

Bill No. CS for SB 2362

Amendment No. Barcode 112810

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Klein moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 On page 22, line 9, through

15 page 47, line 3, delete those lines

16
17 and insert:

18 (5) "Interest" means interest from the effective date

19 of the corporate action until the date of payment, at the rate

20 of interest on judgments in this state on the effective date

21 of the corporate action.

22 (6) "Preferred shares" means a class or series of

23 shares the holders of which have preference over any other

24 class or series with respect to distributions.

25 (7) "Record shareholder" means the person in whose

26 name shares are registered in the records of the corporation

27 or the beneficial owner of shares to the extent of the rights

28 granted by a nominee certificate on file with the corporation.

29 (8) "Senior executive" means the chief executive

30 officer, chief operating officer, chief financial officer, or

31 anyone in charge of a principal business unit or function.

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1 (9) "Shareholder" means both a record shareholder and
2 a beneficial shareholder.

3 Section 22. Section 607.1302, Florida Statutes, is
4 amended to read:

5 (Substantial rewording of section. See s.
6 607.1302, Florida Statutes, for present text.)
7 607.1302 Right of shareholders to appraisal.--

8 (1) A shareholder is entitled to appraisal rights, and
9 to obtain payment of the fair value of that shareholder's
10 shares, in the event of any of the following corporate
11 actions:

12 (a) Consummation of a merger to which the corporation
13 is a party if shareholder approval is required for the merger
14 by s. 607.1103 and the shareholder is entitled to vote on the
15 merger or if the corporation is a subsidiary and the merger is
16 governed by s. 607.1104;

17 (b) Consummation of a share exchange to which the
18 corporation is a party as the corporation whose shares will be
19 acquired if the shareholder is entitled to vote on the
20 exchange, except that appraisal rights shall not be available
21 to any shareholder of the corporation with respect to any
22 class or series of shares of the corporation that is not
23 exchanged;

24 (c) Consummation of a disposition of assets pursuant
25 to s. 607.1202 if the shareholder is entitled to vote on the
26 disposition, including a sale in dissolution but not including
27 a sale pursuant to court order or a sale for cash pursuant to
28 a plan by which all or substantially all of the net proceeds
29 of the sale will be distributed to the shareholders within 1
30 year after the date of sale;

31 (d) Any other amendment to the articles of

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1 incorporation, merger, share exchange, or disposition of
2 assets to the extent provided by the articles of
3 incorporation, bylaws, or a resolution of the board of
4 directors, except that no bylaw or board resolution providing
5 for appraisal rights may be amended or otherwise altered
6 except by shareholder approval; or

7 (e) With regard to shares issued prior to October 1,
8 2003, any amendment of the articles of incorporation if the
9 shareholder is entitled to vote on the amendment and if such
10 amendment would adversely affect such shareholder by:

11 1. Altering or abolishing any preemptive rights
12 attached to any of his or her shares;

13 2. Altering or abolishing the voting rights pertaining
14 to any of his or her shares, except as such rights may be
15 affected by the voting rights of new shares then being
16 authorized of any existing or new class or series of shares;

17 3. Effecting an exchange, cancellation, or
18 reclassification of any of his or her shares, when such
19 exchange, cancellation, or reclassification would alter or
20 abolish the shareholder's voting rights or alter his or her
21 percentage of equity in the corporation, or effecting a
22 reduction or cancellation of accrued dividends or other
23 arrearages in respect to such shares;

24 4. Reducing the stated redemption price of any of the
25 shareholder's redeemable shares, altering or abolishing any
26 provision relating to any sinking fund for the redemption or
27 purchase of any of his or her shares, or making any of his or
28 her shares subject to redemption when they are not otherwise
29 redeemable;

30 5. Making noncumulative, in whole or in part,
31 dividends of any of the shareholder's preferred shares which

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1 had theretofore been cumulative;

2 6. Reducing the stated dividend preference of any of
3 the shareholder's preferred shares; or

4 7. Reducing any stated preferential amount payable on
5 any of the shareholder's preferred shares upon voluntary or
6 involuntary liquidation.

7 (2) Notwithstanding subsection (1), the availability
8 of appraisal rights under paragraphs (1)(a), (b), (c), and (d)
9 shall be limited in accordance with the following provisions:

10 (a) Appraisal rights shall not be available for the
11 holders of shares of any class or series of shares which is:

12 1. Listed on the New York Stock Exchange or the
13 American Stock Exchange or designated as a national market
14 system security on an interdealer quotation system by the
15 National Association of Securities Dealers, Inc.; or

16 2. Not so listed or designated, but has at least 2,000
17 shareholders and the outstanding shares of such class or
18 series has a market value of at least \$10 million, exclusive
19 of the value of such shares held by its subsidiaries, senior
20 executives, directors, and beneficial shareholders owning more
21 than 10 percent of such shares.

