

Florida State University College of Law

## Scholarship Repository

---

Staff Analyses & Legislative Documents

Florida Legislative Documents

---

1997

### Session Law 97-230

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Law Commons

---

#### Recommended Citation

.

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analyses & Legislative Documents by an authorized administrator of Scholarship Repository. For more information, please contact [efarrell@law.fsu.edu](mailto:efarrell@law.fsu.edu).

By Senator Campbell

33-689-97

A bill to be entitled

An act relating to corporations; amending s. 48.101, F.S.; providing for service on certain dissolved corporations; amending s. 607.032, F.S.; providing a condition for an agreement among shareholders of certain corporations; amending s. 607.1002, F.S.; providing a condition for amending articles of incorporation; providing a definition; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 48.101, Florida Statutes, is amended to read:

48.101 Service on dissolved corporations.--Process against the directors of any corporation ~~that was which is~~ dissolved before July 1, 1990, as trustees of the dissolved corporation must ~~shall~~ be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. Process against any other dissolved corporation must be served pursuant to s. 48.081.

Section 2. Subsection (1) of section 607.0732, Florida Statutes, is amended to read:

607.0732 Shareholder agreements.--

(1) An agreement among the shareholders of a corporation with 100 or fewer shareholders at the time of the agreement, that complies with this section, is effective among the shareholders and the corporation, even though it is

1 inconsistent with one or more other provisions of this  
2 chapter, if it:

3 (a) Eliminates the board of directors or restricts the  
4 discretion or powers of the board of directors;

5 (b) Governs the authorization or making of  
6 distributions whether or not in proportion to ownership of  
7 shares, subject to the limitations in s. 607.06401;

8 (c) Establishes who shall be directors or officers of  
9 the corporation, or their terms of office or manner of  
10 selection or removal;

11 (d) Governs, in general or in regard to specific  
12 matters, the exercise or division of voting power by the  
13 shareholders and directors, including use of weighted voting  
14 rights or director proxies;

15 (e) Establishes the terms and conditions of any  
16 agreement for the transfer or use of property or the provision  
17 of services between the corporation and any shareholder,  
18 director, officer, or employee of the corporation;

19 (f) Transfers to any shareholder or other person any  
20 authority to exercise the corporate powers or to manage the  
21 business and affairs of the corporation, including the  
22 resolution of any issue about which there exists a deadlock  
23 among directors or shareholders; or

24 (g) Requires dissolution of the corporation at the  
25 request of one or more of the shareholders or upon the  
26 occurrence of a specified event or contingency; ~~or~~

27 (h) otherwise governs the exercise of the corporate  
28 powers or the management of the business and affairs of the  
29 corporation or the relationship among the shareholders, the  
30 directors and the corporation, or among any of them, and is  
31 not contrary to public policy. For purposes of this

1 subsection, agreements contrary to public policy include, but  
2 are not limited to, agreements that reduce the duties of care  
3 and loyalty to the corporation as required by ss. 607.0830 and  
4 607.0832, exculpate directors from liability that may be  
5 imposed under s. 607.0831, adversely affect shareholders'  
6 rights to bring derivative actions under s. 607.07401, or  
7 abrogate dissenters' rights under ss. 607.1301-607.1320.

8 Section 3. Section 607.1002, Florida Statutes, is  
9 amended to read:

10 607.1002 Amendment by board of directors.--Unless the  
11 articles of incorporation provide otherwise, a corporation's  
12 board of directors may adopt one or more amendments to the  
13 corporation's articles of incorporation without shareholder  
14 action:

15 (1) To extend the duration of the corporation if it  
16 was incorporated at a time when limited duration was required  
17 by law;

18 (2) To delete the names and addresses of the initial  
19 directors;

20 (3) To delete the name and address of the initial  
21 registered agent or registered office, if a statement of  
22 change is on file with the Department of State;

23 (4) To delete any other information contained in the  
24 articles of incorporation that is solely of historical  
25 interest;

26 (5) To delete the authorization for a class or series  
27 of shares authorized pursuant to s. 607.0602, if no shares of  
28 such class or series are issued;

29 (6) To change the corporate name by substituting the  
30 word "corporation," "incorporated," or "company," or the  
31 abbreviation "corp.," "Inc.," or "Co.," for a similar word or



1 abbreviation in the name, or by adding, deleting, or changing  
2 a geographical attribution for the name;

3       (7) To change the par value for a class or series of  
4 shares; or

5       (8) To provide that if the corporation acquires its  
6 own shares, those shares belong to the corporation and  
7 constitute treasury shares until disposed of or canceled by  
8 the corporation; or

9       ~~(9)(8)~~ To make any other change expressly permitted by  
10 this act to be made without shareholder action.

11       Section 4. Present subsections (27) and (28) of  
12 section 607.01401, Florida Statutes, are redesignated as  
13 subsections (28) and (29), respectively, and a new subsection  
14 (27) is added to that section to read:

15       607.01401 Definitions.--As used in this act, unless  
16 the context otherwise requires, the term:

17       (27) "Treasury shares" means shares of a corporation  
18 that belong to the issuing corporation that are authorized and  
19 issued shares that are not outstanding, are not canceled, and  
20 have not been restored to the status of authorized but  
21 unissued shares.

22       Section 5. This act shall take effect upon becoming a  
23 law.

\*\*\*\*\*

SENATE SUMMARY

Provides for service of process on directors of corporations that were dissolved prior to July 1, 1990. Provides that an agreement among the shareholders of a corporation with 100 or fewer shareholders is effective among the shareholders even though it is inconsistent with ch. 607, F.S., if it otherwise governs the exercise of the corporate powers or the management of the business of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy. Provides that unless the articles of incorporation provide otherwise, a board of directors may amend the corporation's articles without shareholder action to provide that if the corporation acquires its own shares, shares so acquired belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation. Defines the term "treasury shares."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

By the Committee on Commerce and Economic Opportunities and  
Senator Myers

312-1712-97

A bill to be entitled

An act relating to corporations; amending s. 48.101, F.S.; providing for service on certain dissolved corporations; amending s. 607.032, F.S.; providing a condition for an agreement among shareholders of certain corporations; amending s. 607.1002, F.S.; providing a condition for amending articles of incorporation; defining the term "treasury shares"; amending s. 617.0808, F.S.; deleting provisions providing for the removal of directors of certain charitable organizations; amending s. 617.2103, F.S.; providing that such organizations are exempt from the provisions of s. 617.0808, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 48.101, Florida Statutes, is amended to read:

48.101 Service on dissolved corporations.--Process against the directors of any corporation ~~that was which is~~ dissolved before July 1, 1990, as trustees of the dissolved corporation must shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. Process against any other dissolved corporation must be served pursuant to s. 48.081.

Section 2. Subsection (1) of section 607.0732, Florida Statutes, is amended to read:

607.0732 Shareholder agreements.--

1 (1) An agreement among the shareholders of a  
2 corporation with 100 or fewer shareholders at the time of the  
3 agreement, that complies with this section, is effective among  
4 the shareholders and the corporation, even though it is  
5 inconsistent with one or more other provisions of this  
6 chapter, if it:

7 (a) Eliminates the board of directors or restricts the  
8 discretion or powers of the board of directors;

9 (b) Governs the authorization or making of  
10 distributions whether or not in proportion to ownership of  
11 shares, subject to the limitations in s. 607.06401;

12 (c) Establishes who shall be directors or officers of  
13 the corporation, or their terms of office or manner of  
14 selection or removal;

15 (d) Governs, in general or in regard to specific  
16 matters, the exercise or division of voting power by the  
17 shareholders and directors, including use of weighted voting  
18 rights or director proxies;

19 (e) Establishes the terms and conditions of any  
20 agreement for the transfer or use of property or the provision  
21 of services between the corporation and any shareholder,  
22 director, officer, or employee of the corporation;

23 (f) Transfers to any shareholder or other person any  
24 authority to exercise the corporate powers or to manage the  
25 business and affairs of the corporation, including the  
26 resolution of any issue about which there exists a deadlock  
27 among directors or shareholders; or

28 (g) Requires dissolution of the corporation at the  
29 request of one or more of the shareholders or upon the  
30 occurrence of a specified event or contingency; ~~or~~

31

1           (h) Otherwise governs the exercise of the corporate  
2 powers or the management of the business and affairs of the  
3 corporation or the relationship among the shareholders, the  
4 directors and the corporation, or among any of them, and is  
5 not contrary to public policy. For purposes of this  
6 subsection, agreements contrary to public policy include, but  
7 are not limited to, agreements that reduce the duties of care  
8 and loyalty to the corporation as required by ss. 607.0830 and  
9 607.0832, exculpate directors from liability that may be  
10 imposed under s. 607.0831, adversely affect shareholders'  
11 rights to bring derivative actions under s. 607.07401, or  
12 abrogate dissenters' rights under ss. 607.1301-607.1320.

13           Section 3. Section 607.1002, Florida Statutes, is  
14 amended to read:

15           607.1002 Amendment by board of directors.--Unless the  
16 articles of incorporation provide otherwise, a corporation's  
17 board of directors may adopt one or more amendments to the  
18 corporation's articles of incorporation without shareholder  
19 action:

20           (1) To extend the duration of the corporation if it  
21 was incorporated at a time when limited duration was required  
22 by law;

23           (2) To delete the names and addresses of the initial  
24 directors;

25           (3) To delete the name and address of the initial  
26 registered agent or registered office, if a statement of  
27 change is on file with the Department of State;

28           (4) To delete any other information contained in the  
29 articles of incorporation that is solely of historical  
30 interest;

31

1 (5) To delete the authorization for a class or series  
2 of shares authorized pursuant to s. 607.0602, if no shares of  
3 such class or series are issued;

4 (6) To change the corporate name by substituting the  
5 word "corporation," "incorporated," or "company," or the  
6 abbreviation "corp.," "Inc.," or "Co.," for a similar word or  
7 abbreviation in the name, or by adding, deleting, or changing  
8 a geographical attribution for the name;

9 (7) To change the par value for a class or series of  
10 shares; or

11 (8) To provide that if the corporation acquires its  
12 own shares, those shares belong to the corporation and  
13 constitute treasury shares until disposed of or canceled by  
14 the corporation; or

15 ~~(9)(8)~~ To make any other change expressly permitted by  
16 this act to be made without shareholder action.

17 Section 4. Present subsections (27) and (28) of  
18 section 607.01401, Florida Statutes, are redesignated as  
19 subsections (28) and (29), respectively, and a new subsection  
20 (27) is added to that section to read:

21 607.01401 Definitions.--As used in this act, unless  
22 the context otherwise requires, the term:

23 (27) "Treasury shares" means shares of a corporation  
24 that belong to the issuing corporation which are authorized  
25 and issued shares that are not outstanding, are not canceled,  
26 and have not been restored to the status of authorized but  
27 unissued shares.

28 Section 5. Section 617.0808, Florida Statutes, is  
29 amended to read:

30 617.0808 Removal of directors.--A director may be  
31 removed from office pursuant to procedures provided in the

1 articles of incorporation or the bylaws, which shall provide  
2 the following, and if they do not do so, shall be deemed to  
3 include the following:

4           (1) ~~Except as provided in subsection (2),~~ Any member  
5 of the board of directors may be removed from office with or  
6 without cause by the vote or agreement in writing by a  
7 majority of all votes of the membership.

8           ~~(2)--Any member of the board of directors of a  
9 charitable organization as defined in s. 496.404, may be  
10 removed from office without cause only following the  
11 recommendation of a majority of the board of directors  
12 followed by the vote or agreement in writing by a majority of  
13 all votes of the membership.~~

14           (2)(3) The notice of a meeting of the members to  
15 recall a member or members of the board of directors shall  
16 state the specific directors sought to be removed.

17           (3)(4) A proposed removal of a director at a meeting  
18 shall require a separate vote for each board member sought to  
19 be removed. Where removal is sought by written agreement, a  
20 separate agreement is required for each board member to be  
21 removed.

22           (4)(5) If removal is effected at a meeting, any  
23 vacancies created thereby shall be filled by the members at  
24 the same meeting.

25           (5)(6) Any director who is removed from the board  
26 shall not be eligible to stand for reelection until the next  
27 annual meeting of the members.

28           (6)(7) Any director removed from office shall turn  
29 over to the board of directors within 72 hours any and all  
30 records of the corporation in his possession.

31

1           ~~(7)(b)~~ If a director who is removed shall not  
2 relinquish his office or turn over records as required under  
3 this section, the circuit court in the county where the  
4 corporation's principal office is located may summarily order  
5 the director to relinquish his office and turn over corporate  
6 records upon application of any member.

7           Section 6. Subsection (1) of section 617.2103, Florida  
8 Statutes, 1996 Supplement, is amended to read:

9           617.2103 Exemptions for certain corporations.--

10           (1) A No corporation described in s. 501(c) of the  
11 Internal Revenue Code of 1986, as amended, is not shall be  
12 subject to the provisions of s. 617.0808, s. 617.1601, s.  
13 617.1602, s. 617.1603, s. 617.1604, s. 617.1605, or s.  
14 617.2102, unless the articles of incorporation or bylaws  
15 provide otherwise. ~~No corporation described in s. 501(c) of~~  
16 ~~the Internal Revenue Code of 1986, as amended, except a~~  
17 ~~charitable organization as defined in s. 496.404, is subject~~  
18 ~~to the provisions of s. 617.0808.~~ For purposes of this  
19 subsection, if a current determination letter issued under the  
20 authority of the internal revenue laws of the United States of  
21 America determines that a particular corporation is or is not  
22 exempt from federal income taxation under s. 501(c) of the  
23 Internal Revenue Code of 1986, as amended, that shall be  
24 conclusive on the question whether the corporation is or is  
25 not described in s. 501(c) of the Internal Revenue Code of  
26 1986, as amended.

27           Section 7. This act shall take effect upon becoming a  
28 law.



1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 1920

4 Provides that service on dissolved corporation applies only to  
5 those corporations which were dissolved before July 1, 1990.  
6 Any other dissolved corporation must be served pursuant to s.  
7 48.081, F.S.

8 Authorization is provided for an agreement among the  
9 shareholders of a corporation with 100 or fewer shareholders  
10 at the time of the agreement, that complies with law, is  
11 effective among the shareholders and the corporation, even  
12 though it is inconsistent with one or more other provisions of  
13 ch. 607, F.S., if it otherwise governs the exercise of the  
14 corporate powers of the management of the business and affairs  
15 of the corporation or the relationship among the shareholders,  
16 the directors and the corporation, or among any of them, and  
17 is not contrary to public policy.

18 Authorization is provided to a corporation's board of  
19 directors, unless otherwise stated in the articles of  
20 incorporation, to adopt an amendment to the articles of  
21 incorporation, without shareholder action, which would provide  
22 that if the corporation acquires its own shares, those shares  
23 belong to the corporation and constitute treasury shares until  
24 disposed of or canceled by the corporation.  
25  
26  
27  
28  
29  
30  
31

By Senator Myers

27-759-97

A bill to be entitled

An act relating to corporations not for profit; amending s. 617.0808, F.S.; deleting provisions providing for the removal of directors of certain charitable organizations; amending s. 617.2103, F.S.; providing that such organizations are exempt from the provisions of s. 617.0808, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 617.0808, Florida Statutes, is amended to read:

617.0808 Removal of directors.--A director may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws, which shall provide the following, and if they do not do so, shall be deemed to include the following:

(1) ~~Except as provided in subsection (2),~~ Any member of the board of directors may be removed from office with or without cause by the vote or agreement in writing by a majority of all votes of the membership.

~~(2)--Any member of the board of directors of a charitable organization as defined in s. 496.404, may be removed from office without cause only following the recommendation of a majority of the board of directors followed by the vote or agreement in writing by a majority of all votes of the membership.~~

(2)(3) The notice of a meeting of the members to recall a member or members of the board of directors shall state the specific directors sought to be removed.

1           (3)(4) A proposed removal of a director at a meeting  
2 shall require a separate vote for each board member sought to  
3 be removed. Where removal is sought by written agreement, a  
4 separate agreement is required for each board member to be  
5 removed.

6           (4)(5) If removal is effected at a meeting, any  
7 vacancies created thereby shall be filled by the members at  
8 the same meeting.

9           (5)(6) Any director who is removed from the board  
10 shall not be eligible to stand for reelection until the next  
11 annual meeting of the members.

12           (6)(7) Any director removed from office shall turn  
13 over to the board of directors within 72 hours any and all  
14 records of the corporation in his possession.

15           (7)(8) If a director who is removed shall not  
16 relinquish his office or turn over records as required under  
17 this section, the circuit court in the county where the  
18 corporation's principal office is located may summarily order  
19 the director to relinquish his office and turn over corporate  
20 records upon application of any member.

21           Section 2. Subsection (1) of section 617.2103, Florida  
22 Statutes, 1996 Supplement, is amended to read:

23           617.2103 Exemptions for certain corporations.--

24           (1) A No corporation described in s. 501(c) of the  
25 Internal Revenue Code of 1986, as amended, is not shall be  
26 subject to the provisions of s. 617.0808, s. 617.1601, s.  
27 617.1602, s. 617.1603, s. 617.1604, s. 617.1605, or s.  
28 617.2102, unless the articles of incorporation or bylaws  
29 provide otherwise. ~~No corporation described in s. 501(c) of~~  
30 ~~the Internal Revenue Code of 1986, as amended, except a~~  
31 ~~charitable organization as defined in s. 496.404, is subject~~

~~to the provisions of s. 647.0000.~~ For purposes of this subsection, if a current determination letter issued under the authority of the internal revenue laws of the United States of America determines that a particular corporation is or is not exempt from federal income taxation under s. 501(c) of the Internal Revenue Code of 1986, as amended, that shall be conclusive on the question whether the corporation is or is not described in s. 501(c) of the Internal Revenue Code of 1986, as amended.

Section 3. This act shall take effect upon becoming a law.

\*\*\*\*\*

SENATE SUMMARY

Exempts certain charitable organizations from provisions relating to the removal of members of the board of directors of a corporation.

By Senator Grant

13-1308-97

## A bill to be entitled

1 An act relating to mergers of business entities  
2 or corporations; amending s. 48.101, F.S.;  
3 specifying service of process on certain  
4 dissolved corporations; amending s. 607.0732,  
5 F.S.; providing an additional criterion of  
6 shareholder agreements; providing limitations;  
7 creating ss. 607.1108, 607.1109, 607.11101,  
8 F.S.; providing for mergers of domestic  
9 corporations and other business entities under  
10 certain circumstances; requiring a plan of  
11 merger; providing criteria; providing for  
12 articles of merger; providing for effect of  
13 merger; creating ss. 608.438, 608.4381,  
14 608.4382, 608.4383, 608.4384, F.S.; providing  
15 for mergers of limited liability companies  
16 under certain circumstances; requiring a plan  
17 of merger; providing criteria; providing for  
18 action on a plan of merger; providing  
19 procedures; providing for articles of merger;  
20 providing for effect of merger; providing for  
21 rights of dissenting members; providing  
22 procedures; creating ss. 620.201, 620.202,  
23 620.203, 620.204, 620.205, F.S.; providing for  
24 mergers of domestic limited partnerships under  
25 certain circumstances; requiring a plan of  
26 merger; providing criteria; providing for  
27 action on a plan of merger; providing  
28 procedures; providing for articles of merger;  
29 providing for effect of merger; providing for  
30  
31

13-1308-97

1 rights of dissenting partners; providing  
2 procedures; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1. Section 48.101, Florida Statutes, is  
7 amended to read:

8 48.101 Service on dissolved corporations.--Process  
9 against the directors of any corporation that was which-is  
10 dissolved before July 1, 1990, as trustees of the dissolved  
11 corporation shall be served on one or more of the directors of  
12 the dissolved corporation as trustees thereof and binds all of  
13 the directors of the dissolved corporation as trustees  
14 thereof. Process against any other dissolved corporation shall  
15 be served in accordance with s. 48.081.

16 Section 2. Subsection (1) of section 607.0732, Florida  
17 Statutes, is amended to read:

18 607.0732 Shareholder agreements.--

19 (1) An agreement among the shareholders of a  
20 corporation with 100 or fewer shareholders at the time of the  
21 agreement, that complies with this section, is effective among  
22 the shareholders and the corporation, even though it is  
23 inconsistent with one or more other provisions of this  
24 chapter, if it:

25 (a) Eliminates the board of directors or restricts the  
26 discretion or powers of the board of directors;

27 (b) Governs the authorization or making of  
28 distributions whether or not in proportion to ownership of  
29 shares, subject to the limitations in s. 607.06401;

30  
31

1 (c) Establishes who shall be directors or officers of  
2 the corporation, or their terms of office or manner of  
3 selection or removal;

4 (d) Governs, in general or in regard to specific  
5 matters, the exercise or division of voting power by the  
6 shareholders and directors, including use of weighted voting  
7 rights or director proxies;

8 (e) Establishes the terms and conditions of any  
9 agreement for the transfer or use of property or the provision  
10 of services between the corporation and any shareholder,  
11 director, officer, or employee of the corporation;

12 (f) Transfers to any shareholder or other person any  
13 authority to exercise the corporate powers or to manage the  
14 business and affairs of the corporation, including the  
15 resolution of any issue about which there exists a deadlock  
16 among directors or shareholders; or

17 (g) Requires dissolution of the corporation at the  
18 request of one or more of the shareholders or upon the  
19 occurrence of a specified event or contingency; or

20 (h) Otherwise governs the exercise of the powers, or  
21 the management of the business and affairs, of the corporation  
22 or the relationship among the shareholders, the directors, or  
23 the corporation and is not contrary to public policy. Any  
24 agreement which modifies the duties of care or loyalty to the  
25 corporation, exculpates the directors from liability more  
26 broadly than permitted by ss. 607.1108-607.11101, ss.  
27 608.438-608.4383, or ss. 620.201-620.205, adversely affects  
28 shareholders' rights to bring derivative actions, abrogates  
29 dissenters' rights provided in s. 608.4384 or s. 620.205, or  
30 abrogates provisions of s. 607.06401 relating to shareholder

1 distributions are deemed contrary to public policy for  
2 purposes of this paragraph.

3 Section 3. Sections 607.1108, 607.1109, and 607.11101,  
4 Florida Statutes, are created to read:

5 607.1108 Merger of domestic corporation and other  
6 business entity.--

7 (1) As used in this section and ss. 607.1109 and  
8 607.11101, "other business entity" means a limited liability  
9 company, a foreign corporation, a business trust or  
10 association, a real estate investment trust, a common law  
11 trust, an unincorporated business, a general partnership, a  
12 limited partnership, or any other entity that is formed  
13 pursuant to the requirements of applicable law.

14 (2) Pursuant to a plan of merger complying and  
15 approved in accordance with this section, one or more domestic  
16 corporations may merge with or into one or more other business  
17 entities formed, organized, or incorporated under the laws of  
18 this state or any other state, the United States, foreign  
19 country, or other foreign jurisdiction, if:

20 (a) Each domestic corporation which is a party to the  
21 merger complies with the applicable provisions of this  
22 chapter.

23 (b) Each domestic partnership that is a party to the  
24 merger complies with the applicable provisions of chapter 620.

25 (c) Each domestic limited liability company that is a  
26 party to the merger complies with the applicable provisions of  
27 chapter 606.

28 (d) The merger is permitted by the laws of the state,  
29 country, or jurisdiction under which each other business  
30 entity that is a party to the merger is formed, organized, or  
31



1 incorporated and each such other business entity complies with  
2 such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic corporation and the name  
5 and jurisdiction of formation, organization, or incorporation  
6 of each other business entity planning to merge, and the name  
7 of the surviving or resulting domestic corporation or other  
8 business entity into which each other domestic corporation or  
9 other business entity plans to merge, which is hereinafter and  
10 in ss. 607.1109 and 607.11101 designated as the surviving  
11 entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the shares of  
14 each domestic corporation that is a party to the merger and  
15 the partnership interests, interests, shares, obligations or  
16 other securities of each other business entity that is a party  
17 to the merger into partnership interests, interests, shares,  
18 obligations or other securities of the surviving entity or any  
19 other domestic corporation or other business entity or, in  
20 whole or in part, into cash or other property, and the manner  
21 and basis of converting rights to acquire the shares of each  
22 domestic corporation that is a party to the merger and rights  
23 to acquire partnership interests, interests, shares,  
24 obligations or other securities of each other business entity  
25 that is a party to the merger into rights to acquire  
26 partnership interests, interests, shares, obligations or other  
27 securities of the surviving entity or any other domestic  
28 corporation or other business entity or, in whole or in part,  
29 into cash or other property.

1           (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4           (e) If a limited liability company is to be the  
5 surviving entity and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers.

8           (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to the merger is formed, organized, or  
11 incorporated.

