

By Senator Grant

13-62-98

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

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

5 607.0732 Shareholder agreements.--

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

12 (a) Eliminates the board of directors or restricts the
13 discretion or powers of the board of directors;

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

17 (c) Establishes who shall be directors or officers of
18 the corporation, or their terms of office or manner of
19 selection or removal;

20 (d) Governs, in general or in regard to specific
21 matters, the exercise or division of voting power by the
22 shareholders and directors, including use of weighted voting
23 rights or director proxies;

24 (e) Establishes the terms and conditions of any
25 agreement for the transfer or use of property or the provision
26 of services between the corporation and any shareholder,
27 director, officer, or employee of the corporation;

28 (f) Transfers to any shareholder or other person any
29 authority to exercise the corporate powers or to manage the
30 business and affairs of the corporation, including the

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1 resolution of any issue about which there exists a deadlock
2 among directors or shareholders; ~~or~~

3 (g) Requires dissolution of the corporation at the
4 request of one or more of the shareholders or upon the
5 occurrence of a specified event or contingency; or.

6 (h) Otherwise governs the exercise of the corporate
7 powers, or the management of the business and affairs, of the
8 corporation or the relationship among ~~between~~ the
9 shareholders, the directors, or the corporation, ~~and~~ is not
10 contrary to public policy. Any agreement that modifies ~~For~~
11 ~~purposes of this paragraph, agreements contrary to public~~
12 ~~policy include, but are not limited to, agreements that reduce~~
13 ~~the duties of care~~ or ~~and~~ loyalty to the corporation ~~as~~
14 ~~required by ss. 607.0830 and 607.0832, exculpates~~ exculpate
15 directors from liability more broadly than permitted by ss.
16 607.1108-607.11101, ss. 608.438-608.4383, or ss.
17 620.201-620.205 that may be imposed under s. 607.0831,
18 adversely affects ~~affect~~ shareholders' rights to bring
19 derivative actions ~~under s. 607.07401, abrogates~~ or ~~abrogate~~
20 dissenters' rights provided in s. 608.4384 or s. 620.205, or
21 abrogates provisions of s. 607.06401 relating to shareholder
22 distributions are deemed contrary to public policy for
23 purposes of this paragraph ~~under ss. 607.1301-607.1320.~~

24 Section 2. Sections 607.1108, 607.1109, and 607.11101,
25 Florida Statutes, are created to read:

26 607.1108 Merger of domestic corporation and other
27 business entity.--

28 (1) As used in this section and ss. 607.1109 and
29 607.11101, the term "other business entity" means a limited
30 liability company, a foreign corporation, a business trust or
31 association, a real estate investment trust, a common law

1 trust, an unincorporated business, a general partnership, a
2 limited partnership, or any other entity that is formed
3 pursuant to the requirements of applicable law.

4 (2) Pursuant to a plan of merger complying and
5 approved in accordance with this section, one or more domestic
6 corporations may merge with or into one or more other business
7 entities formed, organized, or incorporated under the laws of
8 this state or any other state, the United States, foreign
9 country, or other foreign jurisdiction, if:

10 (a) Each domestic corporation which is a party to the
11 merger complies with the applicable provisions of this
12 chapter.

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

15 (c) Each domestic limited liability company that is a
16 party to the merger complies with the applicable provisions of
17 chapter 608.

18 (d) The merger is permitted by the laws of the state,
19 country, or jurisdiction under which each other business
20 entity that is a party to the merger is formed, organized, or
21 incorporated and each such other business entity complies with
22 such laws in effecting the merger.

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

24 (a) The name of each domestic corporation and the name
25 and jurisdiction of formation, organization, or incorporation
26 of each other business entity planning to merge, and the name
27 of the surviving or resulting domestic corporation or other
28 business entity into which each other domestic corporation or
29 other business entity plans to merge, which is hereinafter and
30 in ss. 607.1109 and 607.11101 designated as the surviving
31 entity.

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

2 (c) The manner and basis of converting the shares of
3 each domestic corporation that is a party to the merger and
4 the partnership interests, interests, shares, obligations or
5 other securities of each other business entity that is a party
6 to the merger into partnership interests, interests, shares,
7 obligations or other securities of the surviving entity or any
8 other domestic corporation or other business entity or, in
9 whole or in part, into cash or other property, and the manner
10 and basis of converting rights to acquire the shares of each
11 domestic corporation that is a party to the merger and rights
12 to acquire partnership interests, interests, shares,
13 obligations or other securities of each other business entity
14 that is a party to the merger into rights to acquire
15 partnership interests, interests, shares, obligations or other
16 securities of the surviving entity or any other domestic
17 corporation or other business entity or, in whole or in part,
18 into cash or other property.

19 (d) If a partnership is to be the surviving entity,
20 the names and business addresses of the general partners of
21 the surviving entity.

22 (e) If a limited liability company is to be the
23 surviving entity and management thereof is vested in one or
24 more managers, the names and business addresses of such
25 managers.

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

30 (4) The plan of merger may set forth:
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1 (a) If a domestic corporation is to be the surviving
2 entity, any amendments to, or a restatement of, the articles
3 of incorporation of the surviving entity, and such amendments
4 or restatement shall be effective at the effective date of the
5 merger.

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

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

9 (5) The plan of merger required by subsection (3)
10 shall be adopted and approved by each domestic corporation
11 that is a party to the merger in the same manner as is
12 provided in s. 607.1103. Notwithstanding the foregoing, if the
13 surviving entity is a partnership, no shareholder of a
14 domestic corporation that is a party to the merger shall, as a
15 result of the merger, become a general partner of the
16 surviving entity, unless such shareholder specifically
17 consents in writing to becoming a general partner of the
18 surviving entity, and unless such written consent is obtained
19 from each such shareholder who, as a result of the merger,
20 would become a general partner of the surviving entity, such
21 merger shall not become effective under s. 607.11101. Any
22 shareholder providing such consent in writing shall be deemed
23 to have voted in favor of the plan of merger for purposes of
24 s. 607.1103.

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

29 (7) Notwithstanding any provision of this section or
30 ss. 607.1109 and 607.11101, any merger consisting solely of
31 the merger of one or more domestic corporations with or into

1 one or more foreign corporations shall be consummated solely
2 in accordance with the requirements of s. 607.1107.

3 607.1109 Articles of merger.--

4 (1) After a plan of merger is approved by each
5 domestic corporation and other business entity that is a party
6 to the merger, the surviving entity shall deliver to the
7 Department of State for filing articles of merger, which shall
8 be executed by each domestic corporation as required by s.
9 607.0120 and by each other business entity as required by
10 applicable law, and which shall set forth:

11 (a) The plan of merger.

