

1
2
3
4
5
6
7
8
9

ARTICLE 1

GENERAL PROVISIONS

607.0101 Short title.

~~This Chapter 607~~¹ ("chapter") may be cited as the "Florida Business Corporation Act." Part I of Chapter 607 ("act") contains provisions of general applicability to corporations, Part II of Chapter 607 applies to social purpose corporations, and Part III of Chapter 607 applies to benefit corporations.

¹ This proposal uses the term "chapter" to refer to Chapter 607, Parts I, II and III, and "act" to refer to Part I of Chapter 607. It also uses defined terms in lower case consistent with FRLCA.

10 **Commentary to s. 607.0101:**

11 This proposal is the work of the Chapter 607 Drafting Subcommittee (the "Subcommittee") of
12 the Corporations, Securities and Financial Services Committee of the Business Law Section of
13 The Florida Bar. The members of the Subcommittee who actively participated in the work of the
14 Subcommittee are listed on Exhibit "A" to this proposal.

15 Florida's corporate statute is modeled on the Revised Model Business Corporation Act (the
16 "Model Act"). The Model Act is promulgated by the Corporate Laws Committee (the "Corporate
17 Laws Committee") of the Business Law Section of the American Bar Association. In preparing
18 this proposal, the Subcommittee initially considered the version of the Model Act published
19 through the 2013 Supplement. It also reviewed and considered changes to the Model Act made in
20 the 2016 version of the Model Act.

21 In the many years since Chapter 607 was comprehensively revised, the Florida legislature has
22 passed Part II applying to social corporations and Part III applying to benefit corporations. The
23 changes clarify that when reference is made to Chapter 607 or to this chapter, the reference
24 intends to include corporations organized under Parts II and III, as well as corporations
25 organized under Part I.

26 While many jurisdictions have recently overhauled their corporate acts, none appear to have
27 inserted the word "Revised" or any of its variations into the title of their act. From this
28 perspective, although inconsistent with the approach taken with respect to naming the most
29 recent overhauls of FRUPA, FRULPA and the FRLICA, this revision follows the naming
30 approach taken in the Model Act by the Corporate Laws Committee.

31 In various places, this proposal contains references to *"Florida Business Laws Annotated"*, a
32 treatise on Florida business laws authored by Stuart R. Cohn and Stuart D Ames, two well-
33 known Florida corporate lawyers (the "Ames and Cohn Treatise").

34 For ease of use of this Master Draft, (i) items noted in **yellow** refer to changes to the FBCA that
35 are to be proposed to be made in Chapter 605, and (ii) items noted in **green** refer to issues that
36 need follow-up when the Subcommittee reviews other sections of the FBCA that have not yet
37 been reviewed.

38

39 607.0102 Reservation of power to amend or repeal.

40 The Legislature has power to amend or repeal all or part of this ~~aet~~chapter at any time, and
41 all domestic and foreign corporations subject to this ~~aet~~ chapter shall be governed by the
42 amendment or repeal.

43

44 **Commentary to s. 607.0102:**

45 No material changes have been made. Florida follows the Model Act almost identically, the only
46 difference being in the last part of the sentence, which is non-substantive (The Model Act states
47 that "all domestic and foreign corporations subject to this act are governed by the amendment or
48 repeal").

49

50 607.0120 Filing requirements; extrinsic facts.

51 (1) A document must satisfy the requirements of this section and of any other section that
52 adds to or varies these requirements to be entitled to filing by the department ~~of State~~.

53 (2) This ~~aet~~-chapter must require or permit filing the document in the office of the
54 department ~~of State~~.

55 (3) The document must contain the information required by this ~~aet~~-chapter and it.~~It~~ may
56 contain other information.

57 (4) The document must be typewritten or printed, or, if electronically transmitted, the
58 document must be in a format that can be retrieved or reproduced in typewritten or printed form,
59 and must be legible.

60 (5) The document must be in the English language. A corporate name need not be in
61 English if written in English letters or Arabic or Roman numerals, and the certificate of status
62 required of foreign corporations need not be in English if accompanied by a reasonably
63 authenticated English translation.

64 (6) The document must be signed ~~executed~~:

65 (a) By a director of a domestic or foreign corporation, or by its president or by another
66 of its officers;

67 (b) If directors or officers have not been selected or the corporation has not been
68 formed, by an incorporator; or

69 (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed
70 fiduciary, by that fiduciary.

71 (7) The person executing the document shall sign it and state beneath or opposite his or her
72 signature his or her name and the capacity in which he or she signs. The document may, but need
73 not, contain the corporate seal, an attestation, an acknowledgment, or a verification.

74 (8) If the department ~~of State~~ has prescribed a mandatory form for the document under s.
75 607.0121(1), the document must be in or on the prescribed form.

76 (9) The document must be delivered to the office of the department ~~of State~~ for filing.
77 Delivery may be made by electronic transmission if and to the extent permitted by the
78 department ~~of State~~. If it is filed in typewritten or printed form and not transmitted electronically,
79 the department ~~of State~~ may require one exact or conformed copy, to be delivered with the
80 document.

81 (10) When the document is delivered to the ~~D~~department of ~~S~~State for filing, the correct
82 filing fee, and any other tax, license fee, or penalty required to be paid by this ~~aet~~ chapter or
83 other law to be paid at the time of delivery for filing shall be paid or provision for payment made
84 in a manner permitted by the ~~D~~department of ~~S~~State.

85 (11) Whenever a provision of this chapter permits any of the terms of a plan or a filed
86 document to be dependent on facts objectively ascertainable outside the plan or filed document,
87 the following provisions apply:

88 (a) The manner in which the facts will operate upon the terms of the plan or filed
89 document shall be set forth in the plan or filed document.

90 (b) The facts may include, but are not limited to:

91 1. Any of the following that is available in a nationally recognized news or
92 information medium either in print or electronically: statistical or market indices,
93 market prices of any security or group of securities, interest rates, currency exchange
94 rates, or similar economic or financial data;

95 2. A determination or action by any person or body, including the corporation or
96 any other party to a plan or filed document; or

97 3. The terms of, or actions taken under, an agreement to which the corporation is
98 a party, or any other agreement or document.

99 (c) As used in this subsection:

100 1. "filed document" means a document filed with the department under any
101 provision of this Act, except for ss. 607.1501-607.1532 and s. 607.1621.

102 2. "plan" means a plan of [domestication, conversion, merger or share
103 exchange]².

104 (d) the following provisions of a plan or filed document may not be made dependent
105 on facts outside the plan or filed document:

106 1. the name and address of any person required in a filed document;

107 2. the registered office of any entity required in a filed document;

108 3. The registered agent of any entity required in a filed document;

² Types of plans to list here will need to be determined once the Subcommittee reviews Model Act Article 9 (Conversions and Domestications) and Article 11 (Mergers and Share Exchanges).

109 4. The number of authorized shares and designation of each class or series of
110 shares;

111 5. The effective date of a filed document; and

112 6. Any required statement in a filed document of the date on which the
113 underlying transaction was approved or the manner in which that approval was given.

114 (e) If a provision of a filed document is made dependent on a fact ascertainable outside
115 of the filed document, and that fact is neither ascertainable by reference to a source
116 described in subsection (11)(b)(1) or a document that is a matter of public record, nor have
117 the affected shareholders received notice of the fact from the corporation, then the
118 corporation shall file with the department articles of amendment to the filed document
119 setting forth the fact promptly after the time when the fact referred to is first ascertainable or
120 thereafter changes. Articles of amendment under this subsection (11)(e) are deemed to be
121 authorized by the authorization of the original filed document to which they relate and may
122 be filed by the corporation without further action by the board of directors or the
123 shareholders.

124

125 **Commentary to s. 607.0120:**

126 Section 607.0120 substantially follows the 1989 version of the Model Act except as otherwise
127 noted above.

128 The words "and must be legible" in subsection (4) were added to the FBCA in 1993. They are
129 not in the corollary Model Act provision. Since these words have been in the FBCA for more
130 than 20 years, they have been retained.

131 The Model Act authorizes the "chairman of the board of directors" to sign a document; not any
132 officer. The wording "signed by a director was added in 2003 (prior to 2003, this provision in the
133 FBCA read "by the chair or any vice chair of the board of directors"). The 2003 changes were
134 made (according to the report of the Corporations, Securities and Financial Services Committee
135 when it made the proposal) at the request of the Department to minimize the burden on the
136 Department to interpret the statute and to liberalize the execution provisions to allow more
137 flexibility as to who can sign. The existing wording is retained in the statute.

138 New subsection (11) is derived from the Model Act. It permits any of the terms of a filed
139 document or a plan to be made dependent on facts outside the document or plan, except to the
140 extent provided in subsection (11)(d). The fact on which the filed document or plan is to be
141 dependent need not be within the control of the corporation, but must be objectively
142 ascertainable and the filed document or plan must state the manner in which the facts will
143 operate. Subsection (11)(e) establishes a procedure that assists shareholders in determining what
144 facts are the underlying facts on which a filed document or plan is dependent.

145

146 607.0121 Forms.

147 (1) The department of ~~State~~ may prescribe and furnish on request forms for:

148 (a) An application for certificate of status,

149 (b) A foreign corporation's application for certificate of authority to transact
150 business in the state,

151 (c) A foreign corporation's notice of withdrawal of application for certificate of
152 authority withdrawal, and

153 (d) The annual report, for which the department may prescribe the use of the uniform
154 business report, pursuant to s. 606.06.

155 (2) If the ~~D~~department of ~~State~~ so requires, the use of these forms shall be mandatory.

156 (3) The ~~D~~department of ~~State~~ may prescribe and furnish on request forms for other
157 documents required or permitted to be filed by this ~~aet~~ chapter, but their use shall not be
158 mandatory.

159

160 **Commentary to s. 607.0121:**

161 Clean up changes have been made. Except for a few non-substantive language differences, and
162 the non-Model Act cross reference to s. 606.06 that is referred to below, this statute mirrors the
163 Model Act. Florida is one of thirteen jurisdictions to have adopted subsection (1) without
164 substantive change, and the vast majority of American jurisdictions have adopted subsection (2)
165 without substantive change.

166 The cross reference to s. 606.06 that is contained in subsection (1)(d) was added to the statute in
167 1999. It deals with the uniform annual report provision that is part of and intended to facilitate
168 the creation of a master business index under the Florida Business Coordination Act (Chapter
169 606). Chapter 606 is intended to establish a master business index within the DOS and to
170 facilitate a reporting mechanism that consolidates and coordinates business entity licensing and
171 reporting requirements wherever possible. A similar provision is included in s. 605.0212(7) of
172 FRLCA.

173

174 607.0122 Fees for filing documents and issuing certificates.

175 The ~~D~~department of ~~S~~State shall collect the following fees when the documents described
176 in this section are delivered to the department for filing:

177 (1) Articles of incorporation: \$35.

178 (2) Notice of transfer of reserved name. \$35.

179 (32) Application for registered name: \$87.50.

180 (43) Application for renewal of registered name: \$87.50.

181 (54) Corporation's statement of change of registered agent or registered office or both if
182 not included on the annual report: \$35.

183 (65) Designation of and acceptance by registered agent: \$35.

184 (76) Agent's statement of resignation from active corporation: \$87.50.

185 (87) Agent's statement of resignation from an inactive corporation: \$35.

186 (98) Amendment of articles of incorporation: \$35.

187 (109) Restatement of articles of incorporation with amendment of articles: \$35.

188 (1140) Articles of merger or share exchange for each party thereto: \$35.

189 (1244) Articles of dissolution: \$35.

190 (1342) Articles of revocation of dissolution: \$35.

191 (1443) Application for reinstatement following administrative dissolution: \$600.

192 (1544) Application for certificate of authority to transact business in this state by a foreign
193 corporation: \$35.

194 (1645) Application for amended certificate of authority: \$35.

195 (1746) Application for certificate of withdrawal by a foreign corporation: \$35.

196 (1847) Annual report: \$61.25.

197 (1948) Articles of correction: \$35.

198 (2049) Application for certificate of status: \$8.75.

MASTER DRAFT DATED MARCH 22, 2018

- 199 (~~2120~~) Certificate of domestication of a foreign corporation: \$50.
- 200 (~~2221~~) Certified copy of document: \$52.50.
- 201 (~~2322~~) Serving as agent for substitute service of process: \$87.50.
- 202 (~~2423~~) Supplemental corporate fee: \$88.75.
- 203 (~~2524~~) Any other document required or permitted to be filed by this act: \$35.
- 204

205 **Commentary to s. 607.0122:**

206 No changes have been made to the existing statute.

207

208 607.0123 Effective time and date of document.³

209 Except as otherwise provided in s. 607.0124(5)⁴ and subject to s. 607.0124(2)(a), any
210 document delivered to the department for filing under this chapter may specify an effective time
211 and a delayed effective date. In the case of initial articles of incorporation, a prior effective date
212 may be specified in the articles of incorporation if such date is within 5 business days before the
213 date of filing. Subject to s 607.0124, a document accepted for filing is effective:

214 (1) If the filing does not specify an effective time and does not specify a prior or a
215 delayed effective date, on the date and at the time the filing is accepted, as evidenced by the
216 department's endorsement of the date and time on the filing;

217 (2) If the filing specifies an effective time, but not a prior or delayed effective date, on
218 the date the filing is filed at the time specified in the filing;

219 (3) If the filing specifies a delayed effective date, but not an effective time, at 12:01
220 a.m. on the earlier of:

221 (a) The specified date; or

222 (b) The 90th day after the date of the filing.

223 (4) If the filing specifies a delayed effective date and an effective time, at the specified
224 time on the earlier of:

225 (a) The specified date; or

226 (b) The 90th day after the date of the filing.

227 (5) If the filing is of initial articles of incorporation and specifies an effective date
228 before the date of the filing, but no effective time, at 12:01 a.m. on the later of:

229 (a) The specified date; or

230 (b) The 5th business day before the date of the filing.

231 (6) If the filing is of initial articles of incorporation and specifies an effective time and
232 a date before the date of the filing, at the specified time on the later of:

233 (a) The specified date; or

234 (b) The 5th business day before the date of the filing.

³ Conforming changes to s. 605.0207 of FRLCA should also be made.

⁴ If we add Subchapter E to Article 1, a cross reference to those sections should be added here.

235 (7) If a filed document does not specify the time zone or place at which a date or time
236 or both is to be determined, the date or time or both at which it becomes effective shall be those
237 prevailing at the place of filing in this state.

238 ~~(1) Except as provided in subsections (2) and (4) and in s. 607.0124(3), a document~~
239 ~~accepted for filing is effective (a) on the date and at the time of filing, as evidenced by such~~
240 ~~means as the department of State may use for the purpose of recording the date and time of~~
241 ~~filing; or (b) on the date and at the time specified in the document as its effective time on the date~~
242 ~~it is filed.~~

243 ~~(2) A document may specify a delayed effective date and, if desired, a time on that date,~~
244 ~~and if it does the document shall become effective on the date and at the time, if any, specified. If~~
245 ~~a delayed effective date is specified without specifying a time on that date, the document shall~~
246 ~~become effective at the start of business on that date. Unless otherwise permitted by this chapter~~
247 ~~act, a delayed effective date for a document may not be later than the 90th day after the date on~~
248 ~~which it is filed.~~

249 ~~(38) If a document is determined by the department of State to be incomplete and~~
250 ~~inappropriate for filing, the department of State may return the document to the person or~~
251 ~~corporation filing it, together with a brief written explanation of the reason for the refusal to file,~~
252 ~~in accordance with s. 607.0125(3). If the applicant returns the document with corrections in~~
253 ~~accordance with the rules of the department within 60 days after it was mailed to the applicant by~~
254 ~~the department and if at the time of return the applicant so requests in writing, the filing date of~~
255 ~~the document will be the filing date that would have been applied had the original document not~~
256 ~~been deficient, except as to persons who relied on the record before correction and were~~
257 ~~adversely affected thereby.~~

258 ~~(4) Corporate existence may predate the filing date, pursuant to s. 607.0203(1).~~

259

260 **Commentary to s. 607.0123:**

261 The changes harmonize this provision with s. 605.0207 of FRLCA and are consistent with the
262 changes to the corollary provision in the Model Act.

263 While subsection (3) (renumbered as (8)), dealing with defective or incomplete filings, is not
264 derived from the Model Act, it has been in the FBCA in substantially this form since 1989 and is
265 retained.

266

267 607.0124 Correcting filed document; withdrawal of filed record before effectiveness.

268 (1) A domestic or foreign corporation may correct a document filed by the ~~D~~department of
269 State ~~within 30 days after filing~~ if the document:

270 (a) Contains an inaccuracy;

271 (b) Was defectively ~~executed~~ signed, attested, sealed, verified, or acknowledged; or

272 (c) The electronic transmission to the department was defective.

273 (2) A document is corrected:

274 (a) By preparing articles of correction that:

275 1. Describe the document (including its filing date) or attach a copy of it to the
276 articles of correction;

277 2. Specify the inaccuracy or defect to be corrected; and

278 3. Correct the inaccuracy or defect; and

279 (b) By delivering the articles of correction to the department of ~~State~~ for filing, signed
280 ~~executed~~ in accordance with s. 607.0120.

281 (3) Articles of correction are effective on the effective date of the document they correct
282 except as to persons relying on the uncorrected document and adversely affected by the
283 correction. As to those persons, articles of correction are effective when filed.

284 (4) Articles of correction may not contain a delayed effective date for the correction.

285 (5) Unless otherwise provided in [Article 11⁵], a filing delivered to the department may be
286 withdrawn before it takes effect by delivering to the department for filing a withdrawal
287 statement.

288 (a) A withdrawal statement must:

289 1. Be signed by each person who signed the filing being withdrawn; and

290 2. Identify the filing to be withdrawn.

⁵ Appropriate references for merger, share exchange, conversion and domestication provisions that run contrary to this provision shall be added as required when the Subcommittee reviews those sections.

291 (b) On the filing by the department of a withdrawal statement, the action or transaction
292 evidenced by the original filing does not take effect.

293

294 **Commentary to s. 607.0124:**

295 With few exceptions, this section mirrors the Model Act.

296 The language contained in the existing statute in subsection (1) providing that a document can
297 only be corrected within 30 days of filing has been removed from the statute, thus allowing a
298 correction at any time. The Model Act does not provide a limited timeframe for correcting the
299 record. Similarly, section 605.0209 in FRLCA (correcting filed record) does not provide a
300 limited timeframe for correcting a record with the DOS.

301 The change in subsection (1)(c) conforms this section with the wording on the same topic in s.
302 605.0209 of FRLCA.

303 The revised provision allows, as an alternative to describing the inaccuracy to be corrected, the
304 previously filed articles to be attached, using the language contained in s. 1.24(b)(1)(i) of the
305 Model Act. The Subcommittee recommends that this same change also be made in s. 605.0209
306 of FRLCA, as follows:

- 307 (3) A statement of correction:
- 308 (a) May not state a delayed effective date;
 - 309 (b) Must be signed by the person correcting the filed record;
 - 310 (c) Must identify the filed record to be corrected (including its filing date) or attach a
311 copy of it to the statement of correction;
 - 312 (d) Must specify the inaccuracy or defect to be corrected; and
 - 313 (e) Must correct the inaccuracy or defect.
- 314

315 The addition of subsection (4) conforms this section with the wording on the same topic in s.
316 605.0209(3)(a) of FRLCA.

317 New subsection (5) has been added to allow corporations to withdraw a filing before it becomes
318 effective. It is modeled after s. 605.0208 of FRLCA and is consistent with the Department's
319 current position on this issue.

320

321 607.0125 Filing duties of Department of State.

322 (1) If a document delivered to the ~~Department of State~~ for filing satisfies the
323 requirements of s. 607.0120, the department ~~of State~~ shall file it.

324 (2) The ~~Department of State~~ files a document by stamping or otherwise endorsing the
325 document as "filed," together with the department's official title and recording it as filed on the
326 date and time of receipt. After filing a document, the department ~~of State~~ shall deliver an
327 acknowledgment of the filing or certified copy of the document to the domestic or foreign
328 corporation or its authorized representative.

329 (3) If the ~~Department of State~~ refuses to file a document, the department ~~it~~ shall, within
330 15 days after the document is delivered, return the document ~~it~~ to the domestic or foreign
331 corporation or its authorized representative ~~within 15 days after the document was received for~~
332 ~~filing~~, together with a brief, written explanation of the reason for the refusal.

333 (4) The ~~Department's of State's~~ duty to file documents under this section is ministerial.
334 The filing or refusing to file a document does not:

335 (a) Affect the validity or invalidity of the document in whole or part;

336 (b) Relate to the correctness or incorrectness of information contained in the
337 document; or

338 (c) Create a presumption that the document does or does not conform to the
339 requirements of this chapter or that the is valid or invalid or that information contained in
340 the document is correct or incorrect.

341 (5) If not otherwise provided by law and the provisions of this ~~act~~ chapter, the
342 ~~Department of State~~ shall determine, by rule, the appropriate format for, number of copies of,
343 manner of execution of, method of electronic transmission of, and amount of and method of
344 payment of fees for, any document placed under its jurisdiction.

345

346 **Commentary to s. 607.0125:**

347 The Florida statute follows the Model Act, with some differences. Changes were made to
348 conform this section with the language contained in s. 605.0210(1) of FRLCA.

349 Subsection (3) has been modified to conform the language of this statute to s. 605.0210(3) of
350 FRLCA. The Florida statute allows 15 days for the return of a refused filing, while the Model
351 Act allows 5 days. The existing Florida time period is retained.

352 Subsection (5) is unique to Florida and is also contained in FRLCA. This provision was
353 adopted in 1989 at the request of the Department. However, according to the Ames and Cohn
354 Treatise, the Department has not adopted any such rules that remain in effect.

355

356 607.0126 Appeal from department's of State's refusal to file document.

357 If the ~~D~~department of State refuses to file a document delivered to its office for filing, ~~within~~
358 ~~30 days after return of the document by the department by mail, as evidenced by the postmark,~~
359 ~~the domestic or foreign corporation~~ the person who submitted the document for filing may:

360 (1) ~~Appeal the refusal pursuant to s. 120.68; or~~

361 (2) ~~Appeal the refusal to petition the circuit court of the county in and for Leon County,~~
362 ~~Florida where the corporation's principal office (or, if none in this state, its registered office) is or~~
363 ~~will be located to compel filing of the document. The document and the explanation from the~~
364 ~~department of the refusal to file must be attached to the petition. The court may decide the matter~~
365 ~~in a summary proceeding. The appeal is commenced by petitioning the court to compel filing the~~
366 ~~document and by attaching to the petition the document and the department's of State's~~
367 ~~explanation of its refusal to file. The matter shall promptly be tried de novo by the court without~~
368 ~~a jury. and the court may summarily order the D~~department of State to file the document or take
369 other action the court considers appropriate. The court's final decision may be appealed as in
370 other civil proceedings.

371

372 **Commentary to s. 607.0126:**

373 This section harmonizes the FBCA with s. 605.0210(7) of FRLCA on the same topic.

374 The Subcommittee recommends (for clarity) that s. 605.0210 be modified to add the following
375 additional wording:

376 (7) If the department refuses to file a record delivered to its office for filing, the person
377 who submitted the record for filing may petition the circuit court in and for Leon County,
378 Florida ~~the applicable county~~ to compel filing of the record. The record and the explanation
379 from of the department of the refusal to file must be attached to the petition. The court may
380 decide the matter in a summary proceeding and the court may summarily order the
381 department to file the record or take other action the court considers appropriate. The court's
382 final decision may be appealed as in other civil proceedings.

383 The 30-day statute of limitations contained in the current statute and the Model Act has been
384 eliminated. This statute of limitations provision is not contained in s. 605.0210(7) of FRLCA
385 and has not been historically followed or enforced by the Department of State.

386

387 607.0127. Certificates to be received in evidence and evidentiary effect of certified
388 copy of filed document.

389 All certificates issued by the department in accordance with this chapter shall be taken and
390 received in all courts, public offices and official bodies as prima facie evidence of the facts
391 stated. A certificate from the Department of State delivered with a copy of a document filed by
392 the Department of State bearing the signature of the Secretary of State (which may be in
393 facsimile), and the seal of this state, is conclusive evidence that the original document is on file
394 with the department.

395

396 **Commentary to s. 607.0127:**

397 This section has been revised to harmonize with s. 605.0215 of FRLLCA on the same topic.
398 Further, language from s. 617.0127 to the effect that a document filed with the Department
399 attaching a copy of a document and “bearing the signature of the Secretary of State (which may
400 be in facsimile)” has been added. This language was previously in Chapter 607 and has been
401 added back to the statute for clarity at the request of the Department.

402 The Subcommittee recommends that the word "certified" be added to the title of s. 605.0215 of
403 FRLLCA to make it consistent with the changes made to this statute. It also recommends that
404 conforming changes be made to s. 605.0215 to reflect the additional changes to this section that
405 have been made.

406

407 607.0128 Certificate of status.

408 (1) The department, upon request and payment of the requisite fee, shall issue a certificate
409 of status for a corporation if the records filed in the department show that the department has
410 accepted and filed the corporation's articles of incorporation. A certificate of status must state
411 the following:

412 (a) The corporation's name.

413 (b) That the corporation was organized under the laws of this state and the date of
414 organization.

415 (c) Whether all fees due to the department under this chapter have been paid.

416
417 (d) Whether the corporation's most recent annual report required under s. 607.1622
418 has been filed by the department.

419
420 (e) Whether the department has administratively dissolved the corporation or received
421 a record notifying the department that the corporation has been dissolved by judicial action
422 pursuant to s. 607.1421.

423
424 (f) Whether the department has filed articles of dissolution for the corporation.

425
426 (2) The department, upon request and payment of the requisite fee, shall furnish a
427 certificate of status for a foreign corporation if the records filed show that the department has
428 filed a certificate of authority. A certificate of status for a foreign corporation must state the
429 following:

430 (a) The foreign corporation's name and any⁶ current alternate name adopted under s.
431 607.1506 for use in this state.

432
433 (b) That the foreign corporation is authorized to transact business in this state.

434
435 (c) Whether all fees and penalties due to the department under this chapter or other
436 law have been paid.

437
438 (d) Whether the foreign corporation's most recent annual report required under s.
439 607.1622 has been filed by the department.

440
441 (e) Whether the department has:

442
443 1. Revoked the foreign corporation's certificate of authority; or
444

⁶ The Subcommittee recommends that the word "any" be added to s. 605.0211((2)(a) of FRLCA after the word "and" and before the word "current" to conform to the change in this statute.

445 2. Filed a notice of withdrawal of certificate of authority.

446

447 (1) ~~Anyone may apply to the department of State to furnish a certificate of status for a~~
448 ~~domestic corporation or a certificate of authorization for a foreign corporation.~~

449 (2) ~~A certificate of status or authorization sets forth:~~

450 (a) ~~The domestic corporation's corporate name or the foreign corporation's corporate~~
451 ~~name used in this state;~~

452

453 (b) ~~1. That the domestic corporation is duly incorporated under the law of this state~~
454 ~~and the date of its incorporation, or~~

455

456 2. ~~That the foreign corporation is authorized to transact business in this state;~~

457

458 (c) ~~That all fees and penalties owed to the department have been paid, if:~~

459

460 1. ~~Payment is reflected in the records of the department, and~~

461 2. ~~Nonpayment affects the existence or authorization of the domestic or foreign~~
462 ~~corporation;~~

463 (d) ~~That its most recent annual report required by s. 607.1622 has been delivered to~~
464 ~~the department; and~~

465 (e) ~~That articles of dissolution have not been filed.~~

466 (3) Subject to any qualification stated in the certificate, a certificate of status ~~or~~
467 ~~authorization~~ issued by the department ~~is~~ may be relied upon as conclusive evidence that the
468 ~~domestic or foreign~~ corporation is in existence and of active status in this state or the foreign
469 corporation is authorized to transact business in this state and of active status in this state.⁷

470

⁷ The Subcommittee recommends that s. 605.0211(3) of FRLCA be modified in a similar manner to harmonize with the changes in this FBCA section, as follows:

(3) Subject to any qualification stated in the certificate of status, a certificate of status issued by the department is conclusive evidence that the domestic limited liability company is in existence and of active status in this state or the foreign limited liability company is authorized to transact business in this state and of active status in this state.

471 **Commentary to s. 607.0128:**

472 This section of the FBCA harmonizes the language on this topic with s. 605.0211 of FRLCA on
473 the same topic.

474 The statute does not include subsection (2) of the corollary Model Act provision. In subsection
475 (2)(b)(1), the Model Act provides that the certificate of status will provide information as to
476 whether the corporation's existence is less than perpetual. The Model Act also adds an additional
477 subsection under (2) that allows "other facts of record in the office of the secretary of state that
478 may be requested by the applicant". This does not seem necessary in Florida and would place an
479 undue burden on the Department of State.

480

481 Model Act s. 1.29 Penalty for Signing False Document.

482 This section, which provides for sanctions for signing a false document, was part of the FBCA as
483 adopted in 1989 (consistent with the predecessor Florida corporate statute). However, this
484 section was removed from the FBCA in 2005, effective January 1, 2006. The Subcommittee
485 believes that this section was removed from the FBCA in favor of the general statute that covers
486 the same topic (s. 817.155, FS).

487 Florida is one of only eleven jurisdictions (Arizona, District of Columbia, Louisiana, Minnesota,
488 Nevada, New Jersey, New Mexico, New York, North Carolina, and Pennsylvania) that do not
489 have a comparable section to Model Act Section 1.29 in their corporate statute.

490

491 607.0130 Powers of department of State.

492 The department has the authority reasonably necessary to administer this chapter
493 efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to
494 carry out its duties and functions under this chapter.

