

By the Committee on Commerce and Economic Opportunities and  
Senator Grant

310-1692-98

1                                   A bill to be entitled  
2           An act relating to mergers of business entities  
3           or corporations; amending s. 607.0730, F.S.;  
4           removing 10-year limit on voting trusts;  
5           creating holding company formation by merger by  
6           certain corporations; amending s. 608.407,  
7           F.S.; reducing minimum number of members  
8           necessary to form a limited liability company;  
9           creating ss. 607.1108, 607.1109, 607.11101,  
10          F.S.; providing for mergers of domestic  
11          corporations and other business entities under  
12          certain circumstances; requiring a plan of  
13          merger; providing criteria; providing for  
14          articles of merger; providing for effect of  
15          merger; creating ss. 608.438, 608.4381,  
16          608.4382, 608.4383, 608.4384, F.S.; providing  
17          for mergers of limited liability companies  
18          under certain circumstances; requiring a plan  
19          of merger; providing criteria; providing for  
20          action on a plan of merger; providing  
21          procedures; providing for articles of merger;  
22          providing for effect of merger; providing for  
23          rights of dissenting members; providing  
24          procedures; creating ss. 620.201, 620.202,  
25          620.203, 620.204, 620.205, F.S.; providing for  
26          mergers of domestic limited partnerships under  
27          certain circumstances; requiring a plan of  
28          merger; providing criteria; providing for  
29          action on a plan of merger; providing  
30          procedures; providing for articles of merger;  
31          providing for effect of merger; providing for

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:

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6           Section 1. Subsections (2) and (3) of section  
7 607.0730, Florida Statutes, are amended to read:

8           607.0730 Voting trusts.--

9           (2) A voting trust becomes effective on the date the  
10 first shares subject to the trust are registered in the  
11 trustee's name. ~~A voting trust is valid for not more than 10~~  
12 ~~years after its effective date unless extended under~~  
13 ~~subsection (3). The validity of any voting trust otherwise~~  
14 ~~lawful shall not be affected during a period of 10 years from~~  
15 ~~the date when it was created or last extended by the fact that~~  
16 ~~under its terms it will or may last beyond the 10-year period.~~

17           ~~(3) All or some of the parties to a voting trust may~~  
18 ~~extend it for additional terms of not more than 10 years each~~  
19 ~~by signing an extension agreement and obtaining the voting~~  
20 ~~trustee's written consent to the extension. An extension is~~  
21 ~~valid for the period set forth therein, up to 10 years, from~~  
22 ~~the date the first shareholder signs the extension agreement.~~  
23 ~~The voting trustee must deliver copies of the extension~~  
24 ~~agreement and list of beneficial owners to the corporation's~~  
25 ~~principal office. An extension agreement binds only those~~  
26 ~~parties signing it.~~

27           Section 2. Holding company formation by merger by  
28 certain corporations.--

29           (1) This section applies only to a corporation that  
30 has shares of any class or series which are either registered  
31 on a national securities exchange or designated as a national

1 market system security on an interdealer quotation system by  
2 the National Association of Securities Dealers, Inc., or held  
3 of record by not fewer than 2,000 shareholders.

4 (2) As used in this section, the term:

5 (a) "Constituent corporation" means a corporation that  
6 is a party to a merger governed by this section.

7 (b) "Holding company" means a corporation that, from  
8 the date it first issued shares until consummation of a merger  
9 governed by this section, was at all times a wholly owned  
10 subsidiary of a constituent corporation, and whose shares are  
11 issued in such merger.

12 (c) "Wholly owned subsidiary" means, as to a  
13 corporation, any other corporation of which it owns, directly  
14 or indirectly through one or more subsidiaries, all of the  
15 issued and outstanding shares.