12 (b) A statement that the plan of merger was approved
13 by each domestic corporation that is a party to the merger in
14 accordance with the applicable provisions of this chapter,
15 and, if applicable, a statement that the written consent of
16 each shareholder of such domestic corporation who, as a result
17 of the merger, becomes a general partner of the surviving
18 entity has been obtained pursuant to s. 607.1108(5).

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

22 (d) A statement that the plan of merger was approved
23 by each domestic limited liability company that is a party to
24 the merger in accordance with the applicable provisions of
25 chapter 608.

26 (e) A statement that the plan of merger was approved
27 by each other business entity that is a party to the merger,
28 other than corporations, limited liability companies, and
29 partnerships formed, organized, or incorporated under the laws
30 of this state, in accordance with the applicable laws of the

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1 state, country, or jurisdiction under which such other
2 business entity is formed, organized, or incorporated.

3 (f) The effective date of the merger, which may be on
4 or after the date of filing the articles of merger, provided,
5 if the articles of merger do not provide for an effective date
6 of the merger, the effective date shall be the date on which
7 the articles of merger are filed.

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

11 1. The address, including street and number, if any,
12 of its principal office under the laws of the state, country,
13 or jurisdiction in which it was formed, organized, or
14 incorporated.

15 2. A statement that the surviving entity is deemed to
16 have appointed the Secretary of State as its agent for service
17 of process in a proceeding to enforce any obligation or the
18 rights of dissenting shareholders of each domestic corporation
19 that is a party to the merger.

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

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

29 607.11101 Effect of merger of domestic corporation and
30 other business entity.--When a merger becomes effective:
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1 (1) Every domestic corporation and other business
2 entity that is a party to the merger merges into the surviving
3 entity and the separate existence of every domestic
4 corporation and other business entity that is a party to the
5 merger except the surviving entity ceases.

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

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

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

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

27 (6) If a domestic corporation is the surviving entity,
28 the articles of incorporation of such corporation in effect
29 immediately prior to the time the merger becomes effective
30 shall be the articles of incorporation of the surviving
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1 entity, except as amended or restated to the extent provided
2 in the plan of merger.

3 (7) The shares, partnership interests, interests,
4 obligations, or other securities, and the rights to acquire
5 shares, partnership interests, interests, obligations, or
6 other securities, of each domestic corporation and other
7 business entity that is a party to the merger shall be
8 converted into shares, partnership interests, interests,
9 obligations, or other securities, or rights to such
10 securities, of the surviving entity or any other domestic
11 corporation or other business entity or, in whole or in part,
12 into cash or other property as provided in the plan of merger,
13 and the former holders of shares, partnership interests,
14 interests, obligations, or other securities, or rights to such
15 securities, shall be entitled only to the rights provided in
16 the plan of merger and to their rights as dissenters, if any,
17 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
18 applicable law.

19 Section 3. Sections 608.438, 608.4381, 608.4382,
20 608.4383, and 608.4384, Florida Statutes, are created to read:

21 608.438 Merger of limited liability company.--

22 (1) As used in this section and ss. 608.4381-608.4384,
23 the term "other business entity" includes a corporation, a
24 business trust or association, a real estate investment trust,
25 a common law trust, an unincorporated business, a general
26 partnership, a limited partnership, a limited liability
27 company other than a limited liability company organized under
28 the laws of this chapter, or any other entity that is formed
29 pursuant to the requirements of applicable law.

30 (2) Unless otherwise provided in the articles of
31 organization or the regulations of a limited liability

1 company, pursuant to a plan of merger, a limited liability
2 company may merge with or into one or more limited liability
3 companies or other business entities formed, organized, or
4 incorporated under the laws of this state or any other state,
5 the United States, foreign country, or other foreign
6 jurisdiction, if:

7 (a) Each limited liability company that is a party to
8 the merger complies with the applicable provisions of this
9 chapter and complies with the terms of its articles of
10 organization and regulations.

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

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

15 (d) The merger is permitted by the laws of the state,
16 country, or jurisdiction under which each other business
17 entity that is a party to the merger is formed, organized, or
18 incorporated, and each such other business entity complies
19 with such laws in effecting the merger.

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

21 (a) The name of each limited liability company and the
22 name and jurisdiction of formation, organization, or
23 incorporation of each other business entity planning to merge,
24 and the name of the surviving or resulting limited liability
25 company or other business entity into which each other limited
26 liability company or other business entity plans to merge,
27 which is, in this section and in ss. 608.4381-608.4384,
28 designated as the surviving entity.

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

30 (c) The manner and basis of converting the interests
31 of the members of each limited liability company that is a

1 party to the merger and the interests, partnership interests,
2 shares, obligations, or other securities of each other
3 business entity that is a party to the merger into interests,
4 partnership interests, shares, obligations, or other
5 securities of the surviving entity or any other limited
6 liability company or other business entity or, in whole or in
7 part, into cash or other property, and the manner and basis of
8 converting rights to acquire interests of each limited
9 liability company that is a party to the merger and rights to
10 acquire interests, partnership interests, shares, obligations,
11 or other securities of each other business entity that is a
12 party to the merger into rights to acquire interests,
13 partnership interests, shares, obligations, or other
14 securities of the surviving entity or any other limited
15 liability company or other business entity or, in whole or in
16 part, into cash or other property.

17 (d) If a partnership is to be the surviving entity,
18 the names and business addresses of the general partners of
19 the surviving entity.

20 (e) If a limited liability company is to be the
21 surviving entity, and management thereof is vested in one or
22 more managers, the names and business addresses of such
23 managers.

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

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

29 (a) If a limited liability company is to be the
30 surviving entity, any amendments to, or a restatement of, the
31 articles of organization or the regulations of the surviving

1 entity, and such amendments or restatement shall be effective
2 at the effective date of the merger.

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

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

8 (d) A statement of, or a statement of the method of
9 determining, the "fair value," as defined in s.
10 608.4384(1)(b), of an interest in any limited liability
11 company that is a party to the merger.

12 (e) Other provisions relating to the merger.

13 608.4381 Action on plan of merger.--

14 (1) Unless the articles of organization or the
15 regulations of a limited liability company require a
16 greater-than-majority vote, the plan of merger shall be
17 approved in writing by a majority of the managers of a limited
18 liability company that is a party to the merger in which
19 management is not reserved to its members. Unless the articles
20 of organization or the regulations of a limited liability
21 company require a greater-than-majority vote or provide for
22 another method of determining the voting rights of each of its
23 members, and whether or not management is reserved to its
24 members, the plan of merger shall be approved in writing by a
25 majority of the members of a limited liability company that is
26 a party to the merger, and, if applicable, the vote of each
27 member shall be weighted in accordance with s. 608.4231(1)(b),
28 provided, unless the articles of organization or the
29 regulations of the limited liability company require a
30 greater-than-majority vote or provide for another method of
31 determining the voting rights of each of its members, if there

1 is more than one class or group of members, the merger shall
2 be approved by a majority of the members of each such class or
3 group, and, if applicable, the vote of each member shall be
4 weighted in accordance with s. 608.4231(1)(b).