22 (b) The applicability of paragraph (2)(a) shall be
23 determined as of:

24 1. The record date fixed to determine the shareholders
25 entitled to receive notice of, and to vote at, the meeting of
26 shareholders to act upon the corporate action requiring
27 appraisal rights; or

28 2. If there will be no meeting of shareholders, the
29 close of business on the day on which the board of directors
30 adopts the resolution recommending such corporate action.

31 (c) Paragraph (2)(a) shall not be applicable and

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1 appraisal rights shall be available pursuant to subsection (1)
2 for the holders of any class or series of shares who are
3 required by the terms of the corporate action requiring
4 appraisal rights to accept for such shares anything other than
5 cash or shares of any class or any series of shares of any
6 corporation, or any other proprietary interest of any other
7 entity, that satisfies the standards set forth in paragraph
8 (2)(a) at the time the corporate action becomes effective.

9 (d) Paragraph (2)(a) shall not be applicable and
10 appraisal rights shall be available pursuant to subsection (1)
11 for the holders of any class or series of shares if:

12 1. Any of the shares or assets of the corporation are
13 being acquired or converted, whether by merger, share
14 exchange, or otherwise, pursuant to the corporate action by a
15 person, or by an affiliate of a person, who:

16 a. Is, or at any time in the 1-year period immediately
17 preceding approval by the board of directors of the corporate
18 action requiring appraisal rights was, the beneficial owner of
19 20 percent or more of the voting power of the corporation,
20 excluding any shares acquired pursuant to an offer for all
21 shares having voting power if such offer was made within 1
22 year prior to the corporate action requiring appraisal rights
23 for consideration of the same kind and of a value equal to or
24 less than that paid in connection with the corporate action;
25 or

26 b. Directly or indirectly has, or at any time in the
27 1-year period immediately preceding approval by the board of
28 directors of the corporation of the corporate action requiring
29 appraisal rights had, the power, contractually or otherwise,
30 to cause the appointment or election of 25 percent or more of
31 the directors to the board of directors of the corporation; or

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1 2. Any of the shares or assets of the corporation are
2 being acquired or converted, whether by merger, share
3 exchange, or otherwise, pursuant to such corporate action by a
4 person, or by an affiliate of a person, who is, or at any time
5 in the 1-year period immediately preceding approval by the
6 board of directors of the corporate action requiring appraisal
7 rights was, a senior executive or director of the corporation
8 or a senior executive of any affiliate thereof, and that
9 senior executive or director will receive, as a result of the
10 corporate action, a financial benefit not generally available
11 to other shareholders as such, other than:

12 a. Employment, consulting, retirement, or similar
13 benefits established separately and not as part of or in
14 contemplation of the corporate action;

15 b. Employment, consulting, retirement, or similar
16 benefits established in contemplation of, or as part of, the
17 corporate action that are not more favorable than those
18 existing before the corporate action or, if more favorable,
19 that have been approved on behalf of the corporation in the
20 same manner as is provided in s. 607.0832; or

21 c. In the case of a director of the corporation who
22 will, in the corporate action, become a director of the
23 acquiring entity in the corporate action or one of its
24 affiliates, rights and benefits as a director that are
25 provided on the same basis as those afforded by the acquiring
26 entity generally to other directors of such entity or such
27 affiliate.

28 (e) For the purposes of paragraph (2)(d) only, the
29 term "beneficial owner" means any person who, directly or
30 indirectly, through any contract, arrangement, or
31 understanding, other than a revocable proxy, has or shares the

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1 power to vote, or to direct the voting of, shares, provided
2 that a member of a national securities exchange shall not be
3 deemed to be a beneficial owner of securities held directly or
4 indirectly by it on behalf of another person solely because
5 such member is the record holder of such securities if the
6 member is precluded by the rules of such exchange from voting
7 without instruction on contested matters or matters that may
8 affect substantially the rights or privileges of the holders
9 of the securities to be voted. When two or more persons agree
10 to act together for the purpose of voting their shares of the
11 corporation, each member of the group formed thereby shall be
12 deemed to have acquired beneficial ownership, as of the date
13 of such agreement, of all voting shares of the corporation
14 beneficially owned by any member of the group.