12           (4) The plan of merger may set forth:

13           (a) If a domestic corporation is to be the surviving  
14 entity, any amendments to, or a restatement of, the articles  
15 of incorporation of the surviving entity, and such amendments  
16 or restatement shall be effective at the effective date of the  
17 merger.

18           (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20           (c) Any other provisions relating to the merger.

21           (5) The plan of merger required by subsection (3)  
22 shall be adopted and approved by each domestic corporation  
23 that is a party to the merger in the same manner as is  
24 provided in s. 607.1103. Notwithstanding the foregoing, if the  
25 surviving entity is a partnership, no shareholder of a  
26 domestic corporation that is a party to the merger shall, as a  
27 result of the merger, become a general partner of the  
28 surviving entity, unless such shareholder specifically  
29 consents in writing to becoming a general partner of the  
30 surviving entity, and unless such written consent is obtained  
31 from each such shareholder who, as a result of the merger,

13-1308-97

1 would become a general partner of the surviving entity, such  
2 merger shall not become effective under s. 607.11101. Any  
3 shareholder providing such consent in writing shall be deemed  
4 to have voted in favor of the plan of merger for purposes of  
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,  
7 insofar as they are applicable, apply to mergers of one or  
8 more domestic corporations with or into one or more other  
9 business entities.

10 (7) Notwithstanding any provision of this section or  
11 ss. 607.1109 and 607.11101, any merger consisting solely of  
12 the merger of one or more domestic corporations with or into  
13 one or more foreign corporations shall be consummated solely  
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger.--

16 (1) After a plan of merger is approved by each  
17 domestic corporation and other business entity that is a party  
18 to the merger, the surviving entity shall deliver to the  
19 Department of State for filing articles of merger, which shall  
20 be executed by each domestic corporation as required by s.  
21 607.0120 and by each other business entity as required by  
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved  
25 by each domestic corporation that is a party to the merger in  
26 accordance with the applicable provisions of this chapter,  
27 and, if applicable, a statement that the written consent of  
28 each shareholder of such domestic corporation who, as a result  
29 of the merger, becomes a general partner of the surviving  
30 entity has been obtained pursuant to s. 607.1108(5).

31

1 (c) A statement that the plan of merger was approved  
2 by each domestic partnership that is a party to the merger in  
3 accordance with the applicable provisions of chapter 620.

4 (d) A statement that the plan of merger was approved  
5 by each domestic limited liability company that is a party to  
6 the merger in accordance with the applicable provisions of  
7 chapter 608.

8 (e) A statement that the plan of merger was approved  
9 by each other business entity that is a party to the merger,  
10 other than corporations, limited liability companies, and  
11 partnerships formed, organized, or incorporated under the laws  
12 of this state, in accordance with the applicable laws of the  
13 state, country, or jurisdiction under which such other  
14 business entity is formed, organized, or incorporated.

15 (f) The effective date of the merger, which may be on  
16 or after the date of filing the articles of merger, provided,  
17 if the articles of merger do not provide for an effective date  
18 of the merger, the effective date shall be the date on which  
19 the articles of merger are filed.

20 (g) If the surviving entity is another business entity  
21 formed, organized, or incorporated under the laws of any  
22 state, country, or jurisdiction other than this state:

23 1. The address, including street and number, if any,  
24 of its principal office under the laws of the state, country,  
25 or jurisdiction in which it was formed, organized, or  
26 incorporated.

27 2. A statement that the surviving entity is deemed to  
28 have appointed the Secretary of State as its agent for service  
29 of process in a proceeding to enforce any obligation or the  
30 rights of dissenting shareholders of each domestic corporation  
31 that is a party to the merger.

1 3. A statement that the surviving entity has agreed to  
2 promptly pay to the dissenting shareholders of each domestic  
3 corporation that is a party to the merger the amount, if any,  
4 to which they are entitled under s. 607.1302.

5 (2) A copy of the articles of merger, certified by the  
6 Department of State, may be filed in the office of the  
7 official who is the recording officer of each county in this  
8 state in which real property of a party to the merger other  
9 than the surviving entity is situated.

10 607.11101 Effect of merger of domestic corporation and  
11 other business entity.--

12 (1) When a merger becomes effective:

13 (a) Every domestic corporation and other business  
14 entity that is a party to the merger merges into the surviving  
15 entity and the separate existence of every domestic  
16 corporation and other business entity that is a party to the  
17 merger except the surviving entity ceases.

18 (b) The title to all real estate and other property,  
19 or any interest therein, owned by each domestic corporation  
20 and other business entity that is a party to the merger is  
21 vested in the surviving entity without reversion or impairment  
22 and without any requirement to record any deed or other  
23 conveyance.

24 (c) The surviving entity shall thereafter be  
25 responsible and liable for all the liabilities and obligations  
26 of each domestic corporation and other business entity that is  
27 a party to the merger, including liabilities arising out of  
28 the rights of dissenters with respect to such merger under  
29 applicable law.

30 (d) Any claim existing or action or proceeding pending  
31 by or against any domestic corporation or other business

1 entity that is a party to the merger may be continued as if  
2 the merger did not occur or the surviving entity may be  
3 substituted in the proceeding for the domestic corporation or  
4 other business entity which ceased existence.

5 (e) Neither the rights of creditors nor any liens upon  
6 the property of any domestic corporation or other business  
7 entity shall be impaired by such merger.

8 (f) If a domestic corporation is the surviving entity,  
9 the articles of incorporation of such corporation in effect  
10 immediately prior to the time the merger becomes effective  
11 shall be the articles of incorporation of the surviving  
12 entity, except as amended or restated to the extent provided  
13 in the plan of merger.

14 (g) The shares, partnership interests, interests,  
15 obligations, or other securities, and the rights to acquire  
16 shares, partnership interests, interests, obligations, or  
17 other securities, of each domestic corporation and other  
18 business entity that is a party to the merger shall be  
19 converted into shares, partnership interests, interests,  
20 obligations, or other securities, or rights to such  
21 securities, of the surviving entity or any other domestic  
22 corporation or other business entity or, in whole or in part,  
23 into cash or other property as provided in the plan of merger,  
24 and the former holders of shares, partnership interests,  
25 interests, obligations, or other securities, or rights to such  
26 securities, shall be entitled only to the rights provided in  
27 the plan of merger and to their rights as dissenters, if any,  
28 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other  
29 applicable law.

30  
31

1 Section 4. Sections 608.438, 608.4381, 608.4382,  
2 608.4383, and 608.43884, Florida Statutes, are created to  
3 read:

4 608.438 Merger of limited liability company.--

5 (1) As used in this section and ss. 608.4381-608.4384,  
6 "other business entity" includes a corporation, a business  
7 trust or association, a real estate investment trust, a common  
8 law trust, an unincorporated business, a general partnership,  
9 a limited partnership, a limited liability company other than  
10 a limited liability company organized under the laws of this  
11 chapter, or any other entity that is formed pursuant to the  
12 requirements of applicable law.

13 (2) Unless otherwise provided in the articles of  
14 organization or the regulations of a limited liability  
15 company, pursuant to a plan of merger, a limited liability  
16 company may merge with or into one or more limited liability  
17 companies or other business entities formed, organized, or  
18 incorporated under the laws of this state or any other state,  
19 the United States, foreign country, or other foreign  
20 jurisdiction, if:

21 (a) Each limited liability company that is a party to  
22 the merger complies with the applicable provisions of this  
23 chapter and complies with the terms of its articles of  
24 organization and regulations.

25 (b) Each domestic partnership that is a party to the  
26 merger complies with the applicable provisions of chapter 620.

27 (c) Each domestic corporation that is a party to the  
28 merger complies with the applicable provisions of chapter 607.

29 (d) The merger is permitted by the laws of the state,  
30 country, or jurisdiction under which each other business  
31 entity that is a party to the merger is formed, organized, or

1 incorporated, and each such other business entity complies  
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each limited liability company and the  
5 name and jurisdiction of formation, organization, or  
6 incorporation of each other business entity planning to merge,  
7 and the name of the surviving or resulting limited liability  
8 company or other business entity into which each other limited  
9 liability company or other business entity plans to merge,  
10 which is, in this section and in ss. 608.4381-608.4384,  
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the interests  
14 of the members of each limited liability company that is a  
15 party to the merger and the interests, partnership interests,  
16 shares, obligations, or other securities of each other  
17 business entity that is a party to the merger into interests,  
18 partnership interests, shares, obligations, or other  
19 securities of the surviving entity or any other limited  
20 liability company or other business entity or, in whole or in  
21 part, into cash or other property, and the manner and basis of  
22 converting rights to acquire interests of each limited  
23 liability company that is a party to the merger and rights to  
24 acquire interests, partnership interests, shares, obligations,  
25 or other securities of each other business entity that is a  
26 party to the merger into rights to acquire interests,  
27 partnership interests, shares, obligations, or other  
28 securities of the surviving entity or any other limited  
29 liability company or other business entity or, in whole or in  
30 part, into cash or other property.

31



1 (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4 (e) If a limited liability company is to be the  
5 surviving entity, and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers.

8 (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to merger is formed, organized, or  
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a limited liability company is to be the  
14 surviving entity, any amendments to, or a restatement of, the  
15 articles of organization or the regulations of the surviving  
16 entity, and such amendments or restatement shall be effective  
17 at the effective date of the merger.

18 (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20 (c) A provision authorizing one or more of the limited  
21 liability companies that are parties to the merger to abandon  
22 the proposed merger pursuant to s. 608.4381(7).

23 (d) A statement of, or a statement of the method of  
24 determining, the "fair value," as defined in s.  
25 608.4384(1)(b), of an interest in any limited liability  
26 company that is a party to the merger.

27 (e) Other provisions relating to the merger.

28 608.4381 Action on plan of merger.--

29 (1) Unless the articles of organization or the  
30 regulations of a limited liability company require a  
31 greater-than-majority vote, the plan of merger shall be

1 approved in writing by a majority of the managers of a limited  
2 liability company that is a party to the merger in which  
3 management is not reserved to its members. Unless the articles  
4 of organization or the regulations of a limited liability  
5 company require a greater-than-majority vote or provide for  
6 another method of determining the voting rights of each of its  
7 members, and whether or not management is reserved to its  
8 members, the plan of merger shall be approved in writing by a  
9 majority of the members of a limited liability company that is  
10 a party to the merger, and, if applicable, the vote of each  
11 member shall be weighted in accordance with s. 608.4231(1)(b),  
12 provided, unless the articles of organization or the  
13 regulations of the limited liability company require a  
14 greater-than-majority vote or provide for another method of  
15 determining the voting rights of each of its members, if there  
16 is more than one class or group of members, the merger shall  
17 be approved by a majority of the members of each such class or  
18 group, and, if applicable, the vote of each member shall be  
19 weighted in accordance with s. 608.4231(1)(b).

20       (2) In addition to the approval required by subsection  
21 (1), if the surviving entity is a partnership, no member of a  
22 limited liability company that is a party to the merger shall,  
23 as a result of the merger, become a general partner of the  
24 surviving entity unless such member specifically consents in  
25 writing to becoming a general partner of the surviving entity  
26 and unless such written consent is obtained from each such  
27 member who, as a result of the merger, would become a general  
28 partner of the surviving entity, such merger shall not become  
29 effective under s. 608.4383. Any member providing such  
30 consent in writing shall be deemed to have voted in favor of  
31 the plan of merger for purposes of s. 608.4384.

1       (3) All members of each limited liability company that  
2 is a party to the merger shall be given written notice of any  
3 meeting or other action with respect to the approval of a plan  
4 of merger as provided in subsection (4), not fewer than 30 nor  
5 more than 60 days before the date of the meeting at which the  
6 plan of merger shall be submitted for approval by the members  
7 of such limited liability company, provided, if the plan of  
8 merger is submitted to the members of the limited liability  
9 company for their written approval or other action without a  
10 meeting, such notification shall be given to each member not  
11 fewer than 30 nor more than 60 days before the effective date  
12 of the merger. Pursuant to s. 608.455, the notification  
13 required by this subsection may be waived in writing by the  
14 person or persons entitled to such notification.

15       (4) The notification required by subsection (3) shall  
16 be in writing and shall include:

17       (a) The date, time, and place of the meeting, if any,  
18 at which the plan of merger is to be submitted for approval by  
19 the members of the limited liability company, or, if the plan  
20 of merger is to be submitted for written approval or by other  
21 action without a meeting, a statement to that effect.

22       (b) A copy or summary of the plan of merger.

23       (c) A clear and concise statement that, if the plan of  
24 merger is effected, members dissenting therefrom may be  
25 entitled, if they comply with the provisions of s. 608.4384  
26 regarding the rights of dissenting members, to be paid the  
27 fair value of their interests, which shall be accompanied by a  
28 copy of s. 608.4384.

29       (d) A statement of, or a statement of the method of  
30 determining, the "fair value," as defined in s.  
31 608.4384(1)(b), of an interest in the limited liability

13-1308-97

1 company, in the case of a limited liability company in which  
2 management is not reserved to its members, as determined by  
3 the managers of such limited liability company, which  
4 statement may consist of a reference to the applicable  
5 provisions of such limited liability company's articles of  
6 organization or regulations that determine the fair value of  
7 an interest in the limited liability company for such  
8 purposes, and which shall constitute an offer by the limited  
9 liability company to purchase at such fair value any interests  
10 of a "dissenter," as defined in s. 608.4384(1)(a), unless and  
11 until such dissenter's right to receive the fair value of his  
12 interests in the limited liability company is terminated  
13 pursuant to s. 608.4384(8).

14 (e) The date on which such notification was mailed or  
15 delivered to the members.

16 (f) Any other information concerning the plan of  
17 merger.

18 (5) The notification required by subsection (3) shall  
19 be deemed to be given at the earliest date of:

20 (a) The date such notification is received;

21 (b) Five days after the date such notification is  
22 deposited in the United States mail addressed to the member at  
23 his address as it appears in the books and records of the  
24 limited liability company, with postage thereon prepaid;

25 (c) The date shown on the return receipt, if sent by  
26 registered or certified mail, return receipt requested, and  
27 the receipt is signed by or on behalf of the addressee; or

28 (d) The date such notification is given in accordance  
29 with the provisions of the articles of organization or the  
30 regulations of the limited liability company.

31

1           (6) A plan of merger may provide for the manner, if  
2 any, in which the plan of merger may be amended at any time  
3 before the effective date of the merger, except after the  
4 approval of the plan of merger by the members of a limited  
5 liability company that is a party to the merger, the plan of  
6 merger may not be amended to:

7           (a) Change the amount or kind of interests,  
8 partnership interests, shares, obligations, other securities,  
9 cash, rights, or any other property to be received by the  
10 members of such limited liability company in exchange for or  
11 on conversion of their interests;

12           (b) If the surviving entity is a limited liability  
13 company, change any term of the articles of organization or  
14 the regulations of the surviving entity, except for changes  
15 that otherwise could be adopted without the approval of the  
16 members of the surviving entity;

17           (c) If the surviving entity is not a limited liability  
18 company, change any term of the articles of incorporation or  
19 comparable governing document of the surviving entity, except  
20 for changes that otherwise could be adopted by the board of  
21 directors or comparable representatives of the surviving  
22 entity; or

23           (d) Change any of the terms and conditions of the plan  
24 of merger if any such change, alone or in the aggregate, would  
25 materially and adversely affect the members, or any class or  
26 group of members, of such limited liability company.

27  
28 If an amendment to a plan of merger is made in accordance the  
29 plan and articles of merger have been filed with the  
30 Department of State, amended articles of merger executed by  
31 each limited liability company and other business entity that

1 is a party to the merger shall be filed with the Department of  
2 State prior to the effective date of the merger.

3 (7) Unless the limited liability company's articles of  
4 organization or regulations or the plan of merger provide  
5 otherwise, notwithstanding the prior approval of the plan of  
6 merger by any limited liability company that is a party to the  
7 merger in which management is not reserved to its members, and  
8 at any time prior to the filing of articles of merger with the  
9 Department of State, the planned merger may be abandoned,  
10 subject to any contractual rights, by any such limited  
11 liability company by the affirmative vote of a majority of its  
12 managers without further action by its members, in accordance  
13 with the procedure set forth in the plan of merger or if none  
14 is set forth, in the manner determined by the managers of such  
15 limited liability company.

16 608.4382 Articles of merger.--

17 (1) After a plan of merger is approved by each limited  
18 liability company and other business entity that is a party to  
19 the merger, the surviving entity shall deliver to the  
20 Department of State for filing articles of merger, which shall  
21 be executed by each limited liability company and by each  
22 other business entity as required by applicable law, and which  
23 shall set forth:

24 (a) The plan of merger.

25 (b) A statement that the plan of merger was approved  
26 by each limited liability company that is a party to the  
27 merger in accordance with the applicable provisions of this  
28 chapter, and, if applicable, a statement that the written  
29 consent of each member of such limited liability company who,  
30 as a result of the merger, becomes a general partner of the  
31 surviving entity has been obtained pursuant to s. 608.4381(2).

1       (c) A statement that the plan of merger was approved  
2 by each domestic partnership that is a party to the merger in  
3 accordance with the applicable provisions of chapter 620.

4       (d) A statement that the plan of merger was approved  
5 by each domestic corporation that is a party to the merger in  
6 accordance with the applicable provisions of chapter 607.

7       (e) A statement that the plan of merger was approved  
8 by each other business entity that is a party to the merger,  
9 other than limited liability companies, partnerships, and  
10 corporations formed, organized, or incorporated under the laws  
11 of this state, in accordance with the applicable laws of the  
12 state, country, or jurisdiction under which such other  
13 business entity is formed, organized, or incorporated.

14       (f) The effective date of the merger, which may be on  
15 or after the date of filing the articles of merger, provided,  
16 if the articles of merger do not provide for an effective date  
17 of the merger, the effective date shall be the date on which  
18 the articles of merger are filed.

19       (g) If the surviving entity is another business entity  
20 formed, organized, or incorporated under the laws of any  
21 state, country, or jurisdiction other than this state:

22       1. The address, including street and number, if any,  
23 of its principal office under the laws of the state, country,  
24 or jurisdiction in which it was formed, organized, or  
25 incorporated.

26       2. A statement that the surviving entity is deemed to  
27 have appointed the Secretary of State as its agent for service  
28 of process in a proceeding to enforce any obligation or the  
29 rights of dissenting members of each limited liability company  
30 that is a party to the merger.

31

1           3. A statement that the surviving entity has agreed to  
2 promptly pay to the dissenting members of each limited  
3 liability company that is a party to the merger the amount, if  
4 any, to which such dissenting members are entitled under s.  
5 608.4384.

6           (2) A copy of the articles of merger, certified by the  
7 Department of State, may be filed in the office of the  
8 official who is the recording officer of each county in this  
9 state in which real property of a party to the merger other  
10 than the surviving entity is situated.

11           608.4383 Effect of merger.--When a merger becomes  
12 effective:

13           (1) Every limited liability company and other business  
14 entity that is a party to the merger merges into the surviving  
15 entity and the separate existence of every limited liability  
16 company and other business entity that is a party to the  
17 merger, except the surviving entity, ceases.

18           (2) The title to all real estate and other property,  
19 or any interest therein, owned by each limited liability  
20 company and other business entity that is a party to the  
21 merger is vested in the surviving entity without reversion or  
22 impairment and without any requirement to record any deed or  
23 other conveyance.

24           (3) The surviving entity shall thereafter be  
25 responsible and liable for all the liabilities and obligations  
26 of each limited liability company and other business entity  
27 that is a party to the merger, including liabilities arising  
28 out of the rights of dissenters with respect to such merger  
29 under applicable law.

30           (4) Any claim existing or action or proceeding pending  
31 by or against any limited liability company or other business



13-1308-97

1 entity that is a party to the merger may be continued as if  
2 the merger did not occur or the surviving entity may be  
3 substituted in the proceeding for the limited liability  
4 company or other business entity which ceased existence.

5 (5) Neither the rights of creditors nor any liens upon  
6 the property of any limited liability company or other  
7 business entity shall be impaired by such merger.

8 (6) If a limited liability company is the surviving  
9 entity, the articles of organization and the regulations of  
10 such limited liability company in effect immediately prior to  
11 the time the merger becomes effective shall be the articles of  
12 organization and the regulations of the surviving entity,  
13 except as amended or restated to the extent provided in the  
14 plan of merger.

15 (7) The interests, partnership interests, shares,  
16 obligations, or other securities, and the rights to acquire  
17 interests, partnership interests, shares, obligations, or  
18 other securities, of each limited liability company and other  
19 business entity that is a party to the merger shall be  
20 converted into interests, partnership interests, shares,  
21 obligations, or other securities, or rights to such  
22 securities, of the surviving entity or any other limited  
23 liability company or other business entity or, in whole or in  
24 part, into cash or other property as provided in the plan of  
25 merger, and the former holders of interests, partnership  
26 interests, shares, obligations, or other securities, or rights  
27 to such securities, shall be entitled only to the rights  
28 provided in the plan of merger and to their rights as  
29 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,  
30 s. 620.205, or other applicable law.

31 608.4384 Rights of dissenting members.--

1           (1) For purposes of this section:

2           (a) "Dissenter" means a member of a limited liability  
3 company who is a recordholder of the interests to which he  
4 seeks relief as of the date fixed for the determination of  
5 members entitled to notice of a plan of merger, who does not  
6 vote such interests in favor of the plan of merger, and who  
7 exercises the right to dissent from the plan of merger when  
8 and in the manner required by this section.

9           (b) "Fair value," with respect to a dissenter's  
10 interests, means the value of the interests in the limited  
11 liability company that is a party to a plan of merger as of  
12 the close of business of the day prior to the effective date  
13 of the merger to which the dissenter objects, excluding any  
14 appreciation or depreciation in anticipation of the merger,  
15 unless such exclusion would be inequitable.

16           (2) Each member of a limited liability company that is  
17 a party to a merger shall have the right to be paid the fair  
18 value of his interests as a dissenter only as provided in this  
19 section.

20           (3) Not later than 20 days after the date on which the  
21 notification required by s. 608.438<sup>1</sup>(3) is given to the  
22 members, or if such notification is waived in writing by the  
23 dissenter, not later than 20 days after the date of such  
24 written waiver, the dissenter shall deliver to the limited  
25 liability company a written demand for payment to him of the  
26 fair value of the interests as to which he seeks relief that  
27 states his address, the number and class, if any, of those  
28 interests, and, at the election of the dissenter, the amount  
29 claimed by him as the fair value of the interests. The  
30 statement of fair market value by the dissenter, if any, shall  
31 constitute an offer by the dissenter to sell the interests to

1 the limited liability company at such amount. A dissenter may  
 2 dissent as to less than all the interests registered in his  
 3 name. In such event, the dissenter's rights shall be  
 4 determined as if the interests as to which he has dissented  
 5 and his remaining interests were registered in the names of  
 6 different members. If the interests as to which a dissenter  
 7 seeks relief are represented by certificates, the dissenter  
 8 shall deposit such certificates with the limited liability  
 9 company simultaneously with the delivery of the written demand  
 10 for payment. Upon receiving a demand for payment from a  
 11 dissenter who is a recordholder of uncertificated interests,  
 12 the limited liability company shall make an appropriate  
 13 notation of the demand for payment in its records. The limited  
 14 liability company may restrict the transfer of uncertificated  
 15 interests from the date the dissenter's written demand for  
 16 payment is delivered. A written demand for payment served on  
 17 the limited liability company in which the dissenter is a  
 18 member shall constitute service on the surviving entity.

19 (4) The written demand for payment required by  
 20 subsection (3) shall be deemed to be delivered to the limited  
 21 liability company at the earliest of:

22 (a) The date such written demand is received;

23 (b) Five days after the date such written demand is  
 24 deposited in the United States mail addressed to the principal  
 25 business office of the limited liability company, with postage  
 26 thereon prepaid;

27 (c) The date shown on the return receipt, if such  
 28 written demand is sent by registered or certified mail, return  
 29 receipt requested, and the receipt is signed by or on behalf  
 30 of the addressee; or

31

1           (d) The date such written demand is given in  
2 accordance with the provisions of the limited liability  
3 company's articles of organization or regulations.

