



**DELBERT HOSEMANN**  
*Secretary of State*

**2010 Business Reform Study Groups**  
**Minutes of the Corporation Laws Study Group, Meeting #2**  
**July 21, 2010**

This meeting of the Corporation Laws Study Group (the "Study Group") was called to order on Wednesday, July 21, 2010 at 11:05 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons in attendance is attached as Exhibit A.

**Welcome and Introduction of Speakers**

Cheryn Baker, Assistant Secretary of State for the Secretary of State's Division of Policy and Research, welcomed the members for their attendance and introduced guest speakers Bryn Vaaler and Herbert Wander, both of whom attended the meeting by phone.

**Report from Business Services Division re Nonprofit Corporations**

Tom Riley, Assistant Secretary of State for the Secretary of State's Business Services Division, reported that the agency's records show 3,300 nonprofit corporations which were incorporated between 1817 and 1950 as still active. Many of these corporations did not provide an address or registered agent upon formation. So far, Riley said, his staff has been able to locate approximately 20% of these corporations and determine that they are still in operation. The Business Services Division will continue to work on locating the remaining corporations from this time period.

Riley also discussed a potential problem for corporations that were formed during periods when Mississippi's corporate laws provided a maximum duration term. While the current Business Corporation Act and Nonprofit Corporation Act allow corporations to have a perpetual existence, under prior laws corporations were limited to a lifetime of 50 or 99 years, depending on the year in which the company was formed. Riley said it was likely that many corporations formed during these periods, if still doing business today, could be operating without knowledge that their statutory duration periods have expired. Study Group Co-Chair Henry Chatham recommended the group remedy this problem by recommending the adoption of a savings statute that would retroactively give such corporations a perpetual duration.

## **Speakers' Comments on Recent Amendments to the Model Business Corporation Act**

Next, speakers Bryn Vaaler and Herbert Wander spoke to the group about a number of recent amendments to the Model Business Corporation Act.

**Remote participation in shareholder meetings.** This amendment, stated Mr. Wander allow the directors of a corporation to authorize shareholders to participate in shareholder meetings remotely, such as via the telephone or the internet. Mr. Wander said that this amendment does not mandate that shareholders be allowed to attend remotely; rather, the amendments merely permit boards to authorize remote participation. Wander recommended that Mississippi adopt this amendment if it is interested in allowing such remote participation.

**Bifurcated record dates to address "empty voting" issue.** Bryn Vaaler explained that this amendment which was made in response to concerns about so-called "empty voting," allows corporations to set different record dates for notice of shareholder meetings and for voting at such meeting. Empty voting typically occurs when a shareholder disposes of its shares following the record date, but retains the ability to vote the shares at the upcoming meeting. This can result in votes being cast by shareholders who retain no economic interest in the company. Vaaler said the Securities and Exchange Commission is looking into ways to prevent empty voting, and recommended that the Study Group take a "wait and see" approach before adopting this amendment.

**Electronic technology amendments.** Mr. Wander explained that these amendments, incorporate electronic technology concepts into the Act, adding new definitions dealing with electronic transmissions, signatures, notices, and consents. Wander said these amendments were drafted to complement federal legislation in this area, and recommended that Mississippi adopt the amendments in order to avoid preemption by federal law.

**Proxy access of shareholders to nominate directors; expense reimbursement.** Mr. Vaaler explained that these amendments allow corporations to adopt bylaws that (a) require the corporation to include individuals nominated by shareholders for election as directors in the corporation's proxy statement and proxy cards, and/or (b) require reimbursement by the corporation of expenses incurred by a shareholder in soliciting proxies in an election of directors. Vaaler noted this amendment was made to address concerns from shareholders who were facing a significantly uphill battle in nominating and electing dissident shareholders to the board. Mr. Vaaler also reported that the Securities and Exchange Commission is considering enacting regulations that would require this type of proxy access. Though Mr. Vaaler recommended a "wait and see" approach to these amendments, Mr. Wander claimed that by adopting these amendments, Mississippi could make a strong statement that the state is responsive to the needs of shareholders and does not need further federal regulation to ensure that these needs are being met.

**"Force the vote."** Mr. Vaaler said this amendments to the Model Business Corporation Act were made in response to dicta in the 1985 Delaware Supreme Court opinion in *Smith vs. Van Gorkom*. According to Mr. Vaaler, some commentators had construed the opinion as

invalidating a “force the vote” provision in the merger agreement at issue in the case. Such a provision requires a corporation’s board of directors to submit the merger to shareholders for a vote even if the board no longer recommends that the merger take place. Vaaler said that including force the vote these provisions has become common practice today, and recommended that the group adopt this amendment.

**Director and officer duties.** Mr. Wander indicated that these amendments do not expand the law in any way, and merely make what was implicit in the law before more explicit. Wander recommended that all states should adopt these provisions in order to promote good corporate governance.

### **Creation of subgroups**

Study Group Co-Chair Henry Chatham asked a number of members to specifically review specific amendments to the Model Business Corporation Act, and asked the rest of the members to volunteer in the area of their interest. A list of these assignments will be distributed at a future date. These members will make recommendations to the full Study Group after their review.

### **Rescheduling of Next Meeting, and Reminder of Upcoming Meetings**

Mr. Chatham stated that the next meeting of the Study Group would not be held in order to give the members more time to analyze their assigned portions of the Model Business Corporation Act. He asked Ms. Baker to reschedule the slated September 1 meeting for the week after Labor Day if at all possible due to a scheduling conflict.

There being no further business, the meeting was adjourned at 12:15 P.M.

Respectfully submitted,



Cheryn Baker  
Assistant Secretary of State  
Mississippi Secretary of State  
Division of Policy & Research

## EXHIBIT A

### Minutes of the Corporation Laws Study Group, Meeting # 2 July 21, 2010

#### Members and Guests in Attendance:

1. William Brown, Jr.
2. Mike Bush
3. Jack Byrne
4. Henry Chatham, Co-Chair
5. Prof. Cecile Edwards
6. Prof. Karen Green
7. Joyce Hall
8. Russell Hawkins
9. Dan Hise
10. Gina Jacobs
11. Walter Lee
12. Ben Roberson
13. Tommy Shepherd
14. Caryn Quilter (guest)
15. Cliff Hodge (guest)

#### Members Attending by Telephone:

1. Stephen Burrow, Co-Chair
2. Dawn Jones
3. Walter Jones
4. Prof. Wulf Kaal
5. James McNamara
6. Bill Mendenhall

#### Secretary of State's Staff:

1. Cory Wilson, Chief of Staff
2. Cheryn Baker, Assistant Secretary of State, Division of Policy & Research
3. Tom Riley, Assistant Secretary of State, Business Services
4. Doug Jennings, Senior Attorney, Division of Policy & Research
5. Justin Fitch, Staff Attorney, Elections
6. Pam Weaver, Communications Director
7. Richard Lee, Legal Intern, Division of Policy & Research