15 (3) Notwithstanding any other provision of this
16 section, the articles of incorporation as originally filed or
17 any amendment thereto may limit or eliminate appraisal rights
18 for any class or series of preferred shares, but any such
19 limitation or elimination contained in an amendment to the
20 articles of incorporation that limits or eliminates appraisal
21 rights for any of such shares that are outstanding immediately
22 prior to the effective date of such amendment or that the
23 corporation is or may be required to issue or sell thereafter
24 pursuant to any conversion, exchange, or other right existing
25 immediately before the effective date of such amendment shall
26 not apply to any corporate action that becomes effective
27 within 1 year of that date if such action would otherwise
28 afford appraisal rights.

29 (4) A shareholder entitled to appraisal rights under
30 this chapter may not challenge a completed corporate action
31 for which appraisal rights are available unless such corporate

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1 action:

2 (a) Was not effectuated in accordance with the
3 applicable provisions of this section or the corporation's
4 articles of incorporation, bylaws, or board of directors'
5 resolution authorizing the corporate action; or

6 (b) Was procured as a result of fraud or material
7 misrepresentation.

8 Section 23. Section 607.1303, Florida Statutes, is
9 created to read:

10 607.1303 Assertion of rights by nominees and
11 beneficial owners.--

12 (1) A record shareholder may assert appraisal rights
13 as to fewer than all the shares registered in the record
14 shareholder's name but owned by a beneficial shareholder only
15 if the record shareholder objects with respect to all shares
16 of the class or series owned by the beneficial shareholder and
17 notifies the corporation in writing of the name and address of
18 each beneficial shareholder on whose behalf appraisal rights
19 are being asserted. The rights of a record shareholder who
20 asserts appraisal rights for only part of the shares held of
21 record in the record shareholder's name under this subsection
22 shall be determined as if the shares as to which the record
23 shareholder objects and the record shareholder's other shares
24 were registered in the names of different record shareholders.

25 (2) A beneficial shareholder may assert appraisal
26 rights as to shares of any class or series held on behalf of
27 the shareholder only if such shareholder:

28 (a) Submits to the corporation the record
29 shareholder's written consent to the assertion of such rights
30 no later than the date referred to in s. 607.1322(2)(b)2.

31 (b) Does so with respect to all shares of the class or

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1 series that are beneficially owned by the beneficial
2 shareholder.

3 Section 24. Section 607.1320, Florida Statutes, is
4 amended to read:

5 (Substantial rewording of section. See s.
6 607.1320, Florida Statutes, for present text.)
7 607.1320 Notice of appraisal rights.--

8 (1) If proposed corporate action described in s.
9 607.1302(1) is to be submitted to a vote at a shareholders'
10 meeting, the meeting notice must state that the corporation
11 has concluded that shareholders are, are not, or may be
12 entitled to assert appraisal rights under this chapter. If the
13 corporation concludes that appraisal rights are or may be
14 available, a copy of ss. 607.1301-607.1333 must accompany the
15 meeting notice sent to those record shareholders entitled to
16 exercise appraisal rights.

17 (2) In a merger pursuant to s. 607.1104, the parent
18 corporation must notify in writing all record shareholders of
19 the subsidiary who are entitled to assert appraisal rights
20 that the corporate action became effective. Such notice must
21 be sent within 10 days after the corporate action became
22 effective and include the materials described in s. 607.1322.

23 (3) If the proposed corporate action described in s.
24 607.1302(1) is to be approved other than by a shareholders
25 meeting, the notice referred to in s. 607.1320(1) must be sent
26 to all shareholders at the time that consents are first
27 solicited pursuant to s. 607.0704, whether or not consents are
28 solicited from all shareholders, and include the materials
29 described in s. 607.1322.

30 Section 25. Section 607.1321, Florida Statutes, is
31 created to read:

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1 607.1321 Notice of intent to demand payment.--

2 (1) If proposed corporate action requiring appraisal
3 rights under s. 607.1302 is submitted to a vote at a
4 shareholders' meeting, or is submitted to a shareholder
5 pursuant to a consent vote under s. 607.0704, a shareholder
6 who wishes to assert appraisal rights with respect to any
7 class or series of shares:

8 (a) Must deliver to the corporation before the vote is
9 taken, or within 20 days after receiving the notice pursuant
10 to s. 607.1320(3) if action is to be taken without a
11 shareholder meeting, written notice of the shareholder's
12 intent to demand payment if the proposed action is
13 effectuated.

14 (b) Must not vote, or cause or permit to be voted, any
15 shares of such class or series in favor of the proposed
16 action.

17 (2) A shareholder who does not satisfy the requirements
18 of subsection (1) is not entitled to payment under this
19 chapter.