4           (5) Unless the articles of organization or regulations  
5 of the limited liability company in which the dissenter is a  
6 member provides a basis or method for determining and paying  
7 the fair value of the interests as to which the dissenter  
8 seeks relief, or unless the limited liability company or the  
9 surviving entity and the dissenter have agreed in writing as  
10 to the fair value of the interests as to which the dissenter  
11 seeks relief, the dissenter, the limited liability company, or  
12 the surviving entity, within 90 days after the dissenter  
13 delivers the written demand for payment to the limited  
14 liability company, may file an action in any court of  
15 competent jurisdiction in the county in this state where the  
16 registered office of the limited liability company is located  
17 or was located when the plan of merger was approved by its  
18 members, or in the county in this state in which the principal  
19 office of the limited liability company that issued the  
20 interests is located or was located when the plan of merger  
21 was approved by its partners, requesting that the fair value  
22 of the dissenter's interests be determined. The court shall  
23 also determine whether each dissenter that is a party to such  
24 proceeding, as to whom the limited liability company or the  
25 surviving entity requests the court to make such  
26 determination, is entitled to receive payment of the fair  
27 value for his interests. Other dissenters, within the 90-day  
28 period after a dissenter delivers a written demand to the  
29 limited liability company, may join such proceeding as  
30 plaintiffs or may be joined in any such proceeding as  
31 defendants, and any two or more such proceedings may be

1 consolidated. If the limited liability company or surviving  
2 entity commences such a proceeding, all dissenters, whether or  
3 not residents of this state, other than dissenters who have  
4 agreed in writing with the limited liability company or the  
5 surviving entity as to the fair value of the interests as to  
6 which such dissenters seek relief, shall be made parties to  
7 such action as an action against their interests. The limited  
8 liability company or the surviving entity shall serve a copy  
9 of the initial pleading in such proceeding upon each dissenter  
10 who is a party to such proceeding and who is a resident of  
11 this state in the manner provided by law for the service of a  
12 summons and complaint and upon each such dissenter who is not  
13 a resident of this state either by registered or certified  
14 mail and publication or in such matter as is permitted by law.  
15 The jurisdiction of the court in such a proceeding shall be  
16 plenary and exclusive. All dissenters who are proper parties  
17 to the proceeding are entitled to judgment against the limited  
18 liability company or the surviving entity for the amount of  
19 the fair value of their interests as to which payment is  
20 sought hereunder. The court may, if it so elects, appoint one  
21 or more persons as appraisers to receive evidence and  
22 recommend a decision on the question of fair value. The  
23 appraisers shall have such power and authority as is specified  
24 in the order of their appointment or an amendment thereof.  
25 The limited liability company shall pay each dissenter the  
26 amount found to be due him within 10 days after final  
27 determination of the proceedings. Upon payment of the  
28 judgment, the dissenter shall cease to have any interest in  
29 the interests as to which payment is sought hereunder.

30  
31

1       (6) The judgment may, at the discretion of the court,  
2 include a fair rate of interest, to be determined by the  
3 court.

4       (7) The costs and expenses of any such proceeding  
5 shall be determined by the court and shall be assessed against  
6 the limited liability company or the surviving entity, but all  
7 or any part of such costs and expenses may be apportioned and  
8 assessed as the court deems equitable against any or all of  
9 the dissenters who are parties to the proceeding, to whom the  
10 limited liability company or the surviving entity has made an  
11 offer to pay for the interests, if the court finds that the  
12 action of such dissenters in failing to accept such offer was  
13 arbitrary, vexatious or not in good faith. Such expenses shall  
14 include reasonable compensation for, and reasonable expenses  
15 of, the appraisers, but shall exclude the fees and expenses of  
16 counsel for, and experts employed by, any party. If the fair  
17 value of the interests, as determined, materially exceeds the  
18 amount which the limited liability company or the surviving  
19 entity offered to pay therefor, the court in its discretion  
20 may award to any dissenter who is a party to the proceeding  
21 such amount as the court determines to be reasonable  
22 compensation to any attorney or expert employed by the  
23 dissenter in the proceeding.

24       (8) The right of a dissenter to receive fair value for  
25 and the obligation to sell such interests as to which he seeks  
26 relief, and the right of the limited liability company or the  
27 surviving entity to purchase such interests and the obligation  
28 to pay the fair value of such interests, shall terminate if:

29       (a) The dissenter has not complied with this section,  
30 unless the limited liability company or the surviving entity  
31 waives, in writing, such noncompliance.

1           **(b) The limited liability company abandons the merger**  
2 **or is finally enjoined or prevented from carrying it out, or**  
3 **the members rescind their adoption or approval of the merger;**

4           **(c) The dissenter withdraws his demand, with the**  
5 **consent of the limited liability company or the surviving**  
6 **entity; or**

7           **(d)1. The articles of organization or the regulations**  
8 **of the limited liability company in which the dissenter was a**  
9 **member does not provide a basis or method for determining and**  
10 **paying the dissenter the fair value of his interests.**

11           **2. The limited liability company or the surviving**  
12 **entity and the dissenter have not agreed upon the fair value**  
13 **of the dissenter's interests.**

14           **3. Neither the dissenter, the limited liability**  
15 **company, nor the surviving entity has filed or is joined in a**  
16 **complaint under subsection (5) within the 90-day period**  
17 **provided in subsection (5).**

18           **(9) Unless otherwise provided in the articles of**  
19 **organization or the regulations of the limited liability**  
20 **company in which the dissenter was a member, after the date**  
21 **the dissenter delivers the written demand for payment in**  
22 **accordance with subsection (3) until either the termination of**  
23 **the rights and obligations arising under subsection (3) or the**  
24 **purchase of the dissenter's interests by the limited liability**  
25 **company or the surviving entity, the dissenter shall be**  
26 **entitled only to payment as provided in this section and shall**  
27 **not be entitled to any other rights accruing from such**  
28 **interests, including voting or distribution rights. If the**  
29 **right to receive fair value is terminated other than by the**  
30 **purchase of the dissenter's interests by the limited liability**  
31 **company or the surviving entity, all rights of the dissenter**

1 as a member of the limited liability company shall be  
2 reinstated effective as of the date the dissenter delivered  
3 the written demand for payment, including the right to receive  
4 any intervening payment or other distribution with respect to  
5 the dissenter's interests in the limited liability company,  
6 or, if any such rights have expired or any such distribution  
7 other than a cash payment has been completed, in lieu thereof  
8 at the election of the surviving entity, the fair value  
9 thereof in cash as determined by the surviving entity as of  
10 the time of such expiration or completion, but without  
11 prejudice otherwise to any action or proceeding of the limited  
12 liability company that may have been taken by the limited  
13 liability company on or after the date the dissenter delivered  
14 the written demand for payment.

15       (10) A member who is entitled under this section to  
16 demand payment for his interests shall not have any right at  
17 law or in equity to challenge the validity of any merger that  
18 creates his entitlement to demand payment hereunder, or to  
19 have the merger set aside or rescinded, except with respect to  
20 compliance with the provisions of the limited liability  
21 company's articles of organization or regulations or if the  
22 merger is unlawful or fraudulent with respect to such member.

23       (11) Unless otherwise provided in the articles of  
24 organization or the regulations of the limited liability  
25 company in which the dissenter was a member, this section does  
26 not apply with respect to a plan of merger if, as of the date  
27 fixed for the determination of members entitled to notice of a  
28 plan of merger:

29       (a) The interests of the limited liability company  
30 were held of record by not fewer than 500 members; or  
31



13-1308-97

1       (b) The interests were registered on a national  
2 securities exchange or quoted on the National Association of  
3 Securities Dealers Automated Quotation System.

4           Section 5. Sections 620.201, 620.202, 620.203,  
5 620.204, and 620.205, Florida Statutes, are created to read:  
6       620.201 Merger of domestic limited partnership.

7       (1) As used in this section and ss. 620.202-620.205,  
8 "other business entity" includes a corporation, a limited  
9 liability company, a business trust or association, a real  
10 estate investment trust, a common law trust, an unincorporated  
11 business, a general partnership or a limited partnership but  
12 excluding a domestic limited partnership, or any other entity  
13 that is formed pursuant to the requirements of applicable law.

14       (2) Unless otherwise provided in the partnership  
15 agreement of a domestic limited partnership, pursuant to a  
16 plan of merger, a domestic limited partnership may merge with  
17 or into one or more domestic limited partnerships or other  
18 business entities formed, organized, or incorporated under the  
19 laws of this state or any other state, the United States,  
20 foreign country, or other foreign jurisdiction, if:

21       (a) Each domestic partnership that is a party to the  
22 merger complies with the applicable provisions of this chapter  
23 and complies with the terms of its partnership agreement.

24       (b) Each domestic limited liability company that is a  
25 party to the merger complies with the applicable provisions of  
26 chapter 608.

27       (c) Each domestic corporation that is a party to the  
28 merger complies with the applicable provisions of chapter 607.

29       (d) The merger is permitted by the laws of the state,  
30 country, or jurisdiction under which each other business  
31 entity that is a party to the merger is formed, organized, or

1 incorporated, and each such other business entity complies  
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic limited partnership and  
5 the name and jurisdiction of formation, organization, or  
6 incorporation of each other business entity planning to merge,  
7 and the name of the surviving or resulting domestic limited  
8 partnership or other business entity into which each other  
9 domestic limited partnership or other business entity plans to  
10 merge, which is hereinafter and in ss. 620.202-620.205  
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the partnership  
14 interests of each domestic limited partnership that is a party  
15 to the merger and the partnership interests, interests,  
16 shares, obligations, or other securities of each other  
17 business entity that is a party to the merger into partnership  
18 interests, interests, shares, obligations, or other securities  
19 of the surviving entity or any other domestic limited  
20 partnership or other business entity or, in whole or in part,  
21 into cash or other property, and the manner and basis of  
22 converting rights to acquire the partnership interests of each  
23 domestic limited partnership, that is a party to the merger and  
24 rights to acquire partnership interests, interests, shares,  
25 obligations, or other securities of each other business entity  
26 that is a party to the merger into rights to acquire  
27 partnership interests, interests, shares, obligations, or  
28 other securities of the surviving entity or any other domestic  
29 limited partnership or other business entity or, in whole or  
30 in part, into cash or other property.

1 (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4 (e) If a limited liability company is to be the  
5 surviving entity, and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers.

8 (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to merger is formed, organized, or  
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a domestic limited partnership is to be the  
14 surviving entity, any amendments to, or a restatement of, the  
15 certificate of limited partnership or partnership agreement of  
16 the surviving entity, and such amendments or restatement shall  
17 be effective on the effective date of the merger.

18 (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20 (c) A provision authorizing one or more of the  
21 domestic limited partnerships that are parties to the merger  
22 to abandon the proposed merger pursuant to s. 620.202(7).

23 (d) A statement of, or a statement of the method of  
24 determining, the "fair value," as defined in s. 620.205(1)(b),  
25 of a partnership interest in any domestic limited partnership  
26 that is a party to the merger.

27 (e) Any other provisions relating to the merger.--  
28 620.202 Action on plan of merger.--

29 (1) Unless otherwise provided in the partnership  
30 agreement of a domestic limited partnership, the plan of  
31 merger shall be approved in writing by all of the general

13-1308-97

1 partners of a domestic limited partnership that is a party to  
2 the merger. Unless the partnership agreement of a domestic  
3 limited partnership requires a greater vote, the plan of  
4 merger shall also be approved in writing by those limited  
5 partners who own more than a majority of the then current  
6 percentage or other interests in the profits of the domestic  
7 limited partnership owned by all of the limited partners,  
8 provided, unless the partnership agreement of the domestic  
9 limited partnership requires a greater vote, if there is more  
10 than one class or group of limited partners, the plan of  
11 merger shall be approved by those limited partners who own  
12 more than a majority of the then current percentage or other  
13 interests in the profits of the domestic limited partnership  
14 owned by the limited partners in each class or group.

15 (2) In addition to the approval required by subsection  
16 (1):

17 (a) If a domestic limited partnership is to be the  
18 surviving entity, no person shall, as a result of the merger,  
19 continue to be or become a general partner of the surviving  
20 entity, unless such person specifically consents in writing to  
21 continuing to be or to becoming, as the case may be, a general  
22 partner of the surviving entity, and unless such written  
23 consent is obtained from each such person who, as a result of  
24 the merger, would become a general partner of the surviving  
25 entity, such merger shall not become effective under s.  
26 620.204.

27 (b) If a partnership other than a domestic limited  
28 partnership is to be the surviving entity, no partner of a  
29 domestic limited partnership that is a party to the merger  
30 shall, as a result of the merger, become a general partner of  
31 the surviving entity unless such partner specifically consents

13-1308-97

1 in writing to becoming a general partner of the surviving  
2 entity, and unless such written consent is obtained from each  
3 person who, as a result of the merger, would become a general  
4 partner of the surviving entity, such merger shall not become  
5 effective under s. 620.204. Any person providing such consent  
6 in writing shall be deemed to have voted in favor of the plan  
7 of merger for purposes of s. 620.205.

8 (3) All partners of each domestic limited partnership  
9 that is a party to the merger shall be given written notice of  
10 any meeting or other action with respect to the approval of a  
11 plan of merger as provided in subsection (4), not fewer than  
12 30 nor more than 60 days before the date of the meeting at  
13 which the plan of merger shall be submitted for approval by  
14 the partners of such limited partnership. However, if the  
15 plan of merger is submitted to the partners of the limited  
16 partnership for their written approval or other action without  
17 a meeting, such notification shall be given to each partner  
18 not fewer than 30 nor more than 60 days before the effective  
19 date of the merger. Notwithstanding the foregoing, the  
20 notification required by this subsection may be waived in  
21 writing by the person or persons entitled to such  
22 notification.

23 (4) The notification required by subsection (3) shall  
24 be in writing and shall include:

25 (a) The date, time, and place of the meeting, if any,  
26 at which the plan of merger shall be submitted for approval by  
27 the partners of the domestic limited partnership, or, if the  
28 plan of merger will be submitted for written approval or by  
29 other action without a meeting, a statement to that effect.

30 (b) A copy or summary of the plan of merger.  
31

1 (c) A clear and concise statement that, if the plan of  
2 merger is effected, partners dissenting therefrom may be  
3 entitled, if they comply with the provisions of s. 620.205  
4 regarding the rights of dissenting partners, to be paid the  
5 fair value of their partnership interests, which shall be  
6 accompanied by a copy of s. 620.205.

7 (d) A statement of, or a statement of the method of  
8 determining, the "fair value," as defined in s. 620.205(1)(b),  
9 of an interest in the limited partnership as determined by the  
10 general partners of the limited partnership, which statement  
11 may consist of a reference to the applicable provisions of  
12 such limited partnership's partnership agreement that  
13 determine the fair value of an interest in the limited  
14 partnership for these purposes, and which shall constitute an  
15 offer by the limited partnership to purchase at such fair  
16 value any partnership interests of a "dissenter," as defined  
17 in s. 620.205(1)(a), unless and until such a dissenter's right  
18 to receive the fair value of his interests in the limited  
19 partnership are is terminated pursuant to s. 620.205(8).

20 (e) The date on which such notification was mailed or  
21 delivered to the partners.

22 (f) Any other information concerning the plan of  
23 merger.

24 (5) The notification required by subsection (3) shall  
25 be deemed to be given at the earliest of:

26 (a) The date such notification is received;

27 (b) Five days after the date such notification is  
28 deposited in the United States mail addressed to the partner  
29 at his address as it appears in the books and records of the  
30 limited partnership, with postage thereon prepaid;

13-1308-97

1       (c) The date shown on the return receipt, if sent by  
2 registered or certified mail, return receipt requested, and  
3 the receipt is signed by or on behalf of the addressee; or

4       (d) The date such notification is given in accordance  
5 with the provisions of the limited partnership's partnership  
6 agreement.

7       (6) A plan of merger may provide for the manner, if  
8 any, in which the plan of merger may be amended at any time  
9 before the effective date of the merger, except, after the  
10 approval of the plan of merger by the limited partners of a  
11 domestic limited partnership that is a party to the merger,  
12 the general partners of such domestic limited partnership  
13 shall not be authorized to amend the plan of merger to:

14       (a) Change the amount or kind of partnership  
15 interests, interests, shares, obligations, other securities,  
16 cash, rights, or any other property to be received by the  
17 limited partners of such domestic limited partnership in  
18 exchange for or on conversion of their partnership interests;

19       (b) If the surviving entity is a partnership, change  
20 any term of the partnership agreement of the surviving entity,  
21 except for changes that otherwise could be adopted by the  
22 general partners of the surviving entity;

23       (c) If the surviving entity is not a partnership,  
24 change any term of the articles of incorporation or comparable  
25 governing document of the surviving entity, except for changes  
26 that otherwise could be adopted by the board of directors or  
27 comparable representatives of the surviving entity; or

28       (d) Change any of the terms and conditions of the plan  
29 of merger if any such change, alone or in the aggregate, would  
30 materially and adversely affect the limited partners, or any  
31

1 class or group of limited partners, of such domestic limited  
2 partnership.

3

4 If an amendment to a plan of merger is made in accordance with  
5 such plan and articles of merger have been filed with the  
6 Department of State, amended articles of merger executed by  
7 the general partners of each domestic limited partnership and  
8 other business entity that is a party to the merger shall be  
9 filed with the Department of State prior to the effective date  
10 of the merger.

11

12 (7) Unless the domestic limited partnership's  
13 partnership agreement or the plan of merger provides  
14 otherwise, notwithstanding the prior approval of the plan of  
15 merger by any domestic limited partnership that is a party to  
16 the merger and at any time prior to the filing of articles of  
17 merger with the Department of State, the planned merger may be  
18 abandoned, subject to any contractual rights, by any such  
19 domestic limited partnership by the affirmative vote of all of  
20 its general partners, without further action by its limited  
21 partners, in accordance with the procedure set forth in the  
22 plan of merger or if none is set forth, in the manner  
23 determined by the general partners of such domestic limited  
24 partnership.

25

§20.203 Articles of merger.--

26

27 (1) After a plan of merger is approved by each  
28 domestic limited partnership and other business entity that is  
29 a party to the merger, the surviving entity shall deliver  
30 articles of merger to the Department of State for filing,  
31 which articles shall be executed by the general partners of  
each domestic limited partnership and by each other business



1 entity as required by applicable law, and which shall set  
2 forth:

3 (a) The plan of merger.

4 (b) A statement that the plan of merger was approved  
5 by each domestic partnership that is a party to the merger in  
6 accordance with the applicable provisions of this chapter,  
7 and, if applicable, a statement that the written consent of  
8 each person who, as a result of the merger, becomes a general  
9 partner of the surviving entity has been obtained pursuant to  
10 s. 620.202(2).

11 (c) A statement that the plan of merger was approved  
12 by each domestic corporation that is a party to the merger in  
13 accordance with the applicable provisions of chapter 607.

14 (d) A statement that the plan of merger was approved  
15 by each domestic limited liability company that is a party to  
16 the merger in accordance with the applicable provisions of  
17 chapter 608.

18 (e) A statement that the plan of merger was approved  
19 by each other business entity that is a party to the merger,  
20 other than partnerships, limited liability companies, and  
21 corporations formed, organized, or incorporated under the laws  
22 of this state, in accordance with the applicable laws of the  
23 state, country, or jurisdiction under which such other  
24 business entity is formed, organized, or incorporated.

25 (f) The effective date of the merger, which may be on  
26 or after the date of filing the articles of merger, provided,  
27 if the articles of merger do not provide for an effective date  
28 of the merger, the effective date shall be the date on which  
29 the articles of merger are filed.

1 (g) If the surviving entity is another business entity  
2 formed, organized, or incorporated under the laws of any  
3 state, country, or jurisdiction other than this state:

4 1. The address, including street and number, if any,  
5 of its principal office under the laws of the state, country,  
6 or jurisdiction in which it was formed, organized or  
7 incorporated.

8 2. A statement that the surviving entity is deemed to  
9 have appointed the Secretary of State as its agent for service  
10 of process in a proceeding to enforce any obligation or the  
11 rights of dissenting partners of each domestic limited  
12 partnership that is a party to the merger.

13 3. A statement that the surviving entity has agreed to  
14 promptly pay to the dissenting partners of each domestic  
15 limited partnership that is a party to the merger the amount,  
16 if any, to which they are entitled under s. 620.205.

17 (2) A copy of the articles of merger, certified by the  
18 Department of State, may be filed in the office of the  
19 official who is the recording officer of each county in this  
20 state in which real property of a party to the merger other  
21 than the surviving entity is situated.

22 (3) Articles of merger shall act as a certificate of  
23 cancellation for purposes of s. 620.113 for a domestic limited  
24 partnership that is a party to the merger that is not the  
25 surviving entity and such partnership's certificate of limited  
26 partnership shall be canceled upon the effective date of the  
27 merger.

28 620.204 Effect of merger.--

29 (1) When a merger becomes effective:

30 (a) Every domestic limited partnership and other  
31 business entity that is a party to the merger merges into the

1 surviving entity and the separate existence of every domestic  
2 limited partnership and other business entity that is a party  
3 to the merger except the surviving entity ceases.

4 (b) The title to all real estate and other property,  
5 or any interest therein, owned by each domestic limited  
6 partnership and other business entity that is a party to the  
7 merger is vested in the surviving entity without reversion or  
8 impairment and without any requirement to record any deed or  
9 other conveyance.

10 (c) The surviving entity shall thereafter be  
11 responsible and liable for all the liabilities and obligations  
12 of each domestic limited partnership and other business entity  
13 that is a party to the merger, including liabilities arising  
14 out of the rights of dissenters with respect to such merger  
15 under applicable law.

16 (d) Any claim existing or action or proceeding pending  
17 by or against any domestic limited partnership or other  
18 business entity that is a party to the merger may be continued  
19 as if the merger did not occur or the surviving entity may be  
20 substituted in the proceeding for the domestic limited  
21 partnership or other business entity which ceased existence.

22 (e) Neither the rights of creditors nor any liens upon  
23 the property of any domestic limited partnership or other  
24 business entity shall be impaired by such merger.

25 (f) If a general partner of a partnership formed or  
26 organized under the laws of this state or any other state,  
27 country, or jurisdiction that is a party to the merger is not  
28 a general partner of the surviving entity, the former general  
29 partner shall have no liability for obligations arising out of  
30 the rights of dissenters with respect to such merger under  
31 applicable law or for any obligation incurred after the

1 effective date of the merger, except to the extent that a  
2 former creditor of the partnership in which the former general  
3 partner was a general partner extends credit to the surviving  
4 entity reasonably believing that the former general partner  
5 continued as a general partner of the surviving entity.

6 (g) If a domestic limited partnership is the surviving  
7 entity, the certificate of limited partnership and partnership  
8 agreement of such partnership in effect immediately prior to  
9 the time the merger becomes effective shall be the certificate  
10 of limited partnership and partnership agreement of the  
11 surviving entity, except as amended or restated to the extent  
12 provided in the plan of merger.

13 (h) The partnership interests, interests, shares,  
14 obligations, or other securities, and the rights to acquire  
15 partnership interests, membership interests, shares,  
16 obligations, or other securities, of each domestic limited  
17 partnership and other business entity that is a party to the  
18 merger shall be converted into partnership interests,  
19 interests, shares, obligations, or other securities, or rights  
20 to such securities, of the surviving entity or any other  
21 domestic limited partnership or other business entity or, in  
22 whole or in part, into cash or other property as provided in  
23 the plan of merger, and the former holders of partnership  
24 interests, interests, shares, obligations, or other  
25 securities, or rights to such securities, shall be entitled  
26 only to the rights provided in the plan of merger and to their  
27 rights as dissenters, if any, under s. 620.205, ss.  
28 607.1301-607.1320, s. 608.4384, or other applicable law.

29 (2) Unless otherwise provided in the plan of merger, a  
30 merger of a domestic limited partnership, including a domestic  
31 limited partnership that is not the surviving entity, shall

1 not require such domestic limited partnership to wind up its  
2 affairs under s. 620.159 or pay its liabilities and distribute  
3 its assets under s. 620.162.

4 620.205 Rights of dissenting partners.--

5 (1) For purposes of this section:

6 (a) "Dissenter" means a partner of a domestic limited  
7 partnership who is a recordholder of the partnership interests  
8 to which he seeks relief as of the date fixed for the  
9 determination of partners entitled to notice of a plan of  
10 merger, who does not vote such interests in favor of the plan  
11 of merger, and who exercises the right to dissent from the  
12 plan of merger when and in the manner required by this  
13 section.

14 (b) "Fair value," with respect to a dissenter's  
15 partnership interests, means the value of the partnership  
16 interests in the domestic limited partnership that is a party  
17 to a plan of merger as of the close of business of the day  
18 prior to the effective date of the merger to which the  
19 dissenter objects, excluding any appreciation or depreciation  
20 in anticipation of the merger, unless such exclusion would be  
21 inequitable.

22 (2) Each partner of a domestic limited partnership  
23 that is a party to a merger shall have the right to be paid  
24 the fair value of his partnership interests as a dissenter as  
25 provided in this section.