495 ~~(1) The department of State may propound to any corporation subject to the provisions
496 of this act, and to any officer or director thereof, such interrogatories as may be reasonably
497 necessary and proper to enable it to ascertain whether the corporation has complied with all
498 applicable provisions of this act. Such interrogatories must be answered within 30 days after
499 mailing or within such additional time as fixed by the department. Answers to interrogatories
500 must be full and complete, in writing, and under oath. Interrogatories directed to an individual
501 must be answered by the individual, and interrogatories directed to a corporation must be
502 answered by the president, vice president, secretary, or assistant secretary.~~

503 ~~—(2) The department of State is not required to file any document:~~

504 ~~—(a) To which interrogatories, as propounded pursuant to subsection (1), relate, until
505 the interrogatories are answered in full;~~

506 ~~—(b) When interrogatories or other relevant evidence discloses that such document
507 is not in conformity with the provisions of this Act; or~~

508 ~~(c) When the department has determined that the parties to such document have
509 not paid all fees, taxes, and penalties due and owing this state.~~

510 ~~(3) The department of State may, based upon its findings hereunder or as provided in s.
511 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to
512 be due and owing the state and to compel any filing, qualification, or registration required by
513 law. In connection with such proceeding the department may, without prior approval by the
514 court, file a lis pendens against any property owned by the corporation and may further certify
515 any findings to the Department of Legal Affairs for the initiation of any action permitted
516 pursuant to s. 607.0505 which the Department of Legal Affairs may deem appropriate.~~

517 ~~(4) The department of State shall have the power and authority reasonably necessary to
518 enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and
519 to promulgate reasonable rules necessary to carry out its duties and functions under this chapter.~~

520

521 **Commentary to s. 607.0130:**

522 This section harmonizes the FBCA with s. 605.0214 of FRLICA on the same topic.

523

524 607.01401 Definitions.—

525 As used in this act, unless the context otherwise requires, the term:

526 (1) Applicable county” means the county in this state in which the corporation's principal
527 office is located or was located at such time of such action; if the corporation has, and at the time
528 of such action had, no principal office in this state, then in the county in which the corporation
529 has, or at the time of such action had, an office in this state; or if none in this state, then in the
530 county in which the corporation's registered office is or was last located.

531 (42) “Articles of incorporation” includes original, amended and restated articles of
532 incorporation, articles of share exchange and articles of merger, and all amendments thereto.
533 When used with respect to a foreign corporation, the “articles of incorporation” means the
534 document of such entity that is equivalent to the articles of incorporation of a domestic
535 corporation.

536 (3) “Authorized entity” means: (a) a business corporation; (b) a limited liability company;
537 (c) a limited liability partnership; or (d) a limited partnership, including a limited liability limited
538 partnership.

539 (24) “Authorized shares” means the shares of all classes a domestic or foreign corporation is
540 authorized to issue.

541 (5) “Beneficial shareholder” means a person who owns the beneficial interest in shares,
542 which may be a record shareholder or a person on whose behalf shares are registered in the name
543 of an intermediary or nominee.

544 (3(6) “Business day” means Monday through Friday, excluding any day a national
545 banking association is not open for normal business transactions.

546 (47) “Conspicuous” means so written, displayed or presented that a reasonable person
547 against whom the writing is to operate should have noticed it. For example, ~~printing text~~ in
548 italics, boldface, ~~or a contrasting color,~~ or capitals, or underlined text, is conspicuous.

549 (58) “Corporation” or “domestic corporation” means a corporation for profit, which is not a
550 foreign corporation, incorporated under ~~or subject to the provisions of this act~~ chapter.

551 (69) “Day” means a calendar day.

552 (710) “Deliver” or “delivery” means any method of delivery used in conventional
553 commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in
554 accordance with s. 607.0141, by electronic transmission.

555 (11) "Department" means the Division of Corporations of the Florida Department of State.⁸

556 (12) "Derivative proceeding" means a civil suit in the right of a domestic corporation or,
557 to the extent provided in s. 607.7147, in the right of a foreign corporation.

558 ~~(8)~~ (13) "Distribution" means a direct or indirect transfer of money or other property
559 (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its
560 shareholders in respect of any of its shares. A distribution may be in the form of a declaration or
561 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of
562 indebtedness; a distribution in liquidation; or otherwise.

563 (14) "Document" means (i) any tangible medium on which information is inscribed, and
564 includes any writing or written instrument, or (ii) an electronic record.

565 (15) "Effective date," when referring to a document accepted for filing by the
566 department, means the date and time determined in accordance with s. 607.0123.

567 (16) "Electronic" means relating to technology having electrical, digital, magnetic,
568 wireless, optical, electromagnetic, or similar capabilities.

569 (17) "Electronic record" means information that is stored in an electronic or other
570 medium and is retrievable in paper form through an automated process used in conventional
571 commercial practice, unless otherwise authorized in accordance with s. 607.0141(7).

572 ~~(9)~~ (18) "Electronic transmission" or "electronically transmitted" means any form or
573 process of communication not directly involving the physical transfer of paper or another
574 tangible medium, which (a) is suitable for the retention, retrieval, and reproduction of
575 information by the recipient, and (b) is retrievable in paper form by the recipient through an
576 automated process used in conventional commercial practice, unless otherwise authorized in
577 accordance with s. 607.0141. For purposes of proxy voting in accordance with ss. 607.0721,
578 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams,
579 telephone transmissions, and transmissions through the Internet.

580 ~~(10)~~ (19) "Employee" includes an officer but not a director. A director may accept duties
581 that make him or her also an employee.

582 ~~(11)~~ (20) "Entity" means includes: (a) a business corporation; (b) a and foreign
583 corporation; non-profit corporation; unincorporated association; business trust; estate; (c) a
584 general partnership, including a limited liability partnership; (d) a limited partnership, including
585 a limited liability limited partnership; (e) a limited liability company; (f) a real estate investment
586 trust; or (g) any other foreign or domestic entity that is organized under an organic law. and two

⁸ This definition needs to be added to s. 605.0102 of FRLCA.

587 ~~or more persons having a joint or common economic interest; and state, United States, and~~
588 ~~foreign governments. "Entity" does not include: (w) an individual; (x) a trust with a~~
589 ~~predominantly donative purpose or a charitable trust; (y) an association or relationship that is not~~
590 ~~a partnership solely by reason of s. 620.8202(3) or a similar provision of the law of another~~
591 ~~jurisdiction; or (z) a government or a governmental subdivision, agency or instrumentality.~~

592 (21) The phrase "facts objectively ascertainable" outside of a plan or filed document is
593 defined in s. 607.0120(11).

594 (22) "Expenses" means reasonable expenses of any kind that are incurred in connection
595 with a matter.

596 ~~(12)~~(23) "Foreign corporation" means a corporation for profit incorporated under laws
597 other than the laws of this state.

598 ~~(13)~~ (24) "Governmental subdivision" includes authority, county, district, and
599 municipality.

600 ~~(14)~~ (25) "Includes" denotes a partial definition or a non-exclusive list.

601 ~~(15)~~ (26) "Individual" includes the estate of an incompetent or deceased individual.

602 ~~(16)~~ (27) "Insolvent" means the inability of a corporation to pay its debts as they become
603 due in the usual course of its business.

604 ~~(17)~~ (28) "Mail" means the United States mail, facsimile transmissions, and private mail
605 carriers handling nationwide mail services.

606 ~~(18)~~ (29) "Means" denotes an exhaustive definition.

607 ~~(19)~~ (30) "Person" includes an individual and an entity.

608 ~~(20)~~ (31) "Principal office" means the office (in or out of this state) where the principal
609 executive offices of a domestic or foreign corporation are located as designated in the articles of
610 incorporation or other initial filing until an annual report has been filed, and thereafter as
611 designated in the annual report.

612 ~~(21)~~ (32) "Proceeding" includes a civil suit, a criminal action, an administrative action,
613 and an investigatory action.

614 (33) "Record," if used as a noun, means information that is inscribed on a tangible
615 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

616 ~~(22)~~ (34) “Record date” means the date fixed for determining on which a corporation
617 ~~determines~~ the identity of the corporation's its shareholders and their share holdings for purposes
618 of this ~~aet~~ chapter. Unless another time is specified when the record date is fixed, the ~~The~~
619 determination shall be made as of the close of the business at the principal office of the
620 corporation on the date so on the record date unless another time is fixed.

621 (35) “Record shareholder” means (i) the person in whose name shares are registered in
622 the records of the corporation or (ii) the person identified as a beneficial owner of shares in the
623 beneficial ownership certificate pursuant to s. 607.0723 on file with the corporation to the extent
624 of the rights granted by such certificate.

625 ~~(23)~~ (36) “Secretary” means the corporate officer to whom the board of directors has
626 delegated responsibility under s. 607.08401 to maintain ~~for custody~~ of the minutes of the
627 meetings of the board of directors and of the shareholders and for authenticating records of the
628 corporation.

629 ~~(24)~~ (37) “Shareholder” ~~or “stockholder”~~ means a record shareholder one who is a holder
630 ~~of record of shares in a corporation or the beneficial owner of shares to the extent of the rights~~
631 ~~granted by a nominee certificate on file with a corporation. If used in this chapter, the term~~
632 “stockholder” means a “shareholder.”

633 ~~(25)~~ (38) “Shares” means the units into which the proprietary interests in a corporation are
634 divided.

635 ~~(26)~~ (39) “Sign” or “signature” means, with present intent to authenticate or adopt a
636 document: (a) to execute or adopt a tangible symbol to a document, and includes any manual,
637 facsimile, or conformed signature; or (b) to attach or to logically associate with an electronic
638 transmission an electronic sound, symbol, or process, and includes an electronic signature in an
639 electronic transmission any symbol, manual, facsimile, conformed, or electronic signature
640 adopted by a person with the intent to authenticate a document.

641 ~~(27)~~ (40) “State,” when referring to a part of the United States, includes a state and
642 commonwealth (and their agencies and governmental subdivisions) and a territory and insular
643 possession (and their agencies and governmental subdivisions) of the United States.

644 ~~(28)~~ (41) “Subscriber” means a person who subscribes for shares in a corporation, whether
645 before or after incorporation.

646 ~~(29)~~ (42) “Treasury shares” means shares of a corporation that belong to the corporation,
647 which shares are authorized and issued shares that are not outstanding, are not canceled, and
648 have not been restored to the status of authorized but unissued shares.

649 ~~(30)~~ (43) “United States” includes district, authority, bureau, commission, department, and
650 any other agency of the United States.

651 (44) “Unrestricted voting trust beneficial owner” means, with respect to any shareholder
652 rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in
653 question is not inconsistent with the voting trust agreement.

654 ~~(31)~~ (45) “Voting group” means all shares of one or more classes or series that under the
655 articles of incorporation or this ~~act~~ chapter are entitled to vote and be counted together
656 collectively on a matter at the meeting of shareholders. All shares entitled by the articles of
657 incorporation or this ~~act~~ chapter to vote generally on the matter are for that purpose a single
658 voting group.

659 (46) “Voting trust beneficial owner” means an owner of a beneficial interest in shares of
660 the corporation held in a voting trust established pursuant to s. 607.0730(1).

661 (47) “Writing” or “written” means any information in the form of a document.

662

663 **Commentary to s. 607.01401:**

664 The changes above reflect numerous changes that have been made in the Model Act since the
665 last revisions to this section in Florida.

666 The definitions in subsections (14), (15), (16) and (44) were added and the definitions in
667 subsections (6), (9), and (36) [new subsection numbering] relate to 2010 changes to the Model
668 Act to facilitate electronic transmission and e-signatures. Corresponding changes have been
669 made to Section 607.0120 and 607.0141.

670 The definition of "expenses" in subsection (21) adds a global definition of "expenses" to
671 provisions in Articles 7, 8, 13, 14, and 16.

672 The definition of entity (s. 607.01401(20)) is derived from the definition of entity in s.
673 605.0102(23) of FRLCA. The definition of entity also excludes certain categories of persons
674 and entities, based on what is in the corollary section of FRLCA. For reference, s. 620.8202(3)
675 deals with sharing of profits from a business where the profits are received in payment (i) of a
676 debt by installments or otherwise, (ii) for services as an independent contractor or of wages or
677 other compensation to an employee, (iii) of rent, (iv) of an annuity or other retirement benefit to
678 a beneficiary, representative, or designee of a deceased or retired partner, (v) of interest or other
679 charges on a loan, even if the amount of payment varies with the profits of the business, or (vi)
680 for the sale of the goodwill of a business or other property by installments or otherwise.

681 The Model Act and the existing statute include governmental entities as entities. Section
682 605.0102(23) of FRLCA considers them non-entities. This statute following the definition in
683 FRLCA and excludes governmental entities from the definition of entity.

684 The definition of "applicable county" (s. 607.01401(1)) has been added to make clear where
685 actions can be brought by a corporation or against a corporation under certain circumstances.

686 A definition of "authorized entity" has been added to clarify that types of entities that may act as
687 the registered agent for a Florida corporation or for a foreign corporation authorized to transact
688 business in Florida.

689

690 607.0141 Notices and other communications.

691 (1) (a) Notice under this chapter ~~act~~ must be in writing, unless oral notice is:

692 1. Expressly authorized by the articles of incorporation or the bylaws, and

693 2. Reasonable under the circumstances.

694 (b) Unless otherwise agreed between the sender and the recipient, words in a notice or
695 other communication under this chapter must be in English.

696 (c) Notice by electronic transmission is written notice.

697 (2) A notice or other communication may be given by any method of delivery including
698 voice mail (where oral notice is permitted), except that electronic transmissions must be in
699 accordance with this section. ~~Notice may be communicated in person; by telephone, voice mail~~
700 ~~(where oral notice is permitted), or other electronic means; or by mail or other method of~~
701 delivery.

702 (3) (a) Written notice by a domestic or foreign corporation authorized to transact
703 business in this state to its shareholder, if in a comprehensible form, is effective:

704 1. Upon deposit into the United States mail, if mailed postpaid and correctly
705 addressed to the shareholder's address shown in the corporation's current record of
706 shareholders; or

707 2. When electronically transmitted to the shareholder in a manner authorized
708 by the shareholder.

709 (b) Unless otherwise provided in the articles of incorporation or bylaws, and
710 without limiting the manner by which notice otherwise may be given effectively to
711 shareholders, any notice to shareholders given by the corporation under any provision
712 of this chapter, the articles of incorporation, or the bylaws shall be effective if given by
713 a single written notice to shareholders who share an address if consented to by the
714 shareholders at that address to whom such notice is given. Any such consent shall be
715 revocable by a shareholder by written notice to the corporation, and if a written notice
716 of revocation is delivered to the corporation, the corporation shall begin providing
717 individual notices, reports and other statements to the revoking shareholder no later than
718 30 days after delivery of the written notice of revocation.

719 (c) Any shareholder who fails to object in writing to the corporation, within 60
720 days after having been given written notice by the corporation of its intention to send
721 the single notice permitted under paragraph (b), shall be deemed to have consented to
722 receiving such single written notice.

723 ~~(d) This subsection shall not apply to s. 607.0620, s. 607.1402, or s. 607.1404.~~

724 (4) Written notice to a domestic corporation or to a foreign corporation authorized to
725 transact business in this state may be addressed:

726 (a) To its registered agent at its registered office; or

727 (b) To the corporation or its secretary at the corporation's ~~its~~ principal office or
728 electronic mail address as authorized and shown in its most recent annual report or, in
729 the case of a corporation that has not yet delivered an annual report, in a domestic
730 corporation's articles of incorporation or in a foreign corporation's application for
731 certificate of authority.

732 (5) Except as provided in subsection (3) or elsewhere in this ~~act~~ chapter, written notice, if
733 in a comprehensible form, is effective at the earliest date of the following:

734 (a) When received;

735 (b) Five days after its deposit in the United States mail, if mailed postpaid and
736 correctly addressed; or

737 (c) On the date shown on the return receipt, if sent by registered or certified mail,
738 return receipt requested, and the receipt is signed by or on behalf of the addressee; or

739 (d) When it enters an information processing system that the recipient has
740 designated or uses for the purposes of receiving electronic transmissions or information
741 of the type sent, and from which the recipient is able to retrieve the electronic
742 transmission, and it is in a form capable of being processed by that system.

743 ~~(6) Oral notice is effective when communicated if communicated directly to the person to~~
744 ~~be notified in a comprehensible manner. Except with respect to notice to directors by the~~
745 ~~corporation, notice or other communications may be delivered by electronic transmission if~~
746 ~~consented to by the recipient or if authorized by subsection (7). Notice or other communication~~
747 ~~to directors by the corporation may be delivered by electronic transmission if consented to by the~~
748 ~~recipient director; however, if the articles or bylaws require or authorize electronic transmission~~
749 ~~of notice or other communication to a director by the corporation, then no consent by the director~~
750 ~~recipient shall be required for the corporation to deliver notice or other communications to the~~
751 ~~director by electronic transmission.~~

752 (7) A notice or other communication may be in the form of an electronic transmission that
753 cannot be directly reproduced in paper form by the recipient through an automated process used
754 in conventional commercial practice only if (a) the electronic transmission is otherwise
755 retrievable in perceivable form, and (b) the sender and the recipient have consented in writing to
756 the use of such form of electronic transmission.

757 (8) Any consent under subsection (7) may be revoked by the person who consented by
758 written or electronic notice to the person to whom the consent was delivered. Any such consent
759 is deemed revoked if (1) the corporation is unable to deliver two consecutive electronic
760 transmissions given by the corporation in accordance with such consent, and (2) such inability
761 becomes known to the secretary or assistant secretary of the corporation or to the transfer agent,
762 or other person responsible for the giving of notice or other communications; provided, however,
763 that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting
764 or other action.

765 (9) Receipt of an electronic acknowledgement from an information processing system
766 described in subsection (5)(d) establishes that an electronic transmission was received, but, by
767 itself, does not establish that the content sent corresponds to the content received.

768 (10) An electronic transmission is received under this section even if no person is aware of
769 its receipt.

770 (11) Notice or other communication, if in a comprehensible form or manner, is effective at
771 the earliest of the following:

772 (a) Oral notice is effective when communicated if communicated directly to the
773 person to be notified in a comprehensive manner; or

774 (b) If an electronic transmission, when it is received as provided in subsection
775 (5)(d);

776 ~~(7)~~ (12) If this ~~act~~ chapter prescribes requirements for notices ~~notice requirements~~ or other
777 communications ~~for~~ in particular circumstances, those requirements govern. If articles of
778 incorporation or bylaws prescribe requirements for notices or other communications not less
779 stringent than the requirements of this section or other provisions of this chapter ~~act~~, those
780 requirements govern. The articles of incorporation or bylaws may authorize or require delivery
781 of notices of meetings of directors by electronic transmission.

782 (13) In the event that any provisions of this chapter are deemed to modify, limit, or supersede
783 the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.,
784 the provisions of this chapter shall control to the maximum extent permitted by section 102(a)(2)
785 of that federal act.

786 **Commentary to s. 607.0141:**

787 This adopts most of the changes made in the notice requirements in s. 1.41 of the Model Act,
788 although it moves the subsections around in a fashion consistent with the proposal by the
789 committee that reviewed Article 1 in 2011. These changes to the Model Act were initially
790 published in 2009 and were formally adopted in 2010. The Committee on Corporate Laws of the
791 ABA Section of Business Law stated that these changes were made to incorporate terms from the
792 Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National
793 Commerce Act (or the E-Sign act) into the Model Act. With the heavy growth of electronic
794 transmission (and a corresponding decline in mailed correspondence), a corresponding
795 modernization of the Florida Act is believed necessary.

796 The language in s. 1.41(b) of the Model Act, which allows notice to be given by means of a
797 broad non-exclusionary distribution to the public if the methods of delivery approved in this
798 section are impracticable, has not been adopted.

799 Subsection (6) adds a clarification that if the articles or bylaws provide for notice or other
800 communications to directors by electronic transmission, then no consent of the recipient director
801 shall be required for the corporation to provide notice or other communication to the recipient
802 director by electronic transmission.

803 The Model Act provision dealing with the topic of householding provisions is s. 1.44.
804 Householding provisions were added to subsection (3) of the FBCA in 2003. Since the language
805 in the current version of the FBCA is similar to the language in s. 1.44 of the Model Act, this
806 statute continues to include the householding provisions in s. 607.0141(3). The statute includes a
807 modification from the current version of s. 1.44 of the Model Act providing that if a shareholder
808 revokes its consent to householding, the corporation must begin sending notices to the revoking
809 shareholder not later than 30 days after delivery of the revocation notice.

810 Subsection (13) mirrors s. 1.41(i) of the Model Act. It implements E-Sign section 7002(a)(2),
811 which exempts from the federal preemption provisions of E-Sign certain state laws that modify,
812 limit or supersede E-Sign, and that also make specific reference to E-Sign.

813

814 Model Act s. 1.42. Number of Shareholders.

815 Section 1.42 of the Model Act (Number of shareholders) has not been added to the FBCA.

816 Commentary on the 1989 proposal stated that this section of the Model Act was not proposed

817 because the subject matter was treated elsewhere in the FBCA.

818

819 § 607.0143 Qualified director.

820 (1) A “qualified director” is a director who, at the time action is to be taken under:

821 (a) s. 607.0744, does not have (i) a material interest in the outcome of the proceeding,
822 or (ii) a material relationship with a person who has such an interest.

823 (b) s. 607.0832, is not a director (i) as to whom the transaction is a director’s conflict of
824 interest transaction, or (ii) who has a material relationship with another director as to whom
825 the transaction is a director’s conflict of interest transaction; or

826 (c) ss. 607.0853 or 607.0855, (i) is not a party to the proceeding, (ii) is not a director as
827 to whom a transaction is a director’s conflict of interest transaction, which transaction is
828 challenged in the proceeding, and (iii) does not have a material relationship with a director
829 who is disqualified by virtue of not meeting the requirements of either clause (i) or clause
830 (ii) of this subsection (1)(c).

831 (2) For purposes of this section:

832 (a) “Material relationship” means a familial, financial, professional, employment or
833 other relationship that would reasonably be expected to impair the objectivity of the
834 director’s judgment when participating in the action to be taken; and

835 (b) “Material interest” means an actual or potential benefit or detriment (other than one
836 which would devolve on the corporation or the shareholders generally) that would
837 reasonably be expected to impair the objectivity of the director’s judgment when
838 participating in the action to be taken.

839 (3) The presence of one or more of the following circumstances shall not automatically
840 prevent a director from being a qualified director:

841 (a) Nomination or election of the director to the current board by any director who is
842 not a qualified director with respect to the matter (or by any person that has a material
843 relationship with that director), acting alone or participating with others;

844 (b) Service as a director of another corporation of which a director who is not a
845 qualified director with respect to the matter (or any individual who has a material
846 relationship with that director), is or was also a director; or

847 (c) With respect to action to be taken under s. 607.0744, status as a named defendant,
848 as a director against whom action is demanded, or as a director who approved the conduct
849 being challenged.

850

851

852 **Commentary to s. 607.0143:**

853 This section is based on the definition contained in s. 1.43 of the Model Act. The term “qualified
854 director” is used in the derivative action provisions of Article 7, and the director conflict of
855 interest and indemnification provisions contained in Article 8.

856 This definition is used in these statutes to make clear that only truly independent directors are
857 making the decisions called for under those statutes.

858

859 Model Act s. 1.44 Householding.

860

861 Householding was added to the FBCA (in s. 607.0141(3)) in 2003. Section 607.0141(3) uses

862 language very similar to the Model Act provision on this topic.

863

864 Subchapter E (Model Act ss. 1.45 – 1.52).
865

866 Subchapter E of the Model Act covers the topic of ratification of defective corporate acts. These
867 provisions provide non-exclusive mechanisms to ratify defective corporate acts, which are
868 corporate actions purportedly taken that were, at the respective times the actions were taken,
869 within the power of the corporation, but were void or voidable due to a failure of authorization or
870 constituted an overissue (a purported issuance of shares in excess of the number of shares of a
871 class or series that the corporation has the power to issue at the time of such issuance or shares of
872 any class or series that were not then authorized for issuance under the articles of incorporation).
873 These Model Act provisions were published late last year in *The Business Lawyer* and, to the
874 knowledge of the Subcommittee, these provisions have not yet been adopted into the corporate
875 statute of any other state. The corollary provisions of the Delaware General Corporation Law
876 (the "DGCL"), which are contained in ss. 204 and 205 of the DGCL, have been in place for
877 several years, but continue to be the subject of debate and proposed modification in Delaware as
878 the mechanics of using these provisions are tested.

879 While the Subcommittee believes that this topic should be considered for addition in the FBCA
880 at a future time, a decision has been made to defer consideration of these provisions to allow the
881 law on this topic (both in Delaware and in other Model Act states) to further develop before
882 provisions addressing this topic are considered for adoption in the FBCA. Any provisions
883 addressing this topic will be considered either (i) later in the process of finalizing this statute, or
884 (ii) at some future time as a legislative initiative separate from this proposal.

885

886

ARTICLE 2

887

INCORPORATION

888

889 607.0201. Incorporators.

890 One or more persons may act as the incorporator or incorporators of a corporation by
891 delivering articles of incorporation to the ~~D~~department of ~~S~~State for filing.

892

893 **Commentary for Section 607.0201:**

894 No substantive changes have been made.

895

896

897 607.0202. Articles of incorporation; content.

898 (1) The articles of incorporation must set forth:

899 (a) A corporate name for the corporation that satisfies the requirements of s.
900 607.0401;

901 (b) The street address of the initial principal office and, if different, the mailing
902 address of the corporation;

903 (c) The number of shares the corporation is authorized to issue;

904 (d) ~~If any preemptive rights are to be granted to shareholders, the provision~~
905 ~~therefor;~~

906 ~~(e)~~—The street address of the corporation's initial registered office and the name of
907 its initial registered agent at that office together with a written acceptance as required in
908 s. 607.0501(3); and

909 (f) The name and address of each incorporator.

910 (2) The articles of incorporation may set forth:

911 (a) The names and addresses of the individuals who are to serve as the initial
912 directors;

913 (b) Provisions not inconsistent with law regarding:

914 1. The purpose or purposes for which the corporation is organized;

915 2. Managing the business and regulating the affairs of the corporation;

916 3. Defining, limiting, and regulating the powers of the corporation and its
917 board of directors and shareholders;

918 4. A par value for authorized shares or classes of shares;

919 5. The imposition of personal liability on shareholders for the debts of the
920 corporation to a specified extent and upon specified conditions; and

921 6. Exclusive forum provisions, to the extent permitted by s. 607.0208.

922 (c) If any preemptive rights are to be granted to shareholders, the provision
923 therefor.

924

925 (d) Any provision that under this ~~chapter act~~ is required or permitted to be set forth
926 in the bylaws.

927 (3) The articles of incorporation need not set forth any of the corporate powers enumerated
928 in this ~~chapter act~~.

929 (4) Provisions of the articles of incorporation may be made dependent upon facts
930 objectively ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

931 (5) The articles of incorporation may not contain any provision that would impose liability
932 on a shareholder for the attorneys' fees or expenses of the corporation or any other party in
933 connection with an internal corporate claim, as defined in s. 607.0208(4) of this chapter.

934

935 **Commentary for Section 607.0202:**

936 Cleanup changes have been made to subsections (1) and (2). New subsection (2)(b)6. expressly
937 authorizes articles of incorporation that allow exclusive forum provisions to the extent permitted
938 by s. 607.0208. Although the Subcommittee believes that this provision would already be
939 permissible under the catch-all language in subsection (2)(d), a cross reference was added to
940 confirm that such provisions are permissible under this section.

941 New subsection (4) makes clear that articles of incorporation may be made dependent upon facts
942 objectively ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

943 New subsection (5) prohibits the inclusion in articles of incorporation of provisions that purport to
944 impose liability upon a shareholder for the attorneys' fees or expenses of the corporation or any
945 other party in connection with an internal corporate claim, as defined in new section
946 607.0208(4). A similar provision has been added as new subsection (5) in s. 607.0206.

947 Similar provisions were recently added to the DGCL following the decision of the Delaware
948 Supreme Court in *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014), in which
949 the Delaware Supreme Court upheld as facially valid a bylaw imposing liability for certain legal
950 fees of the nonstock corporation on certain members who participated in the litigation. As a
951 policy matter, the Subcommittee does not believe that such provisions are appropriate if
952 unilaterally placed in articles or bylaws.

953 At the same time, a new subsection has been added to subsection (1) of s. 607.0732 to make
954 clear that this new subsection of s. 607.0202 is not intended to prevent the application of such fee
955 shifting provisions pursuant to an agreement that is entered into in compliance with s. 607.0732.

956

957 607.0203. Incorporation.

958 (1) Unless a delayed effective date is specified, the corporate existence begins when the
959 articles of incorporation are filed or on a date specified in the articles of incorporation, if such
960 date is within 5 business days prior to the date of filing.

961 (2) The ~~D~~department's ~~of State's~~ filing of the articles of incorporation is conclusive proof
962 that the incorporators satisfied all conditions precedent to incorporation except in a proceeding
963 by the state to cancel or revoke the incorporation or ~~involuntarily~~ administratively dissolve the
964 corporation.

965

966 **Commentary for Section 607.0203:**

967 No substantive changes have been made.

968

969

970 607.0204. Liability for preincorporation transactions.

971 All persons purporting to act as or on behalf of a corporation, ~~having actual knowledge~~
972 knowing that there was no incorporation under this chapter, are jointly and severally liable for all
973 liabilities created while so acting ~~except for any liability to any person who also had actual~~
974 ~~knowledge that there was no incorporation.~~

975

976 **Commentary for Section 607.0204:**

977 Revisions are based on language changes in the current version of s. 2.04 of the Model Act.

978

979 607.0205. Organizational meeting of directors.

980 (1) After incorporation:

981 (a) If initial directors are named in the articles of incorporation, the initial directors
982 shall hold an organizational meeting, at the call of a majority of the directors, to complete
983 the organization of the corporation by appointing officers, adopting bylaws, and carrying on
984 any other business brought before the meeting;

985 (b) If initial directors are not named in the articles of incorporation, the incorporators
986 shall hold an organizational meeting at the call of a majority of the incorporators:

987 1. To elect directors and complete the organization of the corporation; or

988 2. To elect a board of directors who shall complete the organization of the
989 corporation.

990 (2) Action required or permitted by this ~~chapter~~ act to be taken by incorporators or directors
991 at an organizational meeting may be taken without a meeting if the action taken is evidenced by
992 one or more written consents describing the action taken and signed by each incorporator or
993 director.

994 (3) The directors or incorporators calling the organizational meeting shall give at least ~~3~~ 2
995 days' notice thereof to each director or incorporator so named, stating the time and place of the
996 meeting.

997 (4) An organizational meeting may be held in or out of this state.

998

999 **Commentary for Section 607.0205:**

1000 Subsection (3) is changed to specify 2 days' notice rather than 3 days' notice, to be consistent
1001 with s. 607.0822(2) of the FBCA and s. 108 of the DGCL.

1002

1003 607.0206. Bylaws.

1004 (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the
1005 corporation unless that power is reserved to the shareholders by the articles of incorporation.