16 (3) Notwithstanding the requirements of section  
17 607.1103, Florida Statutes, unless expressly required by its  
18 articles of incorporation, no vote of shareholders of a  
19 corporation is necessary to authorize a merger of the  
20 corporation with or into a wholly owned subsidiary of such  
21 corporation if:

22 (a) Such corporation and wholly owned subsidiary are  
23 the only constituent corporations to the merger;

24 (b) Each share or fraction of a share of the  
25 constituent corporation whose shares are being converted  
26 pursuant to the merger into a share or equal fraction of share  
27 of a holding company having the same designations, rights,  
28 powers and preferences, and qualifications, limitations and  
29 restrictions thereof as the share of the constituent  
30 corporation being converted in the merger;

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1           (c) The holding company and each of the constituent  
2 corporations to the merger are domestic corporations;

3           (d) The articles of incorporation and by-laws of the  
4 holding company immediately following the effective time of  
5 the merger contain provisions identical to the articles of  
6 incorporation and by-laws of the constituent corporation whose  
7 shares are being converted pursuant to the merger immediately  
8 prior to the effective time of the merger, except provisions  
9 regarding the incorporators, the corporate name, the  
10 registered office and agent, the initial board of directors,  
11 the initial subscribers for shares and matters solely of  
12 historical significance, and such provisions contained in any  
13 amendment to the articles of incorporation as were necessary  
14 to effect a change, exchange, reclassification, or  
15 cancellation of shares, if such change, exchange,  
16 reclassification, or cancellation has become effective;

17           (e) As a result of the merger, the constituent  
18 corporation whose shares are being converted pursuant to the  
19 merger or its successor corporation becomes or remains a  
20 direct or indirect wholly-owned subsidiary of the holding  
21 company;

22           (f) The directors of the constituent corporation  
23 become or remain the directors of the holding company upon the  
24 effective date of the merger;

25           (g) The articles of incorporation of the surviving  
26 corporation immediately following the effective time of the  
27 merger are identical to the articles of incorporation of the  
28 constituent corporation whose shares are being converted  
29 pursuant to the merger immediately prior to the effective time  
30 of the merger, except provisions regarding the incorporators,  
31 the corporate name, the registered office and agent, the

1 initial board of directors, the initial subscribers for shares  
2 and matters solely of historical significance, and such  
3 provisions contained in any amendment to the articles of  
4 incorporation as were necessary to effect a change, exchange,  
5 reclassification, or cancellation of shares, if such change,  
6 exchange, reclassification, or cancellation has become  
7 effective. The articles of incorporation of the surviving  
8 corporation must be amended in the merger to contain a  
9 provision requiring, by specific reference to this section,  
10 that any act or transaction by or involving the surviving  
11 corporation which requires for its adoption under this act or  
12 its articles of incorporation the approval of the shareholders  
13 of the surviving corporation also be approved by the  
14 shareholders of the holding company, or any successor by  
15 merger, by the same vote as is required by this act or the  
16 articles of incorporation of the surviving corporation. The  
17 articles of incorporation of the surviving corporation may be  
18 amended in the merger to reduce the number of classes and  
19 shares which the surviving corporation is authorized to issue;  
20 (h) The board of directors of the constituent  
21 corporation determines that the shareholders of the  
22 constituent corporation will not recognize gain or loss for  
23 United States federal income tax purposes; and  
24 (i) The board of directors of such corporation adopts  
25 a plan of merger that sets forth:  
26 1. The names of the constituent corporations;  
27 2. The manner and basis of converting the shares of  
28 the corporation into shares of the holding company and the  
29 manner and basis of converting rights to acquire shares of  
30 such corporation into rights to acquire shares of the holding  
31 company; and

1           3. A provision for the pro rata issuance of shares of  
2 the holding company to the holders of shares of the  
3 corporation upon surrender of any certificates therefor.

4           (4) From and after the effective time of a merger  
5 adopted by a constituent corporation by action of its board of  
6 directors and without any vote of shareholders pursuant to  
7 this section:

8           (a) To the extent the restrictions of sections  
9 607.0901 and 607.0902, Florida Statutes, applied to the  
10 constituent corporation and its shareholders at the effective  
11 time of the merger, such restrictions also apply to the  
12 holding company and its shareholders immediately after the  
13 effective time of the merger as though it were the constituent  
14 corporation, and all shares of the holding company acquired in  
15 the merger shall, for purposes of sections 607.0901 and  
16 607.0902, Florida Statutes, be deemed to have been acquired at  
17 the time that the shares of the constituent corporation  
18 converted in the merger were acquired, and provided further  
19 that any shareholder who immediately prior to the effective  
20 time of the merger was not an interested shareholder within  
21 the meaning of section 607.0901, Florida Statutes, shall not,  
22 solely by reason of the merger, become an interested  
23 shareholder of the holding company; and

24           (b) If the corporate name of the holding company  
25 immediately following the effective time of the merger is the  
26 same as the corporate name of the constituent corporation  
27 immediately prior to the effective time of the merger, the  
28 shares of the holding company into which the shares of the  
29 constituent corporation are converted in the merger shall be  
30 represented by the share certificates that previously  
31 represented shares of the constituent corporation.