26 (3) Not later than 20 days after the date on which the  
27 notification required by s. 620.202(3) is given to the  
28 partners, or if such notification was waived in writing by the  
29 dissenter, not later than 20 days after the date of such  
30 written waiver, the dissenter shall deliver to the limited  
31 partnership a written demand for payment to him of the fair

1 value of the interests as to which he seeks relief that states  
2 his address, the number and class, if any, of those interests,  
3 and, at the election of the dissenter, the amount claimed by  
4 him as the fair value of the interests. The statement of fair  
5 market value by the dissenter, if any, shall constitute an  
6 offer by the dissenter to sell the partnership interests to  
7 the limited partnership for such amount. A dissenter may  
8 dissent as to less than all the partnership interests  
9 registered in his name. In such event, the dissenter's rights  
10 shall be determined as if the partnership interests as to  
11 which he has dissented and his remaining partnership interests  
12 were registered in the names of different partners. If the  
13 interests as to which a dissenter seeks relief are represented  
14 by certificates, the dissenter shall deposit such certificates  
15 with the limited partnership simultaneously with the delivery  
16 of the written demand for payment. Upon receiving a demand  
17 for payment from a dissenter who is a record holder of  
18 uncertificated interests, the limited partnership shall make  
19 an appropriate notation of the demand for payment in its  
20 records. The limited partnership may restrict the transfer of  
21 uncertificated interests from the date the dissenter's written  
22 demand for payment is delivered. A written demand for payment  
23 served on the domestic limited partnership in which the  
24 dissenter is a partner shall constitute service on the  
25 surviving entity.

26 (4) The written demand for payment required by  
27 subsection (3) shall be deemed to be delivered to the limited  
28 partnership at the earliest of:  
29 (a) The date such written demand is received;  
30 (b) Five days after the date such written demand is  
31 deposited in the United States mail addressed to the principal

1 business office of the limited partnership, with postage  
2 thereon prepaid;  
3 (c) The date shown on the return receipt, if such  
4 written demand is sent by registered or certified mail, return  
5 receipt requested, and the receipt is signed by or on behalf  
6 of the addressee; or  
7 (d) The date such written demand is given in  
8 accordance with the provisions of the limited partnership's  
9 partnership agreement.  
10 (5) Unless the partnership agreement of the limited  
11 partnership in which the dissenter is a partner provides a  
12 basis or method for determining and paying the fair value of  
13 the interests as to which the dissenter seeks relief, or  
14 unless the limited partnership or the surviving entity and the  
15 dissenter have agreed in writing as to the fair value of the  
16 interests as to which the dissenter seeks relief, the  
17 dissenter, the limited partnership, or the surviving entity,  
18 within 90 days after the dissenter delivers the written demand  
19 for payment to the limited partnership, may file an action in  
20 any court of competent jurisdiction in the county in this  
21 state where the registered office of the limited partnership  
22 is located or was located when the plan of merger was approved  
23 by its partners, or in the county in this state in which the  
24 principal office of the limited partnership that issued the  
25 partnership interests is located or was located when the plan  
26 of merger was approved by its partners, requesting a  
27 determination of the fair value of the dissenter's partnership  
28 interests. The court shall also determine whether each  
29 dissenter that is a party to such proceeding, as to whom the  
30 limited partnership or the surviving entity requests the court  
31 to make such determination, is entitled to receive payment of





Florida House of Representatives - 1997

By Representatives Boyd, Wise and Murman

1 A bill to be entitled

2 An act relating to corporations; amending s.  
3 48.101, F.S.; providing for two kinds of  
4 service of process on dissolved corporations  
5 depending on the date of dissolution; amending  
6 s. 607.01401, F.S.; defining the term "treasury  
7 shares"; amending s. 607.0732, F.S.; providing  
8 additional requirements with respect to certain  
9 shareholder agreements; amending s. 607.1002,  
10 F.S.; providing an additional criteria whereby  
11 a corporation's board of directors may adopt  
12 one or more amendments to the articles of  
13 incorporation without shareholder action;  
14 amending s. 617.0808, F.S.; deleting reference  
15 to the board of directors of certain charitable  
16 organizations with respect to the removal of  
17 directors; amending s. 617.2103, F.S.; revising  
18 language with respect to exemptions for certain  
19 corporations; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:22  
23 Section 1. Section 48.101, Florida Statutes, is  
24 amended to read:

25 48.101 Service on dissolved corporations.--Process  
26 against the directors of any corporation which ~~was~~ is  
27 dissolved before July 1, 1990, as trustees of the dissolved  
28 corporation shall be served on one or more of the directors of  
29 the dissolved corporation as trustees thereof and binds all of  
30 the directors of the dissolved corporation as trustees

31

1 thereof. Process against any other dissolved corporation shall  
2 be served in accordance with s. 48.081.

3 Section 2 Subsections (27) and (28) of section  
4 607.01401, Florida Statutes, are renumbered as subsections  
5 (28) and (29), respectively, and a new subsection (27) is  
6 added to said section to read:

7 607.01401 Definitions.--As used in this act, unless  
8 the context otherwise requires, the term:

9 (27) "Treasury shares" means shares of the corporation  
10 that belong to the issuing corporation that are authorized and  
11 issued shares that are not outstanding, are not canceled, and  
12 have not been restored to the status of authorized but  
13 unissued shares.

14 Section 3. Paragraphs (f) and (g) of subsection (1) of  
15 section 607.0732, Florida Statutes, are amended, and paragraph  
16 (h) is added to said subsection, to read:

17 607.0732 Shareholder agreements.--

18 (1) An agreement among the shareholders of a  
19 corporation with 100 or fewer shareholders at the time of the  
20 agreement, that complies with this section, is effective among  
21 the shareholders and the corporation, even though it is  
22 inconsistent with one or more other provisions of this  
23 chapter, if it:

24 (f) Transfers to any shareholder or other person any  
25 authority to exercise the corporate powers or to manage the  
26 business and affairs of the corporation, including the  
27 resolution of any issue about which there exists a deadlock  
28 among directors or shareholders; or

29 (g) Requires dissolution of the corporation at the  
30 request of one or more of the shareholders or upon the  
31 occurrence of a specified event or contingency; or

590-108-97

1        (h) Otherwise governs the exercise of the corporate  
2 powers or the management of the business and affairs of the  
3 corporation or the relationship among the shareholders, the  
4 directors, and the corporation, or among any of them, and is  
5 not contrary to public policy. For purposes of this  
6 subsection, agreements contrary to public policy include, but  
7 are not limited to, agreements that reduce the duties of care  
8 and loyalty to the corporation as required by ss. 607.0830 and  
9 607.0832, exculpate directors from liability that may be  
10 imposed under s. 607.0831, adversely affect the shareholders'  
11 rights to bring derivative actions under s. 607.07401, or  
12 abrogate dissenters' rights under ss. 607.1301 through  
13 607.1320.

14        Section 4. Subsections (7) and (8) of section  
15 607.1002, Florida Statutes, are amended, and a new subsection  
16 (8) is added to said section, to read:

17        607.1002 Amendment by board of directors.--Unless the  
18 articles of incorporation provide otherwise, a corporation's  
19 board of directors may adopt one or more amendments to the  
20 corporation's articles of incorporation without shareholder  
21 action:

22        (7) To change the par value for a class or series of  
23 shares; or

24        (8) To provide that if the corporation acquires its  
25 own shares, shares so acquired belong to the corporation and  
26 constitute treasury shares until disposed of or canceled by  
27 the corporation; or

28        (9)(8) To make any other change expressly permitted by  
29 this act to be made without shareholder action.

30        Section 5. Section 617.0808, Florida Statutes, is  
31 amended to read:

1           617.0808 Removal of directors.--A director may be  
2 removed from office pursuant to procedures provided in the  
3 articles of incorporation or the bylaws, which shall provide  
4 the following, and if they do not do so, shall be deemed to  
5 include the following:

6           (1) ~~Except as provided in subsection (2);~~ Any member  
7 of the board of directors may be removed from office with or  
8 without cause by the vote or agreement in writing by a  
9 majority of all votes of the membership.

10           ~~(2)--Any member of the board of directors of a~~  
11 ~~charitable organization as defined in s. 496.404; may be~~  
12 ~~removed from office without cause only following the~~  
13 ~~recommendation of a majority of the board of directors~~  
14 ~~followed by the vote or agreement in writing by a majority of~~  
15 ~~all votes of the membership:~~

16           (2)(3) The notice of a meeting of the members to  
17 recall a member or members of the board of directors shall  
18 state the specific directors sought to be removed.

19           (3)(4) A proposed removal of a director at a meeting  
20 shall require a separate vote for each board member sought to  
21 be removed. Where removal is sought by written agreement, a  
22 separate agreement is required for each board member to be  
23 removed.

24           (4)(5) If removal is effected at a meeting, any  
25 vacancies created thereby shall be filled by the members at  
26 the same meeting

27           (5)(6) Any director who is removed from the board  
28 shall not be eligible to stand for reelection until the next  
29 annual meeting of the members.

1           (6)(7) Any director removed from office shall turn  
2 over to the board of directors within 72 hours any and all  
3 records of the corporation in his possession.

4           (7)(8) If a director who is removed shall not  
5 relinquish his office or turn over records as required under  
6 this section, the circuit court in the county where the  
7 corporation's principal office is located may summarily order  
8 the director to relinquish his office and turn over corporate  
9 records upon application of any member.

10           Section 6. Subsection (1) of section 617.2103, Florida  
11 Statutes, 1996 Supplement, is amended to read:

12           617.2103 Exemptions for certain corporations.--

13           (1) No corporation described in s. 501(c) of the  
14 Internal Revenue Code of 1986, as amended, shall be subject to  
15 the provisions of s. 617.0808, s. 617.1601, s. 617.1602, s.  
16 617.1603, s. 617.1604, s. 617.1605, or s. 617.2102, unless the  
17 articles of incorporation or bylaws provide otherwise. No  
18 ~~corporation described in s. 501(c) of the Internal Revenue~~  
19 ~~Code of 1986, as amended; except a charitable organization as~~  
20 ~~defined in s. 496.404; is subject to the provisions of s.~~  
21 ~~617.0808.~~ For purposes of this subsection, if a current  
22 determination letter issued under the authority of the  
23 internal revenue laws of the United States of America  
24 determines that a particular corporation is or is not exempt  
25 from federal income taxation under s. 501(c) of the Internal  
26 Revenue Code of 1986, as amended, that shall be conclusive on  
27 the question whether the corporation is or is not described in  
28 s. 501(c) of the Internal Revenue Code of 1986, as amended.

9           Section 7. This act shall take effect upon becoming a  
10 law.

\*\*\*\*\*

HOUSE SUMMARY

Provides for service of process on dissolved corporations with a different procedure for corporations dissolved before July 1, 1990, and on or after that date.

Provides additional criteria whereby an agreement among the shareholders of a corporation with 100 or fewer shareholders is effective among the shareholders, even though inconsistent with one or more provisions of chapter 607, F.S.

Provides that unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action to provide that if the corporation acquires its own shares, shares so acquired belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation.

Defines the term "treasury shares" to mean shares of a corporation that belong to the issuing corporation that are authorized and issued shares that are not outstanding, are not canceled, and have not been restored to the status of authorized but unissued shares.

Deletes reference to the board of directors of a charitable corporation from a provision of law governing the removal of directors

Florida House of Representatives - 1997

By Representative Kosnas

1 A bill to be entitled

2 An act relating to mergers of business entities  
3 or corporations; amending s. 48.101, F.S.;  
4 specifying service of process on certain  
5 dissolved corporations; amending s. 607.0732,  
6 F.S ; providing an additional criterion of  
7 shareholder agreements; providing limitations,  
8 creating ss. 607.1108, 607.1109, 607.11101,  
9 F.S.; providing for mergers of domestic  
10 corporations and other business entities under  
11 certain circumstances; requiring a plan of  
12 merger; providing criteria; providing for  
13 articles of merger; providing for effect of  
merger; creating ss. 608.438, 608.4381,  
14 608.4382, 608.4383, 608.4384, F S ; providing  
15 for mergers of limited liability companies  
16 under certain circumstances; requiring a plan  
17 of merger; providing criteria; providing for  
18 action on a plan of merger, providing  
19 procedures; providing for articles of merger;  
20 providing for effect of merger; providing for  
21 rights of dissenting members; providing  
22 procedures; creating ss. 620.201, 620.202,  
23 620.203, 620.204, 620.205, F S ; providing for  
24 mergers of domestic limited partnerships under  
25 certain circumstances; requiring a plan of  
26 merger; providing criteria; providing for  
27 action on a plan of merger; providing  
28 procedures; providing for articles of merger;  
29 providing for effect of merger, providing for  
30  
31

1 rights of dissenting partners; providing  
2 procedures; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1 Section 48 101, Florida Statutes, is  
7 amended to read.

8 48.101 Service on dissolved corporations.--Process  
9 against the directors of any corporation ~~that was~~ which is  
10 dissolved before July 1, 1990, as trustees of the dissolved  
11 corporation shall be served on one or more of the directors of  
12 the dissolved corporation as trustees thereof and binds all of  
13 the directors of the dissolved corporation as trustees  
14 thereof Process against any other dissolved corporation shall  
15 be served in accordance with s. 48.081.

16 Section 2. Subsection (1) of section 607.0732, Florida  
17 Statutes, is amended to read

18 607.0732 Shareholder agreements --

19 (1) An agreement among the shareholders of a  
20 corporation with 100 or fewer shareholders at the time of the  
21 agreement, that complies with this section, is effective among  
22 the shareholders and the corporation, even though it is  
23 inconsistent with one or more other provisions of this  
24 chapter, if it:

25 (a) ~~Eliminates~~ the board of directors or restricts the  
26 discretion or powers of the board of directors;

27 (b) Governs the authorization or making of  
28 distributions whether or not in proportion to ownership of  
29 shares, subject to the limitations in s. 607.06401;



1 (c) Establishes who shall be directors or officers of  
2 the corporation, or their terms of office or manner of  
3 selection or removal;

4 (d) Governs, in general or in regard to specific  
5 matters, the exercise or division of voting power by the  
6 shareholders and directors, including use of weighted voting  
7 rights or director proxies;

8 (e) Establishes the terms and conditions of any  
9 agreement for the transfer or use of property or the provision  
10 of services between the corporation and any shareholder,  
11 director, officer, or employee of the corporation,

12 (f) Transfers to any shareholder or other person any  
13 authority to exercise the corporate powers or to manage the  
14 business and affairs of the corporation, including the  
15 resolution of any issue about which there exists a deadlock  
16 among directors or shareholders; or

17 (g) Requires dissolution of the corporation at the  
18 request of one or more of the shareholders or upon the  
19 occurrence of a specified event or contingency; or-

20 (h) Otherwise governs the exercise of the powers, or  
21 the management of the business and affairs, of the corporation  
22 or the relationship among the shareholders, the directors, or  
23 the corporation and is not contrary to public policy. Any  
24 agreement which modifies the duties of care or loyalty to the  
25 corporation, exculpates the directors from liability more  
26 broadly than permitted by ss. 607.1108-607.11101, ss.  
27 608.438-608.4383, or ss. 620.201-620.205, adversely affects  
28 shareholders' rights to bring derivative actions, abrogates  
29 dissenters' rights provided in s. 608.4384 or s. 620.205, or  
30 abrogates provisions of s. 607.06401 relating to shareholder  
31

582-104-97

1 distributions are deemed contrary to public policy for  
2 purposes of this paragraph.

3 Section 3. Sections 607 1108, 607.1109, and 607.11101,  
4 Florida Statutes, are created to read:

5 607.1108 Merger of domestic corporation and other  
6 business entity.--

7 (1) As used in this section and ss. 607.1109 and  
8 607 11101, "other business entity" means a limited liability  
9 company, a foreign corporation, a business trust or  
10 association, a real estate investment trust, a common law  
11 trust, an unincorporated business, a general partnership, a  
12 limited partnership, or any other entity that is formed  
13 pursuant to the requirements of applicable law.

14 (2) Pursuant to a plan of merger complying and  
15 approved in accordance with this section, one or more domestic  
16 corporations may merge with or into one or more other business  
17 entities formed, organized, or incorporated under the laws of  
18 this state or any other state, the United States, foreign  
19 country, or other foreign jurisdiction, if:

20 (a) Each domestic corporation which is a party to the  
21 merger complies with the applicable provisions of this  
22 chapter.

23 (b) Each domestic partnership that is a party to the  
24 merger complies with the applicable provisions of chapter 620.

25 (c) Each domestic limited liability company that is a  
26 party to the merger complies with the applicable provisions of  
27 chapter 608.

28 (d) The merger is permitted by the laws of the state,  
29 country, or jurisdiction under which each other business  
30 entity that is a party to the merger is formed, organized, or  
31

1 incorporated and each such other business entity complies with  
2 such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic corporation and the name  
5 and jurisdiction of formation, organization, or incorporation  
6 of each other business entity planning to merge, and the name  
7 of the surviving or resulting domestic corporation or other  
8 business entity into which each other domestic corporation or  
9 other business entity plans to merge, which is hereinafter and  
10 in ss. 607.1109 and 607.11101 designated as the surviving  
11 entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the shares of  
14 each domestic corporation that is a party to the merger and  
15 the partnership interests, interests, shares, obligations or  
16 other securities of each other business entity that is a party  
17 to the merger into partnership interests, interests, shares,  
18 obligations or other securities of the surviving entity or any  
19 other domestic corporation or other business entity or, in  
20 whole or in part, into cash or other property, and the manner  
21 and basis of converting rights to acquire the shares of each  
22 domestic corporation that is a party to the merger and rights  
23 to acquire partnership interests, interests, shares,  
24 obligations or other securities of each other business entity  
25 that is a party to the merger into rights to acquire  
26 partnership interests, interests, shares, obligations or other  
27 securities of the surviving entity or any other domestic  
28 corporation or other business entity or, in whole or in part,  
29 into cash or other property.

1       (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4       (e) If a limited liability company is to be the  
5 surviving entity and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers

8       (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to the merger is formed, organized, or  
11 incorporated.

12       (4) The plan of merger may set forth:

13       (a) If a domestic corporation is to be the surviving  
14 entity, any amendments to, or a restatement of, the articles  
15 of incorporation of the surviving entity, and such amendments  
16 or restatement shall be effective at the effective date of the  
17 merger.

18       (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20       (c) Any other provisions relating to the merger.

21       (5) The plan of merger required by subsection (3)  
22 shall be adopted and approved by each domestic corporation  
23 that is a party to the merger in the same manner as is  
24 provided in s. 607 1103. Notwithstanding the foregoing, if the  
25 surviving entity is a partnership, no shareholder of a  
26 domestic corporation that is a party to the merger shall, as a  
27 result of the merger, become a general partner of the  
28 surviving entity, unless such shareholder specifically  
29 consents in writing to becoming a general partner of the  
30 surviving entity, and unless such written consent is obtained  
31 from each such shareholder who, as a result of the merger,

1 would become a general partner of the surviving entity, such  
2 merger shall not become effective under s. 607.11101. Any  
3 shareholder providing such consent in writing shall be deemed  
4 to have voted in favor of the plan of merger for purposes of  
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,  
7 insofar as they are applicable, apply to mergers of one or  
8 more domestic corporations with or into one or more other  
9 business entities.

10 (7) Notwithstanding any provision of this section or  
11 ss. 607.1109 and 607.11101, any merger consisting solely of  
12 the merger of one or more domestic corporations with or into  
13 one or more foreign corporations shall be consummated solely  
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger --

16 (1) After a plan of merger is approved by each  
17 domestic corporation and other business entity that is a party  
18 to the merger, the surviving entity shall deliver to the  
19 Department of State for filing articles of merger, which shall  
20 be executed by each domestic corporation as required by s.  
21 607.0120 and by each other business entity as required by  
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved  
25 by each domestic corporation that is a party to the merger in  
26 accordance with the applicable provisions of this chapter,  
27 and, if applicable, a statement that the written consent of  
28 each shareholder of such domestic corporation who, as a result  
29 of the merger, becomes a general partner of the surviving  
30 entity has been obtained pursuant to s. 607.1108(5).

582-104-97

1           (c) A statement that the plan of merger was approved  
2 by each domestic partnership that is a party to the merger in  
3 accordance with the applicable provisions of chapter 620

4           (d) A statement that the plan of merger was approved  
5 by each domestic limited liability company that is a party to  
6 the merger in accordance with the applicable provisions of  
7 chapter 608.

8           (e) A statement that the plan of merger was approved  
9 by each other business entity that is a party to the merger,  
10 other than corporations, limited liability companies, and  
11 partnerships formed, organized, or incorporated under the laws  
12 of this state, in accordance with the applicable laws of the  
13 state, country, or jurisdiction under which such other  
14 business entity is formed, organized, or incorporated

15           (f) The effective date of the merger, which may be on  
16 or after the date of filing the articles of merger, provided,  
17 if the articles of merger do not provide for an effective date  
18 of the merger, the effective date shall be the date on which  
19 the articles of merger are filed.

20           (g) If the surviving entity is another business entity  
21 formed, organized, or incorporated under the laws of any  
22 state, country, or jurisdiction other than this state:

23           1. The address, including street and number, if any,  
24 of its principal office under the laws of the state, country,  
25 or jurisdiction in which it was formed, organized, or  
26 incorporated

27           2. A statement that the surviving entity is deemed to  
28 have appointed the Secretary of State as its agent for service  
29 of process in a proceeding to enforce any obligation or the  
30 rights of dissenting shareholders of each domestic corporation  
31 that is a party to the merger.

1           3. A statement that the surviving entity has agreed to  
2 promptly pay to the dissenting shareholders of each domestic  
3 corporation that is a party to the merger the amount, if any,  
4 to which they are entitled under s. 607.1302.

5           (2) A copy of the articles of merger, certified by the  
6 Department of State, may be filed in the office of the  
7 official who is the recording officer of each county in this  
8 state in which real property of a party to the merger other  
9 than the surviving entity is situated.

10           607.11101 Effect of merger of domestic corporation and  
11 other business entity.--

12           (1) When a merger becomes effective:

13           (a) Every domestic corporation and other business  
14 entity that is a party to the merger merges into the surviving  
15 entity and the separate existence of every domestic  
16 corporation and other business entity that is a party to the  
17 merger except the surviving entity ceases.

18           (b) The title to all real estate and other property,  
19 or any interest therein, owned by each domestic corporation  
20 and other business entity that is a party to the merger is  
21 vested in the surviving entity without reversion or impairment  
22 and without any requirement to record any deed or other  
23 conveyance.

24           (c) The surviving entity shall thereafter be  
25 responsible and liable for all the liabilities and obligations  
26 of each domestic corporation and other business entity that is  
27 a party to the merger, including liabilities arising out of  
28 the rights of dissenters with respect to such merger under  
29 applicable law.

30           (d) Any claim existing or action or proceeding pending  
31 by or against any domestic corporation or other business

582-104-97

1 entity that is a party to the merger may be continued as if  
2 the merger did not occur or the surviving entity may be  
3 substituted in the proceeding for the domestic corporation or  
4 other business entity which ceased existence.

5 (e) Neither the rights of creditors nor any liens upon  
6 the property of any domestic corporation or other business  
7 entity shall be impaired by such merger.

8 (f) If a domestic corporation is the surviving entity,  
9 the articles of incorporation of such corporation in effect  
10 immediately prior to the time the merger becomes effective  
11 shall be the articles of incorporation of the surviving  
12 entity, except as amended or restated to the extent provided  
13 in the plan of merger.

14 (g) The shares, partnership interests, interests,  
15 obligations, or other securities, and the rights to acquire  
16 shares, partnership interests, interests, obligations, or  
17 other securities, of each domestic corporation and other  
18 business entity that is a party to the merger shall be  
19 converted into shares, partnership interests, interests,  
20 obligations, or other securities, or rights to such  
21 securities, of the surviving entity or any other domestic  
22 corporation or other business entity or, in whole or in part,  
23 into cash or other property as provided in the plan of merger,  
24 and the former holders of shares, partnership interests,  
25 interests, obligations, or other securities, or rights to such  
26 securities, shall be entitled only to the rights provided in  
27 the plan of merger and to their rights as dissenters, if any,  
28 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other  
29 applicable law.



1 Section 4. Sections 608.438, 608.4381, 608.4382,  
2 608.4383, and 608.43884, Florida Statutes, are created to  
3 read.

4 608.438 Merger of limited liability company.--

5 (1) As used in this section and ss. 608.4381-608.4384,

6 "other business entity" includes a corporation, a business  
7 trust or association, a real estate investment trust, a common  
8 law trust, an unincorporated business, a general partnership,  
9 a limited partnership, a limited liability company other than  
10 a limited liability company organized under the laws of this  
11 chapter, or any other entity that is formed pursuant to the  
12 requirements of applicable law.