5 (2) In addition to the approval required by subsection
6 (1), if the surviving entity is a partnership, no member of a
7 limited liability company that is a party to the merger shall,
8 as a result of the merger, become a general partner of the
9 surviving entity unless such member specifically consents in
10 writing to becoming a general partner of the surviving entity
11 and unless such written consent is obtained from each such
12 member who, as a result of the merger, would become a general
13 partner of the surviving entity, such merger shall not become
14 effective under s. 608.4383. Any member providing such
15 consent in writing shall be deemed to have voted in favor of
16 the plan of merger for purposes of s. 608.4384.

17 (3) All members of each limited liability company that
18 is a party to the merger shall be given written notice of any
19 meeting or other action with respect to the approval of a plan
20 of merger as provided in subsection (4), not fewer than 30 or
21 more than 60 days before the date of the meeting at which the
22 plan of merger shall be submitted for approval by the members
23 of such limited liability company, provided, if the plan of
24 merger is submitted to the members of the limited liability
25 company for their written approval or other action without a
26 meeting, such notification shall be given to each member not
27 fewer than 30 or more than 60 days before the effective date
28 of the merger. Pursuant to s. 608.455, the notification
29 required by this subsection may be waived in writing by the
30 person or persons entitled to such notification.

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

3 (a) The date, time, and place of the meeting, if any,
4 at which the plan of merger is to be submitted for approval by
5 the members of the limited liability company, or, if the plan
6 of merger is to be submitted for written approval or by other
7 action without a meeting, a statement to that effect.

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

9 (c) A clear and concise statement that, if the plan of
10 merger is effected, members dissenting therefrom may be
11 entitled, if they comply with the provisions of s. 608.4384
12 regarding the rights of dissenting members, to be paid the
13 fair value of their interests, which shall be accompanied by a
14 copy of s. 608.4384.

15 (d) A statement of, or a statement of the method of
16 determining, the "fair value," as defined in s.
17 608.4384(1)(b), of an interest in the limited liability
18 company, in the case of a limited liability company in which
19 management is not reserved to its members, as determined by
20 the managers of such limited liability company, which
21 statement may consist of a reference to the applicable
22 provisions of such limited liability company's articles of
23 organization or regulations that determine the fair value of
24 an interest in the limited liability company for such
25 purposes, and which shall constitute an offer by the limited
26 liability company to purchase at such fair value any interests
27 of a "dissenter," as defined in s. 608.4384(1)(a), unless and
28 until such dissenter's right to receive the fair value of his
29 interests in the limited liability company is terminated
30 pursuant to s. 608.4384(8).

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

3 (f) Any other information concerning the plan of
4 merger.

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

7 (a) The date such notification is received;

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

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

15 (d) The date such notification is given in accordance
16 with the provisions of the articles of organization or the
17 regulations of the limited liability company.

18 (6) A plan of merger may provide for the manner, if
19 any, in which the plan of merger may be amended at any time
20 before the effective date of the merger, except after the
21 approval of the plan of merger by the members of a limited
22 liability company that is a party to the merger, the plan of
23 merger may not be amended to:

24 (a) Change the amount or kind of interests,
25 partnership interests, shares, obligations, other securities,
26 cash, rights, or any other property to be received by the
27 members of such limited liability company in exchange for or
28 on conversion of their interests;

29 (b) If the surviving entity is a limited liability
30 company, change any term of the articles of organization or
31 the regulations of the surviving entity, except for changes

1 that otherwise could be adopted without the approval of the
2 members of the surviving entity;

3 (c) If the surviving entity is not a limited liability
4 company, change any term of the articles of incorporation or
5 comparable governing document of the surviving entity, except
6 for changes that otherwise could be adopted by the board of
7 directors or comparable representatives of the surviving
8 entity; or

9 (d) Change any of the terms and conditions of the plan
10 of merger if any such change, alone or in the aggregate, would
11 materially and adversely affect the members, or any class or
12 group of members, of such limited liability company.

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14 If an amendment to a plan of merger is made in accordance the
15 plan and articles of merger have been filed with the
16 Department of State, amended articles of merger executed by
17 each limited liability company and other business entity that
18 is a party to the merger shall be filed with the Department of
19 State prior to the effective date of the merger.

20 (7) Unless the limited liability company's articles of
21 organization or regulations or the plan of merger provide
22 otherwise, notwithstanding the prior approval of the plan of
23 merger by any limited liability company that is a party to the
24 merger in which management is not reserved to its members, and
25 at any time prior to the filing of articles of merger with the
26 Department of State, the planned merger may be abandoned,
27 subject to any contractual rights, by any such limited
28 liability company by the affirmative vote of a majority of its
29 managers without further action by its members, in accordance
30 with the procedure set forth in the plan of merger or if none

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1 is set forth, in the manner determined by the managers of such
2 limited liability company.

3 608.4382 Articles of merger.--

4 (1) After a plan of merger is approved by each limited
5 liability company and other business entity that is a party to
6 the merger, the surviving entity shall deliver to the
7 Department of State for filing articles of merger, which shall
8 be executed by each limited liability company and by each
9 other business entity as required by applicable law, and which
10 shall set forth:

11 (a) The plan of merger.

12 (b) A statement that the plan of merger was approved
13 by each limited liability company that is a party to the
14 merger in accordance with the applicable provisions of this
15 chapter, and, if applicable, a statement that the written
16 consent of each member of such limited liability company who,
17 as a result of the merger, becomes a general partner of the
18 surviving entity has been obtained pursuant to s. 608.4381(2).

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

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

25 (e) A statement that the plan of merger was approved
26 by each other business entity that is a party to the merger,
27 other than limited liability companies, partnerships, and
28 corporations formed, organized, or incorporated under the laws
29 of this state, in accordance with the applicable laws of the
30 state, country, or jurisdiction under which such other
31 business entity is formed, organized, or incorporated.

1 (f) The effective date of the merger, which may be on
2 or after the date of filing the articles of merger, provided,
3 if the articles of merger do not provide for an effective date
4 of the merger, the effective date shall be the date on which
5 the articles of merger are filed.

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

9 1. The address, including street and number, if any,
10 of its principal office under the laws of the state, country,
11 or jurisdiction in which it was formed, organized, or
12 incorporated.

13 2. A statement that the surviving entity is deemed to
14 have appointed the Secretary of State as its agent for service
15 of process in a proceeding to enforce any obligation or the
16 rights of dissenting members of each limited liability company
17 that is a party to the merger.