1006 (2) The bylaws of a corporation may contain any provision ~~for managing the business and~~
1007 ~~regulating the affairs of the corporation that is not inconsistent with law or the articles of~~
1008 incorporation, including the provisions described in subsections (3) and (4) below.

1009 (3) The bylaws of a corporation may contain one or both of the following provisions:

1010 (a) A requirement that if the corporation solicits proxies or consents with respect to an
1011 election of directors, the corporation include in its proxy statement and any form of its proxy
1012 or consent, to the extent and subject to such procedures or conditions as are provided in the
1013 bylaws, one or more individuals nominated by a shareholder in addition to individuals
1014 nominated by the board of directors; and

1015 (b) A requirement that the corporation reimburse the expenses incurred by a shareholder
1016 in soliciting proxies or consents in connection with an election of directors, to the extent and
1017 subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw
1018 so adopted shall apply to elections for which any record date precedes its adoption.

1019 (4) The bylaws of a corporation may contain exclusive forum provisions to the extent
1020 permitted by s. 607.0208.

1021 (5) Notwithstanding s. 607.1020(1)(b), the shareholders in amending, repealing, or
1022 adopting a bylaw described in subsection (3) may not limit the authority of the board of directors
1023 to amend or repeal any condition or procedure set forth in or to add any procedure or condition to
1024 such a bylaw to provide for a reasonable, practical, and orderly process.

1025 (6) The bylaws may not contain any provision that would impose liability on a shareholder
1026 for the attorneys' fees or expenses of the corporation or any other party in connection with an
1027 internal corporate claim, as defined in s. 607.0208(4) of this chapter.

1028

1029 **Commentary for Section 607.0206:**

1030 The change to subsection (2) is to bring Chapter 607 into line with the Model Act. The
1031 Committee believes that the existing language in subsection (2) is intended to mean the same as
1032 the current language in the Model Act, allowing broad latitude as to what type of provisions can
1033 be contained in a corporation’s bylaws. This includes, for example, the ability to include an
1034 exclusive forum bylaw provision. The change is designed to bring the language in the Florida
1035 statute into line with the Model Act and thus avoid any potential of claim that the words “for
1036 managing the business and regulating the affairs of the corporation” were intended to be limiting.
1037 For completeness, a cross reference to subsections (3) and (4) has been added to this subsection.

1038 New subsection (3) expressly authorizes bylaws that require the corporation to include individuals
1039 nominated by shareholders for election as directors in its proxy statement and proxy cards (or
1040 consents) and that require the reimbursement by the corporation of expenses incurred by a
1041 shareholder in soliciting proxies (or consents) in an election of directors, in each case subject to
1042 such procedures or conditions as may be provided in the bylaws. Although the Subcommittee
1043 believes that this provision would already be permissible under subsection (2), because this
1044 provision is expressly in the DGCL and in the Model Act, the decision was made to add these
1045 confirming subsections to the FBCA.

1046 For completeness, new subsection (4) has been added to cross reference s. 607.0208 into this
1047 provision, which expressly authorizes bylaws that allow exclusive forum provisions to the extent
1048 permitted by that section.

1049 New subsection (6) prohibits the inclusion in bylaws of any provision that purports to impose
1050 liability upon a shareholder for the attorneys’ fees or expenses of the corporation or any other
1051 party in connection with an internal corporate claim, as defined in new section 607.0208(4). A
1052 similar provision has been added as new subsection (5) in s. 607.0202.

1053

1054 607.0207. Emergency bylaws.

1055 (1) Unless the articles of incorporation provide otherwise, the board of directors ~~of a~~
1056 ~~corporation~~ may adopt bylaws to be effective only in an emergency defined in subsection (5).
1057 The emergency bylaws, which are subject to amendment or repeal by the shareholders, may
1058 make all provisions necessary for managing the corporation during an emergency, including:

1059 (a) Procedures for calling a meeting of the board of directors;

1060 (b) Quorum requirements for the meeting; and

1061 (c) Designation of additional or substitute directors.

1062 (2) The board of directors, either before or during any such emergency, may provide, and
1063 from time to time modify, lines of succession in the event that during such emergency any or all
1064 officers or agents of the corporation are for any reason rendered incapable of discharging their
1065 duties.

1066 (3) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain
1067 effective during the emergency. The emergency bylaws are not effective after the emergency
1068 ends.

1069 (4) Corporate action taken in good faith in accordance with the emergency bylaws:

1070 (a) Binds the corporation; and

1071 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1072 agent of the corporation.

1073 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~ board
1074 of directors cannot readily be assembled because of some catastrophic event.

1075

1076 **Commentary for Section 607.0207:**

1077 No substantive changes have been made.

1078

1079 607.0208. Forum selection provisions.

1080 (1) The articles of incorporation or the bylaws may require that any or all internal corporate
1081 claims shall be brought exclusively in any specified court or courts of this state and, if so
1082 specified, in any additional courts in this state or in any other jurisdictions with which the
1083 corporation has a reasonable relationship.

1084 (2) A provision of the articles of incorporation or bylaws adopted under subsection (1) shall
1085 not have the effect of conferring jurisdiction on any court or over any person or claim, and shall
1086 not apply if none of the courts specified by such provision has the requisite personal and subject
1087 matter jurisdiction. If the court or courts in this state specified in a provision adopted under
1088 subsection (1) do not have the requisite personal and subject matter jurisdiction and another court
1089 in this state does have such jurisdiction, then the internal corporate claim may be brought in such
1090 other court in this state, notwithstanding that such other court in this state is not specified in such
1091 provision, and in any other court specified in such provision that has the requisite jurisdiction.

1092 (3) No provision of the articles of incorporation or the bylaws may prohibit bringing an
1093 internal corporate claim in all courts in this state or require such claims to be determined by
1094 arbitration.

1095 (4) “Internal corporate claim” means, for the purposes of this section:

1096 (a) any claim that is based upon a violation of a duty under the laws of this state by a
1097 current or former director, officer, or shareholder in such capacity;

1098 (b) any derivative action or proceeding brought on behalf of the corporation;

1099 (c) any action asserting a claim arising pursuant to any provision of this chapter or the
1100 articles of incorporation or bylaws; or

1101 (d) any action asserting a claim governed by the internal affairs doctrine that is not
1102 included in subsections (a)-(c) above.

1103

1104 **Commentary to Section 607.0208:**

1105 New s. 607.0208 largely follows s. 2.08 of the Model Act. It authorizes a provision in either the
1106 articles of incorporation or the bylaws creating exclusive jurisdiction for internal corporate
1107 claims. Under section 607.0208(1), the provision to be valid must include all of the courts in this
1108 state or any specified court or courts of this state. The provision may also, but is not required to,
1109 include additional courts within this state (including federal courts) or in one or more additional
1110 jurisdictions with a reasonable relationship to the corporation.

1111 Although the Subcommittee believes that this type of provision is already permissible under
1112 existing s. 607.0206, because this provision is expressly set forth in the DGCL and in the Model
1113 Act, the decision was made to add this confirming section to the FBCA for clarity.

1114

1115 ARTICLE 3

1116 PURPOSES AND POWERS

1117 607.0301. Purposes and application.

1118 ~~Corporations may be organized under this act for any lawful purpose or purposes,~~

1119 (1) Every corporation incorporated under this chapter has the purpose of engaging in any
1120 lawful business unless a more limited purpose is set forth in the articles of incorporation.

1121 (2) A corporation engaging in a business that is subject to regulation under another statute
1122 of this state may incorporate under this chapter only if permitted by, and subject to all limitations
1123 of, the other statute.

1124 ~~(3) and t~~The provisions of this chapter aet extend to all corporations, whether chartered by
1125 special acts or general laws, except that special statutes for the regulation and control of types of
1126 business and corporations shall control when in conflict herewith.

1127

1128 **Commentary to Section 607.0301:**

1129 Although Florida's existing statute was very similar to the Model Act, it used different wording.
1130 Because the wording of the Model Act seemed clearer and more organized than the existing
1131 Florida statute, the existing language was replaced by the Model Act language in subsections (1)
1132 and (2). However, because the existing statute included language to the effect that Chapter 607
1133 applied to corporations chartered by both special acts and general law, a decision was made to
1134 retain such language as subsection (3) to avoid an implication that such was not the case, even
1135 though there is possibly some overlap of coverage between subsections (2) and (3).

1136 607.0302. General powers.

1137 Unless its articles of incorporation provide otherwise, every corporation has perpetual
1138 duration and succession in its corporate name and has the same powers as an individual to do all
1139 things necessary or convenient to carry out its business and affairs, including ~~without limitation~~
1140 power:

1141 (1) To sue and be sued, complain, and defend in its corporate name;

1142 (2) To have a corporate seal, which may be altered at will and to use it or a facsimile of it,
1143 by impressing or affixing it or in any other manner reproducing it;

1144 (3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
1145 otherwise deal with real or personal property or any legal or equitable interest in property
1146 wherever located;

1147 (4) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, and
1148 otherwise dispose of all or any part of its property;

1149 (5) To lend money to, and use its credit to assist, its officers and employees in accordance
1150 with s. 607.0833;

1151 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,
1152 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in,
1153 or obligations of, any other entity;

1154 (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes,
1155 bonds, and other securities and obligations (which may be convertible into or include the option
1156 to purchase other securities of the corporation), and secure any of its obligations by mortgage or
1157 pledge of any of its property, franchises, ~~and~~ or income and make contracts of guaranty and
1158 suretyship which are necessary or convenient to the conduct, promotion, or attainment of the
1159 business of a corporation the majority of the outstanding stock of which is owned, directly or
1160 indirectly, by the contracting corporation; a corporation which owns, directly or indirectly, a
1161 majority of the outstanding stock of the contracting corporation; or a corporation the majority of
1162 the outstanding stock of which is owned, directly or indirectly, by a corporation which owns,
1163 directly or indirectly, the majority of the outstanding stock of the contracting corporation, which
1164 contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the
1165 conduct, promotion, or attainment of the business of the contracting corporation, and make other
1166 contracts of guaranty and suretyship which are necessary or convenient to the conduct,
1167 promotion, or attainment of the business of the contracting corporation;

1168 (8) To lend money, invest and reinvest its funds, and receive and hold real and personal
1169 property as security for repayment;

1170 (9) To conduct its business, locate offices, and exercise the powers granted by this act
1171 within or without this state;

1172 (10) To elect directors and appoint officers, employees, and agents of the corporation and
1173 define their duties, fix their compensation, and lend them money and credit;

1174 (11) To make and amend bylaws, not inconsistent with its articles of incorporation or with
1175 the laws of this state, for managing the business and regulating the affairs of the corporation;

1176 (12) To make donations for the public welfare or for charitable, scientific, or educational
1177 purposes;

1178 (13) To transact any lawful business that will aid governmental policy;

1179 (14) To make payments or donations or do any other act not inconsistent with law that
1180 furthers the business and affairs of the corporation;

1181 (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans,
1182 share bonus plans, share option plans, and benefit or incentive plans for any or all of its current
1183 or former directors, officers, employees, and agents and for any or all of the current or former
1184 directors, officers, employees, and agents of its subsidiaries;

1185 (16) To provide insurance for its benefit on the life of any of its directors, officers, or
1186 employees, or on the life of any shareholder for the purpose of acquiring at his or her death
1187 shares of its stock owned by the shareholder or by the spouse or children of the shareholder; and

1188 (17) To be a promoter, incorporator, partner, member, associate, or manager of any
1189 corporation, partnership, joint venture, trust, or other entity.

1190

1191 **Commentary to Section 607.0302:**

1192 The FBCA and Model Act provisions are identical in most respects, but with certain additional
1193 items in Florida, many of which were based on pre-1989 Florida law and Delaware law. Those
1194 distinctions, principally in subsections (4), (5), (7), (15) and (16), were retained. Minor changes
1195 are also made to subsections (3) and (7) to match the language in the corollary sections of the
1196 Model Act, but without any intent to change the intended meaning.

1197

1198 607.0303. Emergency powers.

1199 (1) In anticipation of or during any emergency defined in subsection (5), the board of
1200 directors of a corporation may:

1201 (a) Modify lines of succession to accommodate the incapacity of any director,
1202 officer, employee, or agent; and

1203 (b) Relocate the principal office or designate alternative principal offices or
1204 regional offices or authorize the officers to do so.

1205 (2) During an emergency defined in subsection (5), unless emergency bylaws provide
1206 otherwise:

1207 (a) Notice of a meeting of the board of directors need be given only to those directors
1208 whom it is practicable to reach and may be given in any practicable manner, including by
1209 publication and radio;

1210 (b) One or more officers of the corporation present at a meeting of the board of
1211 directors may be deemed to be directors for the meeting, in order of rank and within the
1212 same rank in order of seniority, as necessary to achieve a quorum; and

1213 (c) The director or directors in attendance at a meeting, or any greater number affixed
1214 by the emergency bylaws, constitute a quorum.

1215 (3) Corporate action taken in good faith during an emergency under this section to further
1216 the ordinary business affairs of the corporation:

1217 (a) Binds the corporation; and

1218 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1219 agent of the corporation.

1220 (4) No officer, director, or employee acting in accordance with any emergency bylaws
1221 shall be liable except for willful or intentional misconduct.

1222 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~
1223 board of directors cannot readily be assembled because of some catastrophic event.

1224 (6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of
1225 the corporation shall remain in effect during any emergency, and upon termination of the
1226 emergency, the emergency bylaws will cease to be operative.

1227

1228 **Commentary to Section 607.0303:**

1229 Florida follows the Model Act for the most part, with certain differences in subsections (2)(c),
1230 (4) and (6).

1231

1232 607.0304. Lack of Power to Act ~~Ultra vires~~.

1233 (1) Except as provided in subsection (2), the validity of corporate action, including, but
1234 not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a
1235 corporation, may not be challenged on the ground that the corporation lacks or lacked power to
1236 act.

1237 (2) A corporation's power to act may be challenged:

1238 (a) In a proceeding by a shareholder against the corporation to enjoin the act;

1239 (b) In a proceeding by the corporation, directly, derivatively, or through a receiver,
1240 trustee, or other legal representative, or through shareholders in a representative suit, against
1241 an incumbent or former director, officer, employee, or agent of the corporation; or

1242 (c) In a proceeding by the ~~Attorney General~~ the Department of Legal Affairs, (i) under
1243 s. 607.1430(1) or (ii) as provided in this act, to dissolve the corporation or in a proceeding
1244 ~~by the Attorney General~~ to enjoin the corporation from the transaction of unauthorized
1245 business.

1246 (3) In a shareholder's proceeding under paragraph (2)(a) to enjoin an unauthorized
1247 corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are
1248 parties to the proceeding, and may award damages for loss (other than anticipated profits)
1249 suffered by the corporation or another party because of enjoining the unauthorized act.

1250

1251 **Commentary to Section 607.0304:**

1252 Except for minor differences, the Florida act mirrors the Model Act.

1253 The change in the title is not intended to be a change in the law or to change the meaning of this
1254 section. The change is merely to align the title with the title now used in the corollary Model Act
1255 provision.

1256 Subsection (2)(b) is amended to correct what appears to be an inadvertent omission of the word
1257 “directors”.

1258 Subsection (2)(c) is amended (i) to reference the proper governmental agency (i.e., the
1259 Department of Legal Affairs, as opposed to the Attorney General) with power to bring the
1260 referenced actions, thus coordinating with the terminology in Section 607.1430, (ii) consistent
1261 with the language in the Model Act, to cross reference to the judicial dissolution provisions of
1262 Section 607.1430, and, (iii) to retain the right and power of the Department of Legal Affairs to
1263 pursue injunctive action so as to enjoin the corporation from the transaction of unauthorized
1264 business.

1265

ARTICLE 4

CORPORATE NAMES

1266
1267
1268
1269
1270
1271

607.0401. Corporate name.

1272

(1) A corporate name:

1273
1274
1275
1276

(4a) Must contain the word “corporation,” “company,” or “incorporated” or the abbreviation “Corp.,” or “Inc.,” or “Co.,” or the designation “Corp.,” or “Inc.,” or “Co.,” as will clearly indicate that it is a corporation instead of a natural person, partnership, or other business entity.⁹

1277
1278

(2b) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted in this chapter ~~act~~ and its articles of incorporation.

1279
1280
1281

(3c) May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

1282
1283
1284
1285
1286
1287

(4d) Must be distinguishable from the names of all other entities or filings that are on file with the department ~~Division of Corporations~~, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

1288

1. A suffix.

1289

2. A definite or indefinite article.

1290

3. The word “and” and the symbol “&.”

1291

4. The singular, plural, or possessive form of a word.

1292

~~(e) A recognized abbreviation of a root word.~~¹⁰

1293

5. A punctuation mark or a symbol.

⁹ DOS is requesting that the following language be added to subsection (1)(a) of s. 605.0112 and to subsection (3) of s. 620.1108: "as will clearly indicate that it is a [limited liability company/limited partnership] instead of a natural person, partnership, or other business entity." If this change is made, a grandfathering clause will need to be added to the referenced section of FRLCA and the referenced section of the Florida Revised Uniform Limited Partnership Act.

¹⁰ DOS is requesting that this same language be removed from s. 605.0112 and in s. 620.1108.

1294 (e) Notwithstanding the foregoing, a corporation may register under a name that is not
1295 otherwise distinguishable on the records of the department with the written consent of the
1296 other entity¹¹ if the consent is filed with the department at the time of registration of such
1297 name and if such name is not identical to the name of the other entity.

1298 (25) ~~As filed with the Department of State,~~ is for public notice only and does not alone
1299 create any presumption of ownership beyond that which is created under the common law.

1300 (3) This chapter does not control the use of fictitious names.

1301

¹¹ Correct s. 605.0112(1)(b) to change "owner entity" to "other entity" in conformity with this provision.

1302 **Commentary to Section 607.0401:**

1303 A new paragraph is added as subsection (1)(e). It permits, under certain circumstances, the use of
1304 names that are otherwise prohibited if appropriate consent in writing from the other entity is
1305 obtained and provided to the Department of State. The new paragraph mirrors the corollary
1306 language contained in s. 605.0112(1)(b) of FRLICA, but corrects an errant use of the word
1307 “owner.”

1308 Subsection (1)(e), consistent with s. 607.1506(5) with respect to foreign corporations, allows a
1309 name otherwise unavailable to be used by consent. The section also provides that the department
1310 shall deny such a request if the name of the entity requested with consent is identical to the name
1311 of the other entity.

1312

1313 607.0402. Reserved Name.

1314 (1) A person may reserve the exclusive use of a corporate name, including a fictitious or
1315 alternate name for a foreign corporation whose corporate name is not available, by delivering an
1316 application to the department for filing. The application must set forth the name and address of
1317 the applicant and the name proposed to be reserved. If the department finds that the corporate
1318 name applied for is available, it shall reserve the name for the applicant's exclusive use for a
1319 nonrenewable 120-day period.

1320 (2) The owner of a reserved corporate name may transfer the reservation to another person
1321 by delivering to the department a signed notice of the transfer that states the name and address of
1322 the transferee.

1323 (3) The department may revoke any reservation if, after a hearing, it finds that the
1324 application therefor or any transfer thereof was not made in good faith.

1325

1326 **Commentary to Section 607.0402:**

1327 Section 607.0402, which addresses the reservation of a corporate name, is newly adopted and is
1328 modeled after s. 4.02 of the Model Act. The Florida parallel statute was removed from the FBCA
1329 in 1998 (according to available commentary, because of then budgetary concerns affecting the
1330 Department of State). Florida is one of only three jurisdictions (along with Delaware and Puerto
1331 Rico) that does not allow for name reservations.

1332 Unlike the Model Act, but consistent with most jurisdictions that allow for name reservations,
1333 new s. 607.0402 includes in subsection (2) an express authorization for transfers of a reserved
1334 name.

1335

1336 607.0403. Registered name; application; renewal; revocation.

1337 (1) A foreign corporation may register its corporate name, or its corporate name with the
1338 ~~any~~ addition of any word or abbreviation required by s. 607.1506, if the name is distinguishable
1339 upon the records of the ~~D~~department of State from the corporate names that are not available
1340 under s. 607.0401(4).

1341 (2) A foreign corporation registers its corporate name, or its corporate name with any
1342 addition permitted ~~required~~ by s. 607.1506, by delivering to the ~~D~~department of State for filing
1343 an application:

1344 (a) Setting forth that its corporate name, or its corporate name with any addition
1345 ~~required by s. 607.1506~~, the state or country and date of its incorporation, and a brief
1346 description of the nature of the business which is to be conducted in this state in which it is
1347 ~~engaged~~; and

1348 (b) Accompanied by a certificate of existence, or a certificate setting forth that such
1349 corporation is in good standing under the laws of the state or country wherein it is organized
1350 (or a document of similar import), from the state or country of incorporation.

1351 (3) The name is registered for the applicant's exclusive use upon the effective date of the
1352 application and shall be effective until the close of the calendar year in which the application for
1353 registration is filed.

1354 (4) A foreign corporation the registration of which is effective may renew it from year to
1355 year by annually filing a renewal application which complies with the requirements of subsection
1356 (2) between October 1 and December 31 of the preceding year. The renewal application when
1357 filed renews the registration for the following calendar year.

1358 (5) A foreign corporation the registration of which is effective may thereafter qualify as a
1359 foreign corporation under the registered name or consent in writing to the use of that name by a
1360 corporation thereafter incorporated under this chapter ~~act~~ or by another foreign corporation
1361 thereafter authorized to transact business in this state. The registration terminates when the
1362 domestic corporation is incorporated or the foreign corporation qualifies or consents to the
1363 qualification of another foreign corporation under the registered name.

1364 (6) The ~~D~~department of State may revoke any registration if, after a hearing, it finds that
1365 the application therefor or any renewal thereof was not made in good faith.

1366

1367 **Commentary Section 607.0403:**

1368 No substantive changes have been made.

1369

1370

1371 ARTICLE 5

1372 OFFICE AND AGENT

1373 607.0501. Registered office and registered agent.

1374 (1) Each corporation shall ~~designate~~ have and continuously maintain in this state:

1375 (a) A registered office, which may be the same as its place of business in this state;
1376 and

1377 (b) A registered agent, which who may must be either:

1378 1. An individual who resides in this state whose business address office is
1379 identical to the address of the ~~with such~~ registered office; or

1380 2. Another domestic entity that is an authorized entity and whose business
1381 address is identical to the address of the registered office, or a foreign entity authorized
1382 to transact business in this state that is an authorized entity and whose business address
1383 is identical to the address of the registered office. ~~Another corporation or not for profit~~
1384 ~~corporation as defined in chapter 617, authorized to transact business or conduct its~~
1385 ~~affairs in this state, having a business office identical with the registered office; or~~

1386 3. ~~A foreign corporation or not for profit foreign corporation authorized pursuant~~
1387 ~~to this chapter or chapter 617 to transact business or conduct its affairs in this state,~~
1388 ~~having a business office identical with the registered office.~~

1389 (2) This section does not apply to corporations which are required by law to designate the
1390 Chief Financial Officer as their attorney for the service of process, associations subject to the
1391 provisions of chapter 665, and banks and trust companies subject to the provisions of the
1392 financial institutions codes.

1393 (3) Each initial A-registered agent, and each appointed pursuant to this section or a
1394 successor registered agent that is appointed, pursuant to s. 607.0502 on whom process may be
1395 served shall each file a statement in writing with the Department of State, in the such form and
1396 manner as shall be prescribed by the department, accepting the appointment as a-registered agent
1397 while simultaneously with his or her being designated as the registered agent. The Such
1398 statement of acceptance must provide shall state that the registered agent is familiar with, and
1399 accepts, the obligations of that position.

1400 (4) The duties of a registered agent are as follows:

1401 (a) To forward to the corporation at the address most recently supplied to the registered
1402 agent by the corporation, a process, notice or demand pertaining to the corporation which is
1403 served on or received by the registered agent;

1404 (b) If the registered agent resigns, to provide the notice required under s. 607.0503 to
1405 the corporation at the address most recently supplied to the registered agent by the
1406 corporation.

1407 (5) ~~The Department of State~~ shall maintain an accurate record of the registered agents
1408 and registered offices for ~~the~~ service of process and shall promptly furnish ~~any~~ information
1409 disclosed thereby ~~promptly~~ upon request and payment of the required fee.

1410 (6) A corporation may not prosecute or maintain any action in a court in this state until the
1411 corporation complies with the provisions of this section, pays to the department any amounts
1412 required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays
1413 to the department a penalty of \$5 for each day it has failed to so comply or \$500, whichever is
1414 less.¹²

1415 (7) A court may stay a proceeding commenced by a corporation until the corporation
1416 complies with this section.

1417

¹² Additionally, the following changes should be made to s. 605.0113(5):

(5) A limited liability company and each foreign limited liability company that has a certificate of authority under s. 605.0902 may not prosecute ~~or, maintain, or defend~~ an action in a court ~~in this state until the~~ limited liability company complies with the provisions of this section, pays to the department any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays to the department a penalty of \$5 for each day it has failed to so comply or \$500, whichever is less.

1418 **Commentary to Section 607.0501:**

1419 The Florida statute contains the same elements as, but is significantly more expansive than the
1420 Model Act. The revisions to the statute are based on s. 605.0113 of FRLCA covering this same
1421 topic. Sections (2) through (6) of the Florida statute do not appear in the Model Act.

1422 The scope of the changes to subsection (6), which is modeled after the corresponding LLC
1423 statutory provision, has been modified to clarify that a domestic corporation cannot prosecute or
1424 maintain an action in this state unless it has complied with this section, but may defend an action
1425 in this state. This modification is also proposed to be made to s. 605.0113 for harmonization.
1426 Allowing a corporation to defend an action (even if the corporation is not in compliance with this
1427 provision) is consistent with the corollary Model Act provision and with s. 607.1502 relating to
1428 the consequences of transacting business in this state without authority.

1429 New subsection (6) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
1430 commenced by a corporation until the corporation complies with this section. The change in
1431 subsection (6) relating to payment of a penalty reflects the current position of the Department of
1432 State not to collect this penalty unless required to do so by a court of competent jurisdiction.

1433

1434 607.0502. Change of registered office or registered agent. ; ~~resignation of registered~~
1435 agent

1436 (1) In order to change its registered agent or registered office address, aA corporation may
1437 deliver to the department for filing ~~change its registered office or its registered agent upon filing~~
1438 with the Department of State a statement of change containing the following setting forth:

1439 (a) The name of the corporation.

1440 (b) The name of its current registered agent.

1441 (c) If the current registered agent is to be changed, the name of the new registered
1442 agent.

1443 (d) The street address of its current registered office for its current registered agent.

1444 (e) If the street address of the current registered office is to be changed, the new street
1445 address of the registered office in this state.

1446 ~~(b) The street address of its current registered office;~~

1447 ~~(c) If the current registered office is to be changed, the street address of the new~~
1448 ~~registered office;~~

1449 ~~(d) The name of its current registered agent;~~

1450 ~~(e) If its current registered agent is to be changed, the name of the new registered~~
1451 ~~agent and the new agent's written consent (either on the statement or attached to it) to the~~
1452 ~~appointment;~~

1453 ~~(f) That the street address of its registered office and the street address of the~~
1454 ~~business office of its registered agent, as changed, will be identical;~~

1455 ~~(fg) That such change was authorized by resolution duly adopted by its board of~~
1456 ~~directors or by an officer of the corporation so authorized by the board of directors.~~

1457 ~~(2) Any registered agent may resign his or her agency appointment by signing and~~
1458 ~~delivering for filing with the Department of State a statement of resignation and mailing a copy~~
1459 ~~of such statement to the corporation at its principal office address shown in its most recent~~
1460 ~~annual report or, if none, filed in the articles of incorporation or other most recently filed~~
1461 ~~document. The statement of resignation shall state that a copy of such statement has been mailed~~
1462 ~~to the corporation at the address so stated. The agency is terminated as of the 31st day after the~~
1463 ~~date on which the statement was filed and unless otherwise provided in the statement,~~
1464 ~~termination of the agency acts as a termination of the registered office.~~

1465 (2) If the registered agent is changed, the written acceptance of the successor registered
1466 agent described in s. 607.0501(3) must also be included in or attached to the statement of change.

1467 (3) A statement of change is effective when filed by the department.

1468 (4) The changes described in this section may also be made on the corporation's annual
1469 report, in an application for reinstatement filed with the department under s. 607.1622, or in an
1470 amendment to or restatement of a company's articles of incorporation in accordance with s.
1471 607.0202.

1472 ~~(3) If a registered agent changes his or her business name or business address, he or she~~
1473 ~~may change such name or address and the address of the registered office of any corporation for~~
1474 ~~which he or she is the registered agent by:~~

1475 ~~(a) Notifying all such corporations in writing of the change ,~~

1476 ~~(b) Signing (either manually or in facsimile) and delivering to the Department of~~
1477 ~~State for filing a statement that substantially complies with the requirements of paragraphs~~
1478 ~~(1)(a)-(f), setting forth the names of all such corporations represented by the registered~~
1479 ~~agent, and~~

1480 ~~(c) Reciting that each corporation has been notified of the change.~~

1481 ~~(4) Changes of the registered office or registered agent may be made by a change on the~~
1482 ~~corporation's annual report form filed with the Department of State.~~

1483 ~~(5) The Department of State shall collect a fee pursuant to s. 15.09(2) for the filings~~
1484 ~~authorized under this section.~~

1485

1486 **Commentary to Section 607.0502:**

1487 The Florida statute and Model Act statutes are very similar, although Florida's statute is more
1488 expansive. The language changes are largely derived from s. 605.0114 of FRLCA.

1489 Old subsection (2) has been replaced with new s. 607.0503 and subsection (3) has been replaced
1490 with new s. 607.05031. Both of these sections track the comparable provisions of FRLCA.

1491 A provision comparable to current subsection (1)(g) was not included in FRLCA and has been
1492 eliminated in this statute, even though it has been in the corporate statute since 1989.

1493

1494 607.0503. Resignation of registered agent.

1495 (1) A registered agent may resign as agent for a corporation by delivering to the
1496 department for filing a signed statement of resignation containing the name of the corporation.

1497 (2) After delivering the statement of resignation to¹³ the department for filing, the
1498 registered agent shall promptly mail a copy to the corporation at its current mailing address.

1499 (3) A registered agent is terminated upon the earlier of:

1500 (a) The 31st day after the department files the statement of resignation; or

1501 (b) When a statement of change or other record designating a new registered agent is
1502 filed by the department.