13 (2) Unless otherwise provided in the articles of  
14 organization or the regulations of a limited liability  
15 company, pursuant to a plan of merger, a limited liability  
16 company may merge with or into one or more limited liability  
17 companies or other business entities formed, organized, or  
18 incorporated under the laws of this state or any other state,  
19 the United States, foreign country, or other foreign  
20 jurisdiction, if:

21 (a) Each limited liability company that is a party to  
22 the merger complies with the applicable provisions of this  
23 chapter and complies with the terms of its articles of  
24 organization and regulations.

25 (b) Each domestic partnership that is a party to the  
26 merger complies with the applicable provisions of chapter 620.

27 (c) Each domestic corporation that is a party to the  
28 merger complies with the applicable provisions of chapter 607.

29 (d) The merger is permitted by the laws of the state,  
30 country, or jurisdiction under which each other business  
31 entity that is a party to the merger is formed, organized, or

582-104-97

1 incorporated, and each such other business entity complies  
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each limited liability company and the  
5 name and jurisdiction of formation, organization, or  
6 incorporation of each other business entity planning to merge,  
7 and the name of the surviving or resulting limited liability  
8 company or other business entity into which each other limited  
9 liability company or other business entity plans to merge,  
10 which is, in this section and in ss. 608.4381-608.4384,  
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the interests  
14 of the members of each limited liability company that is a  
15 party to the merger and the interests, partnership interests,  
16 shares, obligations, or other securities of each other  
17 business entity that is a party to the merger into interests,  
18 partnership interests, shares, obligations, or other  
19 securities of the surviving entity or any other limited  
20 liability company or other business entity or, in whole or in  
21 part, into cash or other property, and the manner and basis of  
22 converting rights to acquire interests of each limited  
23 liability company that is a party to the merger and rights to  
24 acquire interests, partnership interests, shares, obligations,  
25 or other securities of each other business entity that is a  
26 party to the merger into rights to acquire interests,  
27 partnership interests, shares, obligations, or other  
28 securities of the surviving entity or any other limited  
29 liability company or other business entity or, in whole or in  
30 part, into cash or other property.  
31

582-104-97

1       (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4       (e) If a limited liability company is to be the  
5 surviving entity, and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers.

8       (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to merger is formed, organized, or  
11 incorporated.

12       (4) The plan of merger may set forth:

13       (a) If a limited liability company is to be the  
14 surviving entity, any amendments to, or a restatement of, the  
15 articles of organization or the regulations of the surviving  
16 entity, and such amendments or restatement shall be effective  
17 at the effective date of the merger.

18       (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20       (c) A provision authorizing one or more of the limited  
21 liability companies that are parties to the merger to abandon  
22 the proposed merger pursuant to s. 608.4381(7).

23       (d) A statement of, or a statement of the method of  
24 determining, the "fair value," as defined in s.  
25 608.4384(1)(b), of an interest in any limited liability  
26 company that is a party to the merger.

27       (e) Other provisions relating to the merger.

28       608.4381 Action on plan of merger.--

29       (1) Unless the articles of organization or the  
30 regulations of a limited liability company require a  
31 greater-than-majority vote, the plan of merger shall be

582-104-97

1 approved in writing by a majority of the managers of a limited  
2 liability company that is a party to the merger in which  
3 management is not reserved to its members. Unless the articles  
4 of organization or the regulations of a limited liability  
5 company require a greater-than-majority vote or provide for  
6 another method of determining the voting rights of each of its  
7 members, and whether or not management is reserved to its  
8 members, the plan of merger shall be approved in writing by a  
9 majority of the members of a limited liability company that is  
10 a party to the merger, and, if applicable, the vote of each  
11 member shall be weighted in accordance with s. 608.4231(1)(b),  
12 provided, unless the articles of organization or the  
13 regulations of the limited liability company require a  
14 greater-than-majority vote or provide for another method of  
15 determining the voting rights of each of its members, if there  
16 is more than one class or group of members, the merger shall  
17 be approved by a majority of the members of each such class or  
18 group, and, if applicable, the vote of each member shall be  
19 weighted in accordance with s. 608.4231(1)(b).

20 (2) In addition to the approval required by subsection  
21 (1), if the surviving entity is a partnership, no member of a  
22 limited liability company that is a party to the merger shall,  
23 as a result of the merger, become a general partner of the  
24 surviving entity unless such member specifically consents in  
25 writing to becoming a general partner of the surviving entity  
26 and unless such written consent is obtained from each such  
27 member who, as a result of the merger, would become a general  
28 partner of the surviving entity, such merger shall not become  
29 effective under s. 608.4383. Any member providing such  
30 consent in writing shall be deemed to have voted in favor of  
31 the plan of merger for purposes of s. 608.4384.

582-104-97

1       (3) All members of each limited liability company that  
2 is a party to the merger shall be given written notice of any  
3 meeting or other action with respect to the approval of a plan  
4 of merger as provided in subsection (4), not fewer than 30 nor  
5 more than 60 days before the date of the meeting at which the  
6 plan of merger shall be submitted for approval by the members  
7 of such limited liability company, provided, if the plan of  
8 merger is submitted to the members of the limited liability  
9 company for their written approval or other action without a  
10 meeting, such notification shall be given to each member not  
11 fewer than 30 nor more than 60 days before the effective date  
12 of the merger. Pursuant to s. 608.455, the notification  
13 required by this subsection may be waived in writing by the  
14 person or persons entitled to such notification.

15       (4) The notification required by subsection (3) shall  
16 be in writing and shall include:

17       (a) The date, time, and place of the meeting, if any,  
18 at which the plan of merger is to be submitted for approval by  
19 the members of the limited liability company, or, if the plan  
20 of merger is to be submitted for written approval or by other  
21 action without a meeting, a statement to that effect

22       (b) A copy or summary of the plan of merger.

23       (c) A clear and concise statement that, if the plan of  
24 merger is effected, members dissenting therefrom may be  
25 entitled, if they comply with the provisions of s. 608.4384  
26 regarding the rights of dissenting members, to be paid the  
27 fair value of their interests, which shall be accompanied by a  
28 copy of s. 608.4384.

29       (d) A statement of, or a statement of the method of  
30 determining, the "fair value," as defined in s.  
31 608.4384(1)(b), of an interest in the limited liability

582-104-97

1 company, in the case of a limited liability company in which  
2 management is not reserved to its members, as determined by  
3 the managers of such limited liability company, which  
4 statement may consist of a reference to the applicable  
5 provisions of such limited liability company's articles of  
6 organization or regulations that determine the fair value of  
7 an interest in the limited liability company for such  
8 purposes, and which shall constitute an offer by the limited  
9 liability company to purchase at such fair value any interests  
10 of a "dissenter," as defined in s. 608.4384(1)(a), unless and  
11 until such dissenter's right to receive the fair value of his  
12 interests in the limited liability company is terminated  
13 pursuant to s. 608.4384(8).

14 (e) The date on which such notification was mailed or  
15 delivered to the members.

16 (f) Any other information concerning the plan of  
17 merger.

18 (5) The notification required by subsection (3) shall  
19 be deemed to be given at the earliest date of:

20 (a) The date such notification is received;

21 (b) Five days after the date such notification is  
22 deposited in the United States mail addressed to the member at  
23 his address as it appears in the books and records of the  
24 limited liability company, with postage thereon prepaid;

25 (c) The date shown on the return receipt, if sent by  
26 registered or certified mail, return receipt requested, and  
27 the receipt is signed by or on behalf of the addressee; or

28 (d) The date such notification is given in accordance  
29 with the provisions of the articles of organization or the  
30 regulations of the limited liability company.

31

1       (6) A plan of merger may provide for the manner, if  
2 any, in which the plan of merger may be amended at any time  
3 before the effective date of the merger, except after the  
4 approval of the plan of merger by the members of a limited  
5 liability company that is a party to the merger, the plan of  
6 merger may not be amended to.

7       (a) Change the amount or kind of interests,  
8 partnership interests, shares, obligations, other securities,  
9 cash, rights, or any other property to be received by the  
10 members of such limited liability company in exchange for or  
11 on conversion of their interests;

12       (b) If the surviving entity is a limited liability  
13 company, change any term of the articles of organization or  
14 the regulations of the surviving entity, except for changes  
15 that otherwise could be adopted without the approval of the  
16 members of the surviving entity;

17       (c) If the surviving entity is not a limited liability  
18 company, change any term of the articles of incorporation or  
19 comparable governing document of the surviving entity, except  
20 for changes that otherwise could be adopted by the board of  
21 directors or comparable representatives of the surviving  
22 entity; or

23       (d) Change any of the terms and conditions of the plan  
24 of merger if any such change, alone or in the aggregate, would  
25 materially and adversely affect the members, or any class or  
26 group of members, of such limited liability company.

27  
28 If an amendment to a plan of merger is made in accordance the  
29 plan and articles of merger have been filed with the  
30 Department of State, amended articles of merger executed by  
31 each limited liability company and other business entity that

1 is a party to the merger shall be filed with the Department of  
2 State prior to the effective date of the merger.

3 (7) Unless the limited liability company's articles of  
4 organization or regulations or the plan of merger provide  
5 otherwise, notwithstanding the prior approval of the plan of  
6 merger by any limited liability company that is a party to the  
7 merger in which management is not reserved to its members, and  
8 at any time prior to the filing of articles of merger with the  
9 Department of State, the planned merger may be abandoned,  
10 subject to any contractual rights, by any such limited  
11 liability company by the affirmative vote of a majority of its  
12 managers without further action by its members, in accordance  
13 with the procedure set forth in the plan of merger or if none  
14 is set forth, in the manner determined by the managers of such  
15 limited liability company.

16 608.4382 Articles of merger.--

17 (1) After a plan of merger is approved by each limited  
18 liability company and other business entity that is a party to  
19 the merger, the surviving entity shall deliver to the  
20 Department of State for filing articles of merger, which shall  
21 be executed by each limited liability company and by each  
22 other business entity as required by applicable law, and which  
23 shall set forth:

24 (a) The plan of merger.

25 (b) A statement that the plan of merger was approved  
26 by each limited liability company that is a party to the  
27 merger in accordance with the applicable provisions of this  
28 chapter, and, if applicable, a statement that the written  
29 consent of each member of such limited liability company who,  
30 as a result of the merger, becomes a general partner of the  
31 surviving entity has been obtained pursuant to s. 608.4381(2).



582-104-97

1 (c) A statement that the plan of merger was approved  
2 by each domestic partnership that is a party to the merger in  
3 accordance with the applicable provisions of chapter 620.

4 (d) A statement that the plan of merger was approved  
5 by each domestic corporation that is a party to the merger in  
6 accordance with the applicable provisions of chapter 607.

7 (e) A statement that the plan of merger was approved  
8 by each other business entity that is a party to the merger,  
9 other than limited liability companies, partnerships, and  
10 corporations formed, organized, or incorporated under the laws  
11 of this state, in accordance with the applicable laws of the  
12 state, country, or jurisdiction under which such other  
13 business entity is formed, organized, or incorporated.

14 (f) The effective date of the merger, which may be on  
15 or after the date of filing the articles of merger, provided,  
16 if the articles of merger do not provide for an effective date  
17 of the merger, the effective date shall be the date on which  
18 the articles of merger are filed.

19 (g) If the surviving entity is another business entity  
20 formed, organized, or incorporated under the laws of any  
21 state, country, or jurisdiction other than this state:

22 1. The address, including street and number, if any,  
23 of its principal office under the laws of the state, country,  
24 or jurisdiction in which it was formed, organized, or  
25 incorporated.

26 2. A statement that the surviving entity is deemed to  
27 have appointed the Secretary of State as its agent for service  
28 of process in a proceeding to enforce any obligation or the  
29 rights of dissenting members of each limited liability company  
30 that is a party to the merger.

582-104-97

1       3. A statement that the surviving entity has agreed to  
2 promptly pay to the dissenting members of each limited  
3 liability company that is a party to the merger the amount, if  
4 any, to which such dissenting members are entitled under s.  
5 608.4384.

6       (2) A copy of the articles of merger, certified by the  
7 Department of State, may be filed in the office of the  
8 official who is the recording officer of each county in this  
9 state in which real property of a party to the merger other  
10 than the surviving entity is situated.

11       608.4383 Effect of merger.--When a merger becomes  
12 effective:

13       (1) Every limited liability company and other business  
14 entity that is a party to the merger merges into the surviving  
15 entity and the separate existence of every limited liability  
16 company and other business entity that is a party to the  
17 merger, except the surviving entity, ceases.

18       (2) The title to all real estate and other property,  
19 or any interest therein, owned by each limited liability  
20 company and other business entity that is a party to the  
21 merger is vested in the surviving entity without reversion or  
22 impairment and without any requirement to record any deed or  
23 other conveyance.

24       (3) The surviving entity shall thereafter be  
25 responsible and liable for all the liabilities and obligations  
26 of each limited liability company and other business entity  
27 that is a party to the merger, including liabilities arising  
28 out of the rights of dissenters with respect to such merger  
29 under applicable law.

30       (4) Any claim existing or action or proceeding pending  
31 by or against any limited liability company or other business

582-104-97

1 entity that is a party to the merger may be continued as if  
2 the merger did not occur or the surviving entity may be  
3 substituted in the proceeding for the limited liability  
4 company or other business entity which ceased existence.

5 (5) Neither the rights of creditors nor any liens upon  
6 the property of any limited liability company or other  
7 business entity shall be impaired by such merger.

8 (6) If a limited liability company is the surviving  
9 entity, the articles of organization and the regulations of  
10 such limited liability company in effect immediately prior to  
11 the time the merger becomes effective shall be the articles of  
12 organization and the regulations of the surviving entity,  
13 except as amended or restated to the extent provided in the  
14 plan of merger.

15 (7) The interests, partnership interests, shares,  
16 obligations, or other securities, and the rights to acquire  
17 interests, partnership interests, shares, obligations, or  
18 other securities, of each limited liability company and other  
19 business entity that is a party to the merger shall be  
20 converted into interests, partnership interests, shares,  
21 obligations, or other securities, or rights to such  
22 securities, of the surviving entity or any other limited  
23 liability company or other business entity or, in whole or in  
24 part, into cash or other property as provided in the plan of  
25 merger, and the former holders of interests, partnership  
26 interests, shares, obligations, or other securities, or rights  
27 to such securities, shall be entitled only to the rights  
28 provided in the plan of merger and to their rights as  
29 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,  
30 s. 620.205, or other applicable law.

31 608.4384 Rights of dissenting members.--

1           (1) For purposes of this section:

2           (a) "Dissenter" means a member of a limited liability  
3 company who is a recordholder of the interests to which he  
4 seeks relief as of the date fixed for the determination of  
5 members entitled to notice of a plan of merger, who does not  
6 vote such interests in favor of the plan of merger, and who  
7 exercises the right to dissent from the plan of merger when  
8 and in the manner required by this section.

9           (b) "Fair value," with respect to a dissenter's  
10 interests, means the value of the interests in the limited  
11 liability company that is a party to a plan of merger as of  
12 the close of business of the day prior to the effective date  
13 of the merger to which the dissenter objects, excluding any  
14 appreciation or depreciation in anticipation of the merger,  
15 unless such exclusion would be inequitable.

16           (2) Each member of a limited liability company that is  
17 a party to a merger shall have the right to be paid the fair  
18 value of his interests as a dissenter only as provided in this  
19 section.

20           (3) Not later than 20 days after the date on which the  
21 notification required by s. 608.4381(3) is given to the  
22 members, or if such notification is waived in writing by the  
23 dissenter, not later than 20 days after the date of such  
24 written waiver, the dissenter shall deliver to the limited  
25 liability company a written demand for payment to him of the  
26 fair value of the interests as to which he seeks relief that  
27 states his address, the number and class, if any, of those  
28 interests, and, at the election of the dissenter, the amount  
29 claimed by him as the fair value of the interests. The  
30 statement of fair market value by the dissenter, if any, shall  
31 constitute an offer by the dissenter to sell the interests to

582-104-97

1 the limited liability company at such amount. A dissenter may  
2 dissent as to less than all the interests registered in his  
3 name. In such event, the dissenter's rights shall be  
4 determined as if the interests as to which he has dissented  
5 and his remaining interests were registered in the names of  
6 different members. If the interests as to which a dissenter  
7 seeks relief are represented by certificates, the dissenter  
8 shall deposit such certificates with the limited liability  
9 company simultaneously with the delivery of the written demand  
10 for payment. Upon receiving a demand for payment from a  
11 dissenter who is a recordholder of uncertificated interests,  
12 the limited liability company shall make an appropriate  
13 notation of the demand for payment in its records. The limited  
14 liability company may restrict the transfer of uncertificated  
15 interests from the date the dissenter's written demand for  
16 payment is delivered. A written demand for payment served on  
17 the limited liability company in which the dissenter is a  
18 member shall constitute service on the surviving entity.

19 (4) The written demand for payment required by  
20 subsection (3) shall be deemed to be delivered to the limited  
21 liability company at the earliest of:

22 (a) The date such written demand is received;

23 (b) Five days after the date such written demand is  
24 deposited in the United States mail addressed to the principal  
25 business office of the limited liability company, with postage  
26 thereon prepaid;

27 (c) The date shown on the return receipt, if such  
28 written demand is sent by registered or certified mail, return  
29 receipt requested, and the receipt is signed by or on behalf  
30 of the addressee; or

582-104-97

1       (d) The date such written demand is given in  
2 accordance with the provisions of the limited liability  
3 company's articles of organization or regulations.

4       (5) Unless the articles of organization or regulations  
5 of the limited liability company in which the dissenter is a  
6 member provides a basis or method for determining and paying  
7 the fair value of the interests as to which the dissenter  
8 seeks relief, or unless the limited liability company or the  
9 surviving entity and the dissenter have agreed in writing as  
10 to the fair value of the interests as to which the dissenter  
11 seeks relief, the dissenter, the limited liability company, or  
12 the surviving entity, within 90 days after the dissenter  
13 delivers the written demand for payment to the limited  
14 liability company, may file an action in any court of  
15 competent jurisdiction in the county in this state where the  
16 registered office of the limited liability company is located  
17 or was located when the plan of merger was approved by its  
18 members, or in the county in this state in which the principal  
19 office of the limited liability company that issued the  
20 interests is located or was located when the plan of merger  
21 was approved by its partners, requesting that the fair value  
22 of the dissenter's interests be determined. The court shall  
23 also determine whether each dissenter that is a party to such  
24 proceeding, as to whom the limited liability company or the  
25 surviving entity requests the court to make such  
26 determination, is entitled to receive payment of the fair  
27 value for his interests. Other dissenters, within the 90-day  
28 period after a dissenter delivers a written demand to the  
29 limited liability company, may join such proceeding as  
30 plaintiffs or may be joined in any such proceeding as  
31 defendants, and any two or more such proceedings may be

582-104-97

1 consolidated. If the limited liability company or surviving  
2 entity commences such a proceeding, all dissenters, whether or  
3 not residents of this state, other than dissenters who have  
4 agreed in writing with the limited liability company or the  
5 surviving entity as to the fair value of the interests as to  
6 which such dissenters seek relief, shall be made parties to  
7 such action as an action against their interests. The limited  
8 liability company or the surviving entity shall serve a copy  
9 of the initial pleading in such proceeding upon each dissenter  
10 who is a party to such proceeding and who is a resident of  
11 this state in the manner provided by law for the service of a  
12 summons and complaint and upon each such dissenter who is not  
13 a resident of this state either by registered or certified  
14 mail and publication or in such matter as is permitted by law.  
15 The jurisdiction of the court in such a proceeding shall be  
16 plenary and exclusive. All dissenters who are proper parties  
17 to the proceeding are entitled to judgment against the limited  
18 liability company or the surviving entity for the amount of  
19 the fair value of their interests as to which payment is  
20 sought hereunder. The court may, if it so elects, appoint one  
21 or more persons as appraisers to receive evidence and  
22 recommend a decision on the question of fair value. The  
23 appraisers shall have such power and authority as is specified  
24 in the order of their appointment or an amendment thereof.  
25 The limited liability company shall pay each dissenter the  
26 amount found to be due him within 10 days after final  
27 determination of the proceedings. Upon payment of the  
28 judgment, the dissenter shall cease to have any interest in  
29 the interests as to which payment is sought hereunder.

30

31

1           (6) The judgment may, at the discretion of the court,  
2 include a fair rate of interest, to be determined by the  
3 court.

4           (7) The costs and expenses of any such proceeding  
5 shall be determined by the court and shall be assessed against  
6 the limited liability company or the surviving entity, but all  
7 or any part of such costs and expenses may be apportioned and  
8 assessed as the court deems equitable against any or all of  
9 the dissenters who are parties to the proceeding, to whom the  
10 limited liability company or the surviving entity has made an  
11 offer to pay for the interests, if the court finds that the  
12 action of such dissenters in failing to accept such offer was  
13 arbitrary, vexatious or not in good faith. Such expenses shall  
14 include reasonable compensation for, and reasonable expenses  
15 of, the appraisers, but shall exclude the fees and expenses of  
16 counsel for, and experts employed by, any party. If the fair  
17 value of the interests, as determined, materially exceeds the  
18 amount which the limited liability company or the surviving  
19 entity offered to pay therefor, the court in its discretion  
20 may award to any dissenter who is a party to the proceeding  
21 such amount as the court determines to be reasonable  
22 compensation to any attorney or expert employed by the  
23 dissenter in the proceeding.

24           (8) The right of a dissenter to receive fair value for  
25 and the obligation to sell such interests as to which he seeks  
26 relief, and the right of the limited liability company or the  
27 surviving entity to purchase such interests and the obligation  
28 to pay the fair value of such interests, shall terminate if:

29           (a) The dissenter has not complied with this section,  
30 unless the limited liability company or the surviving entity  
31 waives, in writing, such noncompliance;



1           (b) The limited liability company abandons the merger  
2 or is finally enjoined or prevented from carrying it out, or  
3 the members rescind their adoption or approval of the merger;

4           (c) The dissenter withdraws his demand, with the  
5 consent of the limited liability company or the surviving  
6 entity; or

7           (d)1. The articles of organization or the regulations  
8 of the limited liability company in which the dissenter was a  
9 member does not provide a basis or method for determining and  
10 paying the dissenter the fair value of his interests.

11           2. The limited liability company or the surviving  
12 entity and the dissenter have not agreed upon the fair value  
13 of the dissenter's interests.

14           3. Neither the dissenter, the limited liability  
15 company, nor the surviving entity has filed or is joined in a  
16 complaint under subsection (5) within the 90-day period  
17 provided in subsection (5).

18           (9) Unless otherwise provided in the articles of  
19 organization or the regulations of the limited liability  
20 company in which the dissenter was a member, after the date  
21 the dissenter delivers the written demand for payment in  
22 accordance with subsection (3) until either the termination of  
23 the rights and obligations arising under subsection (3) or the  
24 purchase of the dissenter's interests by the limited liability  
25 company or the surviving entity, the dissenter shall be  
26 entitled only to payment as provided in this section and shall  
27 not be entitled to any other rights accruing from such  
28 interests, including voting or distribution rights. If the  
29 right to receive fair value is terminated other than by the  
30 purchase of the dissenter's interests by the limited liability  
31 company or the surviving entity, all rights of the dissenter

1 as a member of the limited liability company shall be  
2 reinstated effective as of the date the dissenter delivered  
3 the written demand for payment, including the right to receive  
4 any intervening payment or other distribution with respect to  
5 the dissenter's interests in the limited liability company,  
6 or, if any such rights have expired or any such distribution  
7 other than a cash payment has been completed, in lieu thereof  
8 at the election of the surviving entity, the fair value  
9 thereof in cash as determined by the surviving entity as of  
10 the time of such expiration or completion, but without  
11 prejudice otherwise to any action or proceeding of the limited  
12 liability company that may have been taken by the limited  
13 liability company on or after the date the dissenter delivered  
14 the written demand for payment.

15 (10) A member who is entitled under this section to  
16 demand payment for his interests shall not have any right at  
17 law or in equity to challenge the validity of any merger that  
18 creates his entitlement to demand payment hereunder, or to  
19 have the merger set aside or rescinded, except with respect to  
20 compliance with the provisions of the limited liability  
21 company's articles of organization or regulations or if the  
22 merger is unlawful or fraudulent with respect to such member.

23 (11) Unless otherwise provided in the articles of  
24 organization or the regulations of the limited liability  
25 company in which the dissenter was a member, this section does  
26 not apply with respect to a plan of merger if, as of the date  
27 fixed for the determination of members entitled to notice of a  
28 plan of merger:

29 (a) The interests of the limited liability company  
30 were held of record by not fewer than 500 members; or  
31

1           (b) The interests were registered on a national  
2 securities exchange or quoted on the National Association of  
3 Securities Dealers Automated Quotation System.

