allowing the plaintiffs to pay the defendant's fees if the action was filed without reasonable cause or for an improper purpose was not added. If a proceeding is commenced in bad faith or for an improper purpose, courts already have the ability to deal with it.
 - C. Should we consider a prevailing party standard as an alternative?
3. With respect to proposed new section 607.0749 (shareholder action to appoint custodian or receiver), the members of the Subcommittee decided, on a preliminary basis, to recommend the addition of this RMBCA section to the proposed draft of the FBCA. It was decided to add this section to the working draft of Article 7 in brackets, with a notation that adoption of this proposal is subject to the following qualifiers:
 - A. the Subcommittee leaders will bring this provision to the attention of those members of the Business Litigation Committee who are reviewing the litigation aspects of the Subcommittee's proposal in order to obtain the thinking of those litigators as to whether they believe that adding this provision to the FBCA is advisable and/or desired;
 - B. the Subcommittee will also further evaluate the addition of this section when the Subcommittee takes up review and analysis of the judicial dissolution provisions of the FBCA; and
 - C. The Subcommittee's leaders will seek to have a Subcommittee member research and report to the Subcommittee at a future meeting relative to the extent to which this RMBCA provision has been adopted in other jurisdictions and relative to the form in which it has been adopted in those other jurisdictions.
4. There are several definitional sections that need to be added to the FBCA which are used in the derivative action provisions. They are on pages 78-80 of the working draft of Article 7.
 - A. The RMBCA uses the term "qualified" in place of disinterested or independent and defines qualification in RMBCA s. 1.43. The defined term is applicable for the SLC in derivative actions and is also used in the conflict of interest provision.

- B. In its prior deliberations, the subcommittee concluded that adoption of the "qualified" term as defined in 1.43(a)(1) is appropriate, as well as the definition of "material" in 1.43(b). However, the subcommittee did not recommend the safe harbor carve-outs applicable to derivative actions contained in 1.43(c). Although the carve-outs retain judicial discretion and do not mandate a decision regarding qualification, our concern is that the inclusion of the carve-outs could influence a court to regard the carve-outs as matters of presumptive legislative policy. It was the view of the subcommittee that it does not favor any limitation of a court's role in determining qualification. The careful way in which courts have examined the qualification issue under Florida's current law is testimony to maintaining judicial discretion and alerts corporations to the importance of creating truly independent SLCs. See, e.g., *McDonough v. American Int'l Corp.*, 905 F. Supp. 916 (M.D. Fl. 1995), *Kloha v. Duda*, 226 F. Supp. 2d 1342 (M.D. Fl. 2002), and *Klein v. FPL Group, Inc.*, 2004 WL 302292 (S.D. Fl. 2004).
- C. The definition of "shareholder" is from subsection (7) of Section 607.07401 of the FBCA. Section 7.48 uses the following definition of "shareholder for purposes of this section."
- (g) In this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.
5. Section 7.29A, dealing with "Judicial Determination of Corporate Offices and Review of Elections and Shareholder Votes" has been moved to new s. 7.49 of the RMBCA. The subcommittee originally decided not to include this section, but left the issue open for further consideration. A copy of the current RMBCA provision is Exhibit "D".

EXHIBIT "A"

607.0825 Committees.—

(1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:

(a) Approve or recommend to shareholders actions or proposals required by this act to be approved by shareholders.

(b) Fill vacancies on the board of directors or any committee thereof.

(c) Adopt, amend, or repeal the bylaws.

(d) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.

(e) Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

(2) Unless the articles of incorporation or bylaws provide otherwise, ss. 607.0820, 607.0822, 607.0823, and 607.0824 which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors apply to committees and their members as well.

(3) Each committee must have two or more members who serve at the pleasure of the board of directors. The board, by resolution adopted in accordance with subsection (1), may designate one or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.

(4) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

EXHIBIT "B"

§ 8.25. COMMITTEES OF THE BOARD

- (a) Unless this Act, the articles of incorporation or the bylaws provide otherwise, a board of directors may establish one or more board committees composed exclusively of one or more directors to perform functions of the board of directors.
- (b) The establishment of a board committee and appointment of members to it shall be approved by the greater of (i) a majority of all the directors in office when the action is taken or (ii) the number of directors required by the articles of incorporation or bylaws to take action under section 8.24, unless, in either case, this Act or the articles of incorporation provide otherwise.
- (c) Sections 8.20 through 8.24 apply to board committees and their members.
- (d) A board committee may exercise the powers of the board of directors under section 8.01, to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:
 - (1) authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;
 - (2) approve or propose to shareholders action that this Act requires be approved by shareholders;
 - (3) fill vacancies on the board of directors or, subject to subsection (e), on any board committees; or
 - (4) adopt, amend, or repeal bylaws.
- (e) The board of directors may appoint one or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting, by unanimous action, may appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

EXHIBIT “C”

OFFICIAL COMMENT

Section 8.25 deals only with board committees authorized to perform functions of the board of directors. The board of directors or management, independently of section 8.25, may establish non-board committees composed in whole or in part of directors, employees, or others to address matters in ways that do not constitute performing functions required to be performed by the board of directors under section 8.01, including acting in an advisory capacity.