1503 (4) When a statement of resignation takes effect, the registered agent ceases to have
1504 responsibility for a matter thereafter tendered to it as agent for the corporation. The resignation
1505 does not affect contractual rights that the corporation has against the agent or that the agent has
1506 against the corporation.

1507 (5) A registered agent may resign from a corporation regardless of whether the corporation
1508 has active status.

1509

¹³ The corresponding LLC statute (s. 605.0115) should be changed to use the word "to" instead of the word "with."

1510 **Commentary to Section 607.0503:**

1511 This section is derived from s. 605.0115 of FRLCA. It replaces s. 607.0502(2). The
1512 corresponding section of the Model Act is s. 5.03.

1513

- 1514 607.05031. Change of name or address by registered agent.
- 1515 (1) If a registered agent changes his or her name or address, the agent may deliver to the
- 1516 department for filing a statement of change that provides the following:
- 1517 (a) The name of the corporation represented by the registered agent.
- 1518 (b) The name of the registered agent as currently shown in the records of the
- 1519 department for the corporation.
- 1520 (c) If the name of the registered agent has changed, its new name.
- 1521 (d) If the address of the registered agent has changed, the new address.
- 1522 (e) A statement that the registered agent has given the notice required under
- 1523 subsection (2).
- 1524 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 1525 changes made by the statement filed with the department to the represented corporation.
- 1526

1527 **Commentary to Section 607.05031:**

1528 This section is derived from s. 605.0116 of FRLCA. It replaces s. 607.0502(3).

1529

1530 607.05032. Delivery of notice or other communication.

1531 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
1532 or other communication includes delivery by hand, the United States Postal Service, a
1533 commercial delivery service, and electronic transmission, all as more particularly described in s.
1534 607.0141.

1535 (2) Except as provided in subsection (3), delivery to the department is effective only when
1536 a notice or other communication is received by the department.

1537 (3) If a check is mailed to the department for payment of an annual report fee or the annual
1538 fee required under s. 607.193, the check shall be deemed to have been received by the
1539 department as of the postmark date appearing on the envelope or package transmitting the check
1540 if the envelope or package is received by the department

1541

1542 **Commentary to Section 607.05032:**

1543 This section is derived from s. 605.0118 of FRLCA. It is new to the corporate statute.

1544

1545 607.0504. Service of process, notice, or demand on a corporation.

1546 (1) A corporation may be served with process required or authorized by law by serving on
1547 its registered agent.

1548 (2) If a corporation ceases to have a registered agent or if its registered agent cannot with
1549 reasonable diligence be served, the process required or permitted by law may instead be served
1550 on the chair of the board, the president, any vice president, the secretary, or the treasurer of the
1551 corporation at the principal office of the corporation in this state.

1552 (3) If the process cannot be served on a corporation pursuant to subsection (1) or
1553 subsection (2), the process may be served on the department as an agent of the corporation.

1554 (4) Service of process on the department may be made by delivering to and leaving with
1555 the department duplicate copies of the process.

1556 (5) Service is effectuated under subsection (3) on the date shown as received by the
1557 department.

1558 (6) The department shall keep a record of each process, notice, and demand served
1559 pursuant to this section and record the time of and the action taken regarding the service.

1560 (7) Any notice or demand on a corporation under this chapter may be given or made to the
1561 chair of the board, the president, any vice president, the secretary, or the treasurer of the
1562 corporation; to the registered agent of the corporation at the registered office of the corporation
1563 in this state; or to any other address in this state that is in fact the principal office of the
1564 corporation in this state.¹⁴

1565 (8) This section does not affect the right to serve process, give notice, or make a demand in
1566 any other manner provided by law.

1567 ~~(1) Process against any corporation may be served in accordance with chapter 48 or~~
1568 ~~chapter 49.~~

1569 ~~(2) Any notice to or demand on a corporation under this act may be made to the chair of~~
1570 ~~the board, the president, any vice president, the secretary, or the treasurer; to the registered agent~~
1571 ~~of the corporation at the registered office of the corporation in this state; or to any other address~~
1572 ~~in this state that is in fact the principal office of the corporation in this state.~~

1573 ~~(3) This section does not prescribe the only means, or necessarily the required means, of~~
1574 ~~serving notice or demand on a corporation.~~

¹⁴ Section 605.0117 needs to be modified consistent with this section of the FBCA to bifurcate between service of process and notices and demands on the company.

1575 **Commentary to Section 607.0504:**

1576 This section is derived from s. 605.0117 of FRLCA, which establishes a "waterfall" approach
1577 to proper service on a limited liability company of any process, notice or demand. The provisions
1578 of this section as revised are also consistent with s. 504 of the Model Act.

1579 The one change made was to bifurcate between the statutory provisions relating to service of
1580 process and the provisions dealing with notices or demands on the corporation.

1581 Additionally, corollary changes are being proposed to s. 48.081 of the Florida Statutes dealing
1582 generally with service on a corporation. These changes will make this section consistent with s.
1583 48.062 of the Florida Statutes as amended in connection with the 2013 adoption of FRLCA.

1584 48.081 Service on corporation.¹⁵

1585
1586 (1) Process against any private corporation, domestic or foreign, may be served:

1587
1588 (a) ~~On the president or vice president, or other head of the corporation;~~

1589
1590 (b) ~~In the absence of any person described in paragraph (a), on the cashier,~~
1591 ~~treasurer, secretary, or general manager;~~

1592
1593 (c) ~~In the absence of any person described in paragraph (a) or paragraph (b),~~
1594 ~~on any director; or~~

1595
1596 (d) ~~In the absence of any person described in paragraph (a), paragraph (b), or~~
1597 ~~paragraph (c), on any officer or business agent residing in the state.~~

1598
1599 on the registered agent designated by the corporation under chapter 607. A person
1600 attempting to serve process pursuant to this subsection may serve the process on any
1601 employee of the registered agent during the first attempt at service even if the registered
1602 agent is a natural person and is temporarily absent from his or her office.

1603
1604 (2) ~~If a foreign corporation has none of the foregoing officers or agents in this~~
1605 ~~state, service may be made on any agent transacting business for it in this state.~~

1606
1607 (3)(a) ~~As an alternative to all of the foregoing, process may be served on the agent~~
1608 ~~designated by the corporation under s. 48.091. However, if service cannot be made on a~~
1609 ~~registered agent because of failure to comply with s. 48.091, service of process shall be~~
1610 ~~permitted on any employee at the corporation's principal place of business or on any~~
1611 ~~employee of the registered agent. A person attempting to serve process pursuant to this~~
1612 ~~paragraph may serve the process on any employee of the registered agent during the first~~
1613 ~~attempt at service even if the registered agent is temporarily absent from his or her office.~~

¹⁵ The Subcommittee is in discussion with members of the Business Litigation Committee of the Business Law Section of The Florida Bar regarding additional changes to Chapter 48.

1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635

1636
1637
1638
1639
1640
1641
1642

1643

(2) If service cannot be made on a registered agent of the corporation because of failure to comply with chapter 607 or because the corporation does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the corporation, domestic or foreign, may be served on the chair of the board, the president, any vice president, the secretary, or the treasurer at the principal office of the corporation in this state.

(3) If, after reasonable diligence, service of process cannot be served on a corporation pursuant to subsection (1) or subsection (2), the process may be served on the department as an agent of the company.

(4) If, after reasonable diligence, service of process cannot be completed under subsection (1) or subsection (2), service of process may be effected by service upon the Secretary of State as agent of the corporation as provided for in s. 48.181.

(5) If the address provided for the registered agent ~~or~~, officer, ~~director~~, ~~or~~ ~~principal place of business~~ is a residence, a private mailbox, a virtual office, or an executive office or mini suite, service on the corporation may be made by serving the registered agent or ~~;~~ officer, ~~or director~~ in accordance with s. 48.031.

(46) This section does not apply to service of process on insurance companies.

(57) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

1644 607.0505. Registered agent; duties.

1645 (1) (a) Each corporation, foreign corporation, or alien business organization that owns
1646 real property located in this state, that owns a mortgage on real property located in this state,
1647 or that transacts business in this state shall have and continuously maintain in this state a
1648 registered office and a registered agent and shall file with the ~~D~~department of ~~S~~State notice of
1649 the registered office and registered agent as provided in ss. 607.0501 and 607.0502. The
1650 appointment of a registered agent in compliance with s. 607.0501 or s. 607.1507 is sufficient
1651 for purposes of this section provided the registered agent so appointed files, in such form
1652 and manner as prescribed by the ~~D~~department of ~~S~~State, an acceptance of the obligations
1653 provided for in this section.

1654 (b) Each such corporation, foreign corporation, or alien business organization which
1655 fails to have and continuously maintain a registered office and a registered agent as required
1656 in this section will be liable to this state for \$500 for each year, or part of a year, during
1657 which the corporation, foreign corporation, or alien business organization fails to comply
1658 with these requirements; but such liability will be forgiven in full upon the compliance by
1659 the corporation, foreign corporation, or alien business organization with the requirements of
1660 this subsection, even if such compliance occurs after an action to collect such liability is
1661 instituted. The Department of Legal Affairs may file an action in the circuit court for the
1662 judicial circuit in which the corporation, foreign corporation, or alien business organization
1663 is found or transacts business, or in which real property belonging to the corporation, foreign
1664 corporation, or alien business organization is located, to petition the court for an order
1665 directing that a registered agent be appointed and that a registered office be designated, and
1666 to obtain judgment for the amount owed under this subsection. In connection with such
1667 proceeding, the Department of Legal Affairs may, without prior approval by the court, file a
1668 lis pendens against real property owned by the corporation, foreign corporation, or alien
1669 business organization, which lis pendens shall set forth the legal description of the real
1670 property and shall be filed in the public records of the county where the real property is
1671 located. If the lis pendens is filed in any county other than the county in which the action is
1672 pending, the lis pendens which is filed must be a certified copy of the original lis pendens.
1673 The failure to comply timely or fully with an order directing that a registered agent be
1674 appointed and that a registered office be designated will result in a civil penalty of not more
1675 than \$1,000 for each day of noncompliance. A judgment or an order of payment entered
1676 pursuant to this subsection will become a judgment lien against any real property owned by
1677 the corporation, foreign corporation, or alien business organization when a certified copy of
1678 the judgment or order is recorded as required by s. 55.10. The Department of Legal Affairs
1679 will be able to avail itself of, and is entitled to use, any provision of law or of the Florida
1680 Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a
1681 judgment or order of payment. The state, through the Attorney General, may bid, at any
1682 judicial sale to enforce its judgment lien, any amount up to the amount of the judgment or

1683 lien obtained pursuant to this subsection. All moneys recovered under this subsection shall
1684 be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with
1685 the procedure set forth in s. 895.09. A corporation, foreign corporation, or alien business
1686 organization which fails to have and continuously maintain a registered office and a
1687 registered agent as required in this section may not defend itself against any action instituted
1688 by the Department of Legal Affairs or by any other agency of this state until the
1689 requirements of this subsection have been met.

1690 (2) Each corporation, foreign corporation, or alien business organization that owns real
1691 property located in this state, that owns a mortgage on real property located in this state, or that
1692 transacts business in this state shall, pursuant to subpoena served upon the registered agent of the
1693 corporation, foreign corporation, or alien business organization issued by the Department of
1694 Legal Affairs, produce, through its registered agent or through a designated representative within
1695 30 days after service of the subpoena, testimony and records reflecting the following:

1696 (a) True copies of documents evidencing the legal existence of the entity, including
1697 the articles of incorporation and any amendments to the articles of incorporation or the legal
1698 equivalent of the articles of incorporation and such amendments.

1699 (b) The names and addresses of each current officer and director of the entity or
1700 persons holding equivalent positions.

1701 (c) The names and addresses of all prior officers and directors of the entity or persons
1702 holding equivalent positions, for a period not to exceed the 5 years previous to the date of
1703 issuance of the subpoena.

1704 (d) The names and addresses of each current shareholder, equivalent equitable owner,
1705 and ultimate equitable owner of the entity, the number of which names is limited to the
1706 names of the 100 shareholders, equivalent equitable owners, and ultimate equitable owners
1707 that, in comparison to all other shareholders, equivalent equitable owners, or ultimate
1708 equitable owners, respectively, own the largest number of shares of stock of the corporation,
1709 foreign corporation, or alien business organization or the largest percentage of an equivalent
1710 form of equitable ownership of the corporation, foreign corporation, or alien business
1711 organization.

1712 (e) The names and addresses of all prior shareholders, equivalent equitable owners,
1713 and ultimate equitable owners of the entity for the 12-month period preceding the date of
1714 issuance of the subpoena, the number of which names is limited to the 100 shareholders,
1715 equivalent equitable owners, and ultimate equitable owners that, in comparison to all other
1716 shareholders, equivalent equitable owners, or ultimate equitable owners, respectively, own
1717 the largest number of shares of stock of the corporation, foreign corporation, or alien

1718 business organization or the largest percentage of an equivalent form of equitable ownership
1719 of the corporation, foreign corporation, or alien business organization.

1720 (f) The names and addresses of the person or persons who provided the records and
1721 information to the registered agent or designated representative of the entity.

1722 (g) The requirements of paragraphs (d) and (e) do not apply to:

1723 1. A financial institution;

1724 2. A corporation, foreign corporation, or alien business organization the
1725 securities of which are registered pursuant to s. 12 of the Securities Exchange Act
1726 of 1934, 15 U.S.C. ss. 78a-78kk, if such corporation, foreign corporation, or alien
1727 business organization files with the United States Securities and Exchange
1728 Commission the reports required by s. 13 of that act; or

1729 3. A corporation, foreign corporation, or alien business organization, the
1730 securities of which are regularly traded on an established securities market located
1731 in the United States or on an established securities market located outside the
1732 United States, if such non-United States securities market is designated by rule
1733 adopted by the Department of Legal Affairs;

1734 upon a showing by the corporation, foreign corporation, or alien business
1735 organization that the exception in subparagraph 1., subparagraph 2., or
1736 subparagraph 3. applies to the corporation, foreign corporation, or alien business
1737 organization. Such exception in subparagraph 1., subparagraph 2., or subparagraph
1738 3. does not, however, exempt the corporation, foreign corporation, or alien business
1739 organization from the requirements for producing records, information, or
1740 testimony otherwise imposed under this section for any period of time when the
1741 requisite conditions for the exception did not exist.

1742 (3) The time limit for producing records and testimony may be extended for good cause
1743 shown by the corporation, foreign corporation, or alien business organization.

1744 (4) A person, corporation, foreign corporation, or alien business organization designating
1745 an attorney, accountant, or spouse as a registered agent or designated representative shall, with
1746 respect to this state or any agency or subdivision of this state, be deemed to have waived any
1747 privilege that might otherwise attach to communications with respect to the information required
1748 to be produced pursuant to subsection (2), which communications are among such corporation,
1749 foreign corporation, or alien business organization; the registered agent or designated
1750 representative of such corporation, foreign corporation, or alien business organization; and the
1751 beneficial owners of such corporation, foreign corporation, or alien business organization. The

1752 duty to comply with the provisions of this section will not be excused by virtue of any privilege
1753 or provision of law of this state or any other state or country, which privilege or provision
1754 authorizes or directs that the testimony or records required to be produced under subsection (2)
1755 are privileged or confidential or otherwise may not be disclosed.

1756 (5) If a corporation, foreign corporation, or alien business organization fails without lawful
1757 excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the
1758 Department of Legal Affairs may file an action in the circuit court for the judicial circuit in
1759 which the corporation, foreign corporation, or alien business organization is found or transacts
1760 business or in which real property belonging to the corporation, foreign corporation, or alien
1761 business organization is located, for an order compelling compliance with the subpoena. The
1762 failure without a lawful excuse to comply timely or fully with an order compelling compliance
1763 with the subpoena will result in a civil penalty of not more than \$1,000 for each day of
1764 noncompliance with the order. In connection with such proceeding, the Department of Legal
1765 Affairs ~~department~~ may, without prior approval by the court, file a lis pendens against real
1766 property owned by the corporation, foreign corporation, or alien business organization, which lis
1767 pendens shall set forth the legal description of the real property and shall be filed in the public
1768 records of the county where the real property is located. If the lis pendens is filed in any county
1769 other than the county in which the action is pending, the lis pendens which is filed must be a
1770 certified copy of the original lis pendens. A judgment or an order of payment entered pursuant to
1771 this subsection will become a judgment lien against any real property owned by the corporation,
1772 foreign corporation, or alien business organization when a certified copy of the judgment or
1773 order is recorded as required by s. 55.10. The Department of Legal Affairs ~~department~~ will be
1774 able to avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil
1775 Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of
1776 payment. The state, through the Attorney General, may bid, at any judicial sale to enforce its
1777 judgment lien, an amount up to the amount of the judgment or lien obtained pursuant to this
1778 subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss.
1779 895.01-895.09 and used or distributed in accordance with the procedure set forth in s. 895.09.

1780 (6) Information provided to, and records and transcriptions of testimony obtained by, the
1781 Department of Legal Affairs pursuant to this section are confidential and exempt from the
1782 provisions of s. 119.07(1) while the investigation is active. For purposes of this section, an
1783 investigation shall be considered “active” while such investigation is being conducted with a
1784 reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal
1785 proceeding. An investigation does not cease to be active so long as the Department of Legal
1786 Affairs ~~department~~ is proceeding with reasonable dispatch and there is a good faith belief that
1787 action may be initiated by the Department of Legal Affairs ~~department~~ or other administrative or
1788 law enforcement agency. Except for active criminal intelligence or criminal investigative
1789 information, as defined in s. 119.011, and information which, if disclosed, would reveal a trade
1790 secret, as defined in s. 688.002, or would jeopardize the safety of an individual, all information,

1791 records, and transcriptions become public record when the investigation is completed or ceases
1792 to be active. The Department of Legal Affairs ~~department~~ shall not disclose confidential
1793 information, records, or transcriptions of testimony except pursuant to the authorization by the
1794 Attorney General in any of the following circumstances:

1795 (a) To a law enforcement agency participating in or conducting a civil
1796 investigation under chapter 895, or participating in or conducting a criminal
1797 investigation.

1798 (b) In the course of filing, participating in, or conducting a judicial proceeding
1799 instituted pursuant to this section or chapter 895.

1800 (c) In the course of filing, participating in, or conducting a judicial proceeding
1801 to enforce an order or judgment entered pursuant to this section or chapter 895.

1802 (d) In the course of a criminal or civil proceeding.

1803 A person or law enforcement agency which receives any information, record, or
1804 transcription of testimony that has been made confidential by this subsection shall maintain the
1805 confidentiality of such material and shall not disclose such information, record, or transcription
1806 of testimony except as provided for herein. Any person who willfully discloses any information,
1807 record, or transcription of testimony that has been made confidential by this subsection, except as
1808 provided for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s.
1809 775.082 or s. 775.083. If any information, record, or testimony obtained pursuant to subsection
1810 (2) is offered in evidence in any judicial proceeding, the court may, in its discretion, seal that
1811 portion of the record to further the policies of confidentiality set forth herein.

1812 (7) This section is supplemental and shall not be construed to preclude or limit the scope
1813 of evidence gathering or other permissible discovery pursuant to any other subpoena or
1814 discovery method authorized by law or rule of procedure.

1815 (8) It is unlawful for any person, with respect to any record or testimony produced
1816 pursuant to a subpoena issued by the Department of Legal Affairs under subsection (2), to
1817 knowingly and willfully falsify, conceal, or cover up a material fact by a trick, scheme, or
1818 device; make any false, fictitious, or fraudulent statement or representation; or make or use any
1819 false writing or document knowing the writing or document to contain any false, fictitious, or
1820 fraudulent statement or entry. A person who violates this provision is guilty of a felony of the
1821 third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1822 (9) In the absence of a written agreement to the contrary, a registered agent is not liable for
1823 the failure to give notice of the receipt of a subpoena under subsection (2) to the corporation,
1824 foreign corporation, or alien business organization which appointed such registered agent if such

1825 registered agent timely sends written notice of the receipt of such subpoena by first-class mail or
1826 domestic or international air mail, postage fees prepaid, to the last address that has been
1827 designated in writing to the registered agent by such appointing corporation, foreign corporation,
1828 or alien business organization.

1829 (10) The designation of a registered agent and a registered office as required by subsection
1830 (1) for a corporation, foreign corporation, or alien business organization which owns real
1831 property in this state or a mortgage on real property in this state is solely for the purposes of this
1832 ~~act~~ chapter; and, notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any other relevant
1833 section of the Florida Statutes, such designation shall not be used in determining whether the
1834 corporation, foreign corporation, or alien business organization is actually doing business in this
1835 state.

1836 (11) As used in this section, the term:

1837 (a) “Alien business organization” means:

1838 1. Any corporation, association, partnership, trust, joint stock company, or
1839 other entity organized under any laws other than the laws of the United States, of
1840 any United States territory or possession, or of any state of the United States; or

1841 2. Any corporation, association, partnership, trust, joint stock company, or
1842 other entity or device 10 percent or more of which is owned or controlled, directly
1843 or indirectly, by an entity described in subparagraph 1. or by a foreign natural
1844 person.

1845 (b) “Financial institution” means:

1846 1. A bank, banking organization, or savings association, as defined in s.
1847 220.62;

1848 2. An insurance company, trust company, credit union, or industrial savings
1849 bank, any of which is licensed or regulated by an agency of the United States or
1850 any state of the United States; or

1851 3. Any person licensed under part III of chapter 494.

1852 (c) “Mortgage” means a mortgage on real property situated in this state, except a
1853 mortgage owned by a financial institution.

1854 (d) “Real property” means any real property situated in this state or any interest in
1855 such real property.

1856 (e) “Ultimate equitable owner” means a natural person who, directly or indirectly,
1857 owns or controls an ownership interest in a corporation, foreign corporation, or alien
1858 business organization, regardless of whether such natural person owns or controls such
1859 ownership interest through one or other natural persons or one or more proxies, powers
1860 of attorney, nominees, corporations, associations, partnerships, trusts, joint stock
1861 companies, or other entities or devices, or any combination thereof.

1862 (12) Any alien business organization may withdraw its registered agent designation by
1863 delivering an application for certificate of withdrawal to the ~~D~~department of ~~of~~ State for filing.
1864 Such application shall set forth:

1865 (a) The name of the alien business organization and the jurisdiction under the law of
1866 which it is incorporated or organized.

1867 (b) That it is no longer required to maintain a registered agent in this state.

1868

1869 **Commentary to Section 607.0505:**

1870 This section is not included in the Model Act. It is unique to Florida and was adopted in 1984 as
1871 part of the Florida RICO Act. It was intended to provide law enforcement officials with
1872 additional powers to fight organized crime.

1873 This section expands the registered agent and registered office requirements to foreign
1874 corporations and other types of entities that are not required to qualify to do business in Florida
1875 under the FBCA if such foreign corporations or other entities are "alien business organizations"
1876 as defined in subsection 11(a) of the section. Thus, the reach of this section is much broader than
1877 the other provisions of the FBCA insofar as the section attempts to impose registered agent and
1878 registered office requirements on entities that otherwise would not be subject to the FBCA. This
1879 section imposes substantial reporting, notification, waiver of immunity and disclosure
1880 requirements on registered agents of corporations, both domestic and foreign, as well as alien
1881 business organizations, and it includes criminal penalties for non-compliance with its terms.

1882 Because of the broad language in Section 607.0505 of the FBCA, although these provisions are
1883 not contained in Florida's other entity statutes, these provisions are likely to apply to other types
1884 of Florida entities.

1885 Minor changes have been made to reflect the use of the defined term "Department" as reference
1886 to the "Department of State, Division of Corporations" and to reflect when the use of the term
1887 "department" in this section means the "Department of Legal Affairs."

1888 This section contains some elements similar to, but does not seem to be analogous to, the Model
1889 Registered Agent's Act (MRAA), which was first drafted in 2004 by NCCUSL in association
1890 with the ABA and the International Association of Commercial Administrators (IACA). To date,
1891 MRAA has been adopted in twelve jurisdictions: The District of Columbia, Hawaii, Idaho,
1892 Maine, Montana, North Dakota, South Dakota, Utah, Arkansas, Maine, Wyoming, and Nevada.

1893

ARTICLE 6

SHARES AND DISTRIBUTIONS

1894
1895
1896
1897

1898 607.0601. Authorized shares.

1899 (1) The articles of incorporation must set forth any ~~prescribe the~~ classes of shares and
1900 series of shares within a class, and the number of shares of each class and series, that the
1901 corporation is authorized to issue. If more than one class or series of shares is authorized, the
1902 articles of incorporation must prescribe a distinguishing designation for each class or series and
1903 before ~~prior to~~ the issuance of shares of a class or series, describe the terms, including the
1904 preferences, limitations, and relative rights of that class or series ~~must be described in the articles~~
1905 ~~of incorporation.~~ All shares of a class or series must have terms, including preferences,
1906 limitations, and relative rights identical with those of other shares of the same class or series,
1907 except to the extent otherwise permitted by this section, or s. 607.0602 or s. 607.0624.

1908 (2) The articles of incorporation must authorize:

1909 (a) One or more classes or series of shares that together have unlimited voting
1910 rights, and

1911 (b) One or more classes or series of shares (which may be the same class or
1912 series or classes or series as those with voting rights) that together are entitled to receive
1913 the net assets of the corporation upon dissolution.

1914 (3) The articles of incorporation may authorize one or more classes or series of shares
1915 that:

1916 (a) Have special, conditional, or limited voting rights, or no right to vote, except to
1917 the extent otherwise provided ~~prohibited~~ by this act;

1918 (b) Are redeemable or convertible as specified in the articles of incorporation:

1919 1. At the option of the corporation, the shareholder, or another person or
1920 upon the occurrence of a specified ~~designated~~ event;

1921 2. For cash, indebtedness, securities, or other property; or

1922 3. At prices and in an amount specified, or determined, in accordance with a
1923 formula ~~In a designated amount or in an amount determined in accordance with a~~
1924 ~~designated formula or by reference to extrinsic data or events;~~

1925 (c) Entitle the holders to distributions calculated in any manner, including
1926 dividends that may be cumulative, noncumulative, or partially cumulative;

1927 (d) Have preference over any other class or series of shares with respect to
1928 distributions, including ~~dividends and~~ distributions upon the dissolution of the
1929 corporation.

1930 (4) The description of the designations, preferences, limitations, and relative rights of
1931 share classes or series in subsection (3) is not exhaustive.

1932 (5) Terms of shares may be made dependent on facts ascertainable outside the articles
1933 of incorporation in accordance with s. 607.0120(11).

1934 (6) Shares which are entitled to preference in the distribution of dividends or assets
1935 shall not be designated as common shares. Shares which are not entitled to preference in the
1936 distribution of dividends or assets shall be common shares and shall not be designated as
1937 preferred shares.

1938

1939 **Commentary to Section 607.0601:**

1940 Clarifying changes are made in subsections (1) and (2) to add the concept of "series" to this
1941 section, consistent with the Model Act language. Since the FBCA already includes the concept of
1942 a "series" of shares, this change is viewed as non-substantive.

1943 The Model Act changes the word "unlimited" to "full" in the corollary Model Act provision to
1944 subsection (2). The commentary to this provision in the Model Act states that "the phrase "full
1945 voting rights" refers to the right to vote on all matters for which voting is required by either the
1946 Act or the corporation's articles of incorporation." The corollary Delaware provision, s. 151(a),
1947 also uses term "full" in this context. Nevertheless, because the Florida provision has been in
1948 place since 1989, has never been misinterpreted, and is believed to be substantively the same, the
1949 term "unlimited" has been retained.

1950 Subsection (3) of the Florida statute has been revised so that it is modeled after the better worded
1951 subsection (c) of the corollary applicable Model Act provision.

1952 Subsection (5) has been added to make clear, following the corollary Model Act section, that the
1953 terms of shares may be made dependent on facts ascertainable outside the articles of
1954 incorporation, so long as it is in accordance with s. 607.0120(11) dealing with this subject.
1955 However, the statute is revised to use the term "ascertainable" instead of the Model Act wording
1956 "objectively ascertainable." The corollary provision in the LLC statute (s. 605.1005), the
1957 corollary provision in RULLCA (s. 1005) and the corollary provision in the DGLC (s.102(d)), do
1958 not use the word "objectively." To harmonize the wording in FRLLCa and the FBCA, the word
1959 "ascertainable" is used in the revised statute, rather than the Model Act language ("objectively
1960 ascertainable"). Notwithstanding, since reasonableness is generally required in interpreting a
1961 provision of this type, the words are believed to be substantively identical.

1962 Subsection (e) of Model Act s. 6.01, which provides that terms of shares may be varied among
1963 holders of the same class or series so long as such variations are expressly set forth in the articles
1964 of incorporation, has not been added to the statute. While the FBCA does allow limited variation
1965 in the terms of shares of the same class or series under s. 607.0624 with respect to rights, it
1966 historically has not been the general rule in Florida.

1967

1968 607.0602. Terms of class or series determined by board of directors.

1969 (1) If the articles of incorporation so provide, the board of directors ~~is authorized may~~
1970 ~~determine, in whole or in part, the preferences, limitations and relative rights (within the limits~~
1971 ~~set forth in s. 607.0601) of, without shareholder approval, to:~~

1972 (a) classify any class of unissued shares before the issuance of any shares of that
1973 into one or more classes or into one or more series within a class; or

1974 (b) ~~one or more series within a class before the issuance of any shares of that~~
1975 ~~series~~ reclassify any unissued shares of any class into one or more classes or into one or
1976 more series within one or more classes; or

1977 (c) reclassify any unissued shares of any series of any class into one or more
1978 classes or into one or more series within a class.

1979 (2) If the board of directors acts pursuant to subsection (1), it shall determine the terms,
1980 including the preferences, limitations and relative rights, to the extent permitted under s.
1981 607.0601, of:

1982 (a) Any class of shares before the issuance of any shares of that class, or

1983 (b) Any series within a class before the issuance of any shares of that series.

1984 (3) Each class and each series of a class must be given a distinguishing designation.

1985 (4) All shares of a series must have preferences, limitations, and relative rights
1986 identical with those of other shares of the same series and, except to the extent otherwise
1987 provided in the description of the series, of those of other series of the same class.

1988 (5) Before issuing any shares of a class or series created under this section, the
1989 corporation ~~shall must~~ deliver to the ~~D~~department of ~~S~~State for filing articles of amendment,
1990 which are effective without shareholder action, that set forth:

1991 (a) The name of the corporation;

1992 (b) The text of the amendment determining the terms of the class or series of
1993 shares;

1994 (c) The date the amendment was adopted; and

1995 (d) A statement that the amendment was duly adopted by the board of directors.