20 Section 26. Section 607.1322, Florida Statutes, is
21 created to read:

22 607.1322 Appraisal notice and form.--

23 (1) If proposed corporate action requiring appraisal
24 rights under s. 607.1302(1) becomes effective, the corporation
25 must deliver a written appraisal notice and form required by
26 paragraph (2)(a) to all shareholders who satisfied the
27 requirements of s. 607.1321. In the case of a merger under s.
28 607.1104, the parent must deliver a written appraisal notice
29 and form to all record shareholders who may be entitled to
30 assert appraisal rights.

31 (2) The appraisal notice must be sent no earlier than

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1 the date the corporate action became effective and no later
2 than 10 days after such date and must:

3 (a) Supply a form that specifies the date that the
4 corporate action became effective and that provides for the
5 shareholder to state:

6 1. The shareholder's name and address.

7 2. The number, classes, and series of shares as to
8 which the shareholder asserts appraisal rights.

9 3. That the shareholder did not vote for the
10 transaction.

11 4. Whether the shareholder accepts the corporation's
12 offer as stated in subparagraph (2)(b)4.

13 5. If the offer is not accepted, the shareholder's
14 estimated fair value of the shares and a demand for payment of
15 the shareholder's estimated value plus interest.

16 (b) State:

17 1. Where the form must be sent and where certificates
18 for certificated shares must be deposited and the date by
19 which those certificates must be deposited, which date may not
20 be earlier than the date for receiving the required form under
21 subparagraph (2)(b)2.

22 2. A date by which the corporation must receive the
23 form, which date may not be fewer than 40 nor more than 60
24 days after the date the subsection (1) appraisal notice and
25 form are sent, and state that the shareholder shall have
26 waived the right to demand appraisal with respect to the
27 shares unless the form is received by the corporation by such
28 specified date.

29 3. The corporation's estimate of the fair value of the
30 shares.

31 4. An offer to each shareholder who is entitled to

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1 appraisal rights to pay the corporation's estimate of fair
2 value set forth in subparagraph (2)(b)3.

3 5. That, if requested in writing, the corporation will
4 provide to the shareholder so requesting, within 10 days after
5 the date specified in subparagraph (2)(b)2., the number of
6 shareholders who return the forms by the specified date and
7 the total number of shares owned by them.

8 6. The date by which the notice to withdraw under s.
9 607.1323 must be received, which date must be within 20 days
10 after the date specified in subparagraph (2)(b)2.

11 (c) Be accompanied by:

12 1. Financial statements of the corporation that issued
13 the shares to be appraised, consisting of a balance sheet as
14 of the end of the fiscal year ending not more than 15 months
15 prior to the date of the corporation's appraisal notice, an
16 income statement for that year, a cash flow statement for that
17 year, and the latest available interim financial statements,
18 if any.

19 2. A copy of ss. 607.1301-607.1333.

20 Section 27. Section 607.1323, Florida Statutes, is
21 created to read:

22 607.1323 Perfection of rights; right to withdraw.--

23 (1) A shareholder who wishes to exercise appraisal
24 rights must execute and return the form received pursuant to
25 s. 607.1322(1) and, in the case of certificated shares,
26 deposit the shareholder's certificates in accordance with the
27 terms of the notice by the date referred to in the notice
28 pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits
29 that shareholder's certificates or, in the case of
30 uncertificated shares, returns the executed forms, that
31 shareholder loses all rights as a shareholder, unless the

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1 shareholder withdraws pursuant to subsection (2).

2 (2) A shareholder who has complied with subsection (1)
3 may nevertheless decline to exercise appraisal rights and
4 withdraw from the appraisal process by so notifying the
5 corporation in writing by the date set forth in the appraisal
6 notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails
7 to so withdraw from the appraisal process may not thereafter
8 withdraw without the corporation's written consent.

9 (3) A shareholder who does not execute and return the
10 form and, in the case of certificated shares, deposit that
11 shareholder's share certificates if required, each by the date
12 set forth in the notice described in subsection (2), shall not
13 be entitled to payment under this chapter.

14 Section 28. Section 607.1324, Florida Statutes, is
15 created to read:

16 607.1324 Shareholder's acceptance of corporation's
17 offer.--

18 (1) If the shareholder states on the form provided in
19 s. 607.1322(1) that the shareholder accepts the offer of the
20 corporation to pay the corporation's estimated fair value for
21 the shares, the corporation shall make such payment to the
22 shareholder within 90 days after the corporation's receipt of
23 the form from the shareholder.

24 (2) Upon payment of the agreed value, the shareholder
25 shall cease to have any interest in the shares.

26 Section 29. Section 607.1326, Florida Statutes, is
27 created to read:

28 607.1326 Procedure if shareholder is dissatisfied with
29 offer.--

30 (1) A shareholder who is dissatisfied with the
31 corporation's offer as set forth pursuant to s.