18 3. A statement that the surviving entity has agreed to
19 promptly pay to the dissenting members of each limited
20 liability company that is a party to the merger the amount, if
21 any, to which such dissenting members are entitled under s.
22 608.4384.

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

28 608.4383 Effect of merger.--When a merger becomes
29 effective:

30 (1) Every limited liability company and other business
31 entity that is a party to the merger merges into the surviving

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

4 (2) The title to all real estate and other property,
5 or any interest therein, owned by each limited liability
6 company 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 (3) The surviving entity shall thereafter be
11 responsible and liable for all the liabilities and obligations
12 of each limited liability company 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 (4) Any claim existing or action or proceeding pending
17 by or against any limited liability company or other business
18 entity that is a party to the merger may be continued as if
19 the merger did not occur or the surviving entity may be
20 substituted in the proceeding for the limited liability
21 company or other business entity which ceased existence.

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

25 (6) If a limited liability company is the surviving
26 entity, the articles of organization and the regulations of
27 such limited liability company in effect immediately prior to
28 the time the merger becomes effective shall be the articles of
29 organization and the regulations of the surviving entity,
30 except as amended or restated to the extent provided in the
31 plan of merger.

1 (7) The interests, partnership interests, shares,
2 obligations, or other securities, and the rights to acquire
3 interests, partnership interests, shares, obligations, or
4 other securities, of each limited liability company and other
5 business entity that is a party to the merger shall be
6 converted into interests, partnership interests, shares,
7 obligations, or other securities, or rights to such
8 securities, of the surviving entity or any other limited
9 liability company or other business entity or, in whole or in
10 part, into cash or other property as provided in the plan of
11 merger, and the former holders of interests, partnership
12 interests, shares, obligations, or other securities, or rights
13 to such securities, shall be entitled only to the rights
14 provided in the plan of merger and to their rights as
15 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,
16 s. 620.205, or other applicable law.

17 608.4384 Rights of dissenting members.--

18 (1) For purposes of this section, the term:

19 (a) "Dissenter" means a member of a limited liability
20 company who is a recordholder of the interests to which he
21 seeks relief as of the date fixed for the determination of
22 members entitled to notice of a plan of merger, who does not
23 vote such interests in favor of the plan of merger, and who
24 exercises the right to dissent from the plan of merger when
25 and in the manner required by this section.

26 (b) "Fair value," with respect to a dissenter's
27 interests, means the value of the interests in the limited
28 liability company that is a party to a plan of merger as of
29 the close of business of the day prior to the effective date
30 of the merger to which the dissenter objects, excluding any
31

1 appreciation or depreciation in anticipation of the merger,
2 unless such exclusion would be inequitable.

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

7 (3) Not later than 20 days after the date on which the
8 notification required by s. 608.4381(3) is given to the
9 members, or if such notification is waived in writing by the
10 dissenter, not later than 20 days after the date of such
11 written waiver, the dissenter shall deliver to the limited
12 liability company a written demand for payment to him of the
13 fair value of the interests as to which he seeks relief that
14 states his address, the number and class, if any, of those
15 interests, and, at the election of the dissenter, the amount
16 claimed by him as the fair value of the interests. The
17 statement of fair market value by the dissenter, if any, shall
18 constitute an offer by the dissenter to sell the interests to
19 the limited liability company at such amount. A dissenter may
20 dissent as to less than all the interests registered in his
21 name. In such event, the dissenter's rights shall be
22 determined as if the interests as to which he has dissented
23 and his remaining interests were registered in the names of
24 different members. If the interests as to which a dissenter
25 seeks relief are represented by certificates, the dissenter
26 shall deposit such certificates with the limited liability
27 company simultaneously with the delivery of the written demand
28 for payment. Upon receiving a demand for payment from a
29 dissenter who is a recordholder of uncertificated interests,
30 the limited liability company shall make an appropriate
31 notation of the demand for payment in its records. The limited

1 liability company may restrict the transfer of uncertificated
2 interests from the date the dissenter's written demand for
3 payment is delivered. A written demand for payment served on
4 the limited liability company in which the dissenter is a
5 member shall constitute service on the surviving entity.

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

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

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

14 (c) The date shown on the return receipt, if such
15 written demand is sent by registered or certified mail, return
16 receipt requested, and the receipt is signed by or on behalf
17 of the addressee; or

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

21 (5) Unless the articles of organization or regulations
22 of the limited liability company in which the dissenter is a
23 member provides a basis or method for determining and paying
24 the fair value of the interests as to which the dissenter
25 seeks relief, or unless the limited liability company or the
26 surviving entity and the dissenter have agreed in writing as
27 to the fair value of the interests as to which the dissenter
28 seeks relief, the dissenter, the limited liability company, or
29 the surviving entity, within 90 days after the dissenter
30 delivers the written demand for payment to the limited
31 liability company, may file an action in any court of

1 competent jurisdiction in the county in this state where the
2 registered office of the limited liability company is located
3 or was located when the plan of merger was approved by its
4 members, or in the county in this state in which the principal
5 office of the limited liability company that issued the
6 interests is located or was located when the plan of merger
7 was approved by its partners, requesting that the fair value
8 of the dissenter's interests be determined. The court shall
9 also determine whether each dissenter that is a party to such
10 proceeding, as to whom the limited liability company or the
11 surviving entity requests the court to make such
12 determination, is entitled to receive payment of the fair
13 value for his interests. Other dissenters, within the 90-day
14 period after a dissenter delivers a written demand to the
15 limited liability company, may join such proceeding as
16 plaintiffs or may be joined in any such proceeding as
17 defendants, and any two or more such proceedings may be
18 consolidated. If the limited liability company or surviving
19 entity commences such a proceeding, all dissenters, whether or
20 not residents of this state, other than dissenters who have
21 agreed in writing with the limited liability company or the
22 surviving entity as to the fair value of the interests as to
23 which such dissenters seek relief, shall be made parties to
24 such action as an action against their interests. The limited
25 liability company or the surviving entity shall serve a copy
26 of the initial pleading in such proceeding upon each dissenter
27 who is a party to such proceeding and who is a resident of
28 this state in the manner provided by law for the service of a
29 summons and complaint and upon each such dissenter who is not
30 a resident of this state either by registered or certified
31 mail and publication or in such matter as is permitted by law.