4           Section 5. Sections 620.201, 620.202, 620.203,  
5 620.204, and 620.205, Florida Statutes, are created to read:  
6           620.201 Merger of domestic limited partnership.

7           (1) As used in this section and ss. 620.202-620.205,  
8 "other business entity" includes a corporation, a limited  
9 liability company, a business trust or association, a real  
10 estate investment trust, a common law trust, an unincorporated  
11 business, a general partnership or a limited partnership but  
12 excluding a domestic limited partnership, or any other entity  
13 that is formed pursuant to the requirements of applicable law.

14           (2) Unless otherwise provided in the partnership  
15 agreement of a domestic limited partnership, pursuant to a  
16 plan of merger, a domestic limited partnership may merge with  
17 or into one or more domestic limited partnerships or other  
18 business entities formed, organized, or incorporated under the  
19 laws of this state or any other state, the United States,  
20 foreign country, or other foreign jurisdiction, if:

21           (a) Each domestic partnership that is a party to the  
22 merger complies with the applicable provisions of this chapter  
23 and complies with the terms of its partnership agreement.

24           (b) Each domestic limited liability company that is a  
25 party to the merger complies with the applicable provisions of  
26 chapter 608.

27           (c) Each domestic corporation that is a party to the  
28 merger complies with the applicable provisions of chapter 607.

29           (d) The merger is permitted by the laws of the state,  
30 country, or jurisdiction under which each other business  
31 entity that is a party to the merger is formed, organized, or

582-104-97

1 incorporated, and each such other business entity complies  
2 with such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic limited partnership and  
5 the name and jurisdiction of formation, organization, or  
6 incorporation of each other business entity planning to merge,  
7 and the name of the surviving or resulting domestic limited  
8 partnership or other business entity into which each other  
9 domestic limited partnership or other business entity plans to  
10 merge, which is hereinafter and in ss. 620.202-620.205  
11 designated as the surviving entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the partnership  
14 interests of each domestic limited partnership that is a party  
15 to the merger and the partnership interests, interests,  
16 shares, obligations, or other securities of each other  
17 business entity that is a party to the merger into partnership  
18 interests, interests, shares, obligations, or other securities  
19 of the surviving entity or any other domestic limited  
20 partnership or other business entity or, in whole or in part,  
21 into cash or other property, and the manner and basis of  
22 converting rights to acquire the partnership interests of each  
23 domestic limited partnership that is a party to the merger and  
24 rights to acquire partnership interests, interests, shares,  
25 obligations, or other securities of each other business entity  
26 that is a party to the merger into rights to acquire  
27 partnership interests, interests, shares, obligations, or  
28 other securities of the surviving entity or any other domestic  
29 limited partnership or other business entity or, in whole or  
30 in part, into cash or other property.

582-104-97

1           (d) If a partnership is to be the surviving entity,  
2 the names and business addresses of the general partners of  
3 the surviving entity.

4           (e) If a limited liability company is to be the  
5 surviving entity, and management thereof is vested in one or  
6 more managers, the names and business addresses of such  
7 managers.

8           (f) All statements required to be set forth in the  
9 plan of merger by the laws under which each other business  
10 entity that is a party to merger is formed, organized, or  
11 incorporated.

12           (4) The plan of merger may set forth:

13           (a) If a domestic limited partnership is to be the  
14 surviving entity, any amendments to, or a restatement of, the  
15 certificate of limited partnership or partnership agreement of  
16 the surviving entity, and such amendments or restatement shall  
17 be effective on the effective date of the merger.

18           (b) The effective date of the merger, which may be on  
19 or after the date of filing the certificate of merger.

20           (c) A provision authorizing one or more of the  
21 domestic limited partnerships that are parties to the merger  
22 to abandon the proposed merger pursuant to s. 620.202(7).

23           (d) A statement of, or a statement of the method of  
24 determining, the "fair value," as defined in s. 620.205(1)(b),  
25 of a partnership interest in any domestic limited partnership  
26 that is a party to the merger.

27           (e) Any other provisions relating to the merger.--  
28 620.202 Action on plan of merger.--

29           (1) Unless otherwise provided in the partnership  
30 agreement of a domestic limited partnership, the plan of  
31 merger shall be approved in writing by all of the general

1 partners of a domestic limited partnership that is a party to  
2 the merger. Unless the partnership agreement of a domestic  
3 limited partnership requires a greater vote, the plan of  
4 merger shall also be approved in writing by those limited  
5 partners who own more than a majority of the then current  
6 percentage or other interests in the profits of the domestic  
7 limited partnership owned by all of the limited partners,  
8 provided, unless the partnership agreement of the domestic  
9 limited partnership requires a greater vote, if there is more  
10 than one class or group of limited partners, the plan of  
11 merger shall be approved by those limited partners who own  
12 more than a majority of the then current percentage or other  
13 interests in the profits of the domestic limited partnership  
14 owned by the limited partners in each class or group.

15 (2) In addition to the approval required by subsection  
16 (1):

17 (a) If a domestic limited partnership is to be the  
18 surviving entity, no person shall, as a result of the merger,  
19 continue to be or become a general partner of the surviving  
20 entity, unless such person specifically consents in writing to  
21 continuing to be or to becoming, as the case may be, a general  
22 partner of the surviving entity, and unless such written  
23 consent is obtained from each such person who, as a result of  
24 the merger, would become a general partner of the surviving  
25 entity, such merger shall not become effective under s.  
26 620.204.

27 (b) If a partnership other than a domestic limited  
28 partnership is to be the surviving entity, no partner of a  
29 domestic limited partnership that is a party to the merger  
30 shall, as a result of the merger, become a general partner of  
31 the surviving entity unless such partner specifically consents

582-104-97

1 in writing to becoming a general partner of the surviving  
2 entity, and unless such written consent is obtained from each  
3 person who, as a result of the merger, would become a general  
4 partner of the surviving entity, such merger shall not become  
5 effective under s. 620.204. Any person providing such consent  
6 in writing shall be deemed to have voted in favor of the plan  
7 of merger for purposes of s. 620.205.

8 (3) All partners of each domestic limited partnership  
9 that is a party to the merger shall be given written notice of  
10 any meeting or other action with respect to the approval of a  
11 plan of merger as provided in subsection (4), not fewer than  
12 30 nor more than 60 days before the date of the meeting at  
13 which the plan of merger shall be submitted for approval by  
14 the partners of such limited partnership. However, if the  
15 plan of merger is submitted to the partners of the limited  
16 partnership for their written approval or other action without  
17 a meeting, such notification shall be given to each partner  
18 not fewer than 30 nor more than 60 days before the effective  
19 date of the merger. Notwithstanding the foregoing, the  
20 notification required by this subsection may be waived in  
21 writing by the person or persons entitled to such  
22 notification.

23 (4) The notification required by subsection (3) shall  
24 be in writing and shall include:

25 (a) The date, time, and place of the meeting, if any,  
26 at which the plan of merger shall be submitted for approval by  
27 the partners of the domestic limited partnership, or, if the  
28 plan of merger will be submitted for written approval or by  
29 other action without a meeting, a statement to that effect.

30 (b) A copy or summary of the plan of merger.  
31

1           (c) A clear and concise statement that, if the plan of  
2 merger is effected, partners dissenting therefrom may be  
3 entitled, if they comply with the provisions of s. 620.205  
4 regarding the rights of dissenting partners, to be paid the  
5 fair value of their partnership interests, which shall be  
6 accompanied by a copy of s. 620.205.

7           (d) A statement of, or a statement of the method of  
8 determining, the "fair value," as defined in s 620 205(1)(b),  
9 of an interest in the limited partnership as determined by the  
10 general partners of the limited partnership, which statement  
11 may consist of a reference to the applicable provisions of  
12 such limited partnership's partnership agreement that  
13 determine the fair value of an interest in the limited  
14 partnership for these purposes, and which shall constitute an  
15 offer by the limited partnership to purchase at such fair  
16 value any partnership interests of a "dissenter," as defined  
17 in s. 620.205(1)(a), unless and until such a dissenter's right  
18 to receive the fair value of his interests in the limited  
19 partnership are is terminated pursuant to s. 620.205(8).

20           (e) The date on which such notification was mailed or  
21 delivered to the partners.

22           (f) Any other information concerning the plan of  
23 merger.

24           (5) The notification required by subsection (3) shall  
25 be deemed to be given at the earliest of:

26           (a) The date such notification is received;

27           (b) Five days after the date such notification is  
28 deposited in the United States mail addressed to the partner  
29 at his address as it appears in the books and records of the  
30 limited partnership, with postage thereon prepaid;



1           (c) The date shown on the return receipt, if sent by  
2 registered or certified mail, return receipt requested, and  
3 the receipt is signed by or on behalf of the addressee; or

4           (d) The date such notification is given in accordance  
5 with the provisions of the limited partnership's partnership  
6 agreement.

7           (6) A plan of merger may provide for the manner, if  
8 any, in which the plan of merger may be amended at any time  
9 before the effective date of the merger, except, after the  
10 approval of the plan of merger by the limited partners of a  
11 domestic limited partnership that is a party to the merger,  
12 the general partners of such domestic limited partnership  
13 shall not be authorized to amend the plan of merger to:

14           (a) Change the amount or kind of partnership  
15 interests, interests, shares, obligations, other securities,  
16 cash, rights, or any other property to be received by the  
17 limited partners of such domestic limited partnership in  
18 exchange for or on conversion of their partnership interests;

19           (b) If the surviving entity is a partnership, change  
20 any term of the partnership agreement of the surviving entity,  
21 except for changes that otherwise could be adopted by the  
22 general partners of the surviving entity;

23           (c) If the surviving entity is not a partnership,  
24 change any term of the articles of incorporation or comparable  
25 governing document of the surviving entity, except for changes  
26 that otherwise could be adopted by the board of directors or  
27 comparable representatives of the surviving entity; or

28           (d) Change any of the terms and conditions of the plan  
29 of merger if any such change, alone or in the aggregate, would  
30 materially and adversely affect the limited partners, or any  
31

1 class or group of limited partners, of such domestic limited  
2 partnership.

3  
4 If an amendment to a plan of merger is made in accordance with  
5 such plan and articles of merger have been filed with the  
6 Department of State, amended articles of merger executed by  
7 the general partners of each domestic limited partnership and  
8 other business entity that is a party to the merger shall be  
9 filed with the Department of State prior to the effective date  
10 of the merger.

11 (7) Unless the domestic limited partnership's  
12 partnership agreement or the plan of merger provides  
13 otherwise, notwithstanding the prior approval of the plan of  
14 merger by any domestic limited partnership that is a party to  
15 the merger and at any time prior to the filing of articles of  
16 merger with the Department of State, the planned merger may be  
17 abandoned, subject to any contractual rights, by any such  
18 domestic limited partnership by the affirmative vote of all of  
19 its general partners, without further action by its limited  
20 partners, in accordance with the procedure set forth in the  
21 plan of merger or if none is set forth, in the manner  
22 determined by the general partners of such domestic limited  
23 partnership.

24 620.203 Articles of merger.--

25 (1) After a plan of merger is approved by each  
26 domestic limited partnership and other business entity that is  
27 a party to the merger, the surviving entity shall deliver  
28 articles of merger to the Department of State for filing,  
29 which articles shall be executed by the general partners of  
30 each domestic limited partnership and by each other business  
31

582-104-97

1 entity as required by applicable law, and which shall set  
2 forth:

3 (a) The plan of merger.

4 (b) A statement that the plan of merger was approved  
5 by each domestic partnership that is a party to the merger in  
6 accordance with the applicable provisions of this chapter,  
7 and, if applicable, a statement that the written consent of  
8 each person who, as a result of the merger, becomes a general  
9 partner of the surviving entity has been obtained pursuant to  
10 s. 620.202(2).

11 (c) A statement that the plan of merger was approved  
12 by each domestic corporation that is a party to the merger in  
13 accordance with the applicable provisions of chapter 607.

14 (d) A statement that the plan of merger was approved  
15 by each domestic limited liability company that is a party to  
16 the merger in accordance with the applicable provisions of  
17 chapter 608.

18 (e) A statement that the plan of merger was approved  
19 by each other business entity that is a party to the merger,  
20 other than partnerships, limited liability companies, and  
21 corporations formed, organized, or incorporated under the laws  
22 of this state, in accordance with the applicable laws of the  
23 state, country, or jurisdiction under which such other  
24 business entity is formed, organized, or incorporated.

25 (f) The effective date of the merger, which may be on  
26 or after the date of filing the articles of merger, provided,  
27 if the articles of merger do not provide for an effective date  
28 of the merger, the effective date shall be the date on which  
29 the articles of merger are filed.

30

31

1 (g) If the surviving entity is another business entity  
2 formed, organized, or incorporated under the laws of any  
3 state, country, or jurisdiction other than this state:

4 1. The address, including street and number, if any,  
5 of its principal office under the laws of the state, country,  
6 or jurisdiction in which it was formed, organized or  
7 incorporated.

8 2. A statement that the surviving entity is deemed to  
9 have appointed the Secretary of State as its agent for service  
10 of process in a proceeding to enforce any obligation or the  
11 rights of dissenting partners of each domestic limited  
12 partnership that is a party to the merger.

13 3. A statement that the surviving entity has agreed to  
14 promptly pay to the dissenting partners of each domestic  
15 limited partnership that is a party to the merger the amount,  
16 if any, to which they are entitled under s. 620.205.

17 (2) A copy of the articles of merger, certified by the  
18 Department of State, may be filed in the office of the  
19 official who is the recording officer of each county in this  
20 state in which real property of a party to the merger other  
21 than the surviving entity is situated.

22 (3) Articles of merger shall act as a certificate of  
23 cancellation for purposes of s. 620.113 for a domestic limited  
24 partnership that is a party to the merger that is not the  
25 surviving entity and such partnership's certificate of limited  
26 partnership shall be canceled upon the effective date of the  
27 merger.

28 §20.204 Effect of merger.--

29 (1) When a merger becomes effective:

30 (a) Every domestic limited partnership and other  
31 business entity that is a party to the merger merges into the

1 surviving entity and the separate existence of every domestic  
2 limited partnership and other business entity that is a party  
3 to the merger except the surviving entity ceases.

4 (b) The title to all real estate and other property,  
5 or any interest therein, owned by each domestic limited  
6 partnership and other business entity that is a party to the  
7 merger is vested in the surviving entity without reversion or  
8 impairment and without any requirement to record any deed or  
9 other conveyance.

10 (c) The surviving entity shall thereafter be  
11 responsible and liable for all the liabilities and obligations  
12 of each domestic limited partnership and other business entity  
13 that is a party to the merger, including liabilities arising  
14 out of the rights of dissenters with respect to such merger  
15 under applicable law.

16 (d) Any claim existing or action or proceeding pending  
17 by or against any domestic limited partnership or other  
18 business entity that is a party to the merger may be continued  
19 as if the merger did not occur or the surviving entity may be  
20 substituted in the proceeding for the domestic limited  
21 partnership or other business entity which ceased existence.

22 (e) Neither the rights of creditors nor any liens upon  
23 the property of any domestic limited partnership or other  
24 business entity shall be impaired by such merger.

25 (f) If a general partner of a partnership formed or  
26 organized under the laws of this state or any other state,  
27 country, or jurisdiction that is a party to the merger is not  
28 a general partner of the surviving entity, the former general  
29 partner shall have no liability for obligations arising out of  
30 the rights of dissenters with respect to such merger under  
31 applicable law or for any obligation incurred after the

1 effective date of the merger, except to the extent that a  
2 former creditor of the partnership in which the former general  
3 partner was a general partner extends credit to the surviving  
4 entity reasonably believing that the former general partner  
5 continued as a general partner of the surviving entity.

6 (q) If a domestic limited partnership is the surviving  
7 entity, the certificate of limited partnership and partnership  
8 agreement of such partnership in effect immediately prior to  
9 the time the merger becomes effective shall be the certificate  
10 of limited partnership and partnership agreement of the  
11 surviving entity, except as amended or restated to the extent  
12 provided in the plan of merger.

13 (h) The partnership interests, interests, shares,  
14 obligations, or other securities, and the rights to acquire  
15 partnership interests, membership interests, shares,  
16 obligations, or other securities, of each domestic limited  
17 partnership and other business entity that is a party to the  
18 merger shall be converted into partnership interests,  
19 interests, shares, obligations, or other securities, or rights  
20 to such securities, of the surviving entity or any other  
21 domestic limited partnership or other business entity or, in  
22 whole or in part, into cash or other property as provided in  
23 the plan of merger, and the former holders of partnership  
24 interests, interests, shares, obligations, or other  
25 securities, or rights to such securities, shall be entitled  
26 only to the rights provided in the plan of merger and to their  
27 rights as dissenters, if any, under s. 620.205, ss.  
28 607.1301-607.1320, s. 608.4384, or other applicable law.

29 (2) Unless otherwise provided in the plan of merger, a  
30 merger of a domestic limited partnership, including a domestic  
31 limited partnership that is not the surviving entity, shall

1 not require such domestic limited partnership to wind up its  
2 affairs under s. 620.159 or pay its liabilities and distribute  
3 its assets under s. 620.162.

4 620.205 Rights of dissenting partners.--

5 (1) For purposes of this section:

6 (a) "Dissenter" means a partner of a domestic limited  
7 partnership who is a recordholder of the partnership interests  
8 to which he seeks relief as of the date fixed for the  
9 determination of partners entitled to notice of a plan of  
10 merger, who does not vote such interests in favor of the plan  
11 of merger, and who exercises the right to dissent from the  
12 plan of merger when and in the manner required by this  
13 section.

14 (b) "Fair value," with respect to a dissenter's  
15 partnership interests, means the value of the partnership  
16 interests in the domestic limited partnership that is a party  
17 to a plan of merger as of the close of business of the day  
18 prior to the effective date of the merger to which the  
19 dissenter objects, excluding any appreciation or depreciation  
20 in anticipation of the merger, unless such exclusion would be  
21 inequitable.

22 (2) Each partner of a domestic limited partnership  
23 that is a party to a merger shall have the right to be paid  
24 the fair value of his partnership interests as a dissenter as  
25 provided in this section.

26 (3) Not later than 20 days after the date on which the  
27 notification required by s. 620.202(3) is given to the  
28 partners, or if such notification was waived in writing by the  
29 dissenter, not later than 20 days after the date of such  
30 written waiver, the dissenter shall deliver to the limited  
31 partnership a written demand for payment to him of the fair

1 value of the interests as to which he seeks relief that states  
2 his address, the number and class, if any, of those interests,  
3 and, at the election of the dissenter, the amount claimed by  
4 him as the fair value of the interests. The statement of fair  
5 market value by the dissenter, if any, shall constitute an  
6 offer by the dissenter to sell the partnership interests to  
7 the limited partnership for such amount. A dissenter may  
8 dissent as to less than all the partnership interests  
9 registered in his name. In such event, the dissenter's rights  
10 shall be determined as if the partnership interests as to  
11 which he has dissented and his remaining partnership interests  
12 were registered in the names of different partners. If the  
13 interests as to which a dissenter seeks relief are represented  
14 by certificates, the dissenter shall deposit such certificates  
15 with the limited partnership simultaneously with the delivery  
16 of the written demand for payment. Upon receiving a demand  
17 for payment from a dissenter who is a record holder of  
18 uncertificated interests, the limited partnership shall make  
19 an appropriate notation of the demand for payment in its  
20 records. The limited partnership may restrict the transfer of  
21 uncertificated interests from the date the dissenter's written  
22 demand for payment is delivered. A written demand for payment  
23 served on the domestic limited partnership in which the  
24 dissenter is a partner shall constitute service on the  
25 surviving entity.

26 (4) The written demand for payment required by  
27 subsection (3) shall be deemed to be delivered to the limited  
28 partnership at the earliest of:

29 (a) The date such written demand is received;

30 (b) Five days after the date such written demand is  
31 deposited in the United States mail addressed to the principal



1 business office of the limited partnership, with postage  
2 thereon prepaid;

3 (c) The date shown on the return receipt, if such  
4 written demand is sent by registered or certified mail, return  
5 receipt requested, and the receipt is signed by or on behalf  
6 of the addressee; or

7 (d) The date such written demand is given in  
8 accordance with the provisions of the limited partnership's  
9 partnership agreement.

10 (5) Unless the partnership agreement of the limited  
11 partnership in which the dissenter is a partner provides a  
12 basis or method for determining and paying the fair value of  
13 the interests as to which the dissenter seeks relief, or  
14 unless the limited partnership or the surviving entity and the  
15 dissenter have agreed in writing as to the fair value of the  
16 interests as to which the dissenter seeks relief, the  
17 dissenter, the limited partnership, or the surviving entity,  
18 within 90 days after the dissenter delivers the written demand  
19 for payment to the limited partnership, may file an action in  
20 any court of competent jurisdiction in the county in this  
21 state where the registered office of the limited partnership  
22 is located or was located when the plan of merger was approved  
23 by its partners, or in the county in this state in which the  
24 principal office of the limited partnership that issued the  
25 partnership interests is located or was located when the plan  
26 of merger was approved by its partners, requesting a  
27 determination of the fair value of the dissenter's partnership  
28 interests. The court shall also determine whether each  
29 dissenter that is a party to such proceeding, as to whom the  
30 limited partnership or the surviving entity requests the court  
31 to make such determination, is entitled to receive payment of

1 the fair value for his partnership interests. Other  
2 dissenters, within the 90-day period after a dissenter  
3 delivers a written demand to the partnership, may join such  
4 proceeding as plaintiffs or may be joined in any such  
5 proceeding as defendants, and any two or more such proceedings  
6 may be consolidated. If the limited partnership or surviving  
7 entity commences such a proceeding, all dissenters, whether or  
8 not residents of this state, other than dissenters who have  
9 agreed in writing with the limited partnership or the  
10 surviving entity as to the fair value of the partnership  
11 interests as to which such dissenters seek relief, shall be  
12 made parties to such action as an action against their  
13 partnership interests. The limited partnership or the  
14 surviving entity shall serve a copy of the initial pleading in  
15 such proceeding upon each dissenter who is a party to such  
16 proceeding and who is a resident of this state in the manner  
17 provided by law for the service of a summons and complaint and  
18 upon each such dissenter who is not a resident of this state  
19 either by registered or certified mail and publication or in  
20 such manner as is permitted by law. The jurisdiction of the  
21 court in such a proceeding shall be plenary and exclusive.  
22 All dissenters who are proper parties to the proceeding are  
23 entitled to judgment against the limited partnership or the  
24 surviving entity for the amount of the fair value of their  
25 partnership interests as to which payment is sought hereunder.  
26 The court may, if it so elects, appoint one or more persons as  
27 appraisers to receive evidence and recommend a decision on the  
28 question of fair value. The appraisers shall have such power  
29 and authority as is specified in the order of their  
30 appointment or an amendment thereof. The limited partnership  
31 shall pay each dissenter the amount found to be due him within

1 10 days after final determination of the proceedings. Upon  
2 payment of the judgment, the dissenter shall cease to have any  
3 interest in the partnership interests as to which payment is  
4 sought hereunder.

5 (6) The judgment may, at the discretion of the court,  
6 include a fair rate of interest, to be determined by the  
7 court.

8 (7) The costs and expenses of any such proceeding  
9 shall be determined by the court and shall be assessed against  
10 the limited partnership or the surviving entity. However, all  
11 or any part of such costs and expenses may be apportioned and  
12 assessed as the court deems equitable against any or all of  
13 the dissenters who are parties to the proceeding, to whom the  
14 limited partnership or the surviving entity has made an offer  
15 to pay for the partnership interests, if the court finds that  
16 the action of such dissenters in failing to accept such offer  
17 was arbitrary, vexatious, or not in good faith. Such expenses  
18 shall include reasonable compensation for, and reasonable  
19 expenses of, the appraisers, but shall exclude the fees and  
20 expenses of counsel for, and experts employed by, any party.  
21 If the fair value of the partnership interests, as determined,  
22 materially exceeds the amount which the limited partnership or  
23 the surviving entity offered to pay therefor, the court in its  
24 discretion may award to any dissenter who is a party to the  
25 proceeding such amount as the court determines to be  
26 reasonable compensation to any attorney or expert employed by  
27 the dissenter in the proceeding.

