

Regular Session, 2014

HOUSE BILL NO. 841

BY REPRESENTATIVE LEGER

CORPORATIONS: Provides for voting trusts as holders of limited liability company certificates

1 AN ACT

2 To amend and reenact R.S. 12:1301(A)(18) and 1316 and to enact R.S. 12:1318(E) and
3 1370, relative to limited liability companies; to provide for the definition of person
4 as it relates to limited liability companies; to provide relative to voting of managers;
5 to provide relative to voting by proxy; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 12:1301(A)(18) and 1316 are hereby amended and reenacted and
8 R.S. 12:1318(E) and 1370 are hereby enacted to read as follows:

9 §1301. Definitions

10 A. As used in this Chapter, unless the context otherwise requires:

11 * * *

12 (18) "Person" means a natural person, corporation, partnership, limited
13 partnership, domestic or foreign limited liability company, joint venture, trust
14 including a common law trust, business trust, statutory trust, voting trust, or any
15 other form of trust, estate, or association.

16 * * *

17 §1316. Voting by managers

18 Except as otherwise provided in the articles of organization or an operating
19 agreement, if the limited liability company has more than one manager, each
20 manager shall be entitled to a single vote on all matters properly brought before the

1 managers, and all decisions of the managers shall be made by majority vote of the
2 managers. In the absence of such a provision in the articles or operating agreement,
3 no manager shall have the right to vote by proxy.

4 * * *

5 §1318. Voting rights of members

6 * * *

7 E.(1) A member shall have the right to cast his vote either in person or,
8 subject to the following provisions, by proxy duly authorized in writing, signed by
9 the member and filed in the registered office of the limited liability company at or
10 before the meeting.

11 (2) The authority of the holder of a proxy to act shall not be revoked by the
12 death of the member who executed the proxy unless, before the authority is
13 exercised, written notice of such death is received by the registered office of the
14 limited liability company.

15 (3)(a) A proxy shall be revocable at will, unless otherwise validly provided
16 by agreement or by any provision of the proxy. The validity of every unrevoked
17 proxy shall cease eleven months after the date of its execution, unless some other
18 definite period of validity is expressly provided. In no case shall an outstanding
19 proxy be valid for longer than three years.

20 (b) The revocation of a proxy, if revocable, shall not be effective until
21 written notice has been given to the office of the limited liability company, or unless
22 a proxy of later date is filed with the office at or before the meeting.

23 (4) A proxy regular on its face and signed in the name of a member entitled
24 to vote at the meeting shall be deemed valid unless challenged before it is voted, and
25 the burden of proving invalidity shall be on the challenger.

26 (5) When shares are registered in the names of two or more persons, other
27 than trustees, a proxy signed by any one or more of them shall be deemed valid
28 unless the limited liability company receives written notice to the contrary from a
29 nonsigning member before the proxy is voted.

1 (6) Except as otherwise provided in the articles or bylaws, without limiting
 2 the manner in which a member may authorize another person or persons to act for
 3 him as proxy, pursuant to this Subsection, the following shall constitute a valid
 4 means by which a member may grant such authority:

5 (a) A member may execute a writing authorizing another person or persons
 6 to act for him as proxy. Execution may be accomplished by the member or his
 7 authorized officer, director, employee, or agent signing such writing or causing his
 8 signature to be affixed to such writing by any reasonable means, including but not
 9 limited to facsimile signature.

10 (b)(i) A member may authorize another person or persons to act for him as
 11 proxy by transmitting or authorizing the transmission of a telegram, cablegram, or
 12 other means of electronic transmission to the person who will be the holder of the
 13 proxy, or to a proxy solicitation firm, proxy support service organization, or like
 14 agent duly authorized by the person who will be the holder of the proxy to receive
 15 such transmission.

16 (ii) Any such telegram, cablegram, or other means of electronic transmission
 17 shall be submitted with information from which it can be determined that the
 18 telegram, cablegram, or other electronic transmission was authorized by the member.
 19 If it is determined that such telegrams, cablegrams, or other electronic transmissions
 20 are valid, the inspectors or other such persons making that determination shall
 21 specify the information upon which they relied.

22 (c) Any copy, facsimile telecommunication, or other reliable reproduction
 23 of the writing or transmission, created pursuant to this Subsection may be substituted
 24 or used in lieu of the original writing or transmission for all purposes for which the
 25 original writing or transmission could be used. Such copy, facsimile
 26 telecommunication, or other reliable reproduction shall be a complete reproduction
 27 of the entire original writing or transmission.