1 The jurisdiction of the court in such a proceeding shall be
2 plenary and exclusive. All dissenters who are proper parties
3 to the proceeding are entitled to judgment against the limited
4 liability company or the surviving entity for the amount of
5 the fair value of their interests as to which payment is
6 sought hereunder. The court may, if it so elects, appoint one
7 or more persons as appraisers to receive evidence and
8 recommend a decision on the question of fair value. The
9 appraisers shall have such power and authority as is specified
10 in the order of their appointment or an amendment thereof.
11 The limited liability company shall pay each dissenter the
12 amount found to be due him within 10 days after final
13 determination of the proceedings. Upon payment of the
14 judgment, the dissenter shall cease to have any interest in
15 the interests as to which payment is sought hereunder.

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

19 (7) The costs and expenses of any such proceeding
20 shall be determined by the court and shall be assessed against
21 the limited liability company or the surviving entity, but all
22 or any part of such costs and expenses may be apportioned and
23 assessed as the court deems equitable against any or all of
24 the dissenters who are parties to the proceeding, to whom the
25 limited liability company or the surviving entity has made an
26 offer to pay for the interests, if the court finds that the
27 action of such dissenters in failing to accept such offer was
28 arbitrary, vexatious or not in good faith. Such expenses shall
29 include reasonable compensation for, and reasonable expenses
30 of, the appraisers, but shall exclude the fees and expenses of
31 counsel for, and experts employed by, any party. If the fair

1 value of the interests, as determined, materially exceeds the
2 amount which the limited liability company or the surviving
3 entity offered to pay therefor, the court in its discretion
4 may award to any dissenter who is a party to the proceeding
5 such amount as the court determines to be reasonable
6 compensation to any attorney or expert employed by the
7 dissenter in the proceeding.

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

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

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

19 (c) The dissenter withdraws his demand, with the
20 consent of the limited liability company or the surviving
21 entity; or

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

26 2. The limited liability company or the surviving
27 entity and the dissenter have not agreed upon the fair value
28 of the dissenter's interests.

29 3. Neither the dissenter, the limited liability
30 company, nor the surviving entity has filed or is joined in a
31

1 complaint under subsection (5) within the 90-day period
2 provided in subsection (5).

3 (9) Unless otherwise provided in the articles of
4 organization or the regulations of the limited liability
5 company in which the dissenter was a member, after the date
6 the dissenter delivers the written demand for payment in
7 accordance with subsection (3) until either the termination of
8 the rights and obligations arising under subsection (3) or the
9 purchase of the dissenter's interests by the limited liability
10 company or the surviving entity, the dissenter shall be
11 entitled only to payment as provided in this section and shall
12 not be entitled to any other rights accruing from such
13 interests, including voting or distribution rights. If the
14 right to receive fair value is terminated other than by the
15 purchase of the dissenter's interests by the limited liability
16 company or the surviving entity, all rights of the dissenter
17 as a member of the limited liability company shall be
18 reinstated effective as of the date the dissenter delivered
19 the written demand for payment, including the right to receive
20 any intervening payment or other distribution with respect to
21 the dissenter's interests in the limited liability company,
22 or, if any such rights have expired or any such distribution
23 other than a cash payment has been completed, in lieu thereof
24 at the election of the surviving entity, the fair value
25 thereof in cash as determined by the surviving entity as of
26 the time of such expiration or completion, but without
27 prejudice otherwise to any action or proceeding of the limited
28 liability company that may have been taken by the limited
29 liability company on or after the date the dissenter delivered
30 the written demand for payment.

31

1 (10) A member who is entitled under this section to
2 demand payment for his interests shall not have any right at
3 law or in equity to challenge the validity of any merger that
4 creates his entitlement to demand payment hereunder, or to
5 have the merger set aside or rescinded, except with respect to
6 compliance with the provisions of the limited liability
7 company's articles of organization or regulations or if the
8 merger is unlawful or fraudulent with respect to such member.

9 (11) Unless otherwise provided in the articles of
10 organization or the regulations of the limited liability
11 company in which the dissenter was a member, this section does
12 not apply with respect to a plan of merger if, as of the date
13 fixed for the determination of members entitled to notice of a
14 plan of merger:

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

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

20 Section 4. Sections 620.201, 620.202, 620.203,
21 620.204, and 620.205, Florida Statutes, are created to read:

22 620.201 Merger of domestic limited partnership.

23 (1) As used in this section and ss. 620.202-620.205,
24 the term "other business entity" includes a corporation, a
25 limited liability company, a business trust or association, a
26 real estate investment trust, a common law trust, an
27 unincorporated business, a general partnership or a limited
28 partnership but excluding a domestic limited partnership, or
29 any other entity that is formed pursuant to the requirements
30 of applicable law.

31

1 (2) Unless otherwise provided in the partnership
2 agreement of a domestic limited partnership, pursuant to a
3 plan of merger, a domestic limited partnership may merge with
4 or into one or more domestic limited partnerships or other
5 business entities formed, organized, or incorporated under the
6 laws of this state or any other state, the United States,
7 foreign country, or other foreign jurisdiction, if:

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

11 (b) Each domestic limited liability company that is a
12 party to the merger complies with the applicable provisions of
13 chapter 608.

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

16 (d) The merger is permitted by the laws of the state,
17 country, or jurisdiction under which each other business
18 entity that is a party to the merger is formed, organized, or
19 incorporated, and each such other business entity complies
20 with such laws in effecting the merger.

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

22 (a) The name of each domestic limited partnership and
23 the name and jurisdiction of formation, organization, or
24 incorporation of each other business entity planning to merge,
25 and the name of the surviving or resulting domestic limited
26 partnership or other business entity into which each other
27 domestic limited partnership or other business entity plans to
28 merge, which is hereinafter and in ss. 620.202-620.205
29 designated as the surviving entity.

30 (b) The terms and conditions of the merger.
31

1 (c) The manner and basis of converting the partnership
2 interests of each domestic limited partnership that is a party
3 to the merger and the partnership interests, interests,
4 shares, obligations, or other securities of each other
5 business entity that is a party to the merger into partnership
6 interests, interests, shares, obligations, or other securities
7 of the surviving entity or any other domestic limited
8 partnership or other business entity or, in whole or in part,
9 into cash or other property, and the manner and basis of
10 converting rights to acquire the partnership interests of each
11 domestic limited partnership that is a party to the merger and
12 rights to acquire partnership interests, interests, shares,
13 obligations, or other securities of each other business entity
14 that is a party to the merger into rights to acquire
15 partnership interests, interests, shares, obligations, or
16 other securities of the surviving entity or any other domestic
17 limited partnership or other business entity or, in whole or
18 in part, into cash or other property.

19 (d) If a partnership is to be the surviving entity,
20 the names and business addresses of the general partners of
21 the surviving entity.

22 (e) If a limited liability company is to be the
23 surviving entity, and management thereof is vested in one or
24 more managers, the names and business addresses of such
25 managers.