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1 607.1322(2)(b)4. must notify the corporation on the form
2 provided pursuant to s. 607.1322(1) of that shareholder's
3 estimate of the fair value of the shares and demand payment of
4 that estimate plus interest.

5 (2) A shareholder who fails to notify the corporation
6 in writing of that shareholder's demand to be paid the
7 shareholder's stated estimate of the fair value plus interest
8 under subsection (1) within the timeframe set forth in s.
9 607.1322(2)(b)2. waives the right to demand payment under this
10 section and shall be entitled only to the payment offered by
11 the corporation pursuant to s. 607.1322(2)(b)4.

12 Section 30. Section 607.1331, Florida Statutes, is
13 created to read:

14 607.1331 Court costs and counsel fees.--

15 (1) The court in an appraisal proceeding commenced
16 under s. 607.1330 shall determine all costs of the proceeding,
17 including the reasonable compensation and expenses of
18 appraisers appointed by the court. The court shall assess the
19 costs against the corporation, except that the court may
20 assess costs against all or some of the shareholders demanding
21 appraisal, in amounts the court finds equitable, to the extent
22 the court finds such shareholders acted arbitrarily,
23 vexatiously, or not in good faith with respect to the rights
24 provided by this chapter.

25 (2) The court in an appraisal proceeding may also
26 assess the fees and expenses of counsel and experts for the
27 respective parties, in amounts the court finds equitable:

28 (a) Against the corporation and in favor of any or all
29 shareholders demanding appraisal if the court finds the
30 corporation did not substantially comply with ss. 607.1320 and
31 607.1322; or

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1 (b) Against either the corporation or a shareholder
2 demanding appraisal, in favor of any other party, if the court
3 finds that the party against whom the fees and expenses are
4 assessed acted arbitrarily, vexatiously, or not in good faith
5 with respect to the rights provided by this chapter.

6 (3) If the court in an appraisal proceeding finds that
7 the services of counsel for any shareholder were of
8 substantial benefit to other shareholders similarly situated,
9 and that the fees for those services should not be assessed
10 against the corporation, the court may award to such counsel
11 reasonable fees to be paid out of the amounts awarded the
12 shareholders who were benefited.

13 (4) To the extent the corporation fails to make a
14 required payment pursuant to s. 607.1324, the shareholder may
15 sue directly for the amount owed and, to the extent
16 successful, shall be entitled to recover from the corporation
17 all costs and expenses of the suit, including counsel fees.

18 Section 31. Section 607.1332, Florida Statutes, is
19 created to read:

20 607.1332 Disposition of acquired shares.--Shares
21 acquired by a corporation pursuant to payment of the agreed
22 value thereof or pursuant to payment of the judgment entered
23 therefor, as provided in this chapter, may be held and
24 disposed of by such corporation as authorized but unissued
25 shares of the corporation, except that, in the case of a
26 merger or share exchange, they may be held and disposed of as
27 the plan of merger or share exchange otherwise provides. The
28 shares of the surviving corporation into which the shares of
29 such shareholders demanding appraisal rights would have been
30 converted had they assented to the merger shall have the
31 status of authorized but unissued shares of the surviving

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1 corporation.

2 Section 32. Section 607.1333, Florida Statutes, is
3 created to read:

4 607.1333. Limitation on corporate payment.--

5 (1) No payment shall be made to a shareholder seeking
6 appraisal rights if, at the time of payment, the corporation
7 is unable to meet the distribution standards of s. 607.06401.
8 In such event, the shareholder shall, at the shareholder's
9 option:

10 (a) Withdraw his or her notice of intent to assert
11 appraisal rights, which shall in such event be deemed
12 withdrawn with the consent of the corporation; or

13 (b) Retain his or her status as a claimant against the
14 corporation and, if it is liquidated, be subordinated to the
15 rights of creditors of the corporation, but have rights
16 superior to the shareholders not asserting appraisal rights,
17 and if it is not liquidated, retain his or her right to be
18 paid for the shares, which right the corporation shall be
19 obliged to satisfy when the restrictions of this section do
20 not apply.

21 (2) The shareholder shall exercise the option under
22 paragraph (1)(a) or (b) by written notice filed with the
23 corporation within 30 days after the corporation has given
24 written notice that the payment for shares cannot be made
25 because of the restrictions of this section. If the
26 shareholder fails to exercise the option, the shareholder
27 shall be deemed to have withdrawn his or her notice of intent
28 to assert appraisal rights.