28 * * *

1 §1370. Voting trusts

2 A. One or more members of a limited liability company may, pursuant to an
3 agreement in writing, transfer voting shares to any one or more persons or company
4 having authority to act as trustees, for the purpose of vesting in the transferees, as
5 trustees, for a period not exceeding fifteen years and upon the terms and conditions
6 stated in the agreement, all voting or other rights pertaining to such shares. The
7 voting trust agreement may stipulate that the time of the agreement may be extended
8 under the same terms and conditions for an additional period, not to exceed ten years
9 from the date of expiration of the original agreement. When the original agreement
10 contains such a stipulation, it shall provide for the manner, method, time, and place
11 for a meeting of all of the depositing members to vote on the extension. At least a
12 majority in interest of all depositing members, and a larger percentage if stipulated,
13 must vote for extension if the original agreement is to remain effective beyond its
14 original expiration date.

15 B. Unless the agreement provides otherwise, any other member may at any
16 time transfer his voting shares to the same trustee or trustees upon the terms and
17 conditions stated in the agreement, and thereupon shall be bound by, and shall have
18 the benefits of, all of the provisions of the voting trust agreement.

19 C. The certificates of voting shares transferred to a trustee or trustees shall
20 be surrendered and cancelled, and new certificates therefor issued in the name of the
21 trustee or trustees. In the new certificates it shall appear that they are issued pursuant
22 to the voting trust agreement. In the entry of transfer on the records of the limited
23 liability company, it shall be noted that the transfer is made pursuant to the
24 agreement.

25 D. The trustee or trustees shall execute and deliver voting trust certificates
26 to the transferors. Such voting trust certificates shall be transferable in the same
27 manner and with the same effect as a membership interest under the provisions of
28 R.S. 12:1330.

1 E. The trustee or trustees shall possess all voting and other rights pertaining
2 to the shares transferred and registered in his or their names, subject to the terms and
3 conditions of, and for the period specified in, the agreement.

4 F. Unless otherwise provided in the agreement, the following shall apply:

5 (1) The trustee or trustees may vote in person or by proxy.

6 (2) If there are two or more trustees, the manner of voting shall be
7 determined by the will of the majority of the trustees, unless the voting trust
8 agreement appointing the trustees directs that the shares shall be voted in some other
9 way. When, in any case, the trustees are equally divided as to the manner of voting
10 shares transferred jointly in their names, any court of competent jurisdiction may,
11 upon petition filed by any of the trustees or by any member, appoint an additional
12 person to act with the trustees in determining the manner in which the shares shall
13 be voted on the particular questions as to which the trustees are divided.

14 (3) Vacancies among the trustees shall be filled by the remaining trustee or
15 trustees.

16 (4) A trustee shall incur no responsibility as trustee except for his individual
17 neglect or malfeasance.

18 G. The trustee or trustees shall keep at a place available to holders of voting
19 trust certificates, correct and complete books and records of account relating to the
20 trust, and a record containing the names and addresses of all persons who are holders
21 of voting trust certificates, the number of shares represented by each certificate held
22 by them, and the dates when they became the owners of the shares. The record may
23 be in written form or in any other form capable of being converted into written form
24 within a reasonable time.

25 H. A duplicate of every voting trust agreement shall be filed in the registered
26 office of the limited liability company. The duplicate and the record of voting trust
27 certificate holders shall be subject to the same right of inspection by a member or a
28 holder of a voting trust certificate, in person or by agent or attorney, as are the
29 records of the limited liability company under R.S. 12:1319.

 DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Leger

HB No. 841

Abstract: Provides relative to limited liability companies.

Present law defines person as a natural person, corporation, partnership, limited partnership, domestic or foreign limited liability company, joint venture, trust, estate, or association for purposes of the Limited Liability Company Law.

Proposed law provides that a trust for purposes of the definition of "person" in present law shall include a common law trust, business trust, statutory trust, voting trust, or any other form of trust.

Present law provides that except as otherwise provided in the articles of organization or an operating agreement, if the limited liability company has more than one manager, each manager shall be entitled to a single vote on all matters properly brought before the managers, and all decisions of the managers shall be made by majority vote of the managers.

Proposed law adds that in the absence of such a provision in the articles or operating agreement, no manager of a limited liability company has the right to vote by proxy.

Present law provides for the voting rights of members of a limited liability company.

Proposed law adds that a member shall have the right to cast his vote either in person or, subject to the certain provisions of proposed law, by proxy duly authorized in writing, signed by the member and filed in the registered office of the limited liability company at or before the meeting.

Proposed law includes provisions relative to member voting by proxy, such as revocable and irrevocable proxy voting, challenging a proxy regular, proxy voting when voting shares are registered in the names of two or more persons, other than trustees, and transmission methods to authorize another to act as a proxy.

Proposed law permits and provides for voting trusts, including provisions relative to trust agreements, the transfer of certificates of voting shares to trustees, the execution and deliverance of voting trust certificates to transferors, trustee voting rights, and trustee requirements to maintain and keep available for holders of voting trust certificates correct and complete books and records of accounts relative to the trusts.

(Amends R.S. 12:1301(A)(18) and 1316; Adds R.S. 12:1318(E) and 1370)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical changes.

House Floor Amendments to the engrossed bill.

1. Made technical changes.