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

30 (4) The plan of merger may set forth:
31

1 (a) If a domestic limited partnership is to be the
2 surviving entity, any amendments to, or a restatement of, the
3 certificate of limited partnership or partnership agreement of
4 the surviving entity, and such amendments or restatement shall
5 be effective on the effective date of the merger.

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

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

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

15 (e) Any other provisions relating to the merger.--
16 620.202 Action on plan of merger.--

17 (1) Unless otherwise provided in the partnership
18 agreement of a domestic limited partnership, the plan of
19 merger shall be approved in writing by all of the general
20 partners of a domestic limited partnership that is a party to
21 the merger. Unless the partnership agreement of a domestic
22 limited partnership requires a greater vote, the plan of
23 merger shall also be approved in writing by those limited
24 partners who own more than a majority of the then current
25 percentage or other interests in the profits of the domestic
26 limited partnership owned by all of the limited partners,
27 provided, unless the partnership agreement of the domestic
28 limited partnership requires a greater vote, if there is more
29 than one class or group of limited partners, the plan of
30 merger shall be approved by those limited partners who own
31 more than a majority of the then current percentage or other

1 interests in the profits of the domestic limited partnership
2 owned by the limited partners in each class or group.

3 (2) In addition to the approval required by subsection
4 (1):

5 (a) If a domestic limited partnership is to be the
6 surviving entity, no person shall, as a result of the merger,
7 continue to be or become a general partner of the surviving
8 entity, unless such person specifically consents in writing to
9 continuing to be or to becoming, as the case may be, a general
10 partner of the surviving entity, and unless such written
11 consent is obtained from each such person who, as a result of
12 the merger, would become a general partner of the surviving
13 entity, such merger shall not become effective under s.
14 620.204.

15 (b) If a partnership other than a domestic limited
16 partnership is to be the surviving entity, no partner of a
17 domestic limited partnership that is a party to the merger
18 shall, as a result of the merger, become a general partner of
19 the surviving entity unless such partner specifically consents
20 in writing to becoming a general partner of the surviving
21 entity, and unless such written consent is obtained from each
22 person who, as a result of the merger, would become a general
23 partner of the surviving entity, such merger shall not become
24 effective under s. 620.204. Any person providing such consent
25 in writing shall be deemed to have voted in favor of the plan
26 of merger for purposes of s. 620.205.

27 (3) All partners of each domestic limited partnership
28 that is a party to the merger shall be given written notice of
29 any meeting or other action with respect to the approval of a
30 plan of merger as provided in subsection (4), not fewer than
31 30 or more than 60 days before the date of the meeting at

1 which the plan of merger shall be submitted for approval by
2 the partners of such limited partnership. However, if the
3 plan of merger is submitted to the partners of the limited
4 partnership for their written approval or other action without
5 a meeting, such notification shall be given to each partner
6 not fewer than 30 or more than 60 days before the effective
7 date of the merger. Notwithstanding the foregoing, the
8 notification required by this subsection may be waived in
9 writing by the person or persons entitled to such
10 notification.

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

13 (a) The date, time, and place of the meeting, if any,
14 at which the plan of merger shall be submitted for approval by
15 the partners of the domestic limited partnership, or, if the
16 plan of merger will be submitted for written approval or by
17 other action without a meeting, a statement to that effect.

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

19 (c) A clear and concise statement that, if the plan of
20 merger is effected, partners dissenting therefrom may be
21 entitled, if they comply with the provisions of s. 620.205
22 regarding the rights of dissenting partners, to be paid the
23 fair value of their partnership interests, which shall be
24 accompanied by a copy of s. 620.205.

25 (d) A statement of, or a statement of the method of
26 determining, the "fair value," as defined in s. 620.205(1)(b),
27 of an interest in the limited partnership as determined by the
28 general partners of the limited partnership, which statement
29 may consist of a reference to the applicable provisions of
30 such limited partnership's partnership agreement that
31 determine the fair value of an interest in the limited

1 partnership for these purposes, and which shall constitute an
2 offer by the limited partnership to purchase at such fair
3 value any partnership interests of a "dissenter," as defined
4 in s. 620.205(1)(a), unless and until such a dissenter's right
5 to receive the fair value of his interests in the limited
6 partnership are is terminated pursuant to s. 620.205(8).

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

9 (f) Any other information concerning the plan of
10 merger.

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

13 (a) The date such notification is received;

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

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

21 (d) The date such notification is given in accordance
22 with the provisions of the limited partnership's partnership
23 agreement.

24 (6) A plan of merger may provide for the manner, if
25 any, in which the plan of merger may be amended at any time
26 before the effective date of the merger, except, after the
27 approval of the plan of merger by the limited partners of a
28 domestic limited partnership that is a party to the merger,
29 the general partners of such domestic limited partnership
30 shall not be authorized to amend the plan of merger to:

31

1 (a) Change the amount or kind of partnership
2 interests, interests, shares, obligations, other securities,
3 cash, rights, or any other property to be received by the
4 limited partners of such domestic limited partnership in
5 exchange for or on conversion of their partnership interests;

6 (b) If the surviving entity is a partnership, change
7 any term of the partnership agreement of the surviving entity,
8 except for changes that otherwise could be adopted by the
9 general partners of the surviving entity;

10 (c) If the surviving entity is not a partnership,
11 change any term of the articles of incorporation or comparable
12 governing document of the surviving entity, except for changes
13 that otherwise could be adopted by the board of directors or
14 comparable representatives of the surviving entity; or

15 (d) Change any of the terms and conditions of the plan
16 of merger if any such change, alone or in the aggregate, would
17 materially and adversely affect the limited partners, or any
18 class or group of limited partners, of such domestic limited
19 partnership.

20
21 If an amendment to a plan of merger is made in accordance with
22 such plan and articles of merger have been filed with the
23 Department of State, amended articles of merger executed by
24 the general partners of each domestic limited partnership and
25 other business entity that is a party to the merger shall be
26 filed with the Department of State prior to the effective date
27 of the merger.

28 (7) Unless the domestic limited partnership's
29 partnership agreement or the plan of merger provides
30 otherwise, notwithstanding the prior approval of the plan of
31 merger by any domestic limited partnership that is a party to

1 the merger and at any time prior to the filing of articles of
2 merger with the Department of State, the planned merger may be
3 abandoned, subject to any contractual rights, by any such
4 domestic limited partnership by the affirmative vote of all of
5 its general partners, without further action by its limited
6 partners, in accordance with the procedure set forth in the
7 plan of merger or if none is set forth, in the manner
8 determined by the general partners of such domestic limited
9 partnership.

