We have spoken to more than 20 very experienced corporate lawyers last week, and all of them have serious concerns about Senate Bill 1251, which seeks to amend Section 7.05 of the Illinois Business Corporation Act.

Section 7.05 generally pertains to shareholder meetings. It covers when shareholder meetings may be held, where they can be held, a remedy if a shareholder meeting is not held within 15 months of the corporation's last shareholder meeting, and the means by which a shareholder may participate in such meetings (e.g., in person, by conference telephone, or Internet).

We would be interested in working with the bill's sponsors on an amendment to the bill that will not cause the problems for Illinois corporations that the current bill will certainly cause.

Senate Bill 1251 proposes:

> A corporation shall honor a request by a shareholder to be physically present at a meeting of the shareholders, where space permits, and shall not exclude the shareholder from being physically present at a meeting of shareholders in an effort to censor, silence, or otherwise curtail the shareholder from expressing dissent or otherwise exercising his or her freedom of expression. . . . Any officer, agent, or corporation that does not honor the request of a shareholder to be physically present at a meeting or in any way excludes any shareholder from being physically present at a meeting shall be liable to such shareholder, in a penalty of up to 10% of the value of the shares owned by such shareholder, in addition to any other damages or remedy afforded him or her by law.

This language has a number of problems that will cause consequences that are unintended by the sponsors.

The concept of every shareholder having the right to attend a shareholder meeting is laudable and is already provided in the Corporation Act. Section 7.40(a) provides, in relevant part, that "each outstanding share, regardless of class, shall be entitled to one vote in each matter submitted to a vote at a meeting of shareholders . . . . A shareholder may vote either in person or by proxy subject to the provisions of Section 7.50."

In this respect, the portion of Senate Bill 1251 is unnecessary that states "A corporation shall honor a request by a shareholder to be physically present at a meeting of the shareholders, where space permits." But

this sentence does not cause any harm. We would suggest, however, that the sponsors insert "allow" for "honor a request by" so as to eliminate the possible ambiguity that "honor the request" means that the corporation will have to, for example, provide transportation if that is part of the request. We strongly recommend that the sponsors place a period after "space permits" and delete all of the remainder of the language in Senate Bill 1251.

Another suggestion is to add to this sentence "so long as the shareholder is not physically disruptive." In other words, Senate Bill 1251 would, as amended, read "A corporation shall allow a shareholder to be physically present at a meeting of the shareholders, where space permits and so long as the shareholder is not physically disruptive." This subject is worth discussing further, and we would like to be part of that process.

The remainder of the proposed language in Senate Bill 1251 does present a number of problems, including the following:

• Senate Bill 1251 Creates a New Legal Claim for an Abusive or Disruptive Shareholder Who Has Been Reasonably Expelled From a Shareholders Meeting.

The bill specifically provides that the corporation "shall not exclude the shareholder from being physically present at a meeting of shareholders in an effort to censor, silence, or otherwise curtail the shareholder from expressing dissent or otherwise exercising his or her freedom of expression." As discussed above, Section 7.40(a) already gives a shareholder the right to be in the meeting. Senate Bill 1251 gives the disruptive or abusive shareholder the right to stay there during the meeting regardless of behavior.

The language quoted above could be used by a disruptive or abusive shareholder to argue that he or she may not be asked (or in some egregious cases, required) to leave a meeting because that would constitute a violation of Senate Bill 1251's language prohibiting him or her from being excluded "in an effort to censor, silence, or otherwise curtail the shareholder from expressing dissent or otherwise exercising his or her freedom of expression."

If the corporation does expel the abusive or disruptive shareholder, the shareholder can sue for 10% of the value of his or her shares. Does this not provide a shareholder with an economic inducement to become abusive or disruptive?

• Senate Bill 1251's Reference to the Right to Exercise Freedom of Expression Creates Ambiguity and Impinges on the Other Shareholders' Expectations of an Orderly Meeting.