29 Section 33. Subsection (1) of section 607.1403,
30 Florida Statutes, is amended to read:

31 607.1403 Articles of dissolution.--

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1 (1) At any time after dissolution is authorized, the
2 corporation may dissolve by delivering to the Department of
3 State for filing articles of dissolution which shall be
4 executed in accordance with s. 607.0120 and which shall set
5 setting forth:

6 (a) The name of the corporation;

7 (b) The date dissolution was authorized;

8 (c) If dissolution was approved by the shareholders, a
9 statement that the number cast for dissolution by the
10 shareholders was sufficient for approval.

11 (d) If dissolution was approved by the shareholders
12 and if voting by voting groups was required, a statement that
13 the number cast for dissolution by the shareholders was
14 sufficient for approval must be separately provided for each
15 voting group entitled to vote separately on the plan to
16 dissolve.

17 Section 34. Section 607.1406, Florida Statutes, is
18 amended to read:

19 607.1406 Known claims against dissolved corporation.--

20 (1) A dissolved corporation or successor entity, as
21 defined in subsection (15), may dispose of the known claims
22 against it by following the procedures described in
23 subsections (2), (3), and(4).

24 (2) The dissolved corporation or successor entity
25 shall deliver to each of its known claimants written notice of
26 the dissolution at any time after its effective date. The
27 written notice shall:

28 (a) Provide a reasonable description of the claim that
29 the claimant may be entitled to assert;

30 (b) State whether the claim is admitted or not
31 admitted, in whole or in part, and, if admitted:

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1 1. The amount that is admitted, which may be as of a
2 given date; and
3 2. Any interest obligation if fixed by an instrument
4 of indebtedness;
5 (c) Provide a mailing address where a claim may be
6 sent;
7 (d) State the deadline, which may not be fewer than
8 120 days after the effective date of the written notice, by
9 which confirmation of the claim must be delivered to the
10 dissolved corporation or successor entity; and
11 (e) State that the corporation or successor entity may
12 make distributions thereafter to other claimants and the
13 corporation's shareholders or persons interested as having
14 been such without further notice.
15 (3) A dissolved corporation or successor entity may
16 reject, in whole or in part, any claim made by a claimant
17 pursuant to this subsection by mailing notice of such
18 rejection to the claimant within 90 days after receipt of such
19 claim and, in all events, at least 150 days before expiration
20 of 3 years following the effective date of dissolution. A
21 notice sent by the dissolved corporation or successor entity
22 pursuant to this subsection shall be accompanied by a copy of
23 this section.
24 (4) A dissolved corporation or successor entity
25 electing to follow the procedures described in subsections(2)
26 and (3) shall also give notice of the dissolution of the
27 corporation to persons with known claims, that are contingent
28 upon the occurrence or nonoccurrence of future events or
29 otherwise conditional or unmaturred, and request that such
30 persons present such claims in accordance with the terms of
31 such notice. Such notice shall be in substantially the form,

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1 and sent in the same manner, as described in subsection (2).

2 (5) A dissolved corporation or successor entity shall
3 offer any claimant whose known claim is contingent,
4 conditional, or unmatured such security as the corporation or
5 such entity determines is sufficient to provide compensation
6 to the claimant if the claim matures. The dissolved
7 corporation or successor entity shall deliver such offer to
8 the claimant within 90 days after receipt of such claim and,
9 in all events, at least 150 days before expiration of 3 years
10 following the effective date of dissolution. If the claimant
11 offered such security does not deliver in writing to the
12 dissolved corporation or successor entity a notice rejecting
13 the offer within 120 days after receipt of such offer for
14 security, the claimant is deemed to have accepted such
15 security as the sole source from which to satisfy his or her
16 claim against the corporation.

17 (6) A dissolved corporation or successor entity which
18 has given notice in accordance with subsections (2) and (4)
19 shall petition the circuit court in the county where the
20 corporation's principal office is located or was located at
21 the effective date of dissolution to determine the amount and
22 form of security that will be sufficient to provide
23 compensation to any claimant who has rejected the offer for
24 security made pursuant to subsection (5).

25 (7) A dissolved corporation or successor entity which
26 has given notice in accordance with subsection (2) shall
27 petition the circuit court in the county where the
28 corporation's principal office is located or was located at
29 the effective date of dissolution to determine the amount and
30 form of security which will be sufficient to provide
31 compensation to claimants whose claims are known to the

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1 corporation or successor entity but whose identities are
 2 unknown. The court shall appoint a guardian ad litem to
 3 represent all claimants whose identities are unknown in any
 4 proceeding brought under this subsection. The reasonable fees
 5 and expenses of such guardian, including all reasonable expert
 6 witness fees, shall be paid by the petitioner in such
 7 proceeding.