1996

1997 **Commentary to Section 607.0602:**

1998 The changes in this section are based on the 2003 changes to the Model Act. Although these
1999 changes are not considered to be substantive changes, the modern language is considered clearer
2000 and easier to understand.

2001 Subsection (5) has been in the FBCA since 1989 and includes substantively similar provisions to
2002 s. 607.1006 dealing generally with amendments to articles of incorporation. While there is some
2003 overlap between these sections, the statute retains this subsection in order that the provisions
2004 dealing with the required amendment to the articles of incorporation are easily found by users of
2005 this statute.

2006

2007 607.0603. Issued and outstanding shares.

2008 (1) A corporation may issue the number of shares of each class or series authorized by
2009 the articles of incorporation. Shares that are issued are outstanding shares until they are
2010 reacquired, redeemed, converted, or canceled, except as provided in s. 607.0631.

2011 (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the
2012 limitations of subsection (3) and to s. 607.06401.

2013 (3) At all times that shares of the corporation are outstanding, one or more shares that
2014 together have unlimited voting rights and one or more shares that together are entitled to receive
2015 the net assets of the corporation upon dissolution must be outstanding.

2016

2017 **Commentary to Section 607.0603:**

2018 No changes have been made. Except for the reference to section 607.0631 at the end of
2019 subsection (1) dealing with treasury shares (which are not contemplated in the Model Act
2020 provision), this statute is identical to Section 6.03 of the Model Act.

2021

2022 607.0604. Fractional shares.

2023 (1) A corporation may:

2024 (a) Issue fractions of a share or, in lieu of doing so, pay in money the fair value of
2025 fractions of a share;

2026 (b) Make arrangements, or provide reasonable opportunity, for any person entitled
2027 to or holding a fractional interest in a share to sell such fractional interest or to purchase
2028 such additional fractional interests as may be necessary to acquire a full share;

2029 (c) Issue scrip in registered or bearer form, over the manual or facsimile signature
2030 of an officer of the corporation or its agent, entitling the holder to receive a full share
2031 upon surrendering enough scrip to equal a full share.

2032 (2) The board of directors may authorize the issuance of scrip subject to any condition
2033 ~~considered desirable~~, including that:

2034 (a) ~~That~~ The ~~the~~ scrip will become void if not exchanged for full shares before a
2035 specified date; and

2036 (b) ~~That~~ The ~~the~~ shares for which the scrip is exchangeable may be sold and the
2037 proceeds paid to the scrip holders.

2038 (3) Each certificate representing scrip must be conspicuously labeled “scrip” and must
2039 contain the information required by s. 607.0625.

2040 (4) The holder of a fractional share is entitled to exercise the rights of a shareholder,
2041 including the rights to vote, to receive dividends, and to receive distributions upon dissolution
2042 ~~participate in the assets of the corporation upon liquidation~~. The holder of scrip is not entitled to
2043 any of these rights unless the scrip provides for them.

2044 (5) ~~When a corporation is to pay in money the value of fractions of a share, the good~~
2045 ~~faith judgment of the board of directors as to the fair value shall be conclusive.~~

2046

2047 **Commentary to Section 607.0604:**

2048 Subsection (1)(b) differs from Section (a)(2) of the Model Act in that the Model Act provision
2049 only allows for the disposition of scrip. The current Florida statute allows for the purchase or
2050 sale of fractional interests. The broader language in the current Florida statute has been retained.

2051 Subsection (1)(c), which requires that scrip be in registered or bearer form "over the manual or
2052 facsimile signature of an officer of the corporation or its agent" is not Model Act language.
2053 However, it has been in the FBCA since 1989 and therefore has been retained.

2054 Subsection (5), which is not in the corollary section of the Model Act, has been eliminated. The
2055 board of directors of a corporation has fiduciary duties with respect to the valuation of fractional
2056 shares, and it is believed that those duties provide sufficient discretion to the board in making
2057 this determination. Further, there is a concern that the term "conclusive" as had been used in this
2058 section could have been deemed to inappropriately eliminate fiduciary duties under these
2059 circumstances or eliminate judicial oversight of this decision. Further, in the context of appraisal
2060 rights, no such conclusive presumption exists. As a result, it was decided to remove the
2061 conclusive presumption from this section of the statute.

2062

2063 607.0620. Subscriptions for shares.

2064 (1) A subscription for shares entered into before incorporation is irrevocable for 6 months
2065 unless the subscription agreement provides a longer or shorter period or all the subscribers agree
2066 to revocation.

2067 (2) A subscription for shares, whether made before or after incorporation, is not
2068 enforceable against the subscriber unless in writing and signed by the subscriber.

2069 (3) The board of directors may determine the payment terms of subscriptions for shares
2070 that were entered into before incorporation, unless the subscription agreement specifies them. A
2071 call for payment by the board of directors must be uniform as to all shares of the same class or
2072 series, unless the subscription agreement specifies otherwise.

2073 (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid
2074 and nonassessable when the corporation receives the consideration specified in the subscription
2075 agreement.

2076 (5) If a subscriber defaults in payment of money or property under a subscription
2077 agreement entered into before incorporation, the corporation may collect the amount owed as any
2078 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation
2079 may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days
2080 after the corporation delivers ~~sends~~ written demand for payment to the subscriber. ~~If mailed, such~~
2081 ~~written demand shall be deemed to be made when deposited in the United States mail in a sealed~~
2082 ~~envelope addressed to the subscriber at his or her last post office address known to the~~
2083 ~~corporation, with first class postage thereon prepaid. If the subscription agreement is rescinded~~
2084 ~~and the shares sold, then notwithstanding the rescission,~~ the defaulting subscriber or his or her
2085 legal representative shall be entitled to be paid the excess of the sale proceeds over the sum of
2086 the amount due and unpaid on the subscription and the reasonable expenses incurred in selling
2087 the shares, but in no event shall the defaulting subscriber or his or her legal representative be
2088 entitled to be paid an amount greater than the amount paid by the subscriber on the subscription.

2089 (6) A subscription agreement entered into after incorporation is also subject to s. 607.0621.

2090

2091 **Commentary to Section 607.0620:**

2092 The title to s. 6.20 of the Model Act adds the words "before incorporation" at the end of the title.
2093 However, because subsection (2) and new proposed subsection (6) deal with subscriptions after
2094 incorporation, the title to this section was not changed.

2095 Subsections (1) and (4) of the Florida statute are identical to Subsections (a) and (c) respectively,
2096 of s. 6.20 of the Model Act. Subsection (2) of the Florida statute puts Florida in a minority of
2097 states that require a subscription to be in writing. The Model Act does not require that
2098 subscriptions be in writing to be enforceable. However, when the FBCA was adopted in 1989,
2099 the drafters elected to leave this requirement in subsection (2) based on existing Florida law, and
2100 the statute retains that concept in the FBCA. Notwithstanding, this provision has been clarified to
2101 make clear that it only deals with the requirement that a subscription be in writing to be
2102 enforceable against the subscriber. This is consistent with case law in Florida and is not intended
2103 to apply to cases where a subscriber is seeking to enforce an oral subscription against the
2104 corporation.

2105 Subsection (3) of Florida's statute and Subsection (b) of the Model Act are substantially similar.
2106 However, Florida's statute requires that the call for payment by the board of directors "must be
2107 uniform as to all shares of that same class or series", while subsection (b) of the Model Act
2108 requires that the call for payment be uniform so far as practicable. While the "so far as
2109 practicable" language is used in approximately 30 jurisdictions, including the vast majority of
2110 Model Act jurisdictions, when the FBCA was adopted in 1989, the drafters stated that the
2111 provision was not included in order to incorporate the stricter requirement in the existing Florida
2112 law that the call be uniform without modification, with the view that this prevents favoritism or
2113 unfair treatment among subscribers. Therefore, the existing Florida language has been retained.

2114 Subsection (5) of the Florida statute and subsection (d) of the Model Act are similar, in that the
2115 first two sentences of the Florida Act are identical to subsection (d) of the Model Act. The last
2116 two sentences were added in 1989. The sentence dealing with mailing of the demand has been
2117 removed because it is already stated in s. 607.0141. The second sentence, however, dealing with
2118 repayment to the delinquent subscriber of any amounts paid if there are excess sale proceeds
2119 over the sum of the amount due plus expenses (which was intended to prevent the corporation
2120 from having a windfall gain if it is able to resell the shares without loss) and limiting what the
2121 defaulting subscriber can receive to what they paid on their subscription (which was intended to
2122 prevent the defaulting subscriber from having a windfall if the shares are resold at a higher price)
2123 has been retained.

2124 For completeness, new subsection (6) has been added to clarify that post-incorporation
2125 subscriptions are also subject to the requirements of s. 607.0621.

2126 607.0621. Issuance of shares.

2127 (1) The powers granted in this section to the board of directors may be reserved to the
2128 shareholders by the articles of incorporation.

2129 (2) The board of directors may authorize shares to be issued for consideration consisting of
2130 any tangible or intangible property or benefit to the corporation, including cash, promissory
2131 notes, services performed, promises to perform services evidenced by a written contract, or other
2132 securities of the corporation.

2133 (3) Before the corporation issues shares, the board of directors shall ~~must~~ determine that
2134 the consideration received or to be received for shares to be issued is adequate. That
2135 determination by the board of directors is conclusive insofar as the adequacy of consideration for
2136 the issuance of shares relates to whether the shares are validly issued, fully paid, and
2137 nonassessable. When it cannot be determined that outstanding shares are fully paid and
2138 nonassessable, there shall be a conclusive presumption that such shares are fully paid and
2139 nonassessable if the board of directors makes a good faith determination that there is no
2140 substantial evidence that the full consideration for such shares has not been paid.

2141 (4) When the corporation receives the consideration for which the board of directors
2142 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
2143 Consideration in the form of a promise to pay money or a promise to perform services is
2144 received by the corporation at the time of the making of the promise, unless the agreement
2145 specifically provides otherwise.

2146 (5) The corporation may place in escrow shares issued for a contract for future services or
2147 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares,
2148 and may credit distributions in respect of the shares against their purchase price, until the
2149 services are performed, the note is paid, or the benefits received. If the services are not
2150 performed, the note is not paid or the benefits are not received, the shares escrowed or restricted
2151 and the distributions credited may be canceled in whole or part.

2152

2153 **Commentary to Section 607.0621:**

2154 Subsection (2) retains the existing Florida wording using the words "promises to perform
2155 services evidenced by a written contract" instead of the words "contracts for services to be
2156 performed" contained in s. 6.21(b) of the Model Act. The commentary to the 1989 Act, which
2157 proposed the current statutory language, stated as a rationale that requiring a written contract
2158 avoids differing recollections and can be more protective of the interests of the parties and the
2159 other shareholders.

2160 The last sentence of subsection (3), adding a conclusive presumption that shares are fully paid
2161 and nonassessable where the board of directors makes a good faith determination that there is no
2162 substantial evidence that the full consideration for such shares has not been paid, has been
2163 retained. The commentary to the 1989 Act stated that this provision was modeled after a similar
2164 provision contained in the Virginia corporate statute (s. 13.1-643.E.) and that this good faith
2165 determination is important, for example, for opinion letters of counsel, which rely on the board
2166 of directors' good faith determination.

2167 The last sentence of subsection (4) continues to include a provision that is peculiar to the Florida
2168 Statute clarifying that consideration in the form of a promise to pay money or a promise to
2169 perform services is received at the time of the making of the promise, unless the agreement
2170 specifically provides otherwise. The commentary to the 1989 Act states that this language was
2171 added to avoid the concern that the Model Act arguably creates confusion as to when
2172 consideration is received when it is in the form of promises for future payments or services.

2173 A non-substantive clarifying change is included in subsection (5).

2174 Subsection (f) of s. 6.21 of the Model Act, which requires shareholder approval of share
2175 issuances of more than 20% of the voting power outstanding immediately before the issuance,
2176 has not been added to the statute.

2177

2178 607.0622. Liability for shares issued before payment.

2179 (1) A holder of, or subscriber to, shares of a corporation shall be under no obligation to the
2180 corporation or its creditors with respect to such shares other than the obligation to pay to the
2181 corporation the full consideration for which such shares were issued or to be issued. Such an
2182 obligation may be enforced by the corporation and its successors or assigns; by a shareholder
2183 suing derivatively on behalf of the corporation; by a receiver, liquidator, or trustee in bankruptcy
2184 of the corporation; or by another person having the legal right to marshal the assets of such
2185 corporation.

2186 (2) Any person becoming an assignee or transferee of shares, or of a subscription for
2187 shares, in good faith and without knowledge or notice that the full consideration therefor has not
2188 been paid shall not be personally liable to the corporation or its creditors for any unpaid portion
2189 of such consideration, but the assignor or transferor shall continue to be liable therefor.

2190 (3) No pledgee or other holder of shares as collateral security shall be personally liable as
2191 a shareholder, but the pledgor or other person transferring such shares as collateral shall be
2192 considered the holder thereof for purposes of liability under this section.

2193 (4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of
2194 creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder
2195 of, or subscriber to, shares of a corporation, but the estate and funds in her or his hands shall be
2196 so liable.

2197 (5) No liability under this section may be asserted more than 5 years after the earlier of:

2198 (a) The issuance of the stock, or

2199 (b) The date of the subscription upon which the assessment is sought.

2200

2201 **Commentary to Section 607.0622:**

2202 No changes have been made to this section of the FBCA.

2203 Section 607.0622 of the FBCA does not follow the corollary section of the Model Act. Current s.
2204 607.0622 is based on the pre-1989 Florida statute, which appears to have been based on earlier
2205 versions of the Model Act. The 1989 committee determined to include subsections (2), (3) and
2206 (4) in the corporate statute so that they were part of the corporate statute, despite, as pointed out
2207 in the Model Act commentary, these provisions are otherwise covered in Article 8 of the UCC.

2208 The 1989 committee, with respect to subsection (b) of s. 6.22 of the Model Act, decided not to
2209 adopt the provision because of a belief that it is unnecessary to confirm the limited liability
2210 concept. They were also concerned whether the “own acts or conduct” language was
2211 troublesome in its ambiguity.

2212 Subsection (5) was added to the FBCA in 1989 and is retained in the statute. It provides a five
2213 year statute of limitations for claims under this statute and is generally patterned after s. 162(e)
2214 of the DGCL.

2215

2216 607.0623. Share dividends.

2217 (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata
2218 and without consideration to the corporation's shareholders or to the shareholders of one or more
2219 classes or series of shares. An issuance of shares under this subsection is a share dividend.

2220 (2) Shares of one class or series may not be issued as a share dividend in respect of shares
2221 of another class or series unless:

2222 (a) The articles of incorporation so authorize,

2223 (b) A majority of the votes entitled to be cast by the class or series to be issued
2224 approves the issue, or

2225 (c) There are no outstanding shares of the class or series to be issued.

2226 (3) The board of directors may fix the record date for determining shareholders entitled to a
2227 share dividend, which date may not be retroactive. If the board of directors does not fix the
2228 record date for determining shareholders entitled to a share dividend, the record date ~~it~~ is the date
2229 the board of directors authorizes the share dividend.

2230

2231 **Commentary to Section 607.0623:**

2232 Non-substantive cleanup changes have been made to this section based on recent clean-up
2233 changes made to s. 6.23 of the Model Act.

2234

2235 607.0624. Share rights, options, warrants and awards.

2236 (1) Unless the articles of incorporation provide otherwise, a corporation may issue rights,
2237 options, or warrants for the purchase of shares of the corporation of any class or series, whether
2238 authorized but unissued shares of the corporation, treasury shares, or shares of the corporation to
2239 be purchased or acquired by the corporation. The board of directors shall determine the terms
2240 and conditions upon which the rights, options, or warrants are issued, including the consideration
2241 for which the shares are to be issued. The authorization by the board of directors for the
2242 corporation to issue such rights, options, or warrants constitutes authorization for the issuance of
2243 the shares for which the rights, options, or warrants are exercisable. ~~their form and content, and~~
2244 the consideration for which the shares are to be issued.

2245 (2) The terms and conditions of such stock rights, and options, or warrants, including those
2246 outstanding on the effective date of this section, which are created and issued by a corporation
2247 formed under this chapter, or its successor, and which entitle the holders thereof to purchase
2248 from the corporation shares of any class or series, whether authorized but unissued shares,
2249 treasury shares, or shares to be purchased or acquired by the corporation, may include, without
2250 limitation, restrictions or conditions that:

2251 (a) Preclude ~~preclude~~ or limit the exercise, transfer or receipt or holding of such rights,
2252 options or warrants by any person or persons, including any person or persons owning or
2253 offering to acquire a specified number or percentage of the outstanding common shares or
2254 other securities of the corporation, owning or offering to acquire a specified number or
2255 percentage of the outstanding shares of the corporation or by any transferee or transferees of
2256 any such person or persons, or

2257 (b) Invalidate ~~invalidate~~ or void such rights, options or warrants held by any such
2258 person or persons or any such transferee or transferees.

2259 (3) The board of directors may authorize a board committee or the board of directors may
2260 authorize one or more officers, or a board committee so authorized by the board of directors may
2261 authorize one or more officers, to (A) designate the recipients of rights, options, warrants, or
2262 other equity compensation awards that involve the issuance of shares, and (B) determine, within
2263 an amount and subject to any other limitations established by the board of directors, a board
2264 committee, and, if applicable, the shareholders, the number of such rights, options, warrants, or
2265 other equity compensation awards and the terms and conditions of such rights, options, warrants
2266 or awards to be received by the recipients, provided that an officer may not use such authority to
2267 designate himself or herself or any other persons as the board of directors or a committee of the
2268 board may specify as a recipient of such rights, options, warrants or other equity compensation
2269 awards.

2270 (4) For purposes of this section, “shares” includes a security convertible into or carrying a
2271 right to subscribe for or acquire shares.

2272

2273 **Commentary to Section 607.0624:**

2274 Subsection (1) has been modernized based on the language contained in s. 6.24(a) of the 2016
2275 version of the Model Act.

2276 Subsection (2) allows the creation of rights required for adoption of a shareholders' rights plan
2277 (a/k/a a "poison pill"). The revised language adopts the more concise language in s. 6.24(b) of
2278 the 2016 version of the Model Act. However, it does not change nor is it intended to change the
2279 substance of the provision.

2280 New subsection (3) follows the wording in s. 6.24(c) of the 2016 version of the Model Act. This
2281 language includes language similar to s. 157 of the DGCL and clarifies that not only the board of
2282 directors, but also committees of the board charged with dealing with these matters (such as a
2283 compensation committee under a stock incentive plan adopted by the board of directors and/or
2284 the shareholders), may be authorized by the board to make these equity compensation decisions.
2285 Unlike s. 607.0825, which requires limits to be specified for an authorization, the authorization
2286 under this new subsection, although limited to equity compensation, may be absolute rather than
2287 within specified limits. Nevertheless, as a matter of good corporate governance, boards choosing
2288 to delegate authorization under this new subsection would be well advised to specify limits in
2289 making any such delegation.

2290 Further, new subsection (3) allows delegations of authority to "officers" without imposing an
2291 obligation to set forth specified limits. In contrast, s. 607.0825, which relates to the right of the
2292 board of directors or a board committee to delegate authority to finalize the sale price of shares
2293 to be sold by the corporation, covers more than just equity compensation; but, in the realm of
2294 equity compensation, this new subsection is broader than s. 607.0825 in two key respects: (i) the
2295 new subsection authorizes delegation to "officers" rather than to just "senior executive officers"
2296 and (ii) the new subsection does not require limits to be specified in the delegation of authority to
2297 officers. Section 607.0825 is intended to operate independently of this new subsection and is not
2298 intended in any way to limit the equity compensation delegation authorized by this new
2299 subsection. Thus, for equity compensation, this new subsection makes clear that authorization to
2300 designate recipients of equity compensation can be delegated to a broader category of officers
2301 than would fall within the term "senior executive" officers in s. 607.0825 and that no limits need
2302 be specified in any such delegation.

2303

2304 607.0625. Form and content of certificates.

2305 (1) Shares may but need not be represented by certificates. Unless this chapter ~~act~~ or
2306 another statute expressly provides otherwise, the rights and obligations of shareholders are
2307 identical regardless of whether ~~or not~~ their shares are represented by certificates.

2308 (2) At a minimum, each share certificate must state on its face:

2309 (a) The name of the ~~issuing~~ corporation and that the corporation is organized under
2310 the laws of this state;

2311 (b) The name of the person to whom issued; and

2312 (c) The number and class of shares and the designation of the series, if any, the
2313 certificate represents.

2314 (3) If the ~~issuing~~ corporation is authorized to issue different classes of shares or different
2315 series of shares within a class, the designations, relative rights, preferences, and limitations
2316 applicable to each class and the variations in rights, preferences, and limitations determined for
2317 each series (and the authority of the board of directors to determine variations for future series)
2318 must be summarized on the front or back of each certificate. Alternatively, each certificate may
2319 state conspicuously on its front or back that the corporation will furnish the shareholder a full
2320 statement of this information on request and without charge.

2321 (4) Each share certificate:

2322 (a) Must be signed (either manually or in facsimile) by an officer or officers
2323 designated in the bylaws or designated by the board of directors, and

2324 (b) May bear the corporate seal or its facsimile.

2325 (5) If the person who signed (either manually or in facsimile) a share certificate no longer
2326 holds office when the certificate is issued, the certificate is nevertheless valid.

2327 (6) Nothing in this section may be construed to invalidate any share certificate validly
2328 issued and outstanding under the general corporation law on July 1, 1990.

2329

2330 **Commentary to Section 607.0625:**

2331 The existing language in subsection (3) requiring a full statement of this information to be
2332 provided upon request (which language has been used in the FBCA since 1990) has been
2333 retained even though it is not in the corollary section of the Model Act (which simply uses the
2334 words “this information”. Further, the language in s. 6.25(c) of the Model Act requiring this
2335 request to be in writing has not been adopted. This “writing” requirement was expressly
2336 considered and not adopted by the 1989 committee.

2337 Subsection (4)(a) continues to require the signature of one or more officers. The language used in
2338 s. 6.25(d) of the Model Act, which requires the signature of two officers on a share certificate,
2339 was expressly considered and not adopted by the 1989 committee.

2340 Section 607.0625(1) permits uncertificated shares. Uncertificated shares must comply with s.
2341 607.0626. Further, the issuance, transfer and registration of both certificated and uncertificated
2342 shares is subject to the detailed provisions of Article 8 of the Uniform Commercial Code
2343 (Chapter 678).

2344

2345 607.0626. Shares without certificates.

2346 (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
2347 of a corporation may authorize the issuance ~~issue~~ of some or all of the shares of any or all of its
2348 classes or series without certificates. The authorization does not affect shares already represented
2349 by certificates until they are surrendered to the corporation.

2350 (2) Within a reasonable time after the issuance ~~issue~~ or transfer of shares without
2351 certificates, the corporation shall deliver to ~~send~~ the shareholder a written statement of the
2352 information required on certificates by ss. 607.0625(2) and (3), and, if applicable, s. 607.0627.

2353

2354 **Commentary to Section 607.0626:**

2355 No substantive changes have been made to this section.

2356

2357 607.0627. Restriction on transfer of shares and other securities.

2358 (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an
2359 agreement between shareholders and the corporation may impose restrictions on the transfer or
2360 registration of transfer of shares of the corporation. A restriction does not affect shares issued
2361 before the restriction was adopted unless the holders of such shares are parties to the restriction
2362 agreement or voted in favor of the restriction.

2363 (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable
2364 against the holder or a transferee of the holder if the restriction is authorized by this section and
2365 its existence is noted conspicuously on the front or back of the certificate or is contained in the
2366 information statement required by s. 607.0626(2). Unless so noted, a restriction is not
2367 enforceable against a person without knowledge of the restriction.

2368 (3) A restriction on the transfer or registration of transfer of shares is authorized:

2369 (a) To maintain the corporation's status when it is dependent on the number or
2370 identity of its shareholders;

2371 (b) To preserve exemptions under federal or state securities law; or

2372 (c) For any other reasonable purpose.

2373 (4) A restriction on the transfer or registration of transfer of shares may:

2374 (a) Obligate the shareholder first to offer the corporation or other persons (separately,
2375 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

2376 (b) Obligate the corporation or other persons (separately, consecutively, or
2377 simultaneously) to acquire the restricted shares;

2378 (c) Require the corporation, the holders of any class or series of its shares, or other
2379 persons ~~another person~~ to approve the transfer of the restricted shares, if the requirement is
2380 not manifestly unreasonable; or

2381 (d) Prohibit the transfer of the restricted shares to designated persons or classes of
2382 persons, if the prohibition is not manifestly unreasonable.

2383 (5) For purposes of this section, "shares" includes a security convertible into or carrying a
2384 right to subscribe for or acquire shares.

2385

2386 **Commentary to Section 607.0627:**

2387 The Florida statute and Model Act statute are virtually identical and no substantive changes have
2388 been made to this section of the FBCA. The Model Act provision is generally based on s. 202 of
2389 the DGCL, although s. 202 of the DGCL arguably expands the flexibility to include restraints on
2390 alienation with respect to shares beyond the current statute and corollary FBCA section.

2391 Share transfer restrictions are used by corporations for a variety of purposes. Subsection (3)
2392 enumerates certain purposes for which share transfer restrictions may be imposed, but does not
2393 limit the purposes, given that subsection (3) permits restrictions “for any other reasonable
2394 purpose.” Examples of the “corporation’s status” referred to in subsection (3)(a) include the
2395 subchapter S election under the Internal Revenue Code, and entitlement to a program or
2396 eligibility for a privilege administered by governmental agencies or national securities
2397 exchanges.

2398 Examples of the uses of share transfer restrictions include: (i) a corporation with few
2399 shareholders may impose share transfer restrictions to ensure that shareholders do not transfer
2400 their shares to a person not acceptable to the corporation or other shareholders; (ii) a corporation
2401 with few shareholders may impose share transfer restrictions to establish the value of the shares
2402 of deceased shareholders; (iii) a professional corporation may impose share transfer restrictions
2403 to ensure that its treatment of departing, retiring or deceased shareholders is consistent with rules
2404 applicable to the profession in question; (iv) a corporation may impose share transfer restrictions
2405 to ensure that its election of subchapter S treatment under the Internal Revenue Code, or its
2406 election to be treated as a real estate investment trust will not be unexpectedly terminated; (v) a
2407 corporation issuing securities pursuant to an exemption from federal or state securities
2408 registration may impose share transfer restrictions to ensure that subsequent transfers of shares
2409 will not result in the loss of the exemption being relied upon; and (vi) a corporation may impose
2410 restrictions to protect a valuable corporate asset that may be impacted by share transfers (such as
2411 a net operating loss).

2412 Subsection (4) describes the types of restrictions that may be imposed. The types of restrictions
2413 referred to in subsections (4)(a) (rights of first offer) and (b) (buy-sell agreements) are imposed
2414 as a matter of contractual negotiation and do not prohibit the outright transfer of shares. Rather,
2415 they designate to whom shares or other securities must be offered at a price established in the
2416 agreement or by a formula or method agreed to in advance. By contrast, the restrictions
2417 described in subsections (4)(c) and (d) may permanently limit the market for shares by
2418 disqualifying all or some potential purchasers. However, the restrictions imposed by these two
2419 provisions must not be “manifestly unreasonable.”

2420

2421 607.0628. Expenses of issue.

2422 A corporation may pay the expenses of selling or underwriting its shares, and of organizing
2423 or reorganizing the corporation, from the consideration received for shares.

2424

2425 **Commentary to Section 607.0628:**

2426 This section contains a general authorization to the corporation to pay its expenses of formation
2427 and raising capital out of its original capitalization and is included in the FBCA and in a large
2428 number of state corporation statutes. While this section has recently been eliminated in the 2016
2429 version of the Model Act, it is retained in the FBCA to make clear that a corporation may pay its
2430 expenses of formation and raising capital out of its original capitalization.

2431

2432 607.0630. Shareholders' preemptive rights.

2433 (1) The shareholders of a corporation do not have a preemptive right to acquire the
2434 corporation's unissued shares or the corporation's treasury shares, except in each case to the
2435 extent the articles of incorporation so provide.

2436 (2) A statement included in the articles of incorporation that "the corporation elects to have
2437 preemptive rights" (or words of similar import) means that the following principles apply except
2438 to the extent the articles of incorporation expressly provide otherwise:

2439 (a) The shareholders of the corporation have a preemptive right, granted on uniform
2440 terms and conditions prescribed by the board of directors to provide a fair and reasonable
2441 opportunity to exercise the right, to acquire proportional amounts of the corporation's
2442 unissued shares and treasury shares upon the decision of the board of directors to issue them.

2443 (b) A shareholder may waive his or her preemptive right. A waiver evidenced by a
2444 writing is irrevocable even though it is not supported by consideration.

2445 (c) There is no preemptive right with respect to:

2446 1. Shares issued as compensation to directors, officers, agents, or employees of
2447 the corporation, ~~or~~ its subsidiaries or affiliates;

2448 2. Shares issued to satisfy conversion or option rights created to provide
2449 compensation to directors, officers, agents, or employees of the corporation, ~~or~~ its
2450 subsidiaries or affiliates;

2451 3. Shares authorized in the articles of incorporation that are issued within 6
2452 months from the effective date of incorporation;

2453 4. Shares issued pursuant to a plan of reorganization approved by a court of
2454 competent jurisdiction pursuant to a law of this state or of the United States; or

2455 5. Shares issued for consideration other than money.

2456 (d) Holders of shares of any class or series without general voting rights but with
2457 preferential rights to distributions to receive the ~~or~~ net assets of the corporation upon
2458 dissolution ~~and liquidation~~ have no preemptive rights with respect to shares of any class or
2459 series.

2460 (e) Holders of shares of any class or series with general voting rights but without
2461 preferential rights to distributions ~~or net assets~~ upon dissolution ~~or liquidation~~ have no
2462 preemptive rights with respect to shares of any class or series with preferential rights to

2463 receive the net assets of the corporation upon dissolution ~~distributions or assets~~ unless the
2464 shares with preferential rights are convertible into or carry a right to subscribe for or acquire
2465 the shares without preferential rights.