10 620.203 Articles of merger.--

11 (1) After a plan of merger is approved by each
12 domestic limited partnership and other business entity that is
13 a party to the merger, the surviving entity shall deliver
14 articles of merger to the Department of State for filing,
15 which articles shall be executed by the general partners of
16 each domestic limited partnership and by each other business
17 entity as required by applicable law, and which shall set
18 forth:

19 (a) The plan of merger.

20 (b) A statement that the plan of merger was approved
21 by each domestic partnership that is a party to the merger in
22 accordance with the applicable provisions of this chapter,
23 and, if applicable, a statement that the written consent of
24 each person who, as a result of the merger, becomes a general
25 partner of the surviving entity has been obtained pursuant to
26 s. 620.202(2).

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

30 (d) A statement that the plan of merger was approved
31 by each domestic limited liability company that is a party to

1 the merger in accordance with the applicable provisions of
2 chapter 608.

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

10 (f) The effective date of the merger, which may be on
11 or after the date of filing the articles of merger, provided,
12 if the articles of merger do not provide for an effective date
13 of the merger, the effective date shall be the date on which
14 the articles of merger are filed.

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

18 1. The address, including street and number, if any,
19 of its principal office under the laws of the state, country,
20 or jurisdiction in which it was formed, organized or
21 incorporated.

22 2. A statement that the surviving entity is deemed to
23 have appointed the Secretary of State as its agent for service
24 of process in a proceeding to enforce any obligation or the
25 rights of dissenting partners of each domestic limited
26 partnership that is a party to the merger.

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

31

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

6 (3) Articles of merger shall act as a certificate of
7 cancellation for purposes of s. 620.113 for a domestic limited
8 partnership that is a party to the merger that is not the
9 surviving entity and such partnership's certificate of limited
10 partnership shall be canceled upon the effective date of the
11 merger.

12 620.204 Effect of merger.--

13 (1) When a merger becomes effective:

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

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

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

31

1 (d) Any claim existing or action or proceeding pending
2 by or against any domestic limited partnership or other
3 business entity that is a party to the merger may be continued
4 as if the merger did not occur or the surviving entity may be
5 substituted in the proceeding for the domestic limited
6 partnership or other business entity which ceased existence.

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

10 (f) If a general partner of a partnership formed or
11 organized under the laws of this state or any other state,
12 country, or jurisdiction that is a party to the merger is not
13 a general partner of the surviving entity, the former general
14 partner shall have no liability for obligations arising out of
15 the rights of dissenters with respect to such merger under
16 applicable law or for any obligation incurred after the
17 effective date of the merger, except to the extent that a
18 former creditor of the partnership in which the former general
19 partner was a general partner extends credit to the surviving
20 entity reasonably believing that the former general partner
21 continued as a general partner of the surviving entity.

22 (g) If a domestic limited partnership is the surviving
23 entity, the certificate of limited partnership and partnership
24 agreement of such partnership in effect immediately prior to
25 the time the merger becomes effective shall be the certificate
26 of limited partnership and partnership agreement of the
27 surviving entity, except as amended or restated to the extent
28 provided in the plan of merger.

29 (h) The partnership interests, interests, shares,
30 obligations, or other securities, and the rights to acquire
31 partnership interests, membership interests, shares,

1 obligations, or other securities, of each domestic limited
2 partnership and other business entity that is a party to the
3 merger shall be converted into partnership interests,
4 interests, shares, obligations, or other securities, or rights
5 to such securities, of the surviving entity or any other
6 domestic limited partnership or other business entity or, in
7 whole or in part, into cash or other property as provided in
8 the plan of merger, and the former holders of partnership
9 interests, interests, shares, obligations, or other
10 securities, or rights to such securities, shall be entitled
11 only to the rights provided in the plan of merger and to their
12 rights as dissenters, if any, under s. 620.205, ss.
13 607.1301-607.1320, s. 608.4384, or other applicable law.

14 (2) Unless otherwise provided in the plan of merger, a
15 merger of a domestic limited partnership, including a domestic
16 limited partnership that is not the surviving entity, shall
17 not require such domestic limited partnership to wind up its
18 affairs under s. 620.159 or pay its liabilities and distribute
19 its assets under s. 620.162.

20 620.205 Rights of dissenting partners.--

21 (1) For purposes of this section, the term:

22 (a) "Dissenter" means a partner of a domestic limited
23 partnership who is a recordholder of the partnership interests
24 to which he seeks relief as of the date fixed for the
25 determination of partners entitled to notice of a plan of
26 merger, who does not vote such interests in favor of the plan
27 of merger, and who exercises the right to dissent from the
28 plan of merger when and in the manner required by this
29 section.

30 (b) "Fair value," with respect to a dissenter's
31 partnership interests, means the value of the partnership

1 interests in the domestic limited partnership that is a party
2 to a plan of merger as of the close of business of the day
3 prior to the effective date of the merger to which the
4 dissenter objects, excluding any appreciation or depreciation
5 in anticipation of the merger, unless such exclusion would be
6 inequitable.

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

11 (3) Not later than 20 days after the date on which the
12 notification required by s. 620.202(3) is given to the
13 partners, or if such notification was waived in writing by the
14 dissenter, not later than 20 days after the date of such
15 written waiver, the dissenter shall deliver to the limited
16 partnership a written demand for payment to him of the fair
17 value of the interests as to which he seeks relief that states
18 his address, the number and class, if any, of those interests,
19 and, at the election of the dissenter, the amount claimed by
20 him as the fair value of the interests. The statement of fair
21 market value by the dissenter, if any, shall constitute an
22 offer by the dissenter to sell the partnership interests to
23 the limited partnership for such amount. A dissenter may
24 dissent as to less than all the partnership interests
25 registered in his name. In such event, the dissenter's rights
26 shall be determined as if the partnership interests as to
27 which he has dissented and his remaining partnership interests
28 were registered in the names of different partners. If the
29 interests as to which a dissenter seeks relief are represented
30 by certificates, the dissenter shall deposit such certificates
31 with the limited partnership simultaneously with the delivery

1 of the written demand for payment. Upon receiving a demand
2 for payment from a dissenter who is a record holder of
3 uncertificated interests, the limited partnership shall make
4 an appropriate notation of the demand for payment in its
5 records. The limited partnership may restrict the transfer of
6 uncertificated interests from the date the dissenter's written
7 demand for payment is delivered. A written demand for payment
8 served on the domestic limited partnership in which the
9 dissenter is a partner shall constitute service on the
10 surviving entity.

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

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

15 (b) Five days after the date such written demand is
16 deposited in the United States mail addressed to the principal
17 business office of the limited partnership, with postage
18 thereon prepaid;

19 (c) The date shown on the return receipt, if such
20 written demand is sent by registered or certified mail, return
21 receipt requested, and the receipt is signed by or on behalf
22 of the addressee; or

23 (d) The date such written demand is given in
24 accordance with the provisions of the limited partnership's
25 partnership agreement.