Under section 8.25(a), except as otherwise provided by the Act, the articles of incorporation or the bylaws, a board committee may consist of a single director. This accommodates situations in which only one director may be present or available to make a decision on short notice, as well as situations in which it is unnecessary or inconvenient to have more than one member on a board committee or where only one board member is disinterested or independent with respect to a matter. Various other sections of the Act require the participation or approval of at least two qualified directors in order for the decision of the board or committee to have effect. (For the definition of “qualified director,” see section 1.43). These include a determination that maintenance of a derivative suit is not in the corporation’s best interests (section 7.44(b)(2)), a determination that indemnification is permissible (section 8.55(b)(1)), an approval of a director's conflicting interest transaction (section 8.62(a)), and disclaimer of the corporation’s interest in a business opportunity (section 8.70(a)).

The requirement of section 8.25(b) that, unless the Act or the articles of incorporation otherwise provide, a board committee may be created only by the affirmative vote of a majority of the board of directors then in office, or, if greater, by the number of directors required to take action by the articles of incorporation or bylaws, reflects the importance of the decision to invest board committees with power to act under section 8.25. Sections 7.44(b), 8.55(b), 8.62(a) and 8.70 contain exceptions to this rule.

The limitations in section 8.25(d)(1) through (4) are based on the principle that the listed actions so substantially affect the rights of shareholders or are so fundamental to the governance of the corporation that they should be determined by the full board and not delegated to a committee. On the other hand, section 8.25(d) allows board committees to take many actions that may be material, such as the authorization of long-term debt and capital investment or the issuance of shares.

Although section 8.25(d)(1) generally makes nondelegable the decision whether to authorize or approve distributions, including dividends, it does permit the delegation to a board committee of power to approve a distribution pursuant to a formula or method or within limits prescribed by the board of directors. Therefore, the board of directors could set a dollar range and timeframe for a prospective dividend and delegate to a board committee the authority to determine the exact amount and record and payment dates of the dividend. The board of directors also could establish certain conditions to the payment of a distribution and delegate to a board committee the power to determine whether the conditions have been satisfied.

Section 8.25(e) is a rule of convenience that permits the board of directors or the other board

committee members to replace an absent or disqualified member during the time that the member is absent or disqualified. Unless otherwise provided or unless a quorum is no longer present, replacement of an absent or disqualified member of a committee is not necessary to permit the other committee members to continue to perform their duties.

EXHIBIT "D"

§ 7.49. JUDICIAL DETERMINATION OF CORPORATE OFFICES AND REVIEW OF ELECTIONS AND SHAREHOLDER VOTES

- (a) Upon application of or in a proceeding commenced by a person specified in subsection (b), the [name or describe court] may determine:
 - (1) the result or validity of the election, appointment, removal or resignation of a director or officer of the corporation;
 - (2) the right of an individual to hold the office of director or officer of the corporation;
 - (3) the result or validity of any vote by the shareholders of the corporation;
 - (4) the right of a director to membership on a committee of the board of directors; and
 - (5) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to section 2.06(c) or any comparable right under any provision of the articles of incorporation, contract, or applicable law.
- (b) An application or proceeding pursuant to subsection (a) of this section may be filed or commenced by any of the following persons:
 - (1) the corporation;
 - (2) any record shareholder, beneficial shareholder or unrestricted voting trust beneficial owner of the corporation;
 - (3) a director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of his or her right to such office or membership;
 - (4) an officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his or her right to such office; and
 - (5) a person claiming a right covered by subsection (a)(5) and who is seeking a determination of such right.
- (c) In connection with any application or proceeding under subsection (a), the following shall be named as defendants, unless such person made the application or commenced the proceeding:
 - (1) the corporation;
 - (2) any individual whose right to office or membership on a committee of the board of directors is contested;
 - (3) any individual claiming the office or membership at issue; and
 - (4) any person claiming a right covered by subsection (a)(5) that is at issue.
- (d) In connection with any application or proceeding under subsection (a), service of process may be made upon each of the persons specified in subsection (c) either by:
 - (1) service of process on the corporation addressed to such person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or
 - (2) service of process on the person in any manner provided by statute of this state or by rule of the applicable court.
- (e) When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subsection (d)(1), the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to the person at the person's last known residence or business address, or as permitted by statute of this state or by rule of the applicable court.

- (f) In connection with any application or proceeding under subsection (a), the court shall dispose of the application or proceeding on an expedited basis and also may:
 - (1) order such additional or further notice as the court deems proper under the circumstances;
 - (2) order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;
 - (3) order an election or meeting be held in accordance with the provisions of section 7.03(b) or otherwise;
 - (4) appoint a master to conduct an election or meeting;
 - (5) enter temporary, preliminary or permanent injunctive relief;
 - (6) resolve solely for the purpose of this proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection (a), including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and
 - (7) order such other relief as the court determines is equitable, just and proper.
- (g) It is not necessary to make shareholders a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (c)(4), relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (f)(2).
- (h) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (a).