2466 (f) Shares subject to preemptive rights that are not acquired by shareholders may be
2467 issued to any person for a period of 1 year after being offered to shareholders at a
2468 consideration set by the board of directors that is not lower than the consideration set for the
2469 exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1
2470 year is subject to the shareholders' preemptive rights.

2471 (3) For purposes of this section, "shares" includes a security convertible into or carrying a
2472 right to subscribe for or acquire shares.

2473 (4) In the case of any corporation in existence prior to January 1, 1976, shareholders of
2474 such corporation shall continue to have the preemptive rights in such corporation which they had
2475 immediately prior to that date, unless and until the articles of incorporation are amended to alter
2476 or terminate shareholders' preemptive rights.

2477

2478 **Commentary to Section 607.0630:**

2479 The Model Act, along with the corporate statutes in many jurisdictions (including Florida),
2480 contain "opt in" provisions with respect to preemptive rights under which a corporation's
2481 shareholder do not have statutory preemptive rights unless expressly granted in the articles of
2482 incorporation.

2483 For the most part, with minor language differences, the Florida statute is identical to the Model
2484 Act. There are two substantive differences between the statutes. The first, found in s.
2485 607.0630(2)(c)(4), exempts from preemptive rights shares that are issued pursuant to a court-
2486 approved reorganization. The second is a grandfather clause, retaining "opt out" preemptive
2487 rights for corporations in existence prior to January 1, 1976.

2488 Clarifying changes were made to subsections (2)(d) and (2)(e) in 2003 to make the language
2489 used (net assets upon dissolution) consistent with the corollary language used for the same
2490 purpose in s. 607.0601(2)(b) and s. 607.0603(3). However, further clean up changes have been
2491 made to subsections 2(d) and 2(e) to make the language consistent among these three statutory
2492 provisions.

2493

2494 607.0631. Corporation's acquisition of its own shares.

2495 (1) A corporation may acquire its own shares, and, unless otherwise provided in the articles
2496 of incorporation or except as provided in subsection (4) or subsection (5), shares so acquired
2497 constitute authorized but unissued shares of the same class but undesignated as to series.

2498 (2) If the articles of incorporation prohibit the reissue of acquired shares, the number of
2499 authorized shares is reduced by the number of shares acquired, effective upon amendment of the
2500 articles of incorporation.

2501 (3) Articles of amendment to effectuate a reduction in the authorized shares by the number
2502 of shares acquired by the corporation, may be adopted by the board of directors without
2503 shareholder action, shall be delivered to the ~~D~~department of State for filing, and shall set forth:

2504 (a) The name of the corporation;

2505 (b) The reduction in the number of authorized shares, itemized by class and series; and

2506 (c) The total number of authorized shares, itemized by class and series, remaining after
2507 reduction of the shares.

2508 (4) Shares of a corporation in existence on June 30, 1990, which are treasury shares under
2509 s. 607.004(18), Florida Statutes (1987), shall be issued, but not outstanding, until canceled or
2510 disposed of by the corporation.

2511 (5) A corporation that has shares of any class or series which are ~~either~~ registered on a
2512 national securities exchange ~~or designated as a national market system security on an interdealer~~
2513 ~~quotation system by the National Association of Securities Dealers, Inc.,~~ may acquire such
2514 shares and designate, either in the bylaws or in the resolutions of its board, that shares so
2515 acquired by the corporation shall constitute treasury shares.

2516 (6) Shares that a corporation acquires in a fiduciary capacity for the benefit of any person
2517 other than the corporation directly or indirectly through an entity controlled by the corporation
2518 shall not be deemed to have been acquired by the corporation for purposes of this section.

2519

2520 **Commentary to Section 607.0631:**

2521 Florida takes a more expansive view of a corporation's re-acquisition of its own shares than the
2522 Model Act. The Model Act states only that a corporation may acquire its own shares and that the
2523 shares so acquired constitute authorized but unissued shares (similar to subsection (1) above,
2524 though Florida adds that (i) a corporation may provide otherwise in its articles of incorporation
2525 (which includes the ability to expressly provide in the articles of incorporation that shares
2526 acquired by the corporation shall become treasury shares rather than authorized but unissued
2527 shares), and (ii) adds the exemptions found in subsections (4) and (5) above) and that if the
2528 articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares
2529 is reduced by the number of shares acquired (identical to subsection (2) above).

2530 Subsection (3) is identical to the corollary section contained in an earlier version of the Model
2531 Act. This section was removed from the Model Act in 1999, because it was believed that the
2532 required amendment to the articles was adequately covered in Article 10. However, because the
2533 language has been in the FBCA since 1989 and addresses the required amendment in the same
2534 section as the language addressing the reasons for the proposed amendment, this language has
2535 been retained. This is similar to the position taken in s. 607.0602(5).

2536 The grandfathering provision contained in subsection (4) for treasury shares outstanding prior to
2537 1990 (when the FBCA became effective) has been retained.

2538 Subsection (5), added to the FBCA in 1999, deals with the ability of a Florida corporation to
2539 designate shares reacquired by listed companies or companies whose shares are traded on the
2540 NASDAQ as treasury shares. Since NASDAQ listed companies are now
2541 "listed on a national securities exchange", the statutory language dealing with companies traded
2542 on the NASDAQ has been eliminated.

2543 New subsection (6), with respect to shares acquired by a corporation in a fiduciary capacity, is
2544 derived from a proposed change to s. 6.31 of the Model Act that is currently being considered by
2545 the Corporate Laws Committee. The change adds language consistent with the language
2546 contained in s. 607.0721(3).

2547

2548 607.06401. Distributions to shareholders.

2549 (1) A board of directors may authorize and the corporation may make distributions to its
2550 shareholders subject to restriction by the articles of incorporation and the limitations in
2551 subsection (3).

2552 (2) ~~The~~ ~~If the~~ board of directors may ~~does not~~ fix the record date for determining
2553 shareholders entitled to a distribution, which date may not be retroactive (~~other than one~~
2554 ~~involving a purchase, redemption, or other acquisition of the corporation's shares~~). If the, ~~it is~~
2555 ~~the date the~~ board of directors does not fix a record date for determining shareholders entitled to
2556 a distribution (other than one involving a purchase, redemption or other acquisition of the
2557 corporation's shares), the record date is the date the board of directors authorizes the distribution.

2558 (3) No distribution may be made if, after giving it effect:

2559 (a) The corporation would not be able to pay its debts as they become due in the usual
2560 course of the corporation's activities and affairs ~~business~~; or

2561 (b) The corporation's total assets would be less than the sum of its total liabilities plus
2562 (unless the articles of incorporation permit otherwise) the amount that would be needed, if
2563 the corporation were to be dissolved and wound up at the time of the distribution, to satisfy
2564 the preferential rights upon dissolution and winding up of shareholders whose preferential
2565 rights are superior to those receiving the distribution.

2566 (4) The board of directors may base a determination that a distribution is not prohibited
2567 under subsection (3) on:

2568 (a) ~~either on~~ Financial statements prepared on the basis of accounting practices and
2569 principles that are reasonable under ~~in~~ the circumstances; or

2570 (b) ~~on~~ A fair valuation or other method that is reasonable under ~~in~~ the circumstances.
2571 In the case of any distribution based upon such a valuation, each such distribution shall be
2572 identified as a distribution based upon a current valuation of assets, and the amount per
2573 share paid on the basis of such valuation shall be disclosed to the shareholders concurrent
2574 with their receipt of the distribution.

2575 (5) If the articles of incorporation of a corporation engaged in the business of exploiting
2576 natural resources or other wasting assets so provide, distributions may be paid in cash out of
2577 depletion or similar reserves; and each such distribution shall be identified as a distribution based
2578 upon such reserves, and the amount per share paid on the basis of such reserves shall be
2579 disclosed to the shareholders concurrent with their receipt of the distribution.

2580 (6) Except as provided in subsection (8), the effect of a distribution under subsection (3) is
2581 measured:

2582 (a) In the case of a distribution by purchase, redemption, or other acquisition of the
2583 corporation's shares, as of the earlier of the date on which:

2584 1. ~~The date~~ Money or other property is transferred or the debt to a shareholder is
2585 incurred by the corporation, ~~or~~ and

2586 2. The ~~date~~ the shareholder ceases to be a shareholder with respect to the acquired
2587 shares;

2588 (b) In the case of ~~a any other~~ distribution of indebtedness, as of the date on which the
2589 indebtedness is distributed;

2590 (c) In all other cases, as of the date on which:

2591 1. The ~~date~~ the distribution is authorized if the payment occurs within 120 days
2592 after that the date of authorization, or

2593 2. The ~~date~~ the payment is made if the payment ~~it~~ occurs more than 120 days
2594 after the date that the distribution is authorized ~~date of authorization~~.

2595 (7) A corporation's indebtedness to a shareholder incurred by reason of a distribution made
2596 in accordance with this section is at parity with the corporation's indebtedness to its general,
2597 unsecured creditors except to the extent provided otherwise ~~subordinated~~ by agreement. The
2598 obligation to pay such indebtedness may be secured by a lien on assets of the corporation if not
2599 prohibited under a law other than this chapter.

2600 (8) Indebtedness of a corporation, including indebtedness issued as a distribution, is not
2601 considered a liability for purposes of determinations under subsection (3) if the terms of the
2602 indebtedness ~~its terms~~ provide that payment of principal and interest is ~~are~~ made only if and to
2603 the extent that ~~payment of~~ a distribution to shareholders could then be made under this section. If
2604 such ~~the~~ indebtedness is issued as a distribution, and by its terms provides that the payments of
2605 each payment of principal or interest are made only to the extent a ~~is treated as a~~ distribution
2606 could be made under this section, then each payment of principal and interest of that
2607 indebtedness is treated as a distribution, the effect of which is measured on the date the payment
2608 is actually made.

2609 (9) This section shall not apply to distributions in liquidation under ss. 607.1401-
2610 607.14401.

2611

2612 **Commentary to Section 607.06401:**

2613 The cleanup changes in subsection (2) are based on language changes in the 2016 version of the
2614 Model Act and are non-substantive.

2615 The changes in subsection (3) are consistent with the language in s. 605.0405(1)(a) and are
2616 intended to harmonize the language in the FBCA and the FRLCA on this provision.

2617 Subsection (4) has been modified to harmonize this section with the language contained in s.
2618 605.0405(2). This section also retains existing Florida language not found in the Model Act
2619 clarifying disclosure rules to shareholders where directors rely on statements of accountants to
2620 determine whether a corporation is authorized to make a distribution under this section. The
2621 1989 commentary to the FBCA provided that this language requires disclosure to shareholders of
2622 the fact that the dividend payment or other distribution is based on valuation in excess of
2623 standard accounting techniques. It also provides that this "[D]isclosure is appropriate to prevent
2624 shareholders from being misled about the reason or basis for their dividends."

2625 Subsection (5) retains existing Florida language not found in the Model Act, and relates to
2626 special situations involving distributions in corporations relying on the depletion of natural
2627 resources. This language was added to the FBCA in 1989 based on the then existing Florida
2628 statute. The 1989 commentary provides that "[I]t is possible to read the "fair valuation or other
2629 method" language of s. 6.40(d) as broad enough to permit distributions out of depletion
2630 reserves." Rather than leave that question open, it is appropriate to adopt the clear provision in
2631 the Florida code."

2632 The changes in subsection (6) are intended to harmonize the language in the FBCA and the
2633 FRLCA and are derived from the language contained in s. 605.0405(3).

2634 The language in subsection (7) has been modified to make clear that a corporation is not
2635 precluded from securing/collateralizing indebtedness which is owed to a shareholder and
2636 incurred by reason of a distribution, so long as it does not violate a law other than Chapter 607.

2637 The changes in subsection (8) are intended to harmonize the language in the FBCA and the
2638 FRLCA and are derived from the language contained in s. 605.0405(5).

2639

2640 ARTICLE 7

2641 SHAREHOLDERS

2642 607.0701. Annual meeting.

2643 (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted
2644 by s. 607.0704, aA corporation shall hold a meeting of shareholders annually, for the election of
2645 directors and for the transaction of any proper business, at a time stated in or fixed in accordance
2646 with the bylaws.

2647 (2) Annual ~~shareholders'~~ meetings of shareholders may be held in or out of this state at a
2648 place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws,
2649 stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the
2650 bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the
2651 corporation's principal office.

2652 (3) The failure to hold the annual meeting at the time stated in or fixed in accordance with a
2653 corporation's bylaws or pursuant to this chapter ~~act~~ does not affect the validity of any corporate
2654 action and shall not work a forfeiture of or dissolution of the corporation.

2655 (4) Participation of shareholders and proxy holders at an annual meeting of shareholders by
2656 remote communication shall be governed by and subject to the provisions of s.607.0709. If
2657 ~~authorized by the board of directors, and subject to such guidelines and procedures as the board~~
2658 ~~of directors may adopt, shareholders and proxy holders not physically present at an annual~~
2659 ~~meeting of shareholders may, by means of remote communication:~~

2660 (a) ~~Participate in an annual meeting of shareholders.~~

2661 (b) ~~Be deemed present in person and vote at an annual meeting of shareholders,~~
2662 ~~whether such meeting is to be held at a designated place or solely by means of remote~~
2663 ~~communication, provided that:~~

2664 1. ~~The corporation shall implement reasonable measures to verify that each~~
2665 ~~person deemed present and permitted to vote at the annual meeting by means of remote~~
2666 ~~communication is a shareholder or proxy holder;~~

2667 2. ~~The corporation shall implement reasonable measures to provide such~~
2668 ~~shareholders or proxy holders a reasonable opportunity to participate in the annual~~
2669 ~~meeting and to vote on matters submitted to the shareholders, including, without~~
2670 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2671 ~~annual meeting substantially concurrently with such proceedings; and~~

2672 3. ~~If any shareholder or proxy holder votes or takes other action at the annual~~
2673 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2674 ~~be maintained by the corporation.~~

2675

2676 **Commentary to Section 607.0701:**

2677 The revision clarifies that companies are allowed to hold an annual shareholders' meeting solely
2678 by remote communication or by way of a written consent under s. 607.0704, even if one or more
2679 shareholders object and would prefer to hold an in-person meeting.

2680 Although this language does not appear in the Model Act, the words “and shall not work a
2681 forfeiture of or dissolution of the corporation” were left in subsection (3). There was a belief that,
2682 even if the language were to be removed, the law would still be the same. However, a concern
2683 was expressed that removing this language might be misinterpreted as a change in the law. As a
2684 result, the language was retained in the statute.

2685 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2686 regarding participation in meetings of shareholders by remote communications.

2687

2688 607.0702. Special meeting.

2689 (1) A corporation shall hold a special meeting of shareholders:

2690 (a) On call of its board of directors or the person or persons authorized to do so by the
2691 articles of incorporation or bylaws; or

2692 (b) If shareholders holding the holders of not less than 10 percent, unless a greater
2693 percentage not to exceed 50 percent is required by the articles of incorporation, of all the
2694 votes entitled to be cast on any issue proposed to be considered at the proposed special
2695 meeting sign, date, and deliver to the corporation's secretary one or more written demands
2696 for the meeting describing the purpose or purposes for which it is to be held. Unless
2697 otherwise provided in the articles of incorporation, a written demand for a special meeting
2698 may be revoked by a writing to that effect received by the corporation prior to the receipt by
2699 the corporation of demands sufficient in number to require the holding of a special meeting.

2700 (2) Special meetings of shareholders' ~~meetings~~ may be held in or out of the state at a place
2701 stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, in the
2702 notice of the special meeting. If no place is stated in or fixed in accordance with the bylaws or in
2703 the notice of the special meeting, special meetings shall be held at the corporation's principal
2704 office.

2705 (3) Only business within the purpose or purposes described in the special meeting notice
2706 required by s. 607.0705 may be conducted at a special meeting of shareholders' ~~meeting~~.

2707 (4) Participation of shareholders and proxy holders at a special meeting of shareholders by
2708 remote communication shall be governed by and subject to the provisions of s.607.0709. If
2709 authorized by the board of directors, and subject to such guidelines and procedures as the board
2710 of directors may adopt, shareholders and proxy holders not physically present at a special
2711 meeting of shareholders may, by means of remote communication:

2712 (a) ~~Participate in a special meeting of shareholders.~~

2713 (b) ~~Be deemed present in person and vote at a special meeting of shareholders, whether~~
2714 ~~such meeting is to be held at a designated place or solely by means of remote~~
2715 ~~communication, provided that:~~

2716 1. ~~The corporation shall implement reasonable measures to verify that each~~
2717 ~~person deemed present and permitted to vote at the special meeting by means of remote~~
2718 ~~communication is a shareholder or proxy holder;~~

2719 2. ~~The corporation shall implement reasonable measures to provide such~~
2720 ~~shareholders or proxy holders a reasonable opportunity to participate in the special~~
2721 ~~meeting and to vote on matters submitted to the shareholders, including, without~~

2722 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2723 ~~special meeting substantially concurrently with such proceedings; and~~

2724 ~~3. If any shareholder or proxy holder votes or takes other action at the special~~
2725 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2726 ~~be maintained by the corporation.~~

2727

2728 **Commentary to Section 607.0702:**

2729 Clarifying changes in subsection (1)(b), which are derived from the Model Act, are considered
2730 non-substantive.

2731 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2732 regarding participation in a meeting of shareholders by remote communications.

2733

2734 607.0703. Court-ordered meeting.

2735 (1) The circuit court ~~in the applicable of the county where a corporation's principal office is~~
2736 ~~located, if located in this state, or where a corporation's registered office is located if its principal~~
2737 ~~office is not located in this state, may, after notice to the corporation, summarily order a meeting~~
2738 to be held:

2739 (a) On application of any shareholder ~~of the corporation~~ entitled to vote ~~in~~ at an annual
2740 meeting if neither an annual meeting has ~~not~~ been held nor action by written consent in lieu
2741 thereof has become effective within any ~~13-15-~~month period; or

2742 (b) On application of one or more shareholders ~~a shareholder~~ who signed a demand for
2743 a special meeting valid under s. 607.0702, if:

2744 1. Notice of the special meeting was not given within 60 days after the first day
2745 on which the requisite number of demands have been ~~date the demand~~ was delivered to
2746 the corporation's secretary; or

2747 2. The special meeting was not held in accordance with the notice.

2748 (2) The court may fix the time and place of the meeting, determine the shares entitled to
2749 participate in the meeting, specify a record date or dates for determining shareholders entitled to
2750 notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
2751 quorum by voting group required for matters to be considered at the meeting (or direct that the
2752 votes of a voting group represented at the meeting constitute a quorum of such voting group for
2753 action on those matters), and enter other orders as ~~may be appropriate~~ necessary to accomplish
2754 the purpose or purposes of the meeting.

2755

2756 **Commentary to Section 607.0703:**

2757 The words “after notice to the corporation” is not in the Model Act and has been deleted in
2758 subsection (1). This change is not considered substantive, since the company will have to be
2759 notified of the action through the service of process in the lawsuit. Further, this change is not
2760 intended to authorize or allow an ex parte action.

2761 The word “summarily” has been added to the language at the end of subsection (1) regarding the
2762 Court's power to order a meeting. This language matches the language in s. 7.03(a) of the Model
2763 Act and corresponds with other existing similar references throughout Chapter 607 and in the
2764 Delaware corporate statute. The use of the word "summarily" is intended to urge courts to act
2765 quickly on this type of request, possibly through, within the applicable power and discretion of
2766 the court, expedited briefing and a quick decision.

2767 The words “of the corporation” were removed from (1)(a). This is not intended to be a
2768 substantive change, since the definition of “shareholder” in s. 607.0141(24) states that a
2769 shareholder is a holder of shares in the corporation.

2770 The time frame in subsection (1)(a) was changed from 13 months to 15 months so that it is
2771 consistent with s. 7.03(a)(1) of the Model Act. The 60 day provision in s. 607.0703(1)(b) was not
2772 changed, despite the shorter 30 day period contained in s. 7.03(a)(2) of the Model Act. This
2773 longer period was an intentional deviation from the Model Act adopted in 1989 and was intended
2774 to give public companies more time to comply with applicable Exchange Act requirements if a
2775 demand for a meeting has been received.

2776 Section 607.0703(1)(a) was amended to make clear that a court may not order an annual meeting
2777 if shareholders have acted by written consent to elect directors, in accordance with s.
2778 607.0701(1), within the 15-month period.

2779 The words “or dates was added to subsection (2) to recognize the ability of a corporation, at its
2780 option, to establish bi-furcated record dates. In addition, the broader Model Act language in s.
2781 7.03(b) replaces the language in current subsection (2). Further, language was added to make
2782 clear that courts have the authority to establish quorum requirements for separate voting groups.

2783 For clarity, this section is not intended to be overruled by an exclusive forum bylaws provision
2784 that selects a forum different from the circuit court identified in this section (the circuit court in
2785 the applicable county). Such circuit court continues to have jurisdiction for the matters described
2786 in this section, notwithstanding any validly adopted exclusive forum bylaw provision.

2787

2788 607.0704. Action by shareholders without a meeting.

2789 (1) Unless otherwise provided in the articles of incorporation ~~or in subsection (8)~~, action
2790 required or permitted by this ~~chapter act~~ to be taken at an annual or special meeting of
2791 shareholders may be taken without a meeting, without prior notice, and without a vote if the
2792 action is taken by the holders of outstanding stock of each voting group entitled to vote thereon
2793 having not less than the minimum number of votes with respect to each voting group that would
2794 be necessary to authorize or take such action at a meeting at which all voting groups and shares
2795 entitled to vote thereon were present and voted. In order to be effective the action must be
2796 evidenced by one or more written consents describing the action taken, dated and signed by
2797 approving shareholders having the requisite number of votes of each voting group entitled to
2798 vote thereon, and delivered to the corporation by delivery to its principal office in this state, its
2799 principal place of business, the corporate secretary, or another officer or agent of the corporation
2800 having custody of the book in which proceedings of meetings of shareholders are recorded. No
2801 written consent shall be effective to take the corporate action referred to therein unless, within 60
2802 days of the date of the earliest dated consent delivered in the manner required by this section,
2803 written consents signed by shareholders owning a sufficient number of shares ~~the number of~~
2804 ~~shareholders~~ required to authorize or take the action have been ~~are~~ delivered to the corporation
2805 by delivery as set forth in this section.

2806 (2) Any written consent may be revoked prior to the date that the corporation receives the
2807 required number of consents to authorize the proposed action. No revocation is effective unless
2808 in writing and until received by the corporation at its principal office or received by the corporate
2809 secretary or other officer or agent of the corporation having custody of the book in which
2810 proceedings of meetings of shareholders are recorded.

2811 (3) Within 10 days after (i) written consents sufficient to authorize or take the action have
2812 been delivered to the corporation, or (ii) such later date that tabulation of consents is completed
2813 pursuant to an authorization under subsection (4) ~~obtaining such authorization by written~~
2814 ~~consent~~, notice must be given to those shareholders who have not consented in writing or who
2815 are not entitled to vote on the action. The notice shall fairly summarize the material features of
2816 the authorized action and, if the action be such for which appraisal dissenters' rights are provided
2817 under this ~~chapter act~~, the notice shall contain a clear statement of the right of shareholders
2818 entitled to assert appraisal rights under this chapter with respect to the action ~~dissenting~~
2819 ~~therefrom~~ to be paid the fair value of their shares upon compliance with further provisions of this
2820 act regarding the rights of ~~dissenting~~ shareholders entitled to assert appraisal rights under this
2821 chapter with respect to the action.

2822 (4) A consent signed under this section has the effect of a meeting vote and may be
2823 described as such in any document. Unless the articles of incorporation, bylaws or a resolution
2824 of the board of directors provides for a reasonable delay to permit tabulation of written consents,
2825 the action taken by written consent shall be effective when written consents signed by

2826 shareholders owning a sufficient number of shares required to authorize or take the action have
2827 been delivered to the corporation.

2828 (5) In the event that the action to which the shareholders consent is such as would have
2829 required the filing of a certificate under any other section of this chapter ~~act~~ if such action had
2830 been voted on by shareholders at a meeting thereof, the certificate filed under such other section
2831 shall state that written consent has been given in accordance with the provisions of this section.

2832 (6) Whenever action is taken pursuant to this section, the written consent of the
2833 shareholders consenting thereto or the written reports of inspectors appointed to tabulate such
2834 consents shall be filed with the minutes of proceedings of shareholders.

2835 (7) The notice requirements in subsection (3) shall not delay the effectiveness of actions
2836 taken by written consent, and a failure to comply with such notice requirement shall not
2837 invalidate actions taken by written consent, provided that this subsection shall not be deemed to
2838 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely
2839 affected by a failure to give such notice within the required time period.

2840 (8) If a corporation's articles of incorporation authorize shareholders to cumulate their
2841 votes when electing directors pursuant to s. 607.0728, directors may not be elected by written
2842 consent of the shareholders unless the consent is unanimous.

2843

2844 **Commentary to Section 607.0704:**

2845 Subsection (4) has been modified, following s. 7.04(d) of the Model Act, addressing an ability to
2846 delay effectiveness of a written consent for a reasonable period of time to permit tabulation of
2847 the written consents received. A parallel change has also been made in subsection (3) requiring
2848 notice of an action taken by written consent to non-consenting shareholders within ten days after
2849 authorization of the action. No specific outside time limit on the time to tabulate written
2850 consents has been added. However, this provision is not intended to allow a corporation to
2851 inappropriately delay effecting an action taken by the corporation's shareholders by written
2852 consent.

2853 The language in Model Act s. 7.04(g) was added as new s. 607.0704(7) (expressing that the
2854 failure to give the required notice does not delay the effectiveness of the action taken or
2855 invalidate the action taken, subject to the right of a court to fashion an appropriate remedy for
2856 failure to give such notice). It is believed that this new language merely codifies the existing
2857 state of court decisions relative to this issue.

2858 New subsection (8) clarifies that if a corporation's articles of incorporation authorize
2859 shareholders to cumulate their votes when electing directors pursuant to s. 607.0728, directors
2860 may only be elected by written consent of the shareholders if the consent is unanimous.

2861

2862 607.0705. Notice of meeting.

2863 (1) A corporation shall notify shareholders of the date, time, and place of each annual and
2864 special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date.
2865 The notice shall include the record date for determining the shareholders entitled to vote at the
2866 meeting, if such date is different than the record date for determining shareholders entitled to
2867 notice of the meeting. If the board of directors has authorized participation by means of remote
2868 communication pursuant to s. 607.0709 for any class or series of shares, the notice to the holders
2869 of such class or series must describe the means of remote communication to be used. Unless this
2870 chapter ~~æ~~ or the articles of incorporation require otherwise, the corporation is required to give
2871 notice only to shareholders entitled to vote at the meeting as of the record date for determining
2872 the shareholders entitled to notice of the meeting. Notice shall be given in the manner provided
2873 in s. 607.0141, by or at the direction of the president, the secretary, or the officer or persons
2874 calling the meeting. If the notice is mailed at least 30 days before the date of the meeting, it may
2875 be done by a class of United States mail other than first class. Notwithstanding s. 607.0141, if
2876 mailed, such notice shall be deemed to be delivered when deposited in the United States mail
2877 addressed to the shareholder at her or his address as it appears in the record of shareholders of
2878 the corporation (maintained in accordance with s. 607.1601(3)) ~~on the stock transfer books of the~~
2879 ~~corporation~~, with postage thereon prepaid.

2880 (2) Unless this chapter ~~æ~~ or the articles of incorporation require otherwise, notice of an
2881 annual meeting of shareholders need not include a description of the purpose or purposes for
2882 which the meeting is called.

2883 (3) Notice of a special meeting of shareholders must include a description of the purpose or
2884 purposes for which the meeting is called.

2885 (4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is
2886 adjourned to a different date, time, or place, or to add or modify the terms of participation by
2887 remote communication, notice need not be given of the new date, time, ~~or~~ place or terms of
2888 participation by remote communication if the new date, time, ~~or~~ place or terms of participation
2889 by remote communication is announced at the meeting before an adjournment is taken, and any
2890 business may be transacted at the adjourned meeting that might have been transacted on the
2891 original date of the meeting. If a new record date for the adjourned meeting is or must be fixed
2892 under s. 607.0707, however, notice of the adjourned meeting must be given under this section to
2893 persons who are shareholders as of the new record date who are entitled to notice of the meeting.

2894 (5) Notwithstanding the foregoing, whenever notice is required to be given to any
2895 shareholder under any provision of this chapter or the articles of incorporation or bylaws of any
2896 corporation to whom ~~no notice of a shareholders' meeting need be given to a shareholder if:~~

2897 (a) Notice of two consecutive annual meetings, and all notices of meetings or the
2898 taking of action by written consent without a meeting to such person during the period

2899 ~~between such two consecutive annual meetings. An annual report and proxy statements for~~
2900 ~~two consecutive annual meetings of shareholders or~~

2901 (b) All, and at least two, ~~checks in~~ payments of dividends or interest on securities
2902 during a 12-month period,

2903 have been sent by first-class United States mail, addressed to the shareholder at ~~her or his~~ such
2904 person's address as it appears in the record of shareholders on the share transfer books of the
2905 corporation (maintained in accordance with s. 607.1601(3)), and returned undeliverable, then the
2906 giving of such notice to such person shall not be required. Any action or meeting which shall be
2907 taken or held without notice to such person shall have the same force and effect as if such notice
2908 has been duly given. The obligation of the corporation to give notice of a shareholders' meeting
2909 to any such shareholder shall be reinstated once the corporation has received a new address for
2910 such shareholder for entry on its share transfer books. If any such person shall deliver to the
2911 corporation a written notice setting forth such person's then current address, the requirement that
2912 a notice be given to such person with respect to future notices shall be reinstated.

2913

2914 **Commentary to Section 607.0705:**

2915 Language was added to subsection (1), with a cross reference to s. 607.0709 which now contains
2916 all of the provisions regarding attendance at shareholders' meetings, whether the meeting is an
2917 annual meeting or a special meeting, using remote communications, to the effect that if the board
2918 of directors has agreed to allow participation by remote communication at a shareholders'
2919 meeting, the notice shall be required to describe the means of remote communication to be used.

2920 Language has been added to subsection (4) to address the obligation to communicate the terms of
2921 remote communication for the continuation of an adjourned meeting.

2922 The language in subsection (5), which authorizes the corporation not to have to give notice to
2923 certain missing stockholders under certain circumstances, is modified to follow the language
2924 used in the current version of DGCL s. 230 (upon which this FBCA provision was originally
2925 based).

2926

2927

2928

2929 607.0706. Waiver of notice.