1           (5) If a plan of merger is adopted by a constituent  
2 corporation by selection of its board of directors without any  
3 vote of shareholders pursuant to this section, the secretary  
4 or assistant secretary of the constituent corporation shall  
5 certify in the articles of merger that the plan of merger has  
6 been adopted pursuant to this section and that the conditions  
7 specified in the first sentence of this section have been  
8 satisfied. The articles of merger so certified shall then be  
9 filed and become effective in accordance with section  
10 607.1106, Florida Statutes.

11           Section 3. Subsection (2) of section 608.407, Florida  
12 Statutes, is amended to read:

13           608.407 Articles of organization.--

14           (2) An affidavit declaring that the limited liability  
15 company has at least one member ~~two members~~ and setting forth  
16 the amount of the cash and a description and agreed value of  
17 property other than cash contributed by the members and the  
18 amount anticipated to be contributed by the members shall  
19 accompany the articles of organization of a limited liability  
20 company.

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

23           607.1108 Merger of domestic corporation and other  
24 business entity.--

25           (1) As used in this section and ss. 607.1109 and  
26 607.11101, the term "other business entity" means a limited  
27 liability company, a foreign corporation, a not-for-profit  
28 corporation, a business trust or association, a real estate  
29 investment trust, a common law trust, an unincorporated  
30 business, a general partnership, a limited partnership, or any  
31 other entity that is formed pursuant to the requirements of

1 applicable law. Notwithstanding the provisions of chapter 617,  
2 a domestic not-for-profit corporation acting under a plan of  
3 merger approved pursuant to s. 617.1103 shall be governed by  
4 the provisions of ss. 607.1108, 607.1109, and 607.11101.

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

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

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

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

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

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

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

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1 in ss. 607.1109 and 607.11101 designated as the surviving  
2 entity.

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

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

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

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

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

1           (4) The plan of merger may set forth:  
2           (a) If a domestic corporation is to be the surviving  
3 entity, any amendments to, or a restatement of, the articles  
4 of incorporation of the surviving entity, and such amendments  
5 or restatement shall be effective at the effective date of the  
6 merger.  
7           (b) The effective date of the merger, which may be on  
8 or after the date of filing the certificate of merger.  
9           (c) Any other provisions relating to the merger.  
10           (5) The plan of merger required by subsection (3)  
11 shall be adopted and approved by each domestic corporation  
12 that is a party to the merger in the same manner as is  
13 provided in s. 607.1103. Notwithstanding the foregoing, if the  
14 surviving entity is a partnership, no shareholder of a  
15 domestic corporation that is a party to the merger shall, as a  
16 result of the merger, become a general partner of the  
17 surviving entity, unless such shareholder specifically  
18 consents in writing to becoming a general partner of the  
19 surviving entity, and unless such written consent is obtained  
20 from each such shareholder who, as a result of the merger,  
21 would become a general partner of the surviving entity, such  
22 merger shall not become effective under s. 607.11101. Any  
23 shareholder providing such consent in writing shall be deemed  
24 to have voted in favor of the plan of merger for purposes of  
25 s. 607.1103.  
26           (6) Sections 607.1103 and 607.1301-607.1320 shall,  
27 insofar as they are applicable, apply to mergers of one or  
28 more domestic corporations with or into one or more other  
29 business entities.  
30           (7) Notwithstanding any provision of this section or  
31 ss. 607.1109 and 607.11101, any merger consisting solely of

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

4 607.1109 Articles of merger.--

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

12 (a) The plan of merger.

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

20 (c) 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 chapter 620.

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

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

1 the 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  
31

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 5. 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.

31

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).

31

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.

13  
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

31

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 6. 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 7. This act shall take effect upon becoming a  
25 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 518

This committee substitute removes the ten-year limitation on voting trusts, permits publicly-held Florida corporations to reorganize as holding companies under certain circumstances, reduces the minimum number of members necessary to form a limited liability company, and includes not-for-profit corporations in the merger provisions of this bill, allowing not-for-profit corporations to merge with for-profit corporations.