Senate Bill 1251's requirement that "a corporation . . . shall not exclude a shareholder from being physically present at a meeting of the shareholders in an effort to censor, silence, or otherwise curtail the shareholder from expressing dissent or otherwise exercising his or her freedom of expression" gives rise to a number of questions. Does this language expressly or implicitly mean that a shareholder has an unfettered right to express dissent or otherwise exercise "his or her freedom of expression" at a shareholders meeting? An abusive or disruptive shareholder could argue that he or she has the unfettered right to verbally express his or her positions on anything, whether related or unrelated to the shareholder business being discussed at the shareholders meeting.

Senate Bill 1251's "freedom of expression" language implies that a corporation does not have the right to control the orderly conduct of its meeting. This freedom of expression reference does not address any limits on the method or amount of expression, limits on repetitive presentations, or limits on relevancy of this freedom of expression to the issues being discussed by the shareholders. For example, what if the objective of expressing a point of view on an issue before the shareholders is to prevent lawful action from being taken by the shareholders holding the majority of the ownership? To eliminate the right of a corporation from conducting an orderly meeting is unfair to the other shareholders.

Typically, there are specified times at a shareholders meeting when shareholders may verbally comment on particular shareholder matters. To the extent shareholders exceed reasonable time limits, are repetitive of points made by other shareholders, or discuss topics other than what is currently being discussed by the shareholders, the Chairman of the meeting will handle those issues. Do not the Rules of the Senate and House of the General Assembly also have similar limitations for committee hearings to assure the orderly conduct of business?

By introducing a freedom of expression concept into Section 7.05, we are ignoring the reality that we would then have to incorporate and codify all of the controls that a corporation now uses to conduct an orderly meeting for the benefit of all of the shareholders there. We respectfully submit that references to "expressing dissent" and "freedom of expression" are not solving any discernible problem but are creating many more. The existing shareholder meeting law works well.

• **Senate Bill 1251's Monetary Penalty is Unwarranted.**

To impose a potential monetary penalty of up to 10% of the value of the shareholder's shares is unwarranted. To impose it on an officer or agent is not appropriate. While Section 7.75(d) of the Business Corporation Act pertaining to an improper refusal to permit a shareholder access to the books and records of a corporation imposes the same penalty of 10% of the value of the shares held by the shareholder, the shareholder's right to that access is specifically conditioned upon that being for a proper purpose. Various prior "bad acts" by the requesting shareholder are specifically enumerated as defenses to any action seeking such a penalty while the proposed amendment provides no protection for the corporation or its agents regardless of a shareholder's history of disruptive behavior or aimed at obstructing the normal operation of the business of the shareholder meeting.

Not only does Section 7.75(d) condition the right of a shareholder upon there being a proper purpose, but the representatives of the corporation have an opportunity to review the request and respond in an orderly fashion. In contrast, the proposed amendments under Section 7.05 deal with contemporaneous behavior without the opportunity for reflection if the corporate representative conducting a shareholder meeting seeks to terminate discussion upon the speaker reaching a time limitation uniformly imposed on all speakers or seeks to have a physically disruptive shareholder removed from the meeting in order to continue the orderly conduct of business. To impose personal liability on not only the corporation, but also officers, directors and agents in that circumstance, imposes an extraordinary burden.

In all, Senate Bill 1251, if passed, would provide a strong incentive to existing corporations to re-incorporate in other states and to encourage new corporations to do so as well because of such interference with the conduct of shareholder meetings. The result of the bill would be counterproductive and would give rise to unnecessary litigation involving the interpretation of the proposed language.

We would be happy to meet with the bill's sponsors or their representatives to understand the concerns that led to Senate Bill 1251. We believe that we could work collaboratively and devise a solution that would address those concerns yet not create even larger problems for the 300,000-plus Illinois closely-held or family corporations that exist today in Illinois. We look forward to doing so.

Thank you for your consideration.