2930 (1) A shareholder may waive any notice required by this ~~chapter act~~, or the articles of
2931 incorporation, or bylaws, before or after the date and time stated in the notice. The waiver must
2932 be in writing, be signed by the shareholder entitled to the notice, and be delivered to the
2933 corporation for filing by the corporation with inclusion in the minutes or ~~filing with the~~ corporate
2934 records. Neither the business to be transacted at nor the purpose of any regular or special meeting
2935 of the shareholders need be specified in any written waiver of notice unless so required by the
2936 articles of incorporation or the bylaws.

2937 (2) A shareholder's attendance at a meeting:

2938 (a) Waives objection to lack of notice or defective notice of the meeting, unless the
2939 shareholder at the beginning of the meeting objects to holding the meeting or transacting
2940 business at the meeting; or

2941 (b) Waives objection to consideration of a particular matter at the meeting that is not
2942 within the purpose or purposes described in the meeting notice, unless the shareholder
2943 objects to considering the matter when it is presented.

2944

2945 **Commentary to Section 607.0706:**

2946 The language at the end of subsection (1), which confirms that the purpose of the meeting need
2947 not be included in the waiver of notice in order for the waiver of notice to be valid, was retained.
2948 Although not in the Model Act, it derives from s. 229 of the DGCL.

2949

2950 607.0707. Record date.

2951 (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or
2952 more voting groups ~~in order~~ to determine the shareholders entitled to notice of a shareholders'
2953 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not
2954 fix or provide for fixing such a record date, the board of directors ~~of the corporation~~ may fix the
2955 record date. In no event may a record date fixed by the board of directors be a date preceding the
2956 date upon which the resolution fixing the record date is adopted.

2957 (2) If not otherwise provided by or pursuant to the bylaws, the record date for determining
2958 shareholders entitled to demand a special meeting is the date the first shareholder delivers his or
2959 her demand to the corporation.

2960 (3) The bylaws may fix or provide the manner of fixing the record date for determining
2961 shareholders entitled to take action by the written consent of shareholders. If not otherwise
2962 provided by or pursuant to the bylaws, the board of directors of the corporation may set a record
2963 date for determining shareholders entitled to take action by the written consent of shareholders.
2964 In no event may a record date fixed by the board of directors be a date preceding the date upon
2965 which the resolution fixing the record date is adopted. If the bylaws do not fix or provide for the
2966 manner of fixing such a record date and if no such record date is fixed by the board of directors,
2967 the record date for determining shareholders entitled to take such action shall be ~~If not otherwise~~
2968 ~~provided by or pursuant to the bylaws and no prior action is required by the board of directors~~
2969 ~~pursuant to this act, the record date for determining shareholders entitled to take action without a~~
2970 ~~meeting is the date that the first signed written consent is delivered to the corporation under s.~~
2971 ~~607.0704. If not otherwise fixed, and prior action is required by the board of directors pursuant~~
2972 ~~to this chapter, the record date for determining shareholders entitled to take action without a~~
2973 ~~meeting is at the close of business on the day on which the board of directors adopts the~~
2974 ~~resolution taking such prior action.~~

2975 (4) If not otherwise provided by or pursuant to the bylaws, or by a court order pursuant to s.
2976 607.0703, the record date for determining shareholders entitled to notice of and to vote at an
2977 annual or special shareholders' meeting is the close of business on the day before the first notice
2978 is delivered to shareholders.

2979 (5) A record date for purposes of this section may not be more than 70 days before the
2980 meeting or action requiring a determination of shareholders.

2981 (6) A determination of shareholders entitled to notice of or to vote at a shareholders'
2982 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new
2983 record date or dates, which it must do if the meeting is adjourned to a date more than 120 days
2984 after the date fixed for the original meeting.

2985 (7) If a court orders a meeting adjourned to a date more than 120 days after the date fixed
2986 for the original meeting, it may provide that the original record date or dates continues in effect
2987 or it may fix a new record date or dates.

2988 (8) The record date for a shareholders' meeting fixed by or in the manner provided in the
2989 bylaws or by the board of directors shall be the record date for determining shareholders entitled
2990 both to notice, of and to vote at, the shareholders' meeting, unless in the case of a record date
2991 fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the
2992 time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record
2993 date on or before the date of the meeting to determine the shareholders entitled to vote at the
2994 meeting.

2995 (9) Shares of a corporation's own stock acquired by the corporation between the record
2996 date for determining shareholders entitled to notice of or to vote at a meeting of shareholders and
2997 the time of the meeting may be voted at the meeting by the holder of record as of the record date
2998 and shall be counted in determining the total number of outstanding shares entitled to be voted at
2999 the meeting.

3000 (10) If not otherwise fixed under s. 607.0703, the record date for determining shareholders
3001 entitled to demand a special meeting shall be the first date on which a signed shareholder
3002 demand is delivered to the corporation. No written demand for a special meeting shall be
3003 effective unless, within 60 days of the earliest date on which such a demand delivered to the
3004 corporation as required by s. 607.0702 was signed, written demands signed by shareholders
3005 holding at least the percentage of votes specified in or fixed in accordance with s. 607.0702(1)(b)
3006 have been delivered to the corporation.

3007

3008 **Commentary to Section 607.0707:**

3009 The ability to establish bifurcated record dates has been added to this section (and to
3010 corresponding places in other Article 7 sections) to provide corporations, if the directors so
3011 choose, with greater flexibility to align shareholder ownership and voting by setting a record date
3012 for voting closer to the meeting date. Delaware enacted similar provisions in 2009, and those
3013 provisions are contained in s. 213 of the DGCL. This option to establish bifurcated record dates
3014 is likely to be used primary by public companies. In light of this expectation, the Model Act
3015 commentary provides that although corporate laws provide this flexibility, public corporations
3016 will need to consider the SEC's proxy rules and the practicalities of proxy voting and vote
3017 counting mechanisms in using this flexibility.

3018 The changes to subsection (3) are based (in part) on s. 213(b) of the DGCL, make clear that the
3019 board may set a record date for determining shareholders entitled to take action by written
3020 consent of shareholders, and set a default rule for determining the record date if the board
3021 doesn't set a specific record date. However, the language for the bylaws override for fixing or
3022 establishing the method for fixing such record date contained in this section has been changed to
3023 parallel the syntax appearing in the lead-in to subsection (2). Finally, the last sentence of
3024 subsection (1) has also been added to subsection (3).

3025 The "unless" language contained in new subsection (8), which is based on s. 7.07(e) of the
3026 Model Act, is meant only to refer to bi-furcated record dates.

3027 New subsection (9) has been added to resolve an inconsistency between s. 607.0707(1), which
3028 states that shareholders of record on the record date are to receive notice of and are authorized to
3029 vote at a shareholders' meeting, and s. 607.0631, which provides that shares acquired by a
3030 corporation shall become, when acquired by the corporation, authorized but not issued and
3031 outstanding shares of the corporation (or authorized and issued but not outstanding, treasury
3032 shares under the circumstances set forth in s. 607.0631(5)). Because of these inconsistent
3033 positions, a Florida corporation might be reluctant to reacquire its shares between the record date
3034 and a meeting date because of the uncertainty as to how to deal with voting of those shares given
3035 the fact that under s. 607.0631(1) these shares would not be outstanding on the meeting date,
3036 even though they were issued and outstanding on the record date. This provision is based on a
3037 similar provision contained in Maryland's corporate statute.

3038

3039 Model Act s. 7.08. Conduct of the Meeting.

3040 Section 7.08 of the Model Act, which creates default rules regarding the conduct of shareholders'
3041 meetings, has not been added to the statute. It is believed that remedies already exist for dealing
3042 with manipulations of the shareholder voting machinery and that adding this section to the FBCA
3043 is therefore unnecessary.

3044 However, the poll closing provision that is contained in s. 7.08 of the Model Act has been added
3045 to s. 607.0729(6).

3046

3047 607.0709. Remote Participation in Annual and Special Meetings of Shareholders.

3048 (1) Shareholders of any voting group, other persons entitled to vote on behalf of
3049 shareholders pursuant to s. 607.0721, attorneys in fact for shareholders and holders of proxies
3050 appointed pursuant to s. 607.0722, may participate in any annual or special meeting of
3051 shareholders by means of remote communication to the extent the board of directors authorizes
3052 such participation for such voting group. Participation by means of remote communication shall
3053 be subject to such guidelines and procedures as the board of directors adopts, and shall be in
3054 conformity with subsection (2).

3055 (2) Shareholders, other persons entitled to vote on behalf of shareholders pursuant to s.
3056 607.0721, attorneys in fact for shareholders and holders of proxies appointed pursuant to s.
3057 607.0722, participating in a shareholders' meeting by means of remote communication
3058 authorized in conformity with subsection (1) shall be deemed present in person and may vote at
3059 such a meeting, whether such meeting is to be held at a designated place or solely by means of
3060 remote communication, if the corporation has implemented reasonable measures:

3061 (a) To verify that each person participating remotely as a shareholder is a shareholder,
3062 is another person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, is an
3063 attorney in fact for a shareholder or is a holder of a proxy appointed pursuant to s. 607.0722,
3064 and

3065 (b) To provide such shareholders, such other persons entitled to vote on behalf of
3066 shareholders pursuant to s. 607.0721, such attorneys in fact for shareholders and such
3067 holders of proxies appointed pursuant to s. 607.0722, a reasonable opportunity to participate
3068 in the meeting and to vote on matters submitted to the shareholders, including an
3069 opportunity to communicate, and to read or hear the proceedings of the meeting,
3070 substantially concurrently with such proceedings.

3071 (3) If any shareholder, any other person entitled to vote on behalf of a shareholder pursuant
3072 to s. 607.0721, any attorney in fact for a shareholder or any holder of a proxy appointed pursuant
3073 to s. 607.0722, votes or takes action at a shareholder's meeting by means of remote
3074 communication authorized in conformity with this section, a record of such vote or other action
3075 shall be maintained by the corporation.

3076 (4) If the board of directors is authorized to determine the place of a shareholders' meeting,
3077 the board of directors may, in its sole discretion, determine that the meeting shall be held solely
3078 by means of remote communication.

3079

3080 **Commentary to Section 607.0709:**

3081 New s. 607.0709 replaces the language previously contained in ss. 607.0701 and 607.0702
3082 regarding participation in a shareholders meeting by remote communication. The language is
3083 based on Model Act s. 7.09.

3084 The language in subsection (1) that allows the corporation’s board of directors to authorize
3085 remote participation for less than all shareholders (selecting between classes and series that can
3086 participate by remote participation) is based on subsection (1) of the Model Act provision. It is
3087 believed that the Board should have the flexibility to decide which classes or series of shares can
3088 participate in a meeting by remote participation, and that any abuse by the board in
3089 inappropriately using this provision should be able to be addressed by way of remedies available
3090 to shareholders for breaches of fiduciary duties.

3091 The term “voting groups” has been substituted for “classes and series” in subsection (1).

3092

3093 607.0720. Shareholders' list for meeting.

3094 (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list
3095 of the names of all its shareholders who are entitled to notice of a shareholders' meeting,
3096 ~~arranged by voting group with the address of, and the number and class and series, if any, of~~
3097 ~~shares held by, each.~~ If the board of directors fixes a different record date under s. 607.0707(8)
3098 to determine the shareholders entitled to vote at the meeting, the corporation shall also prepare an
3099 alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. Each
3100 list must be arranged by voting group (and within each voting group by class or series of shares)
3101 and show the address of and number of shares held by each shareholder. Nothing contained in
3102 this subsection shall require the corporation to include on such list the electronic mail address or
3103 other electronic contact information of a shareholder.

3104 (2) The shareholders' list for notice must be available for inspection by any shareholder for
3105 a period of 10 days prior to the meeting or such shorter time as exists between the record date
3106 and the meeting and continuing through the meeting at the corporation's principal office, at a
3107 place identified in the meeting notice in the city where the meeting will be held, or at the office
3108 of the corporation's transfer agent or registrar. Any separate shareholders' list for voting, if
3109 different, must be similarly available for inspection promptly after the record date for voting. A
3110 shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and,
3111 ~~the list~~ (subject to the requirements of s. 607.1602(3)), copy a list during regular business hours
3112 and at his or her expense, during the period it is available for inspection.

3113 (3) The corporation shall make the ~~shareholders'~~ list of shareholders entitled to vote
3114 available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to
3115 inspect the list at any time during the meeting or any adjournment.

3116 (4) The shareholders' list is prima facie evidence of the identity of shareholders entitled to
3117 examine the shareholders' list or to vote at a meeting of shareholders.

3118 (5) If the requirements of this section have not been substantially complied with or if the
3119 corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect ~~a the~~
3120 ~~shareholders' list~~ (or copy a list as permitted by subsection (2)) before or at the meeting, the
3121 meeting shall be adjourned until such requirements are complied with on the demand of any
3122 shareholder in person or by proxy who failed to get such access, or, if not adjourned upon such
3123 demand and such requirements are not complied with, the circuit court in the applicable ~~of the~~
3124 ~~county where a corporation's principal office (or, if none in this state, its registered office) is~~
3125 ~~located,~~ on application of the shareholder, may summarily order the inspection or copying at the
3126 corporation's expense and may postpone the meeting for which the list was prepared until the
3127 inspection or copying is complete.

3128 (6) Refusal or failure to comply with the requirements of this section shall not affect the
3129 validity of any action taken at such meeting.

3130 (7) A shareholder may not sell or otherwise distribute any information or records inspected
3131 under this section, except to the extent that such use is for a proper purpose as defined in s.
3132 607.1602(3). ~~Any person who violates this provision shall be subject to a civil penalty of \$5,000.~~

3133

3134 **Commentary to Section 607.0720:**

3135 Subsection (1) was modified to make it clear that the corporation need not include electronic
3136 mail addresses in its shareholder list.

3137 Subsection (2) was modified to make clear that shareholders have an absolute right to inspect the
3138 corporation's shareholders' list in connection with a meeting of shareholders, but that the right to
3139 obtain a copy of the shareholders' list is subject to the requirements of s. 607.1602 (requiring a
3140 demand made in good faith and with a proper purpose).

3141 Language was added to subsection (2) to correspond with the addition of the possibility of a bi-
3142 furcated record date. Such additional new language deals with the requirement to have a
3143 separate list of those entitled to vote in those cases where a bi-furcated record date has been
3144 established.

3145 Subsection (4), which subsection sets forth that the shareholder' list is prima facie evidence as to
3146 the identity of shareholders entitled to examine the list or to vote at the meeting, was retained,
3147 even though this subsection is not in the corresponding section of the Model Act.

3148 While not in the Model Act, the language in subsection (7), which has been in the Florida statute
3149 since 1994, was retained. However, the second sentence in subsection (7), which provides that
3150 any person who violates this provision shall be subject to a civil penalty of \$5,000, was removed.
3151 By removing this sentence, the penalty for improperly selling a shareholders' list is left to the
3152 courts to determine.

3153

3154 607.0721. Voting entitlement of shares.

3155 (1) Except as provided in subsections (2), (3), and (4) or unless the articles of incorporation
3156 or this ~~chapter~~ æ provides otherwise, each outstanding share, regardless of class or series, is
3157 entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares
3158 are entitled to vote. If the articles of incorporation provide for more or less than one vote for any
3159 share on any matter, every reference in this ~~chapter~~ æ to a majority or other proportion of shares
3160 shall refer to such a majority or other proportion of votes entitled to be cast.

3161 (2) ~~The S~~shares of a corporation are not entitled to vote if they are owned by or otherwise
3162 belong to the corporation directly or indirectly through an entity of which a majority of the
3163 voting power is held directly or indirectly by the corporation or which is otherwise controlled by
3164 the domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the
3165 shares entitled to vote for directors of the second corporation.

3166 (3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are
3167 entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation
3168 directly, or indirectly through an entity of which a majority of the voting power is held directly
3169 or indirectly by the corporation or which is otherwise controlled by the corporation ~~Subsection~~
3170 ~~(2) does not limit the power of a corporation to vote any shares, including its own shares, held by~~
3171 ~~it in a fiduciary capacity. For purposes of this subsection, "voting power" means the current~~
3172 power to vote in the election of directors of a corporation or to elect, select or appoint those
3173 persons who will govern another entity.

3174 (4) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be
3175 outstanding, after delivery of a written notice of redemption is effective ~~mailed to the holders~~
3176 ~~thereof~~ and a sum sufficient to redeem such shares has been deposited with a bank, trust
3177 company, or other financial institution upon an irrevocable obligation to pay the holders the
3178 redemption price upon surrender of the shares.

3179 (5) Shares standing in the name of another corporation, domestic or foreign, may be voted
3180 by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in
3181 the absence of any applicable provision, by such person as the board of directors of the corporate
3182 shareholder may designate. In the absence of any such designation or in case of conflicting
3183 designation by the corporate shareholder, the chair of the board, the president, any vice president,
3184 the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to
3185 be fully authorized to vote such shares.

3186 (6) Shares held by an administrator, executor, guardian, personal representative, or
3187 conservator may be voted by him or her, either in person or by proxy, without a transfer of such
3188 shares into his or her name. Shares standing in the name of a trustee may be voted by him or her,
3189 either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her
3190 without a transfer of such shares into his or her name or the name of his or her nominee.

3191 (7) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or
3192 an assignee for the benefit of creditors may be voted by him or her without the transfer thereof
3193 into his or her name.

3194 (8) If a share or shares stand of record in the names of two or more persons, whether
3195 fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety,
3196 or otherwise, or if two or more persons have the same fiduciary relationship respecting the same
3197 shares, unless the secretary of the corporation is given notice to the contrary and is furnished
3198 with a copy of the instrument or order appointing them or creating the relationship wherein it is
3199 so provided, then acts with respect to voting have the following effect:

3200 (a) If only one votes, in person or by proxy, his or her act binds all;

3201 (b) If more than one vote, in person or by proxy, the act of the majority so voting binds
3202 all;

3203 (c) If more than one vote, in person or by proxy, but the vote is evenly split on any
3204 particular matter, each faction is entitled to vote the share or shares in question
3205 proportionally;

3206 (d) If the instrument or order so filed shows that any such tenancy is held in unequal
3207 interest, a majority or a vote evenly split for purposes of this subsection shall be a majority
3208 or a vote evenly split in interest;

3209 (e) The principles of this subsection shall apply, insofar as possible, to execution of
3210 proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of
3211 a quorum.

3212 (9) Subject to s. 607.0723, nothing herein contained shall prevent trustees or other
3213 fiduciaries holding shares registered in the name of a nominee from causing such shares to be
3214 voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote
3215 shares as directed by a trustee or other fiduciary without the necessity of transferring the shares
3216 to the name of the trustee or other fiduciary.

3217

3218 **Commentary to Section 607.0721:**

3219 Clarifying changes were made in subsections (1) – (4) based on changes made in the 2016
3220 version of the Model Act, none of which are considered substantive. Subsections (5) – (9) are not
3221 in the Model Act, but have been in the FBCA since 1989 and are retained.

3222

3223 607.0722. Proxies.

3224 (1) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s.
3225 607.0721, or attorney in fact for a shareholder may vote the shareholder's shares in person or by
3226 proxy.

3227 (2) (a) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to
3228 s. 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise
3229 act for the shareholder by signing an appointment form or by electronic transmission. Any
3230 type of electronic transmission appearing to have been, or containing or accompanied by
3231 such information or obtained under such procedures to reasonably ensure that the electronic
3232 transmission was, transmitted by such person is a sufficient appointment, subject to the
3233 verification requested by the corporation under s. 607.0724.

3234 (b) Without limiting the manner in which a shareholder, other person entitled to vote
3235 on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may
3236 appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a
3237 shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721,
3238 or attorney in fact for a shareholder may make such an appointment by:

3239 1. Signing an appointment form, with the signature affixed, by any reasonable
3240 means including, but not limited to, facsimile or electronic signature.

3241 2. Transmitting or authorizing the transmission of an electronic transmission to
3242 the person who will be appointed as the proxy or to a proxy solicitation firm, proxy
3243 support service organization, registrar, or agent authorized by the person who will be
3244 designated as the proxy to receive such transmission. However, any electronic
3245 transmission must set forth or be submitted with information from which it can be
3246 determined that the electronic transmission was authorized by the shareholder, other
3247 person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in
3248 fact for a shareholder. If it is determined that the electronic transmission is valid, the
3249 inspectors of election or, if there are no inspectors, such other persons making that
3250 determination shall specify the information upon which they relied.

3251 (3) An appointment of a proxy is effective when a signed appointment form or an electronic
3252 transmission of the appointment is received by the inspector of election or by the secretary or
3253 other officer or agent authorized to count tabulate votes. An appointment is valid for the term—up
3254 to 11 months unless a longer period is expressly provided in the appointment form and, if no
3255 term is provided, is valid for 11 months unless the appointment is irrevocable under subsection
3256 (5).

3257 (4) The death or incapacity of the shareholder appointing a proxy does not affect the right
3258 of the corporation to accept the proxy's authority unless notice of the death or incapacity is

3259 received by the secretary or other officer or agent authorized to tabulate votes before the proxy
3260 exercises his or her authority under the appointment.

3261 (5) An appointment of a proxy is revocable by the shareholder unless the appointment form
3262 or electronic transmission conspicuously states that it is irrevocable and the appointment is
3263 coupled with an interest. Appointments coupled with an interest include the appointment of:

3264 (a) A pledgee;

3265 (b) A person who purchased or agreed to purchase the shares;

3266 (c) A creditor of the corporation who extended credit to the corporation under terms
3267 requiring the appointment;

3268 (d) An employee of the corporation whose employment contract requires the
3269 appointment; or

3270 (e) A party to a voting agreement created under s. 607.0731.

3271 (6) An appointment made irrevocable under subsection (5) becomes revocable when the
3272 interest with which it is coupled is extinguished.

3273 (7) Unless it otherwise provides, an appointment made irrevocable under subsection (5)
3274 continues in effect after a transfer of the shares and a transferee takes subject to the appointment,
3275 except that aA transferee for value of shares subject to an irrevocable appointment may revoke
3276 the appointment if the transferee did not know of its existence when he or she acquired the shares
3277 and the existence of the irrevocable appointment was not noted conspicuously on the certificate
3278 representing the shares or on the information statement for shares without certificates.

3279 (8) Subject to s. 607.0724 and to any express limitation on the proxy's authority appearing
3280 on the face of the appointment form or in the electronic transmission, a corporation is entitled to
3281 accept the proxy's vote or other action as that of the shareholder making the appointment.

3282 (9) If an appointment form expressly provides, any proxy holder may appoint, in writing, a
3283 substitute to act in his or her place.

3284 (10) Any copy, facsimile transmission, or other reliable reproduction of the writing or
3285 electronic transmission created under subsection (2) may be substituted or used in lieu of the
3286 original writing or electronic transmission for any purpose for which the original writing or
3287 electronic transmission could be used if the copy, facsimile transmission, or other reproduction is
3288 a complete reproduction of the entire original writing or electronic transmission.

3289 (11) A corporation may adopt bylaws authorizing additional means or procedures for
3290 shareholders to use in exercising rights granted by this section.

3291

3292 **Commentary to Section 607.0722:**

3293 Changes to subsection (3) follow the recently adopted changes to s. 7.22(c) of the Model Act.
3294 The new language clarifies that a proxy is valid for the period specified in the appointment form
3295 (which can be less than 11 months, 11 months or more than 11 months), and that if no term is
3296 specified, the term would be defaulted to 11 months unless such appointment is irrevocable
3297 under (5) (because it is coupled with an interest).

3298 The language added to subsection (7) follows recently adopted changes to s. 7.22 of the Model
3299 Act. This language makes clear that unless the appointment otherwise provides, an appointment
3300 made irrevocable under subsection (5) continues in effect after a transfer of the shares and a
3301 transferee takes subject to the appointment, except if such transferee is a transferee for value who
3302 did not know (or have reason to know from a notation on the certificate or in a related
3303 information statement) that there was an irrevocable appointment associated with such shares.
3304 This clarifying change is not believed to be substantive.

3305

3306 607.0723. Shares held by intermediaries and nominees.

3307 (1) A corporation's board of directors may establish a procedure ~~under~~ by which a person
3308 on whose behalf the beneficial owner of shares that are registered in the name of an intermediary
3309 or a nominee may elect to be treated is recognized by the corporation as the record shareholder
3310 by filing with the corporation a beneficial ownership certificate. The extent of this recognition
3311 may be determined in the procedure terms, conditions, and limitations of this treatment shall be
3312 specified in the procedure. To the extent such person is treated under such procedure as having
3313 rights or privileges that the record shareholder otherwise would have, the record shareholder
3314 shall not have those rights or privileges.

3315 (2) The procedure ~~shall specify~~ may set forth:

3316 (a) The types of intermediaries or nominees to which it applies;

3317 (b) The rights or privileges that the corporation recognizes in a person with respect to
3318 whom a beneficial owner ownership certificate is filed;

3319 (c) The manner in which the procedure is selected ~~by the nominee,~~ which shall include
3320 that the beneficial ownership certificate be signed or assented to by or on behalf of the
3321 record shareholder and the person or persons on whose behalf the shares are held;

3322 (d) The information that must be provided when the procedure is selected;

3323 (e) The period for which selection of the procedure is effective; ~~and~~

3324 (f) Requirements for notice to the corporation with respect to the arrangement; and

3325 (g) the form and contents of the beneficial ownership certificate.

3326 (3)(f) The procedure may specify any o~~o~~ther aspects of the rights and duties created by
3327 the filing of a beneficial ownership certificate.

3328

3329 **Commentary to Section 607.0723:**

3330 The changes follow the recently adopted changes to s. 7.23 of the Model Act. The new language
3331 modernizes this provision of the FBCA to better deal with issues of beneficial ownership of
3332 shares.

3333

3334 607.0724. Corporation's Acceptance of votes and other instruments.

3335 (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3336 appointment corresponds to the name of a shareholder, the corporation if acting in good faith is
3337 entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment
3338 and give it effect as the act of the shareholder.

3339 (2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3340 appointment does not correspond to the name of its shareholder, the corporation if acting in good
3341 faith is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or
3342 proxy appointment and give it effect as the act of the shareholder if:

3343 (a) The shareholder is an entity and the name signed purports to be that of an officer or
3344 agent of the entity;

3345 (b) The name signed purports to be that of an administrator, executor, guardian,
3346 personal representative, or conservator representing the shareholder and, if the corporation
3347 requests, evidence of fiduciary status acceptable to the corporation has been presented with
3348 respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

3349 (c) The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee
3350 for the benefit of creditors of the shareholder and, if the corporation requests, evidence of
3351 this status acceptable to the corporation has been presented with respect to the vote, ballot,
3352 consent, waiver, shareholder demand, or proxy appointment;

3353 (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in
3354 fact of the shareholder and, if the corporation requests, evidence acceptable to the
3355 corporation of the signatory's authority to sign for the shareholder has been presented with
3356 respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

3357 (e) Two or more persons are the shareholder as co-tenants or fiduciaries and the name
3358 signed purports to be the name of at least one of the co-owners and the person signing
3359 appears to be acting on behalf of all the co-owners.

3360 (3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand,
3361 or proxy appointment if the ~~secretary or other officer or agent~~ person authorized to accept or
3362 reject such instrument tabulate votes, acting in good faith, has reasonable basis for doubt about
3363 the validity of the signature on it or about the signatory's authority to sign for the shareholder.

3364 (4) ~~The corporation and its officer or agent who~~ Neither the corporation or any person
3365 authorized by it, nor an inspector of election under s. 607.0729, that accepts or rejects a vote,
3366 ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in
3367 accordance with the standards of this section ~~are not~~ is liable in damages to the shareholder for
3368 the consequences of the acceptance or rejection.

3369 (5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver,
3370 shareholder demand, or proxy appointment under this section is valid unless a court of competent
3371 jurisdiction determines otherwise.

3372 (6) If an inspector of election has been appointed under s. 607.0729, the inspector of
3373 election also has the authority to request information and make determinations under subsections
3374 (1), (2), and (3). Any determination made by the inspector of election under those subsections is
3375 controlling.

3376

3377 **Commentary to Section 607.0724:**

3378 Clarifying changes have been made following recent changes to s. 7.24 of the Model Act,
3379 including references to “ballot” and "shareholder demand" and language designed to coordinate
3380 with the inspector of election provisions in s. 607.0729.

3381

3382 607.0725. Quorum and voting requirements for voting.

3383 (1) Shares entitled to vote as a separate voting group may take action on a matter at a
3384 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of
3385 incorporation or this chapter ~~aet~~ provides otherwise, a majority of the votes entitled to be cast on
3386 the matter by the voting group constitutes a quorum of that voting group for action on that
3387 matter.

3388 (2) Once a share is represented for any purpose at a meeting, it is deemed present for
3389 quorum purposes for the remainder of the meeting and for any adjournment of that meeting
3390 unless a new record date is or must be fixed ~~set~~ for that adjourned meeting.

3391 (3) If a quorum exists, action on a matter (other than the election of directors) by a voting
3392 group is approved if the votes cast within the voting group favoring the action exceed the votes
3393 cast opposing the action, unless the articles of incorporation or this chapter ~~aet~~ requires a greater
3394 number of affirmative votes.

3395 (4) The holders of a majority of the shares represented, and who would be entitled to vote
3396 at a meeting if a quorum were present, where a quorum is not present, may adjourn such meeting
3397 from time to time.

3398 (5) The articles of incorporation may provide for a greater voting requirement or a greater
3399 or lesser quorum requirement for shareholders, or voting groups of shareholders, than is provided
3400 by this chapter ~~aet~~, but in no event shall a quorum consist of less than one-third of the shares
3401 entitled to vote.

3402 (6) An amendment to the articles of incorporation that adds, changes, or deletes a greater or
3403 lesser quorum or voting requirement shall meet the same quorum requirement and be adopted by
3404 the same vote and voting groups required to take action under the quorum and voting
3405 requirements then in effect or proposed to be adopted, whichever is greater.

3406 (7) The election of directors is governed by s. 607.0728.

3407 (8) Whenever a provision of this chapter provides for voting of classes or series as separate
3408 voting groups, the rules provided in s. 607.1004(3) for amendments of articles of incorporation
3409 apply to that provision.

3410

3411 **Commentary to Section 607.0725:**

3412 The language in subsection (4), dealing with the ability of the holders of a majority of the shares
3413 in attendance at a meeting for which a quorum is not present to adjourn the meeting (which has
3414 been in the statute since 1989 but is not in the Model Act) has been retained.