8 (8) The giving of any notice or making of any offer
 9 pursuant to the provisions of this section shall not revive
 10 any claim then barred or constitute acknowledgment by the
 11 dissolved corporation or successor entity that any person to
 12 whom such notice is sent is a proper claimant and shall not
 13 operate as a waiver of any defense or counterclaim in respect
 14 of any claim asserted by any person to whom such notice is
 15 sent.

16 (9) A dissolved corporation or successor entity which
 17 has followed the procedures described in subsections (2)-(7):

18 (a) Shall pay the claims admitted or made and not
 19 rejected in accordance with subsection (3);

20 (b) Shall post the security offered and not rejected
 21 pursuant to subsection (5);

22 (c) Shall post any security ordered by the circuit
 23 court in any proceeding under subsections (6) and (7); and

24 (d) Shall pay or make provision for all other known
 25 obligations of the corporation or such successor entity.

26
 27 Such claims or obligations shall be paid in full, and any such
 28 provision for payments shall be made in full if there are
 29 sufficient funds. If there are insufficient funds, such claims
 30 and obligations shall be paid or provided for according to
 31 their priority and, among claims of equal priority, ratably to

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1 the extent of funds legally available therefor. Any remaining
2 funds shall be distributed to the shareholders of the
3 dissolved corporation; however, such distribution may not be
4 made before the expiration of 150 days from the date of the
5 last notice of rejections given pursuant to subsection (3). In
6 the absence of actual fraud, the judgment of the directors of
7 the dissolved corporation or the governing persons of such
8 successor entity as to the provisions made for the payment of
9 all obligations under paragraph (d) is conclusive.

10 (10) A dissolved corporation or successor entity which
11 has not followed the procedures described in subsections (2)
12 and (3) shall pay or make reasonable provision to pay all
13 known claims and obligations, including all contingent,
14 conditional, or unmatured claims known to the corporation or
15 such successor entity and all claims which are known to the
16 dissolved corporation or such successor entity but for which
17 the identity of the claimant is unknown. Such claims shall be
18 paid in full, and any such provision for payment made shall be
19 made in full if there are sufficient funds. If there are
20 insufficient funds, such claims and obligations shall be paid
21 or provided for according to their priority and, among claims
22 of equal priority, ratably to the extent of funds legally
23 available therefor. Any remaining funds shall be distributed
24 to the shareholders of the dissolved corporation.

25 (11) Directors of a dissolved corporation or governing
26 persons of a successor entity which has complied with
27 subsection (9) or subsection (10) are not personally liable to
28 the claimants of the dissolved corporation.

29 (12) A shareholder of a dissolved corporation the
30 assets of which were distributed pursuant to subsection (9) or
31 subsection (10) is not liable for any claim against the

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1 corporation in an amount in excess of such shareholder's pro
2 rata share of the claim or the amount distributed to the
3 shareholder, whichever is less.

4 (13) A shareholder of a dissolved corporation, the
5 assets of which were distributed pursuant to subsection (9),
6 is not liable for any claim against the corporation, which
7 claim is known to the corporation or successor entity, on
8 which a proceeding is not begun prior to the expiration of 3
9 years following the effective date of dissolution.

10 (14) The aggregate liability of any shareholder of a
11 dissolved corporation for claims against the dissolved
12 corporation arising under this section, s. 607.1407, or
13 otherwise, may not exceed the amount distributed to the
14 shareholder in dissolution.

15 (15) As used in this section or s. 607.1407, the term
16 "successor entity" includes any trust, receivership, or other
17 legal entity governed by the laws of this state to which the
18 remaining assets and liabilities of a dissolved corporation
19 are transferred and which exists solely for the purposes of
20 prosecuting and defending suits by or against the dissolved
21 corporation, enabling the dissolved corporation to settle and
22 close the business of the dissolved corporation, to dispose of
23 and convey the property of the dissolved corporation, to
24 discharge the liabilities of the dissolved corporation, and to
25 distribute to the dissolved corporation's shareholders any
26 remaining assets, but not for the purpose of continuing the
27 business for which the dissolved corporation was organized.

28 Section 35. Section 607.1407, Florida Statutes, is
29 created to read:

30 607.1407 Unknown claims against dissolved
31 corporation.--A dissolved corporation or successor entity, as

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1 defined in s. 607.1406(15), may choose to execute one of the
2 following procedures to resolve payment of unknown claims.