26 (5) Unless the partnership agreement of the limited
27 partnership in which the dissenter is a partner provides a
28 basis or method for determining and paying the fair value of
29 the interests as to which the dissenter seeks relief, or
30 unless the limited partnership or the surviving entity and the
31 dissenter have agreed in writing as to the fair value of the

1 interests as to which the dissenter seeks relief, the
2 dissenter, the limited partnership, or the surviving entity,
3 within 90 days after the dissenter delivers the written demand
4 for payment to the limited partnership, may file an action in
5 any court of competent jurisdiction in the county in this
6 state where the registered office of the limited partnership
7 is located or was located when the plan of merger was approved
8 by its partners, or in the county in this state in which the
9 principal office of the limited partnership that issued the
10 partnership interests is located or was located when the plan
11 of merger was approved by its partners, requesting a
12 determination of the fair value of the dissenter's partnership
13 interests. The court shall also determine whether each
14 dissenter that is a party to such proceeding, as to whom the
15 limited partnership or the surviving entity requests the court
16 to make such determination, is entitled to receive payment of
17 the fair value for his partnership interests. Other
18 dissenters, within the 90-day period after a dissenter
19 delivers a written demand to the partnership, may join such
20 proceeding as plaintiffs or may be joined in any such
21 proceeding as defendants, and any two or more such proceedings
22 may be consolidated. If the limited partnership or surviving
23 entity commences such a proceeding, all dissenters, whether or
24 not residents of this state, other than dissenters who have
25 agreed in writing with the limited partnership or the
26 surviving entity as to the fair value of the partnership
27 interests as to which such dissenters seek relief, shall be
28 made parties to such action as an action against their
29 partnership interests. The limited partnership or the
30 surviving entity shall serve a copy of the initial pleading in
31 such proceeding upon each dissenter who is a party to such

1 proceeding and who is a resident of this state in the manner
2 provided by law for the service of a summons and complaint and
3 upon each such dissenter who is not a resident of this state
4 either by registered or certified mail and publication or in
5 such manner as is permitted by law. The jurisdiction of the
6 court in such a proceeding shall be plenary and exclusive.
7 All dissenters who are proper parties to the proceeding are
8 entitled to judgment against the limited partnership or the
9 surviving entity for the amount of the fair value of their
10 partnership interests as to which payment is sought hereunder.
11 The court may, if it so elects, appoint one or more persons as
12 appraisers to receive evidence and recommend a decision on the
13 question of fair value. The appraisers shall have such power
14 and authority as is specified in the order of their
15 appointment or an amendment thereof. The limited partnership
16 shall pay each dissenter the amount found to be due him within
17 10 days after final determination of the proceedings. Upon
18 payment of the judgment, the dissenter shall cease to have any
19 interest in the partnership interests as to which payment is
20 sought hereunder.

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

24 (7) The costs and expenses of any such proceeding
25 shall be determined by the court and shall be assessed against
26 the limited partnership or the surviving entity. However, all
27 or any part of such costs and expenses may be apportioned and
28 assessed as the court deems equitable against any or all of
29 the dissenters who are parties to the proceeding, to whom the
30 limited partnership or the surviving entity has made an offer
31 to pay for the partnership interests, if the court finds that

1 the action of such dissenters in failing to accept such offer
2 was arbitrary, vexatious, or not in good faith. Such expenses
3 shall include reasonable compensation for, and reasonable
4 expenses of, the appraisers, but shall exclude the fees and
5 expenses of counsel for, and experts employed by, any party.
6 If the fair value of the partnership interests, as determined,
7 materially exceeds the amount which the limited partnership or
8 the surviving entity offered to pay therefor, the court in its
9 discretion may award to any dissenter who is a party to the
10 proceeding such amount as the court determines to be
11 reasonable compensation to any attorney or expert employed by
12 the dissenter in the proceeding.

13 (8) The right of a dissenter to receive fair value for
14 and the obligation to sell such partnership interests as to
15 which he seeks relief and the right of the domestic limited
16 partnership or the surviving entity to purchase such interests
17 and the obligation to pay the fair value of such interests
18 shall terminate if:

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

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

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

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

31

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

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

8 (9) Unless otherwise provided in the partnership
9 agreement of the domestic limited partnership in which the
10 dissenter was a partner, after the date the dissenter delivers
11 the written demand for payment in accordance with subsection
12 (3) until either the termination of the rights and obligations
13 arising from it or the purchase of the dissenter's partnership
14 interests by the limited partnership or the surviving entity,
15 the dissenter shall be entitled only to payment as provided in
16 this section and shall not be entitled to any other rights
17 accruing from such interests, including voting or distribution
18 rights. If the right to receive fair value is terminated
19 other than by the purchase of the dissenter's partnership
20 interests by the limited partnership or the surviving entity,
21 all rights of the dissenter as a partner of the limited
22 partnership shall be reinstated effective as of the date the
23 dissenter delivered the written demand for payment, including
24 the right to receive any intervening payment or other
25 distribution with respect to the dissenter's interests in the
26 limited partnership, or, if any such rights have expired or
27 any such distribution other than a cash payment has been
28 completed, in lieu thereof at the election of the surviving
29 entity, the fair value thereof in cash as determined by the
30 surviving entity as of the time of such expiration or
31 completion, but without prejudice otherwise to any action or

1 proceeding of the limited partnership that may have been taken
2 by the limited partnership on or after the date the dissenter
3 delivered the written demand for payment.

4 (10) A partner who is entitled under this section to
5 demand payment for his partnership interests shall not have
6 any right at law or in equity to challenge the validity of any
7 merger that creates his entitlement to demand payment
8 hereunder, or to have the merger set aside or rescinded,
9 except with respect to compliance with the provisions of the
10 limited partnership's partnership agreement or if the merger
11 is unlawful or fraudulent with respect to such partner.

12 (11) Unless otherwise provided in the partnership
13 agreement of the domestic limited partnership in which the
14 dissenter was a partner, this section does not apply with
15 respect to a plan of merger if, as of the date fixed for the
16 determination of partners entitled to notice of a plan of
17 merger:

18 (a) The partnership interests of the limited
19 partnership were held of record by not fewer than 500
20 partners; or

21 (b) The partnership interests were registered on a
22 national securities exchange or quoted on the National
23 Association of Securities Dealers Automated Quotation System.

24 Section 5. This act shall take effect upon becoming a
25 law.

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SENATE SUMMARY

Provides procedures and criteria for mergers of corporations and other business entities, limited liability companies, and domestic limited partnerships. Requires plans of merger and specifies actions on such plans. Provides for articles of merger. Provides for rights of dissenting members or partners. (See bill for details.)