28 (8) The right of a dissenter to receive fair value for  
29 and the obligation to sell such partnership interests as to  
30 which he seeks relief and the right of the domestic limited  
31 partnership or the surviving entity to purchase such interests

1 and the obligation to pay the fair value of such interests  
2 shall terminate if,

3 (a) The dissenter has not complied with this section,  
4 unless the limited partnership or the surviving entity waives  
5 in writing such noncompliance;

6 (b) The limited partnership abandons the merger or is  
7 finally enjoined or prevented from carrying out the merger, or  
8 the partners rescind their adoption or approval of the merger;

9 (c) The dissenter withdraws his demand, with the  
10 consent of the limited partnership or the surviving entity; or

11 (d)1. The partnership agreement of the domestic  
12 limited partnership in which the dissenter was a partner does  
13 not provide a basis or method for determining and paying the  
14 dissenter the fair value of his partnership interests.

15 2. The limited partnership or the surviving entity and  
16 the dissenter have not agreed upon the fair value of the  
17 dissenter's partnership interests.

18 3. Neither the dissenter, the limited partnership nor  
19 the surviving entity has filed or is joined in a complaint  
20 under subsection (5) within the 90-day period provided in that  
21 subsection.

22 (9) Unless otherwise provided in the partnership  
23 agreement of the domestic limited partnership in which the  
24 dissenter was a partner, after the date the dissenter delivers  
25 the written demand for payment in accordance with subsection  
26 (3) until either the termination of the rights and obligations  
27 arising from it or the purchase of the dissenter's partnership  
28 interests by the limited partnership or the surviving entity,  
29 the dissenter shall be entitled only to payment as provided in  
30 this section and shall not be entitled to any other rights  
31 accruing from such interests, including voting or distribution

582-104-97

1 rights. If the right to receive fair value is terminated  
2 other than by the purchase of the dissenter's partnership  
3 interests by the limited partnership or the surviving entity,  
4 all rights of the dissenter as a partner of the limited  
5 partnership shall be reinstated effective as of the date the  
6 dissenter delivered the written demand for payment, including  
7 the right to receive any intervening payment or other  
8 distribution with respect to the dissenter's interests in the  
9 limited partnership, or, if any such rights have expired or  
10 any such distribution other than a cash payment has been  
11 completed, in lieu thereof at the election of the surviving  
12 entity, the fair value thereof in cash as determined by the  
13 surviving entity as of the time of such expiration or  
14 completion, but without prejudice otherwise to any action or  
15 proceeding of the limited partnership that may have been taken  
16 by the limited partnership on or after the date the dissenter  
17 delivered the written demand for payment.

18 (10) A partner who is entitled under this section to  
19 demand payment for his partnership interests shall not have  
20 any right at law or in equity to challenge the validity of any  
21 merger that creates his entitlement to demand payment  
22 hereunder, or to have the merger set aside or rescinded,  
23 except with respect to compliance with the provisions of the  
24 limited partnership's partnership agreement or if the merger  
25 is unlawful or fraudulent with respect to such partner.

26 (11) Unless otherwise provided in the partnership  
27 agreement of the domestic limited partnership in which the  
28 dissenter was a partner, this section does not apply with  
29 respect to a plan of merger if, as of the date fixed for the  
30 determination of partners entitled to notice of a plan of  
31 merger:



By Representative Lacasa

1 A bill to be entitled

2 An act relating to charitable corporations;  
3 amending ss. 617.0808 and 617.2103, F.S.;  
4 excluding charitable corporations from certain  
5 provisions relating to removal of a director  
6 from a board of directors; providing an  
7 effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10  
11 Section 1. Section 617 0808, Florida Statutes, is  
12 amended to read:

13 617.0808 Removal of directors.--A director may be  
14 removed from office pursuant to procedures provided in the  
15 articles of incorporation or the bylaws, which shall provide  
16 the following, and if they do not do so, shall be deemed to  
17 include the following:

18 (1) ~~Except as provided in subsection (2);~~ Any member  
19 of the board of directors may be removed from office with or  
20 without cause by the vote or agreement in writing by a  
21 majority of all votes of the membership.

22 ~~(2)--Any member of the board of directors of a~~  
23 ~~charitable organization as defined in s. 496.404; may be~~  
24 ~~removed from office without cause only following the~~  
25 ~~recommendation of a majority of the board of directors~~  
26 ~~followed by the vote or agreement in writing by a majority of~~  
27 ~~all votes of the membership:~~

28 (2)(3) The notice of a meeting of the members to  
29 recall a member or members of the board of directors shall  
30 state the specific directors sought to be removed.

1           (3)(4) A proposed removal of a director at a meeting  
2 shall require a separate vote for each board member sought to  
3 be removed. Where removal is sought by written agreement, a  
4 separate agreement is required for each board member to be  
5 removed.

6           (4)(5) If removal is effected at a meeting, any  
7 vacancies created thereby shall be filled by the members at  
8 the same meeting.

9           (5)(6) Any director who is removed from the board  
10 shall not be eligible to stand for reelection until the next  
11 annual meeting of the members.

12           (6)(7) Any director removed from office shall turn  
13 over to the board of directors within 72 hours any and all  
14 records of the corporation in his possession.

15           (7)(8) If a director who is removed shall not  
16 relinquish his office or turn over records as required under  
17 this section, the circuit court in the county where the  
18 corporation's principal office is located may summarily order  
19 the director to relinquish his office and turn over corporate  
20 records upon application of any member.

21           Section 2. Subsection (1) of section 617.2103, Florida  
22 Statutes, 1996 Supplement, is amended to read:

23           617.2103 Exemptions for certain corporations.--

24           (1) No corporation described in s. 501(c) of the  
25 Internal Revenue Code of 1986, as amended, shall be subject to  
26 the provisions of s. 617.0808, s. 617.1601, s. 617.1602, s.  
27 617.1603, s. 617.1604, s. 617.1605, or s. 617.2102, unless the  
28 articles of incorporation or bylaws provide otherwise. No  
29 corporation-described-in-s.-501(c)-of-the-Internal-Revenue  
30 Code-of-1986;-as-amended;-except-a-charitable-organization-as  
31 defined-in-s.-496.404;-is-subject-to-the-provisions-of-s-



1 647:8888: For purposes of this subsection, if a current  
 2 determination letter issued under the authority of the  
 3 internal revenue laws of the United States of America  
 4 determines that a particular corporation is or is not exempt  
 5 from federal income taxation under s. 501(c) of the Internal  
 6 Revenue Code of 1986, as amended, that shall be conclusive on  
 7 the question whether the corporation is or is not described in  
 8 s. 501(c) of the Internal Revenue Code of 1986, as amended.

9 Section 3. This act shall take effect upon becoming a  
 10 law.

11 \*\*\*\*\*

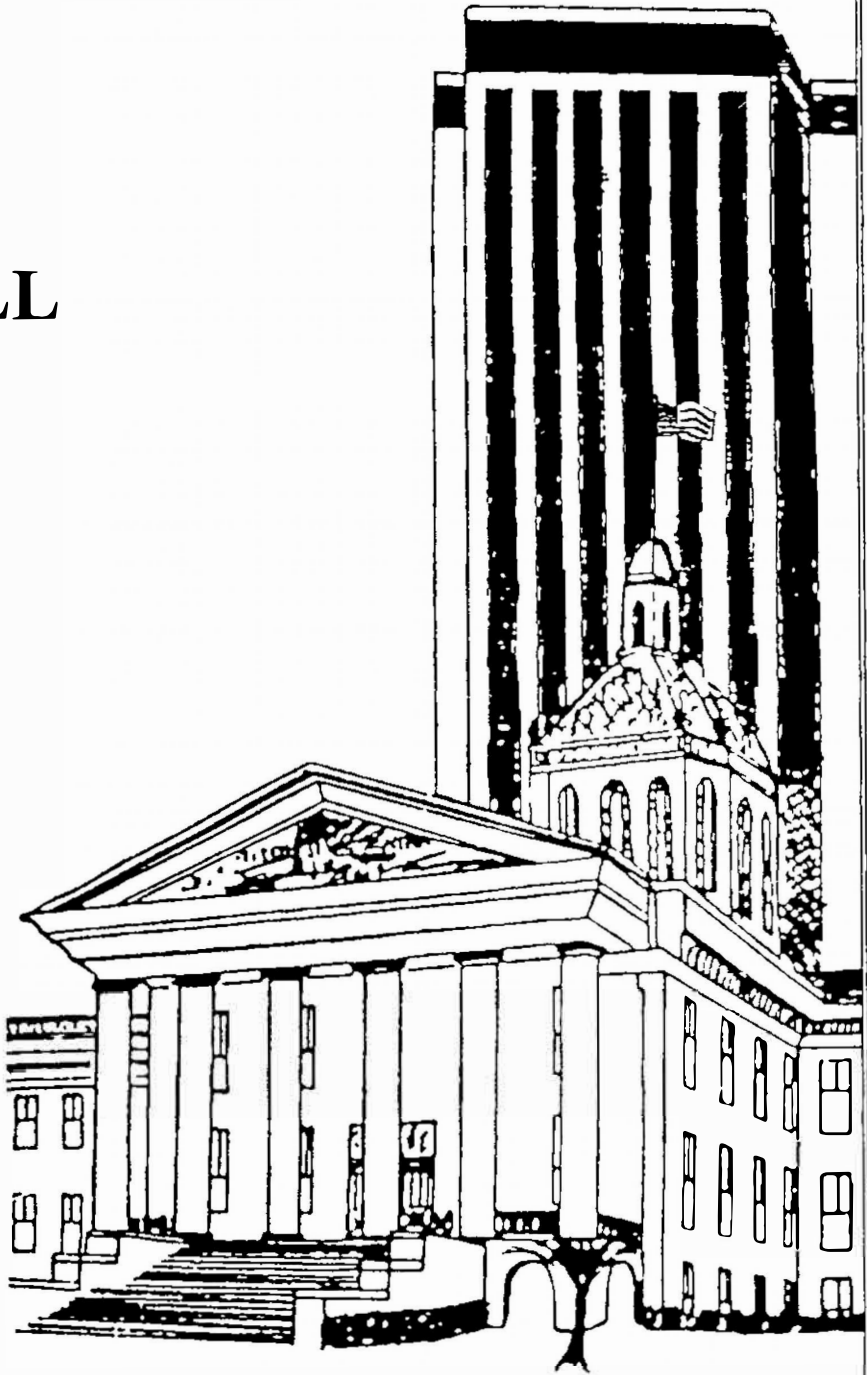
12  
 13 HOUSE SUMMARY

14 Excludes charitable corporations from provisions relating  
 5 to removal of a director from a board of directors See  
 16 bill for details.

# **FLORIDA LEGISLATURE**

## **FINAL LEGISLATIVE BILL INFORMATION**

*1997 Regular Session*



prepared by:

**JOINT LEGISLATIVE MANAGEMENT COMMITTEE  
LEGISLATIVE INFORMATION DIVISION**

**Claude Pepper Building, Room 704**

**111 West Madison Street**

**Tallahassee, Florida 32399-1400**

**Telephone (904) 488-4371**

HISTORY OF HOUSE BILLS

**H 1235 GENERAL BILL by Bradley (Identical S 1380)**  
County Commissioners/Elections, requires county commissioners to be elected from single-member districts in certain counties, authorizes certain boards of county commissioners to increase their membership, provides for election of county commissioners in such counties, provides applicability, provides for transition to such method of election Effective Date Upon becoming law  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00169  
 03/24/97 HOUSE Referred to Election Reform (GRC), General Government Appropriations -HJ 00323  
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Election Reform (GRC)

**H 1237 GENERAL BILL/CS by Crime & Punishment (JC); Villalobos**  
Cloning, prohibits cloning of any human being in state, provides penalty, provides definitions, provides for genetic research, diagnosis, & therapeutic processes, establishes genetic information resource committee, provides duties & membership, requires report Effective Date 10/01/1997  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00169  
 03/24/97 HOUSE Referred to Crime & Punishment (JC) -HJ 00323  
 04/02/97 HOUSE On Committee agenda—Crime & Punishment (JC), 04/08/97, 3 30 pm, 21-HOB—Temporarily deferred  
 04/09/97 HOUSE On Committee agenda—Crime & Punishment (JC), 04/10/97, 2 45 pm, 21-HOB  
 04/10/97 HOUSE Comm Action—Unanimously CS by Crime & Punishment (JC) -HJ 00666  
 04/21/97 HOUSE CS read first time on 04/21/97 -HJ 00663  
 04/22/97 HOUSE Pending Consent Calendar -HJ 00666  
 04/24/97 HOUSE Available for Consent Calendar, Objection filed  
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In Justice Council, pending ranking

**H 1239 GENERAL BILL by Mackey (Similar S 1370, Compare CS/H 0841, S 0686)**  
Game & Freshwater Fishing, exempts entry fees for participation in freshwater fishing tournaments from admissions tax, increases fee for private game preserve or farm licenses, increases fee re each license or management area permit sold, increases fee for resident fishing or hunting license, provides license for taking of reptiles or amphibians, provides for sale of licenses electronically by credit card, etc Amends Ch 372, 212 04, 375 315 Effective Date 07/01/1997  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00169  
 05/02/97 HOUSE Withdrawn from further cons ,Iden/Sim/Compare Bill(s) passed, refer to CS/HB 841 (Ch 97-217) -HJ 01979

**H 1241 GENERAL BILL/CS by Health Care Standards & Regulatory Reform (GSC), D. Prewitt**  
Prescription Drugs/Study Commission, creates study commission for purpose of studying variations in cost of prescription drugs, provides for membership, provides for organization & administration, requires meetings & public hearings, provides for expert testimony, requires report Effective Date Upon becoming law  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00169  
 03/24/97 HOUSE Referred to Health Care Standards & Regulatory Reform (GSC), Governmental Rules & Regulations (GRC), Health & Human Services Appropriations -HJ 00323  
 04/01/97 HOUSE On Committee agenda—Health Care Standards & Regulatory Reform (GSC), 04/07/97, 1 00 pm, Morris Hall  
 04/07/97 HOUSE Comm Action Unanimously CS by Health Care Standards & Regulatory Reform (GSC) -HJ 00595  
 04/16/97 HOUSE CS read first time on 04/16/97 -HJ 00592  
 04/15/97 HOUSE Now in Governmental Rules & Regulations (GRC) -HJ 00595  
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Governmental Rules & Regulations (GRC)

**H 1243 GENERAL BILL/CS by Elder Affairs & Long Term Care (GSC); Jacobs, (CO-SPONSORS) Wiles, Arnall, Livingston; Carlton; Crist; Silver (Similar CS/S 1592)**  
Continuing Care Contracts, revises definitions re continuing care contracts, specifies application of additional laws to providers of continuing care, revises certain filing fee provisions, deletes certain escrow agreement requirements, limits Insurance Dept's authority to approve certain applications clarifies provisions for applications for certificates of authority revises criteria for granting certain mortgages, etc Amends Ch 651 Effective Date 10/01/1997  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00169  
 03/24/97 HOUSE Referred to Elder Affairs & Long Term Care (GSC), Finance & Taxation (FRC), General Government Appropriations -HJ 00323  
 03/27/97 HOUSE On Committee agenda—Elder Affairs & Long Term Care (GSC) 04/03/97 2 00 pm, 413C

**H 1243 (CONTINUED)**  
 04/03/97 HOUSE Comm Action Unanimously CS by Elder Affairs & Long Term Care (GSC) -HJ 00496  
 04/09/97 HOUSE CS read first time on 04/09/97 -HJ 00490, Now in Finance & Taxation (FRC) -HJ 00496  
 04/16/97 HOUSE Withdrawn from Finance & Taxation (FRC) -HJ 00574, Now in General Government Appropriations  
 04/17/97 HOUSE Withdrawn from General Government Appropriations -HJ 00648  
 04/18/97 HOUSE Pending Consent Calendar  
 04/22/97 HOUSE Available for Consent Calendar  
 04/24/97 HOUSE Placed on Consent Calendar  
 04/25/97 HOUSE Read second and third times -HJ 00931, -HJ 00932, CS passed, YEAS 115 NAYS 0 -HJ 00932  
 04/25/97 SENATE In Messages  
 04/28/97 SENATE Received, referred to Banking and Insurance, Ways and Means -SJ 00713  
 05/01/97 SENATE Withdrawn from Banking and Insurance, Ways and Means -SJ 01127, Substituted for CS/SB 1592 -SJ 01128, Read second and third times -SJ 01128, CS passed, YEAS 38 NAYS 0 -SJ 01128  
 05/01/97 HOUSE Ordered enrolled -HJ 01755  
 05/14/97 Signed by Officers and presented to Governor  
 05/30/97 Became Law without Governor's Signature, Chapter No 97-229

**H 1245 GENERAL BILL/2ND ENG by Lacasa; (CO-SPONSORS) Fasano; Murman; Cosgrove; Boyd (Similar H 1247, S 0682, CS/S 1920, Compare H 1657, S 2040)**  
Corporations, excludes charitable corporations from certain provisions re removal of director from board of directors, specifies additional criterion for certain shareholder agreements, clarifies circumstance under which acquisition of certain shares does not constitute control—share acquisition, authorizes corporation's board of directors to amend corporation's articles of incorporation for additional purpose, etc Amends Chs 617, 607, 48 101 Effective Date 05/30/1997  
 03/07/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00170  
 03/24/97 HOUSE Referred to Financial Services (EIC) -HJ 00323  
 03/28/97 HOUSE On Committee agenda—Financial Services (EIC), 04/03/97, 8 30 am, Morris Hall  
 04/03/97 HOUSE Comm Action -Favorable by Financial Services (EIC) -HJ 00493  
 04/07/97 HOUSE In Economic Impact Council, pending ranking -HJ 00493  
 04/10/97 HOUSE Placed on Economic Impact Council Calendar -HJ 00529  
 04/23/97 HOUSE Read second time -HJ 01047, Amendment(s) adopted -HJ 01047  
 05/01/97 HOUSE Read third time -HJ 01351, Amendment(s) adopted -HJ 01351, Passed as amended, YEAS 114 NAYS 3 -HJ 01351  
 05/01/97 SENATE In Messages, Received, referred to Commerce and Economic Opportunities -SJ 01302, Withdrawn from Commerce and Economic Opportunities -SJ 01270, Substituted for CS/SB 1920 -SJ 01270, Read second and third times -SJ 01270, Passed, YEAS 27 NAYS 9 -SJ 01270  
 05/01/97 HOUSE Ordered enrolled -HJ 01755  
 05/14/97 Signed by Officers and presented to Governor  
 05/30/97 Became Law without Governor's Signature, Chapter No 97-230

**H 1247 GENERAL BILL by Boyd; (CO-SPONSORS) Wise, Murman (Similar 2ND ENG/H 1245, S 0682, CS/S 1920, Compare H 1657, S 2040)**  
Corporations, provides for two kinds of service of process on dissolved corporations depending on date of dissolution, defines term "treasury shares", provides additional requirements re certain shareholder agreements, provides additional criteria whereby corporation's board of directors may adopt one or more amendments to articles of incorporation without shareholder action, etc Amends 48 101, 607 01401, 0732, 1002, 617 0808, 2103 Effective Date Upon becoming law  
 03/10/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00170  
 04/17/97 HOUSE Withdrawn from further cons ,Iden/Sim/Compare Bill(s) passed, refer to HB 1245 (Ch 97-230) -HJ 00600

**H 1249 GENERAL BILL by Boyd (Similar S 1562, Compare CS/3RD ENG/H 0715)**  
Water Resources, (THIS BILL COMBINED IN CS/H715 1249,1321,1339) authorizes use & management of lands acquired under Conservation & Recreation Lands TF for permissible water resources development & water supply development purposes, revises procedure for appointment of members to WMD governing boards, revises criteria re duration of consumptive use permits, revises provisions re district & basin audits budgets & expense reports, etc Amends 259 032, 101 Ch 373 Effective Date 07/01/1997 except as otherwise provided  
 03/10/97 HOUSE Filed  
 03/11/97 HOUSE Introduced -HJ 00170

## CITATOR—BILLS INTRODUCED AND PASSED

(Citator reflects Florida Statute numbers listed in final passed bill—not necessarily final statutory placement. Verify with F.S. tracing tables.)

## FLORIDA STATUTE CHAPTER 607 (CONT.)

607 1604 S 438(97-102)  
 607 1620 S 438(97-102)  
 607 1622 S 1706, H 155,  
 H 681  
 607 1904 S 438(97-102)

## FLORIDA STATUTE CHAPTER 608

608 404 S 438(97-102)  
 608 406 H 1049  
 608 407 S 438(97-102)  
 608 416 S 438(97-102)  
 608 4211 S 438(97-102)  
 608 4225 S 438(97-102)  
 608 426 S 438(97-102)  
 608 427 S 438(97-102)  
 608 428 S 438(97-102)  
 608 432 S 438(97-102)  
 608 433 S 438(97-102)  
 608 434 S 438(97-102)  
 608 4362 S 438(97-102)  
 608 4363 S 438(97-102)  
 608 438 S 2040, H 1657  
 608 4381 S 2040, H 1657  
 608 4382 S 2040, H 1657  
 608 4363 S 2040, H 1657  
 608 4384 S 2040, H 1657  
 608 4421 S 438(97-102)  
 608 4481 S 438(97-102)  
 608 4492 S 438(97-102)  
 608 4494 S 438(97-102)  
 608 452 S 1908  
 608 463 S 438(97-102)  
 608 471 S 1908, H 1049  
 608 508 S 438(97-102)  
 608 509 S 438(97-102)  
 608 512 S 438(97-102)

## FLORIDA STATUTE CHAPTER 609

609 02 S 438(97-102)  
 609 08 S 438(97-102)

## FLORIDA STATUTE CHAPTER 610

610 011 S 1450, H 1083  
 610 021 S 438(97-102), S 1450,  
 H 1083  
 610 031 S 1450, H 1083  
 610 041 S 438(97-102), S 1450,  
 H 1083  
 610 051 S 1450, H 1083  
 610 061 S 438(97-102), S 1450,  
 H 1083  
 610 071 S 1450, H 1083  
 610 081 S 438(97-102), S 1450,  
 H 1083  
 610 091 S 1450, H 1083  
 610 101 S 1450, H 1083  
 610 111 S 1450, H 1083

## FLORIDA STATUTE CHAPTER 616

616 121 S 438(97-102)  
 616.21 S 416(97-93), S 438(97-102),  
S 1688(97-307)  
 616 252 S 438(97-102)

## FLORIDA STATUTE CHAPTER 617

617 01201 S 438(97-102)  
 617 0122 S 418(97-94)  
 617 01225 S 418(97-94)  
 617 0129 S 438(97-102)  
 617 01301 S 438(97-102)  
 617 0501 S 435(97-102), S 816  
 617 0502 S 438(97-102)  
 617 0504 S 438(97-102)  
 617 0701 S 438(97-102)  
 617 0721 S 438(97-102)  
 617 0806 S 438(97-102)  
 617 0807 S 438(97-102)  
 617 0808 S 438(97-102), S 1920,  
 H 1245(97-230), H 1247  
 617 0809 S 438(97-102)  
 617 0820 S 438(97-102)

## FLORIDA STATUTE CHAPTER 617 (CONT.)

617 0824 S 438(97-102)  
 617 0825 S 438(97-102)  
 617 0830 S 438(97-102)  
 617 0832 S 438(97-102)  
 617 0834 S 438(97-102)  
 617 1421 S 438(97-102)  
 617 1432 S 438(97-102)  
 617 1440 S 438(97-102)  
 617 1507 S 416(97-93), S 438(97-102)  
 617 1508 S 438(97-102)  
 617 1509 S 438(97-102)  
 617 1530 S 438(97-102)  
 617 1533 S 416(97-93)  
 617 1602 S 438(97-102)  
 617 1603 S 438(97-102)  
 617 1604 S 416(97-93), S 438(97-102)  
 617 1807 S 438(97-102)  
 617 1904 S 438(97-102)  
 617 2003 S 438(97-102)  
 617 2006 S 438(97-102)  
 617 2103 S 438(97-102), S 1920,  
 H 1245(97-230), H 1247  
 617 303 S 104, H 113(97-311)  
 617 305 S 102, S 104,  
 S 1786, H 113(97-311),  
 H 1435  
 617 306 S 104, S 438(97-102),  
 H 113  
 617 31 S 438(97-102)

## FLORIDA STATUTE CHAPTER 618

618 09 S 438(97-102)  
 618 12 S 435(97-102)  
 618 14 S 438(97-102)  
 618 15 S 438(97-102)  
 618 18 S 438(97-102)  
 618 25 S 438(97-102)

## FLORIDA STATUTE CHAPTER 619

619 06 S 438(97-102)  
 619 07 S 438(97-102)

