

FIRST BANCSHARES INC /MS/  
Form 8-K  
June 17, 2013

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):  
June 17, 2013

THE FIRST BANCSHARES, INC.  
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(Exact name of registrant as specified in its charter)

MISSISSIPPI (State or other jurisdiction of incorporation)	33-94288 (Commission File Number)	64-0862173 (IRS employer Identification No.)
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6480 US Highway 98 West Hattiesburg, Mississippi (Address of principal executive offices)	39402 (Zip Code)
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Registrant's telephone number, including area code: (601) 268-8998

Not applicable  
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(Registrant's former address of principal executive offices)





## INFORMATION TO BE INCLUDED IN THE REPORT

### Item 8.01 Other Events.

The First Bancshares, Inc. (the “Company”) is filing this Current Report on Form 8-K solely for the purpose of updating the description of the Company’s Common Stock, \$1.00 par value, which description is incorporated by reference in certain of the Company’s registration statements filed with the Securities and Exchange Commission.

The material terms and provisions of the Company’s Common Stock are summarized as set forth below. The following summary is not intended to be relied upon as an exhaustive list or a detailed description of the provisions discussed and is qualified in its entirety by the Mississippi Business Corporation Act (“MBCA”) and by the Restated Articles of Incorporation and Bylaws of The Company.

#### Authorized Capital

The Company has 10,000,000 shares of authorized Common Stock, \$1.00 par value, and authority to issue up to 10,000,000 shares of Preferred Stock, \$1.00 par value, with such preferences, limitations, and relative rights as determined by the Board of Directors. As of June 17, 2013 (following mandatory conversion of the Series D Preferred Stock) there were 5,093,455 shares of Common Stock issued and outstanding.

#### Voting Rights; Cumulative Voting

Pursuant to the MBCA and the Company’s Bylaws, each outstanding share of the Company’s common stock is entitled to one vote on each matter submitted to a vote. Holders of the Company’s Common Stock do not have cumulative voting rights. Article 2.6 of the Company’s Bylaws provides that unless otherwise required by the MBCA or the Articles, all classes or series of the Company shares entitled to vote generally on a matter shall for that purpose be considered a single voting group.

#### Limitations on Directors’ and Officers’ Liability

Article 7 of the Company’s Articles of Incorporation provide that no director of the Company shall be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for any appropriation in violation of fiduciary duties of any business opportunity; for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, under Section 79-4-8.33 of the MBCA, or for any transaction from which the director derived an improper personal benefit. Article 8 of the Company’s Bylaws provide for indemnification of Directors and Officers as discussed below under the caption “Indemnification.”

#### Supermajority Voting Requirements; Business Combinations or Control Share Acquisition

The MBCA states that in the absence of a greater requirement in the articles of incorporation, a sale, lease, exchange, or other disposition of all, or substantially all, a corporation’s property requires approval by a majority of the shares entitled to vote on the transaction. The Company’s Articles of Incorporation do not provide for a greater than majority vote on such a transaction.

The Company’s Articles of Incorporation do include a Control Share Acquisition provision requiring any person who plans to acquire a control block of stock (generally defined as 10%) to obtain approval by the majority vote of disinterested shareholders or the affirmative vote of 75% of eligible members of the Board of Directors in order to vote the control shares. If a control share is made without first obtaining this approval, all stock beneficially owned by the acquiring person in excess of 10% will be considered “excess stock” and will not be entitled to vote.



Any person who proposes to make or has made a control share acquisition may deliver a statement to the Company describing the person's background and the control share acquisition and requesting a special meeting of shareholders of the Company to decide whether to grant voting rights to the shares acquired in the control share acquisition. The acquiring person must pay the expenses of this meeting. If no request is made, the voting rights to be accorded the shares acquired in the control share acquisition shall be presented to the next special or annual meeting of the shareholders. If the acquiring person does not deliver his or her statement to the Company, it may elect to repurchase the acquiring person's shares at fair market value. Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person's statement has been filed unless the shares are not accorded full voting rights by the shareholders.

#### Removal of Directors

Article 11 of the Company's Articles of Incorporation provide that no director of the Company may be removed except by the shareholders for cause; provided that directors elected by a particular voting group may be removed only by the shareholders in that voting group for cause. Article 3.3 of the Company's Bylaws provide further that removal action may only be taken at a shareholders' meeting for which notice of the removal action has been given. A removed director's successor may be elected at the same meeting to serve the unexpired term.

#### Board of Directors

Under Article 10 of the Company's Articles of Incorporation, the Board of Directors of the Company is divided into three classes — Class I, Class II, and Class III as nearly equal in numbers of directors as possible. Article 3.2 of the Bylaws establishes a minimum of 9 directors, and a maximum of 25 directors. At present there are a total of 11 directors divided as follows: 4 Class I directors, 3 Class II directors, and 4 Class III directors. The terms of the Class I directors will expire at the 2014 Annual Shareholders' Meeting. The terms of the Class II directors will expire at the 2015 Annual Shareholders' Meeting. The terms of the Class III directors will expire at the 2016 Annual Shareholders' Meeting.