3 (1) A dissolved corporation or successor entity may
4 file notice of its dissolution with the Department of State on
5 the form prescribed by the Department of State and request
6 that persons with claims against the corporation which are not
7 known to the corporation or successor entity present them in
8 accordance with the notice. The notice shall:

9 (a) State the name of the corporation and the date of
10 dissolution;

11 (b) Describe the information that must be included in
12 a claim and provide a mailing address to which the claim may
13 be sent; and

14 (c) State that a claim against the corporation under
15 this subsection will be barred unless a proceeding to enforce
16 the claim is commenced within 4 years after the filing of the
17 notice.

18 (2) A dissolved corporation or successor entity may,
19 within 10 days of adopting the articles of dissolution,
20 publish a "Notice of Corporate Dissolution." The notice shall
21 appear once a week for 2 consecutive weeks in a newspaper of
22 general circulation in a county in the state wherein the
23 corporation owns real or personal property. Such newspaper
24 shall meet the requirements as are prescribed by law for such
25 purposes. The notice shall:

26 (a) State the name of the corporation and the date of
27 dissolution;

28 (b) Describe the information that must be included in
29 a claim and provide a mailing address to which the claim may
30 be sent; and

31 (c) State that a claim against the corporation under

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1 this subsection will be barred unless a proceeding to enforce
2 the claim is commenced within 4 years after the filing of the
3 notice.

4 (3) If the dissolved corporation or successor entity
5 complies with subsections (1) or (2), the claim of each of the
6 following claimants is barred unless the claimant commences a
7 proceeding to enforce the claim against the dissolved
8 corporation within 4 years after the filing date:

9 (a) A claimant who did not receive written notice
10 under s. 607.1406(9), or whose claim was not provided for
11 under s. 607.1456(10), whether such claim is based on an event
12 occurring before or after the effective date of dissolution.

13 (b) A claimant whose claim was timely sent to the
14 dissolved corporation but on which no action was taken.

15 (4) A claim may be entered under this section:

16 (a) Against the dissolved corporation, to the extent
17 of its undistributed assets; or

18 (b) If the assets have been distributed in
19 liquidation, against a shareholder of the dissolved
20 corporation to the extent of such shareholder's pro rata share
21 of the claim or the corporate assets distributed to such
22 shareholder in liquidation, whichever is less, provided that
23 the aggregate liability of any shareholder of a dissolved
24 corporation arising under this section, s. 607.1406, or
25 otherwise may not exceed the amount distributed to the
26 shareholder in dissolution.

27
28 Nothing in this section shall preclude or relieve the
29 corporation from its notification to claimants otherwise set
30 forth in this chapter.

31

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 2, line 20, through
4 page 4, line 5 delete those lines

5
6 and insert:

7 assets; amending s. 607.1301, F.S.; providing
8 definitions relating to appraisal rights;
9 amending s. 607.1302, F.S.; providing for
10 shareholders' rights to appraisals under
11 certain circumstances; providing limitations;
12 providing for limiting or eliminating appraisal
13 rights under certain circumstances; prohibiting
14 certain corporate action challenges under
15 certain circumstances; creating s. 607.1303,
16 F.S.; providing procedures, requirements, and
17 limitations for assertion of rights by nominees
18 and beneficial owners; amending s. 607.1320,
19 F.S.; providing requirements for notice of
20 appraisal rights; creating s. 607.1321, F.S.;
21 providing requirements for notice of intent to
22 demand payment; creating s. 607.1322, F.S.;
23 providing appraisal notice and form
24 requirements; creating s. 607.1323, F.S.;
25 providing procedures, requirements, and
26 limitations for perfection of appraisal rights;
27 providing for right to withdraw under certain
28 circumstances; creating s. 607.1324, F.S.;
29 providing procedures and requirements for
30 shareholders' acceptance of certain offers;
31 creating s. 607.1326, F.S.; providing

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1 procedures for shareholder dissatisfaction with
2 certain offers; providing for waiver of certain
3 rights; creating s. 607.1330, F.S.; providing
4 requirements, procedures, and limitations on
5 court actions; providing for entitlement to
6 certain judgments; requiring corporate payments
7 under certain circumstances; creating s.
8 607.1331, F.S.; providing for assessment and
9 award of court costs and attorney fees under
10 certain circumstances; creating s. 607.1332,
11 F.S.; providing for disposition of certain
12 acquired shares; creating s. 607.1333, F.S.;
13 providing limitations on corporate payouts;
14 providing certain shareholder notice
15 requirements; amending s. 607.1403, F.S.;
16 providing for execution of articles of
17 dissolution; clarifying requirements; amending
18 s. 607.1406, F.S.; clarifying provisions
19 relating to claims against dissolved
20 corporations; creating s. 607.1407, F.S.;
21 providing procedures and requirements for
22 administration of unknown claims against
23 dissolved corporations; amending s. 607.1422,
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