## FLORIDA STATUTE CHAPTER 620

620 102 S 438(97-102)  
 620 1051 S 438(97-102)  
 620 116 S 438(97-102)  
 620 117 S 438(97-102)  
 620 124 S 438(97-102)  
 620 126 S 438(97-102)  
 620 129 S 438(97-102)  
 620 132 S 438(97-102)  
 620 136 S 438(97-102)  
 620 139 S 438(97-102)  
 620 142 S 438(97-102)  
 620 144 S 438(97-102)  
 620 145 S 438(97-102)  
 620 146 S 438(97-102)  
 620 148 S 438(97-102)  
 620 152 S 438(97-102)  
 620 153 S 438(97-102)  
 620 154 S 438(97-102)  
 620 155 S 438(97-102)  
 620 159 S 438(97-102)  
 620 164 S 438(97-102)  
 620 172 S 438(97-102)  
 620 1835 S 438(97-102)  
 620 187 S 1050, H 1697  
 620 201 S 2040, H 1657  
 620 202 S 2040, H 1657  
 620 203 S 2040, H 1657  
 620 204 S 2040, H 1657  
 620 205 S 2040, H 1657  
 620 57 S 438(97-102)  
 620 59 S 438(97-102)  
 620 60 S 438(97-102)  
 620 605 S 438(97-102)  
 620 61 S 438(97-102)  
 620 615 S 438(97-102)  
 620 62 S 438(97-102)  
 620 625 S 438(97-102)

## FLORIDA STATUTE CHAPTER 620 (CONT.)

620 635 S 438(97-102)  
 620 64 S 438(97-102)  
 620 645 S 438(97-102)  
 620 66 S 438(97-102)  
 620 665 S 438(97-102)  
 620 675 S 438(97-102)  
 620 68 S 438(97-102)  
 620 685 S 438(97-102)  
 620 69 S 438(97-102)  
 620 695 S 438(97-102)  
 620 715 S 438(97-102)  
 620 725 S 438(97-102)  
 620 73 S 438(97-102)  
 620 735 S 438(97-102)  
 620 74 S 438(97-102)  
 620 745 S 438(97-102)  
 620 75 S 438(97-102)  
 620 755 S 438(97-102)  
 620 76 S 438(97-102)  
 620 765 S 438(97-102)  
 620 77 S 438(97-102)  
 620 78 S 438(97-102), S 1050,  
 H 1697  
 620 781 S 1050, H 1697  
 620 782 S 1050, H 1697  
 620 783 S 1050, H 1697  
 620 784 S 1050, H 1697  
 620 7851 S 1050, H 1697  
 620 786 S 1050, H 1697  
 620 787 S 1050, H 1697  
 620 788 S 1050, H 1697  
 620 7885 S 438(97-102), S 1050,  
 H 1697  
 620 7887 S 1050, H 1697  
 620 789 S 1050, H 1697  
 620 8101 S 1050, H 1697  
 620 8103 S 1050, H 1697  
 620 8105 S 1050, H 1697  
 620 81055 S 1050, H 1697  
 620 8106 S 1050, H 1697  
 620 8201 S 1050, H 1697  
 620 8303 S 1050, H 1697  
 620 8304 S 1050, H 1697  
 620 8306 S 1050, H 1697  
 620 8307 S 1050, H 1697  
 620 8701 S 1050, H 1697  
 620 8702 S 1050, H 1697  
 620 8703 S 1050, H 1697  
 620 8704 S 1050, H 1697  
 620 8801 S 1050, H 1697  
 620 8805 S 1050, H 1697  
 620 8806 S 1050, H 1697  
 620 8807 S 1050, H 1697  
 620 8903 S 1050, H 1697  
 620 8906 S 1050, H 1697  
 620 8907 S 1050, H 1697  
 620 90 S 1050, H 1697  
 620 9001 S 1050, H 1697  
 620 9002 S 1050, H 1697  
 620 9003 S 1050, H 1697  
 620 91 S 1050, H 1697  
 620 9101 S 1050, H 1697  
 620 9102 S 1050, H 1697  
 620 9103 S 1050, H 1697  
 620 9104 S 1050, H 1697  
 620 9105 S 1050, H 1697  
 620 9901 S 1050, H 1697  
 620 9902 S 1050, H 1697

## FLORIDA STATUTE CHAPTER 621

621 03 S 1514, H 2013(97-264)  
 621 06 S 438(97-102)  
 621 11 S 438(97-102)

## FLORIDA STATUTE CHAPTER 623

623 03 S 438(97-102)  
 623 04 S 438(97-102)  
 623 06 S 438(97-102)  
 623 12 S 438(97-102)

STORAGE NAME h1245z fs  
DATE May 30, 1997

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
CHAPTER # 97-230, Laws of Florida

HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL # HB 1245/2nd ENG  
RELATING TO Corporations  
SPONSOR(S) Representative Lacasa  
STATUTE(S) AFFECTED Chapter 617  
COMPANION BILL(S) SB 1920 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**

- (1) FINANCIAL SERVICES YEAS 10 NAYS 2
  - (2)
  - (3)
  - (4)
  - (5)
- 

I SUMMARY

The bill would define "treasury shares." provide procedures for service of process on dissolved corporations, and include an additional instance when an agreement among shareholders of a corporation will govern the corporate powers or management of the corporation

Charitable corporations would no longer be subject to the procedures outlined in s 617 0808, F S , for the removal of board members. Consequently, board members of charitable organizations would be removed from office "pursuant to procedures provided in the articles of incorporation or the bylaws." These procedures could mirror those in s 617 0808 (with or without a direct reference to that section)

The bill has no fiscal impact

## II SUBSTANTIVE RESEARCH

### A PRESENT SITUATION

A corporation is an artificial legal entity that exists distinctly from its members. When a corporation is dissolved, process against the corporation is to be served on its directors, as trustees of the dissolved corporation.

Section 607.0732, F.S. provides that certain types of agreements among the shareholders of a corporation with 100 or fewer shareholders will be effective even if the agreements conflict with other parts of Chapter 607, F.S. For example, agreements to eliminate the board of directors or restrict the power of the board of directors will be effective. Likewise, if the agreement requires dissolution of the corporation at the request of at least one shareholder, or upon the occurrence of a specified event, the agreement will be effective.

Like the board of directors of a corporation, the board of directors of a non-profit corporation is the group of people who manage its affairs, with the aim of promoting the best interests of the non-profit corporation. The board oversees and approves corporate concerns which include implementing operating and financial plans, evaluating and taking action on the performance of the corporation and its senior management, selecting and evaluating executive salaries, and adopting policies of corporate conduct. s. 617.01401, F.S., "The Corporate Lawyer," The Business Lawyer, May 1994.

Section 617.0808, F.S., sets forth procedures for removing a board member of a non-profit corporation. Subsection (1) provides that any member of the board of directors may be removed with or without cause by a vote or agreement in writing of a majority of the membership. Subsection (2) of that section speaks to charitable organizations. In the case of a charitable organization, a director may be removed from office without cause by a majority vote of the membership. However, a majority of the members of the board of directors must first recommend the removal of the director. Unlike other non-profit corporations, such as labor organizations, agricultural organizations, and business leagues, charitable organizations are not exempted statutorily from these procedures. Section 496.404, F.S. defines a "charitable organization" as an organization held out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, or civic purpose, or any person who employs a charitable appeal as the basis for any solicitation.

### B EFFECT OF PROPOSED CHANGES

Under the bill, there would be a distinction between service of process on a corporation dissolved before July 1, 1990, and a corporation dissolved on or after July 1, 1990. Instead of having process served on a dissolved corporation's directors, process in the case of a corporation dissolved on or after July 1, 1990 would have to be served in the following order: on the president, vice president, or other corporation head, on the cashier, treasurer, secretary or general manager, on any director, on any officer or business agent residing in the state.

The bill would define "treasury shares," where no definition existed before the bill. Shares belonging to the issuing corporation, that are authorized and issued and not

outstanding, not canceled, and not restored to the status of authorized but unissued shares, would be "treasury shares." If a corporation were to acquire its own shares the shares would be treasury shares that belong to the corporation until disposed of or canceled by the corporation.

The bill would add a basis under which an agreement among shareholders of a corporation with 100 or fewer shareholders would be effective even though the agreement is inconsistent with the provisions of Chapter 607, F.S., other than s. 607.0732, F.S. The basis would be that the agreement would have to comply with public policy in order to be effective. Examples of agreements that would violate public policy, and thus be ineffective, include agreements to reduce a director's duty of care or loyalty to the corporation, or to limit shareholders' rights to bring derivative suits.

Regarding charitable corporations, the procedures outlined in s. 617.0808, F.S., for the removal of board members would no longer apply. Consequently, in accordance with s. 617.2103(2), board members of charitable organizations would be removed from office "pursuant to procedures provided in the articles of incorporation or the bylaws." These procedures could mirror those in s. 617.0808 (with or without a direct reference to that section).

## C APPLICATION OF PRINCIPLES

### 1 Less Government

a Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b If an agency or program is eliminated or reduced

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

N/A

2 Lower Taxes

a Does the bill increase anyone's taxes?

No

b Does the bill require or authorize an increase in any fees?

No.

c Does the bill reduce total taxes, both rates and revenues?

No

d Does the bill reduce total fees, both rates and revenues?

No

e Does the bill authorize any fee or tax increase by any local government?

No

3 Personal Responsibility

a Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4 Individual Freedom

a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A



- b Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5 Family Empowerment

- a If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b Does the bill directly affect the legal rights and obligations between family members?

No

- c If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D SECTION-BY-SECTION RESEARCH

Please see Effect of Proposed Changes section above

III FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

1 Non-recurring Effects

None

2 Recurring Effects

None

3 Long Run Effects Other Than Normal Growth

None

4 Total Revenues and Expenditures

None

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1 Non-recurring Effects

None

2 Recurring Effects

None

3 Long Run Effects Other Than Normal Growth:

None

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1 Direct Private Sector Costs

None

2 Direct Private Sector Benefits

None

3 Effects on Competition, Private Enterprise and Employment Markets

None

D FISCAL COMMENTS

None

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION

N/A

B REDUCTION OF REVENUE RAISING AUTHORITY

N/A

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

N/A

V COMMENTS

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

HB 1245/2nd ENG is different from HB 1245 in that HB 1245/2nd ENG defines "treasury shares," changes the procedure for serving process on certain dissolved corporations, and provides that if an agreement among shareholders of a company with 100 or fewer shareholders does not violate public policy, then the agreement is effective, even if the agreement is inconsistent with other provisions of Chapter 607, F S

VII SIGNATURES

COMMITTEE ON FINANCIAL SERVICES

Prepared by

Legislative Research Director

Hilary E. Coggins

Stephen T. Hogge

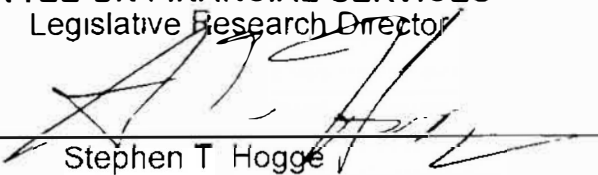
STORAGE NAME h1245z fs  
DATE May 30, 1997  
PAGE 8

**FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES**

Prepared by

Legislative Research Director

  
Hilary E. Coggins


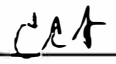
  
Stephen T. Hogge

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below )

Date: March 21, 1997 Revised. \_\_\_\_\_

Subject: Not for profit corporations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Schmeling 	Austin 	CM	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill corrects several anomalies that were created by the adoption of the Florida Business Corporation Act.

This bill eliminates the provision which requires charitable organizations to obtain a recommendation from the majority of the board of directors, followed by the vote or agreement in writing by a majority of all votes in the membership, to remove a member without cause. The bill further exempts charitable organizations from the provisions of s. 617.0808, F.S., unless the articles of incorporation or bylaws provide otherwise.

This bill amends sections 617.0808 and 617.2103, Florida Statutes.

II. Present Situation:

The Florida Business Corporation Act, adopted in 1989, but not effective until 1990, eliminated the concept of a board of trustees for dissolved corporations and continued the authority of the officers, directors and registered agent upon dissolution. Section 48.101, F.S., service on dissolved corporations, was not conformed to this change and continues to contemplate service of process against directors of a dissolved corporation as trustees of the dissolved corporation. It was believed that this contradiction would be treated as an implied repeal of s. 48.101, however, the Second District Court of Appeal in Stoeggler v. Castagliola, 18 Fla. Law Week D2421, suggested that legislative repeal is necessary.


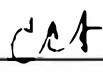
Section 607.0732, F.S., deals with closely held corporations and was adopted in its current form in 1993 in response to the Revised Model Business Corporation Act that was adopted by the American Bar Association in 1991.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below )

Date March 21, 1997 Revised \_\_\_\_\_

Subject. Not for profit corporations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Schmeling 	Austin 	CM	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill corrects several anomalies that were created by the adoption of the Florida Business Corporation Act.

This bill eliminates the provision which requires charitable organizations to obtain a recommendation from the majority of the board of directors, followed by the vote or agreement in writing by a majority of all votes in the membership, to remove a member without cause. The bill further exempts charitable organizations from the provisions of s. 617.0808, F.S., unless the articles of incorporation or bylaws provide otherwise.

This bill amends sections 617 0808 and 617 2103, Florida Statutes.

**II. Present Situation:**

The Florida Business Corporation Act, adopted in 1989, but not effective until 1990, eliminated the concept of a board of trustees for dissolved corporations and continued the authority of the officers, directors and registered agent upon dissolution. Section 48.101, F.S., service on dissolved corporations, was not conformed to this change and continues to contemplate service of process against directors of a dissolved corporation as trustees of the dissolved corporation. It was believed that this contradiction would be treated as an implied repeal of s. 48 101, however, the Second District Court of Appeal in Stoeggler v. Castagliola, 18 Fla Law Week D2421, suggested that legislative repeal is necessary.

Section 607 0732, F.S., deals with closely held corporations and was adopted in its current form in 1993 in response to the Revised Model Business Corporation Act that was adopted by the American Bar Association in 1991.

**S 2040 GENERAL BILL by Grant (Identical H 1657, Compare 2ND  
ENG/H 1245, H 1247, S 0682, CS/S 1920)**

Business & Corp Entities/Mergers, specifies service of process on certain dissolved corporations, provides additional criterion of shareholder agreements; provides for mergers of domestic corporations & other business entities & limited liability companies & domestic limited partnerships under certain circumstances, provides for articles of merger & effect of merger, etc **Creates** 607 1108- 11101, 608 438- 4384, 620 201- 205, amends 48 101, 607 0732 **Effective Date** Upon becoming law

03/04/97 SENATE Filed

03/19/97 SENATE Introduced, referred to Commerce and Economic Opportunities, Judiciary, Ways and Means -SJ 00237

04/03/97 SENATE On Committee agenda—Commerce and Economic Opportunities, 04/07/97, 2 00 pm, Room-EL

04/07/97 SENATE Comm Action Favorable by Commerce and Economic Opportunities -SJ 00448

04/09/97 SENATE Now in Judiciary -SJ 00448

04/16/97 SENATE On Committee agenda—Judiciary, 04/18/97, 12 00 Noon, Room-1C(309)—Not considered

04/28/97 SENATE Withdrawn from Judiciary -SJ 00664, Now in Ways and Means

05/02/97 SENATE Died in Committee on Ways and Means, Iden /Sim / Compare Bill(s) passed, refer to HB 1245 (Ch 97-230)

**SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based only on the provisions contained in the legislation as of the latest date listed below )

Date: April 5, 1997 Revised: \_\_\_\_\_

Subject: Mergers of business entities or corporations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Maclure <i>ELM</i>	Austin <i>CA</i>	CM	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill provides a process for mergers of Florida corporations, limited liability companies, and limited partnerships with or into each other and with or into other business entities, both domestic and foreign. The bill revises requirements related to service of process on dissolved corporations. The bill also amends shareholder agreement provisions for corporations with 100 or fewer shareholders.

This bill amends the following sections of the Florida Statutes: 48.101 and 607.0732. This bill also creates the following sections of the Florida Statutes: 607.1108, 607.1109, 607.11101, 608.438, 608.4381, 608.4382, 608.4383, 608.4384, 620.201, 620.202, 620.203, 620.204, and 620.205.

**II. Present Situation:**

Section 48.081, F.S., provides requirements for service of process on domestic and foreign corporations through its officers, directors, or agents as prescribed in the statute. Section 48.101, F.S., provides for service of process on dissolved corporations.

Chapter 607, F.S., is the "Florida Business Corporation Act" and provides for the creation of corporations in Florida. Section 607.0732, F.S., provides conditions upon which shareholders of a corporation with 100 or fewer shareholders may enter into agreements that would otherwise be inconsistent with the provisions of chapter 607, F.S., including agreements that: eliminate or restrict the board of directors; govern distributions; establish the directors or officers of the corporation; govern the exercise of voting powers, establish terms for the use of property or services of shareholders, transfer corporate authority; or require dissolution of the corporation.



Section 607.1101, F.S., allows the merger of one or more corporations upon the adoption of a merger plan by the board of directors and the approval of the plan by the shareholders. Section 607.1103, F.S., sets forth the procedure for shareholder action on a merger plan, including notice to shareholders of the meeting to consider the merger, the ability to amend the merger plan after approval, and the ability of the corporation to abandon the merger.

Section 607.1105, F.S., requires "articles of merger" to be filed with the Secretary of State upon the approval of the merger plan by all affected corporations. Section 607.1106, F.S., describes the effect of the merger, as far as the distribution of shares in the merged corporation and continuity of legal actions and creditor's rights. Section 607.1107, F.S., allows a domestic corporation to merge with a foreign corporation. Finally, ss. 607.1301, 607.1302, and 607.1320, F.S., provide for the exercise of dissenters' rights for those minority shareholders who do not wish to participate in a merger.

Chapter 608, F.S., is the "Florida Limited Liability Company Act" and provides for the creation of limited liability companies in the state. The chapter sets forth the various requirements for organizing a limited liability company, including management of the company by members or managers and the voting rights of each. Articles of organization of a limited liability company must be filed with the Secretary of State.

Part I of chapter 620, F.S., is the "Florida Revised Uniform Limited Partnership Act" and provides for the creation of limited partnerships in Florida. The part describes the requirements for forming limited partnerships in the state, including the ownership rights and responsibilities of general and limited partners and the voting rights of each. A certificate of partnership for a limited partnership must be filed with the Secretary of State.

Although ch. 607, F.S., provides for the merger of corporations with other corporations, there are no specific provisions in Florida law that allow the merger of corporations, limited liability companies, limited partnerships, and other business entities with each other. If business entities other than corporations wish to merge, they are generally required to dissolve and then re-form. Section 620.8905, F.S., does provide for the merger of a partnership with one or more partnerships or limited partnerships.

At least 26 states have statutes authorizing one or more different types of business entities to merge. Some states prohibit mergers between certain business entities, such as limited liability companies and limited partnerships. States differ on the number of members or partners required to approve a merger of limited liability companies and limited partnerships (e.g., majority vs. unanimous approval). Some states limit the type of entity that can result from a merger (e.g., a corporation or limited liability company, but not a partnership). In addition, some states take different approaches to the rights of owners dissenting to the merger.

### III. Effect of Proposed Changes:

The bill amends s. 48.101, F.S., to continue to require that service of process be made on directors, as trustees for those corporations dissolved prior to July 1, 1990. For those corporations dissolved after July 1, 1990, service is to be made as provided in s. 48.081, F.S. This corrects a glitch created by 1990 amendments to the Florida Business Corporation Act.

The bill also amends s. 607.0732, F.S., to allow a close corporation to adopt any shareholder agreement, otherwise inconsistent with the provisions of ch. 607, F.S., which governs the power and management of the corporation, so long as the agreement is not contrary to public policy. The bill specifically sets forth provisions that would violate public policy, including modifying the directors' duties of loyalty or care; adversely affecting the shareholders' rights to bring derivative actions; abrogating dissenting shareholder rights; or abrogating shareholder rights to distributions.

The bill amends chs. 607, 608, and 620, F.S., to specifically allow corporations, limited liability companies, and limited partnerships to merge with each other and with other business entities, both domestic and foreign, to form a "surviving entity" that can be either a corporation, limited liability company, limited partnership, or other business entity. Generally, the process set forth in the bill should streamline the merger process, enhance the flexibility of business structures, and enhance business opportunities in Florida.

The bill allows mergers of domestic corporations, limited liability companies, and limited partnerships with each other or other business entities, in accordance with procedures that are generally consistent with those currently provided for the merger of two or more corporations in ch. 607, F.S. The merger may occur upon the adoption of a plan of merger, which must include, among other things: the names of all business entities that are a party to the merger; the name of the surviving entity, all general partners if the surviving entity is a partnership, and all managers if the surviving entity is a limited liability company; the terms and conditions of the merger; and the manner and basis of converting shares, partnership interests, and the like of business entities into similar interests in the surviving entity.

The bill establishes the voting rights of members and managers of limited liability companies and general and limited partners in limited partnerships. The voting rights of shareholders are set forth in s. 607.1103, F.S. If the surviving entity is to be a partnership, all shareholders, general partners, and the members of a limited liability company must consent in writing to becoming a general partner, with the resulting exposure to joint and several liability. If a shareholder, general partner, or member refuses to consent to becoming a general partner, the merger does not take place. All business entities involved must approve the plan for merger.

The bill references current procedures in s. 607.1103, F.S., as applicable to corporations merging with the other business entities. The bill provides for notice of a meeting to consider a merger plan to all limited liability company members and managers and all limited partnership general and limited partners. Information that must appear in the notice includes an explanation of

**S 1920 GENERAL BILL/CS by Commerce and Economic Opportunities;  
Myers (Similar 2ND ENG/H 1245, H 1247, S 0682, Compare H 1657, S  
2040)**

Corporations, provides for service on certain dissolved corporations; provides condition for agreement among shareholders of certain corporations, provides condition for amending articles of incorporation, defines term "treasury shares", deletes provisions providing for removal of directors of certain charitable organizations; provides that such organizations are exempt from certain provisions Amends 48 101, 607 0732, 1002, 01401, 617 0808, 2103 Effective Date Upon becoming law.

03/04/97 SENATE Filed

03/12/97 SENATE Introduced, referred to Commerce and Economic Opportunities -SJ 00190

03/20/97 SENATE On Committee agenda—Commerce and Economic Opportunities, 03/24/97, 9 30 am, Room-EL

03/24/97 SENATE Comm Action -CS by Commerce and Economic Opportunities -SJ 00277, CS read first time on 03/26/97 -SJ 00284

03/25/97 SENATE Placed on Calendar -SJ 00277

04/30/97 SENATE Placed on Special Order Calendar -SJ 01096

05/01/97 SENATE Placed on Special Order Calendar -SJ 00957, -SJ 01096, Read second time -SJ 01269, Amendment(s) failed -SJ 01270, Amendment(s) adopted -SJ 01270, House Bill substituted -SJ 01270, Laid on Table, Iden /Sim / Compare Bill(s) passed, refer to HB 1245 (Ch 97-230)

**H 1245 GENERAL BILL/2ND ENG by Lacasa; (CO-SPONSORS) Fasano; Murman; Cosgrove; Boyd (Similar H 1247, S 0682, CS/S 1920, Compare H 1657, S 2040)**

Corporations, excludes charitable corporations from certain provisions re removal of director from board of directors, specifies additional criterion for certain shareholder agreements, clarifies circumstance under which acquisition of certain shares does not constitute control-share acquisition, authorizes corporation's board of directors to amend corporation's articles of incorporation for additional purpose, etc Amends Chs 617, 607, 48 101 Effective Date 05/30/1997

03/07/97 HOUSE Filed  
03/11/97 HOUSE Introduced -HJ 00170  
03/24/97 HOUSE Referred to Financial Services (EIC) -HJ 00323  
03/28/97 HOUSE On Committee agenda—Financial Services (EIC), 04/03/97, 8 30 am, Morris Hall  
04/03/97 HOUSE Comm Action -Favorable by Financial Services (EIC) -HJ 00493  
04/07/97 HOUSE In Economic Impact Council, pending ranking -HJ 00493  
04/10/97 HOUSE Placed on Economic Impact Council Calendar -HJ 00529  
04/25/97 HOUSE Read second time -HJ 01047, Amendment(s) adopted -HJ 01047  
05/01/97 HOUSE Read third time -HJ 01351, Amendment(s) adopted -HJ 01351, Passed as amended, YEAS 114 NAYS 3 -HJ 01351  
05/01/97 SENATE In Messages, Received, referred to Commerce and Economic Opportunities -SJ 01302, Withdrawn from Commerce and Economic Opportunities -SJ 01270, Substituted for CS/SB 1920 -SJ 01270, Read second and third times -SJ 01270, Passed, YEAS 27 NAYS 9 -SJ 01270  
05/01/97 HOUSE Ordered enrolled -HJ 01755  
05/14/97 Signed by Officers and presented to Governor  
05/30/97 Became Law without Governor's Signature, Chapter No 97-230