#### Vacancies in the Board of Directors

Under the Company's Bylaws, any vacancy, may be filled for the unexpired term by the affirmative vote of a majority of the remaining directors, provided that, if the vacant office was held by a director elected by a particular voting group, only the shares of that voting group or the remaining directors elected by that voting group shall be entitled to fill the vacancy; and further provided that, if the vacant office was held by a director elected by a particular voting group, the other remaining directors or director (elected by another voting group or groups) may fill the vacancy during an interim period before the shareholders of the vacated director's voting group act to fill the vacancy.

#### Amendment of the Articles of Incorporation or Bylaws

Under the MBCA, the board of directors has the power to amend or repeal the bylaws of a Mississippi corporation such as the Company, unless such power is expressly reserved for the shareholders. Article 10 of the Company's Bylaws provide that the Bylaws may be amended, altered, or repealed by the Board of Directors, except with regard to the provisions establishing the number of directors and process for removal of directors, which may only be amended by the affirmative vote of holders of outstanding shares entitled to more than 80% of the votes entitled to be cast on the alteration, amendment, or repeal.

Amendments to the Articles of Incorporation that result in dissenters' rights require the affirmative vote of a majority of the outstanding shares entitled to vote on the amendment. Otherwise, the Articles of Incorporation may be amended by a majority vote of the shares present at a meeting where a quorum is present.

#### Special Meetings of Shareholders

Under the Company's Bylaws, special meetings of the shareholders, for any purpose or purposes, may be called by the Chairman of the Board, the Chief Executive Officer, or the Board of Directors, or within 75 days of a written request of shareholders holding in the aggregate 10% or more of the total voting power entitled to vote on an issue. Such a request must state the purpose or purposes of the proposed special meeting.

#### Shareholder Proposals and Nominations

The Company's Bylaws provide procedures that must be followed to properly nominate candidates for election as directors. At least 60 days prior to the Annual Meeting, or 10 days after notice of the Annual Meeting is provided to shareholders, notice must be given to the Secretary of the Company if a shareholder intends to nominate an individual for election to the Board of Directors or propose any shareholder action. These Bylaw provisions also require information to be supplied about both the shareholder making such nomination or proposal and the person nominated.

#### Indemnification

Section 79-4-8.50 through 79-4-8.59 of the MBCA provide the Company with broad powers and authority to indemnify its directors and officers and to purchase and maintain insurance for such purposes and mandate the indemnification of the Company's directors under certain circumstances. The Company's Articles of Incorporation also provide it with the power and authority, to the fullest extent legally permissible under the MBCA, to indemnify its directors and officers, persons serving at the request of the Company or for its benefit as directors or officers of another corporation, and persons serving as the Company's representatives or agents in certain circumstances. Pursuant to such authority and the provisions of the Company's Articles of Incorporation, the Company intends to purchase insurance against certain liabilities that may be incurred by it and its officers and directors.

The Articles of Incorporation of the Company contain a provision which, subject to certain exceptions described below, eliminates the liability of a director or officer to it or its shareholders for monetary damages for any breach of duty as a director or officer. This provision does not eliminate such liability to the extent the director or officer engaged in willful misconduct or a knowing violation of criminal law or of any federal or state securities law, including, without limitation, laws proscribing insider trading or manipulation of the market for any security.

Under its Bylaws, the Company must indemnify any person who becomes subject to a lawsuit or proceeding by reason of service as a director of the Company or The First or any other corporation which the person served as a director at the request of the Company. Except as noted in the next paragraph, directors are entitled to be indemnified against judgments, penalties, fines, settlements, and reasonable expenses actually incurred by the director in connection with the proceeding. Directors are also entitled to have the Company advance any such expenses prior to final disposition of the proceeding, upon delivery of (1) a written affirmation by the director of his good faith belief that the standard of conduct necessary for indemnification has been met, and (2) a written undertaking to repay the amounts advanced if it is ultimately determined that the standard of conduct has not been met.

Under the Bylaws, indemnification will be disallowed if it is established that the director appropriated, in violation of his duties, any business opportunity of the Company, engaged in acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, approved dividends or other distributions in violation of the MBCA, or engaged in any transaction in which the director derived an improper personal benefit. In addition to the Bylaws of the Company, the MBCA requires that a corporation indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he is or was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding. The MBCA also provides that, upon application of a director, a court may order indemnification if it determines that the director is entitled to such indemnification under the applicable standard of the MBCA.

The Board of Directors of the Company also has the authority to extend to officers, employees, and agents the same indemnification rights held by directors, subject to all of the accompanying conditions and obligations. The Board of Directors has extended or intends to extend indemnification rights to all of its executive officers.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Company pursuant to the Articles of Incorporation or Bylaws, or otherwise, the Company has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: June 17, 2013

THE FIRST BANCSHARES, INC.

By: /s/ Donna T. Lowery  
Name: Donna T. Lowery  
Title: Chief Financial Officer