3415 Subsections (5) and (6) are derived from s. 7.27 of the Model Act.

3416 Practitioners are reminded that the best way to avoid the possibility that a separate vote of each
3417 voting group will be required under particular circumstances is to expressly and clearly state in
3418 the corporation's articles of incorporation that all shares will vote together as a single voting
3419 group on such matters.

3420

3421 607.0726. Action by single and multiple voting groups.

3422 (1) If the articles of incorporation or this chapter ~~act~~ provides for voting by a single voting
3423 group on a matter, action on that matter is taken when voted upon by that voting group as
3424 provided in s. 607.0725.

3425 (2) If the articles of incorporation or this chapter ~~act~~ provides for voting by two or more
3426 voting groups on a matter, action on that matter is taken only when voted upon by each of those
3427 voting groups counted separately as provided in s. 607.0725. Action may be taken by different
3428 ~~one~~ voting groups on a matter ~~even though no action is taken by another voting group entitled to~~
3429 ~~vote on the matter~~ at different times.

3430

3431 **Commentary to Section 607.0726:**

3432 Clarifying changes based on the most recent versions of the corollary section of the Model Act
3433 have been made. None of these changes are considered substantive.

3434

3435 607.0728. Voting for directors; cumulative voting.

3436 (1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a
3437 greater voting requirement for the election of directors and that is adopted by the board of
3438 directors or shareholders of a corporation having shares registered pursuant to section 12 of the
3439 Securities Exchange Act of 1934 ~~listed on a national securities exchange~~ at the time of adoption,
3440 directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at
3441 a meeting at which a quorum is present. A bylaw provision or amendment adopted by
3442 shareholders which specifies the votes necessary for the election of directors may not be further
3443 amended or repealed by the board of directors.

3444 (2) Each shareholder who is entitled to vote at an election of directors has the right to vote
3445 the number of shares owned by him or her for as many persons as there are directors to be
3446 elected and for whose election the shareholder has a right to vote. Shareholders do not have a
3447 right to cumulate their votes for directors unless the articles of incorporation so provide.

3448 (3) A statement included in the articles of incorporation that “all or a designated voting
3449 group of shareholders are entitled to cumulate their votes for directors,” or words of similar
3450 import, means that the shareholders designated are entitled to multiply the number of votes they
3451 are entitled to cast by the number of directors for whom they are entitled to vote and cast the
3452 product for a single candidate or distribute the product among two or more candidates.

3453

3454 **Commentary to Section 607.0728:**

3455 Subsection (1), which was added to the Florida statute in 2009, allows directors of a public
3456 company to amend the corporation's bylaws to fix a greater voting requirement for the election of
3457 directors without requiring action by the shareholders. The definition of public company used in
3458 this section has been modified to provide that the board of directors of any company with a class
3459 of shares registered pursuant to section 12 of the Securities Exchange Act of 1934 (whether or
3460 not on a national securities exchange) may adopt a majority voting standard.

3461 The language in the first sentence of subsection (2) is not included in Model Act s. 7.28(b).
3462 However, this language is believed to be the general rule with respect to shares entitled to vote
3463 for the election of directors, and therefore the language has been retained.

3464 The language in s. 7.28(d) of the Model Act dealing with the rules for cumulative voting was
3465 determined not to be necessary and thus has not been included.

3466 Concern was expressed that the language allowing the board of directors of a public company to
3467 adopt a majority voting standard could be viewed as in conflict with the language in s. 607.1021
3468 (although it was agreed that the drafters of the 2009 change did not intend for Section 607.1021
3469 to override the authority granted to directors to act alone to fix the greater voting requirement).
3470 The subcommittee considered whether to add a cross reference to s. 607.1021 so as to eliminate
3471 any potential for conflict. However, it was concluded that the cross reference was unnecessary.

3472

3473 607.0729. Voting Procedures; Inspectors of Election.

3474 (1) A corporation that has a class of shares registered pursuant to section 12 of the
3475 Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more
3476 inspectors to act at a meeting of shareholders in connection with determining voting results.
3477 Each inspector will faithfully execute the duties of inspector with strict impartiality and
3478 according to the best of the inspector's ability. An inspector may be an officer or employee of
3479 the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the
3480 performance of the duties of inspector under subsection (2), and may rely on information
3481 provided by such persons and other persons, including those appointed to count votes, unless the
3482 inspectors believe reliance is unwarranted.

3483 (2) The inspectors shall:

3484 (a) Ascertain the number of shares outstanding and the voting power of each;

3485 (b) Determine the shares represented at a meeting;

3486 (c) Determine the validity of proxy appointments and ballots;

3487 (d) Count the votes; and

3488 (e) Make a written report of the results.

3489 (3) In performing their duties, the inspectors may examine (i) the proxy appointment forms
3490 and any other information provided in accordance with s. 607.0722(2), (ii) any envelope or
3491 related writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or
3492 other information specified in s. 607.0724, and (v) the relevant books and records of the
3493 corporation relating to its shareholders and their entitlement to vote, including any securities
3494 position list provided by a depository clearing agency.

3495 (4) The inspectors also may consider other information that they believe is relevant and
3496 reliable for the purpose of performing any of the duties assigned to them pursuant to subsection
3497 (2), including for the purpose of evaluating inconsistent, incomplete or erroneous information
3498 and reconciling information submitted on behalf of banks, brokers, their nominees or similar
3499 persons that indicates more votes being cast than a proxy is authorized by the record shareholder
3500 to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors
3501 consider other information allowed by this subsection, they shall, in their report under subsection
3502 (2), specify the information considered by them, including the purpose or purposes for which the
3503 information was considered, the person or persons from whom they obtained the information,
3504 when the information was obtained, the means by which the information was obtained, and the
3505 basis for the inspectors' belief that such information is relevant and reliable.

3506 (5) Determinations of law by the inspectors of election are subject to de novo review by a
3507 court in a judicial proceeding challenging the inspector's activities under this section.

3508 (6) The chair of the meeting shall announce at the meeting when the polls close for each
3509 matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon
3510 the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any
3511 revocations or changes thereto may be accepted.

3512

3513 **Commentary to Section 607.0729:**

3514 This new section of the FBCA adopts the current version of s. 7.29 of the Model Act dealing
3515 with inspectors of election. Section 7.29(a) of the Model Act applies this provision to all
3516 companies with a class of shares registered pursuant to section 12 of the Securities Exchange Act
3517 of 1934 and to "any other corporation" that appoints an inspector to act at a meeting of directors
3518 (compared to s. 231 of the DGCL, which, in covering this subject, only applies this provision to
3519 public companies). This statute follows the approach taken on this issue in the Model Act.
3520 However, the provision has been changed to a requirement to faithfully execute the duties of an
3521 inspector with strict impartiality rather than a provision that requires an inspector to "certify in
3522 writing" that they will faithfully execute the duties of inspector with strict impartiality. While
3523 best practices might be to arrange for a certification in writing, requiring a written certification
3524 was viewed as a potential trap for companies that may not get it technically right, even though
3525 their inspectors appropriately execute their duties.

3526 Subsection (5) is believed to reflect the current law on this topic.

3527 New subsection (6) laying out the impact of the closing of the polls at a shareholders meeting,
3528 has been added. The language is derived from s. 7.08(d) of the Model Act and is consistent with
3529 a similar provision in s. 231 of the DGCL.

3530

3531 607.0730. Voting trusts.

3532

3533 (1) One or more shareholders may create a voting trust, conferring on a trustee the right to
3534 vote or otherwise act for him or her or for them, by signing an agreement setting out the
3535 provisions of the trust (which may include anything consistent with its purpose) and transferring
3536 their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list
3537 of the names and addresses of all owners of a beneficial interests in shares of the corporation
3538 held in the trust, together with the number and class of shares each transferred to the trust, and
3539 deliver copies of the list and agreement to the corporation's at its principal office. After filing a
3540 copy of the list and agreement in the corporation's principal office, such copy shall be open to
3541 inspection by any shareholder of the corporation (subject to the requirements of s. 607.1602(3))
3542 or by any beneficiary of the trust under the agreement, during business hours.

3543 (2) A voting trust becomes effective on the date the first shares subject to the trust are
3544 registered in the trustee's name.

3545

3546 **Commentary to Section 607.0730:**

3547 Subsection (1) was modified to include clean-up language from s. 7.30 of the 2016 version of the
3548 Model Act ("shall prepare a list of the names and addresses of all voting trust beneficial owners"
3549 instead of "shall prepare a list of the names and addresses of all owners of a beneficial interest in
3550 shares of the corporation held in the trust."). This change eliminates the need for the Model Act
3551 definition of the words "voting trust beneficial owners".

3552 Although not in the corollary section of the Model Act, the language in the last sentence of
3553 subsection (1), dealing with the requirement that a copy of the trust need to be made available to
3554 beneficial holders of an interest in the trust and, subject to the requirements of Section
3555 607.0602(3), to shareholders of the company, has been retained.

3556 The language in the first sentence of section (c) of Model Act Section 7.30, which provides that
3557 the duration of a voting trust shall be as set forth in the voting trust agreement, has not been
3558 added. The question of whether a voting trust without an expiration date can continue
3559 indefinitely is left to the Courts to decide.

3560 Since Florida law has not included a ten-year limitation on the duration of a voting trust since
3561 this statute was modified back in 1998, the transition language contained in s. 7.30(c) of the
3562 Model Act has not been added to this section of the FBCA.

3563

3564 607.0731 Shareholders' Voting agreements.

3565 (1) Two or more shareholders may provide for the manner in which they will vote their
3566 shares by signing an agreement for that purpose. A ~~shareholders' voting~~ agreement created under
3567 this section is not subject to the provisions of s. 607.0730.

3568 (2) A ~~shareholders' voting~~ agreement created under this section is specifically enforceable.

3569 (3) A transferee of shares in a corporation the shareholders of which have entered into an
3570 agreement authorized by subsection (1) shall be bound by such agreement if the transferee takes
3571 shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice
3572 of any such agreement or any ~~such~~ renewal thereof if the existence of such agreement ~~thereof~~ is
3573 noted on the face or back of the certificate or certificates representing such shares or on the
3574 information statement for uncertificated shares required by s. 607.0626(2).

3575

3576 **Commentary to Section 607.0731:**

3577 The name of this section has been changed to "Voting Agreements," since this section only deals
3578 with voting agreements and the current heading ("Shareholders' Agreements") is misleading and
3579 creates confusion with s. 607.0732. A corresponding change has been made to the language in
3580 subsections (1) and (2) to change the words "shareholders' agreement" in each subsection to
3581 "voting agreements."

3582 The language in subsection (3), dealing with the issue of whether transferees take their shares
3583 subject to a voting agreement, has been retained, even though this language is not in the
3584 corresponding section of the Model Act. There is a concern that taking this subsection out could
3585 possibly be misconstrued by judges as a change in the law, when confronted with addressing
3586 whether a holder in due course who is not aware of a voting agreement should take free of the
3587 agreement. However, the language has been modernized.

3588 Users of the statute are reminded that as a matter of good practice, legends with respect to voting
3589 agreements placed on stock certificates should be carefully worded so that the legend not only
3590 covers the particular agreement, but also all extensions, amendments or renewals of such
3591 agreement.

3592

3593 607.0732 Shareholder agreements.

3594 (1) An agreement among the shareholders of a corporation ~~with 100 or fewer shareholders~~
3595 ~~at the time of the agreement,~~ that complies with this section, is effective among the shareholders
3596 and the corporation, even though it is inconsistent with one or more other provisions of this
3597 chapter, if it:

3598 (a) Eliminates the board of directors or restricts the discretion or powers of the board
3599 of directors;

3600 (b) Governs the authorization or making of distributions regardless of whether ~~or not~~
3601 they are in proportion to ownership of shares, subject to the limitations in s. 607.06401;

3602 (c) Establishes who shall be directors or officers of the corporation, or their terms of
3603 office or manner of selection or removal;

3604 (d) Governs, in general or in regard to specific matters, the exercise or division of
3605 voting power by the shareholders and directors or by or among any of them, including use of
3606 weighted voting rights or director proxies;

3607 (e) Establishes the terms and conditions of any agreement for the transfer or use of
3608 property or the provision of services between the corporation and any shareholder, director,
3609 officer, or employee of the corporation or among any of them;

3610 (f) Transfers to any shareholder or other person any authority to exercise the corporate
3611 powers or to manage the business and affairs of the corporation, including the resolution of
3612 any issue about which there exists a deadlock among directors or shareholders; ~~or~~

3613 (g) Requires dissolution of the corporation at the request of one or more of the
3614 shareholders or upon the occurrence of a specified event or contingency;

3615 (h) Imposes liability on a shareholder for the attorneys' fees or expenses of the
3616 corporation or any other party in connection with an internal corporate claim, as defined in s.
3617 607.0208(4); or

3618 (ih) Otherwise governs the exercise of the corporate powers or the management of the
3619 business and affairs of the corporation or the relationship between the shareholders, the
3620 directors, and or the corporation, or among any of them, and is not contrary to public policy.
3621 ~~For purposes of this paragraph, agreements contrary to public policy include, but are not~~
3622 ~~limited to, agreements that reduce the duties of care and loyalty to the corporation as~~
3623 ~~required by ss. 607.0830 and 607.0832, exculpate directors from liability that may be~~
3624 ~~imposed under s. 607.0831, adversely affect shareholders' rights to bring derivative actions~~
3625 ~~under s. 607.07401, or abrogate appraisal dissenters' rights under ss. 607.1301-607.1320.~~

3626 (2) An agreement authorized by this section shall be:

3627 (a) 1. Set forth in the articles of incorporation or bylaws and approved by all
3628 persons who are shareholders at the time the agreement; or

3629 2. Set forth in a written agreement that is signed by all persons who are
3630 shareholders at the time of the agreement and such written agreement is made
3631 known to the corporation; and;

3632 (b) Subject to termination or amendment only by all persons who are shareholders
3633 at the time of the termination or amendment, unless the agreement provides otherwise
3634 ~~with respect to termination and with respect to amendments that do not change the~~
3635 ~~designation, rights, preferences, or limitations of any of the shares of a class or series.~~

3636 (3) The existence of an agreement authorized by this section shall be noted conspicuously
3637 on the front or back of each certificate for outstanding shares or on the information statement
3638 required with respect to uncertificated shares by s. 607.0626(2). If at the time of the agreement
3639 the corporation has shares outstanding which are represented by certificates, the corporation shall
3640 recall such certificates and issue substitute certificates that comply with this subsection. The
3641 failure to note the existence of the agreement on the certificate or information statement shall not
3642 affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares
3643 who, at the time of purchase, did not have knowledge of the existence of the agreement shall be
3644 entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the
3645 existence of the agreement if its existence is noted on the certificate or information statement for
3646 the shares in compliance with this subsection and, if the shares are not represented by a
3647 certificate, the information statement is delivered to the purchaser at or before ~~prior to~~ the time of
3648 the purchase of the shares. An action to enforce the right of rescission authorized by this
3649 subsection must be commenced within the earlier of 90 days after discovery of the existence of
3650 the agreement or 2 years after the time of purchase of the shares.

3651 (4) An agreement authorized by this section shall cease to be effective when shares of the
3652 corporation are registered pursuant to section 12 of the Securities Exchange Act of 1934 ~~are~~
3653 ~~listed on a national securities exchange or regularly quoted in a market maintained by one or~~
3654 ~~more members of a national or affiliated securities association.~~ If the agreement ceases to be
3655 effective for any reason, the board of directors may, if the agreement is contained or referred to
3656 in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of
3657 incorporation or bylaws, without shareholder action, to delete the agreement and any references
3658 to it.

3659 (5) An agreement authorized by this section that limits the discretion or powers of the board
3660 of directors shall relieve the directors of, and impose upon the person or persons in whom such
3661 discretion or powers are vested, liability for acts or omissions imposed by law on directors to the
3662 extent that the discretion or powers of the directors are limited by the agreement.

3663 (6) The existence or performance of an agreement authorized by this section shall not be a
3664 ground for imposing personal liability on any shareholder for the acts or debts of the corporation
3665 even if the agreement or its performance treats the corporation as if it were a partnership or
3666 results in failure to observe the corporate formalities otherwise applicable to the matters
3667 governed by the agreement.

3668 (7) Incorporators or subscribers for shares may act as shareholders with respect to an
3669 agreement authorized by this section if no shares have been issued when the agreement is made.

3670 (8) This section shall not apply to, limit or invalidate agreements that are otherwise valid or
3671 authorized without regard to this section, including without limitation shareholder agreements
3672 between or among some or all of the shareholders or agreement between or among the
3673 corporation and one or more shareholders.

3674

3675 **Commentary to Section 607.0732:**

3676 Subsection (1) currently limits the use of this section to corporations that have 100 or fewer
3677 shareholders at the time of the agreement. The comparable Model Act provision does not contain
3678 this limitation. The 100 or fewer shareholder limitation has been removed based on the belief
3679 that the limitation is an artificial limitation on the definition of what is a closely held entity and
3680 that, in an era of providing flexibility for corporations and other entities to agree upon how they
3681 will operate, this distinction no longer makes sense.

3682 Subsection (1)(h) (now (i)), has been modified to remove the examples of provisions that are
3683 contrary to public policy. These examples are not in subsection (a)(8) of the corollary section of
3684 the Model Act. Whether particular provisions of a shareholders' agreement are contrary to public
3685 policy is a decision to be made by the courts.

3686 Although the limits of this subsection of the Model Act are left uncertain, the commentary to the
3687 2016 version of the Model Act provides that provisions of the Act may not be overridden if they
3688 reflect core principles of public policy with respect to corporate affairs. For example, a provision
3689 of a shareholder agreement that purports to eliminate all of the standards of conduct established
3690 under s. 607.0830 may be viewed as contrary to public policy and thus not validated under
3691 subsection (1)(h). On the other hand, a provision that modifies standards of conduct under certain
3692 circumstances may be acceptable.

3693 Further, the validity of some provisions may depend upon the circumstances. For example, a
3694 provision of a shareholder agreement that limits inspection rights under s. 607.1602 or the right to
3695 financial statements under s. 607.1620 might, as a general matter, be valid, but that provision might
3696 not be given effect if it prevented shareholders from obtaining information necessary to determine
3697 whether directors of the corporation have satisfied the standards of conduct under s. 607.0830.

3698 This change is not intended to suggest that one or more of the items that were previously
3699 enumerated in subsection (1)(h) as agreements that are contrary to public policy should no longer
3700 be considered to be contrary to public policy. Rather, as noted above, whether any such agreements
3701 are contrary to public policy will be determined by a court based on the particularities of each
3702 agreement and the circumstances, and in some cases these items may be contrary to public policy
3703 and in other circumstances they may not.

3704 Subsection (8) was added to make clear that a shareholders' agreement which is not executed by
3705 all persons who are shareholders at the time the agreement is entered into may still be
3706 enforceable against the shareholders who are parties to such agreement and against the
3707 corporation under certain circumstances. This is in addition to the two sections of the FBCA that
3708 expressly permit enforcement of these types of agreements: (i) Sections 607.0731 (Voting
3709 Agreements) and (ii) Section 607.0627 (Restriction on Transfer of Shares and Other Securities).
3710 The addition of subsection (8) with respect to shareholder agreements that do not cover the
3711 topics contained in Section 607.0731(1) is not considered a change in the law and reflects what is

3712 considered to be the current state of the common law on this issue. It is added to eliminate any
3713 ambiguity in that regard and to provide express supporting language.

3714 Practitioners are cautioned that if they want certainty as to whether an agreement covering one or
3715 more of the topics contained in s. 607.0732(1) is enforceable, they should follow the
3716 requirements of this section of the FBCA.

3717 A shareholder agreement otherwise validated by s. 607.0732 is not legally binding on the state, on
3718 creditors, or on other third parties. For example, an agreement that dispenses with the need to make
3719 corporate filings required by the FBCA would be ineffective. Similarly, an agreement among
3720 shareholders that provides that only the president has authority to enter into contracts for the
3721 corporation would not, without more, be binding against third parties – and ordinary principles of
3722 agency, including the concept of apparent authority, would continue to apply.

3723

3724 607.07401—Shareholders’ derivative actions.

3725 ~~(1) A person may not commence a proceeding in the right of a domestic or foreign~~
3726 ~~corporation unless the person was a shareholder of the corporation when the transaction~~
3727 ~~complained of occurred or unless the person became a shareholder through transfer by operation~~
3728 ~~of law from one who was a shareholder at that time.~~

3729 ~~(2) A complaint in a proceeding brought in the right of a corporation must be verified and~~
3730 ~~allege with particularity the demand made to obtain action by the board of directors and that the~~
3731 ~~demand was refused or ignored by the board of directors for a period of at least 90 days from the~~
3732 ~~first demand unless, prior to the expiration of the 90 days, the person was notified in writing that~~
3733 ~~the corporation rejected the demand, or unless irreparable injury to the corporation would result~~
3734 ~~by waiting for the expiration of the 90-day period. If the corporation commences an investigation~~
3735 ~~of the charges made in the demand or complaint, the court may stay any proceeding until the~~
3736 ~~investigation is completed.~~

3737 ~~(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the~~
3738 ~~court finds that one of the groups specified below has made a determination in good faith after~~
3739 ~~conducting a reasonable investigation upon which its conclusions are based that the maintenance~~
3740 ~~of the derivative suit is not in the best interests of the corporation. The corporation shall have the~~
3741 ~~burden of proving the independence and good faith of the group making the determination and~~
3742 ~~the reasonableness of the investigation. The determination shall be made by:~~

3743 ~~(a) A majority vote of independent directors present at a meeting of the board of~~
3744 ~~directors, if the independent directors constitute a quorum;~~

3745 ~~(b) A majority vote of a committee consisting of two or more independent directors~~
3746 ~~appointed by a majority vote of independent directors present at a meeting of the board of~~
3747 ~~directors, whether or not such independent directors constitute a quorum; or~~

3748 ~~(c) A panel of one or more independent persons appointed by the court upon motion by~~
3749 ~~the corporation.~~

3750 ~~(4) A proceeding commenced under this section may not be discontinued or settled without~~
3751 ~~the court’s approval. If the court determines that a proposed discontinuance or settlement will~~
3752 ~~substantially affect the interest of the corporation’s shareholders or a class, series, or voting~~
3753 ~~group of shareholders, the court shall direct that notice be given to the shareholders affected. The~~
3754 ~~court may determine which party or parties to the proceeding shall bear the expense of giving the~~
3755 ~~notice.~~

3756 ~~(5) On termination of the proceeding, the court may require the plaintiff to pay any~~
3757 ~~defendant’s reasonable expenses, including reasonable attorney’s fees, incurred in defending the~~
3758 ~~proceeding if it finds that the proceeding was commenced without reasonable cause.~~

3759 ~~(6) The court may award reasonable expenses for maintaining the proceeding, including~~
3760 ~~reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding~~
3761 ~~who receives any relief, whether by judgment, compromise, or settlement, and require that the~~
3762 ~~person account for the remainder of any proceeds to the corporation; however, this subsection~~
3763 ~~does not apply to any relief rendered for the benefit of injured shareholders only and limited to a~~
3764 ~~recovery of the loss or damage of the injured shareholders.~~

3765 ~~(7) For purposes of this section, "shareholder" includes a beneficial owner whose shares are~~
3766 ~~held in a voting trust or held by a nominee on his or her behalf.~~

3767

3768 **Commentary to Section 607.07401:**

3769 The FBCA includes all of the derivative action sections in a single statutory section. On the other
3770 hand, the Model Act breaks this topic into multiple sections (ss. 7.41-7.47). The revisions follow
3771 the approach of the Model Act and thus break the derivative action provisions into multiple
3772 sections in a manner similar to the Model Act.

3773 Florida's corporate statute follows the Model Act and its LLC and partnership statutes follow the
3774 Uniform Acts, and the Model Act and the respective Uniform Acts often differ in procedure and
3775 substance for valid reasons. In many instances in the various Florida entity statutes, these
3776 differences have been respected, in whole or in part; yet in certain other instances where the
3777 same concept is addressed and where deemed appropriate, efforts have been made to harmonize
3778 the approach by using the same language with the same general structure. The process sections
3779 of the derivative action provisions of the FBCA are an example of provisions where efforts have
3780 been made to harmonize the FBCA with the most recent uniform act adopted in Florida
3781 (FRLCA). On the other hand, there are other sections within the FBCA derivative action
3782 provisions where, because of the different nature of the different types of entities, trying to
3783 achieve harmonization of language and approach could actually end up defeating the intended
3784 differences of the respective entities (for example, in Section 607.0742). In those cases, the
3785 language and structure were not harmonized, even though the subject matter of the provision was
3786 comparable. As a general matter, wherever possible, efforts were made to follow the model on
3787 which the FBCA is based (the Model Act) and not to stray from that model unless there was a
3788 compelling reason to do so.

3789

3790 607.0741. Standing.

3791 (1) A shareholder may not commence a derivative proceeding unless the shareholder is a
3792 shareholder at the time the action is commenced and:

3793 (a) Was a shareholder when the conduct giving rise to the action occurred; or

3794 (b) Whose status as a shareholder devolved on the person through transfer or by
3795 operation of law from one who was a shareholder when the conduct giving rise to the action
3796 occurred.

3797 (2) In ss. 607.0741 through 607.0747, the term “shareholder” means a record shareholder, a
3798 beneficial shareholder, and an unrestricted voting trust beneficial owner.

3799

3800 **Commentary to Section 607.0741:**

3801 Under s. 607.0741(1), a person may not commence a derivative action proceeding unless the
3802 person was a shareholder of the corporation when the transaction complained of occurred or
3803 unless the person became a shareholder through transfer by operation of law from one who was a
3804 shareholder at that time. Section 7.41 of the Model Act provides that a shareholder may not
3805 commence or maintain a derivative action proceeding unless the shareholder was a shareholder
3806 of the corporation at the time of the act or omission complained of or became a shareholder
3807 through transfer by operation of law from one who was a shareholder at that time. Section 7.41
3808 also adds a requirement that "the shareholder must fairly and adequately represent the interests of
3809 the corporation in enforcing the rights of the corporation" to maintain a derivative action
3810 proceeding. Section 605.0803 of the FRLCA is substantively similar to the current FBCA
3811 section regarding who is a proper plaintiff, except that it adds the requirement that the member
3812 must also be a member at the time the action is commenced.

3813 The revised standing provision does not add any specific language to the effect that a shareholder
3814 must remain a shareholder throughout the derivative action proceeding in order to continue to
3815 proceed with an otherwise properly brought derivative action. Imposing any such condition to
3816 continuing to maintain such an action should be based on the equities in each respective situation
3817 and thus should be left to the courts to decide. Further, the Model Act concept contained in s.
3818 7.41(b) requiring that the shareholder fairly and adequately represent the interests of the
3819 corporation in enforcing the rights of the corporation was not included in the statute out of a
3820 concern that this additional standing requirement is an invitation to litigation that would be costly
3821 and would unduly delay the process, thus operating as an inappropriate hindrance to derivative
3822 actions. Any such determination should be based on the equities in each respective situation and
3823 thus should be left to the courts to decide.

3824 The revised standing provision does not adopt the "maintain" language from s. 7.41 of the Model
3825 Act because the concept is implicit in the current statute and tends to give courts more leeway.¹⁶

3826 An expanded definition of "shareholder" for purposes of the derivative action provisions of the
3827 FBCA has been added.

3828

¹⁶ Consideration should be given to making a corollary change in the standing provision in FRLCA (s. 605.0802).

3829 607.0742. Demand.

3830 No shareholder may commence a derivative proceeding until:

3831 (1) A written demand has been made upon the corporation to take suitable action; and

3832 (2) 90 days have expired from the date delivery of the demand was made unless the
3833 shareholder has earlier been notified that the demand has been rejected by the corporation or
3834 unless irreparable injury to the corporation would result by waiting for the expiration of the
3835 90 day period.

3836

3837 **Commentary to Section 607.0742:**

3838 Under current s. 607.07401(2), a derivative proceeding cannot be brought unless the complainant
3839 alleges that demand was made to obtain action of the Board of Directors and the demand was
3840 refused or ignored by the Board of Directors for a period of at least 90 days from the first
3841 demand, unless irreparable injury to the corporation would result from waiting the 90 days. The
3842 Model Act continues to include a required universal demand before a derivative action may be
3843 brought.

3844 On the other hand, the FRLUCA, in Section 605.0802(2) contemplates that if making a demand
3845 on the other members (in a member-managed LLC) or on the other managers (in a manager
3846 managed LLC) would be futile or would cause irreparable injury to the company, then such
3847 demand shall not be required in order to maintain a derivative proceeding against the LLC. This
3848 provision follows RULLCA on this issue. Further, while not in the DGCL, the case law that has
3849 developed in Delaware dealing with derivative actions excuses the requirement of making a
3850 demand based upon futility.

3851 Consideration was given to the following items:

- 3852 • the reasons why futility might or might not be an appropriate excuse to demand in
3853 the LLC context and in the corporate context;
- 3854 • the reasons why futility was not adopted in the FBCA when it was originally
3855 adopted in 1989 and why it has not been added to the FBCA as the Delaware law
3856 on the subject has continued to develop; and
- 3857 • whether because of acknowledged harmonization efforts to rationalize among
3858 entity statutes in Florida, either demand futility should be added to the FBCA or
3859 the FRLUCA should be modified to remove demand futility.

3860 After taking an analysis of these items into account, the revised demand provision retains a
3861 universal demand requirement and does not add the concept of demand futility.

3862 The demand need not set forth the basis for the demand in detail, since the corporation can
3863 contact the shareholder for clarification if there are any questions, but the demand must set forth
3864 facts concerning share ownership and must be sufficiently specific to apprise the corporation of
3865 the action sought to be taken and the grounds for that action so that the demand can be evaluated.

3866

3867 607.0743. Stay of proceedings.

3868 If the corporation commences an inquiry into the allegations made in the demand or
3869 complaint, the court may stay any derivative proceeding for such period as the court deems
3870 appropriate.

3871

3872 **Commentary to Section 607.0743:**

3873 The language is identical to the last sentence of subsection (2) of prior s. 607.07401.

3874

3875 607.0744. Dismissal

3876 (1) A derivative proceeding may be dismissed, in whole or in part, by the court on motion
3877 by the corporation if a group specified in subsections (2) or (3) has determined in good faith,
3878 after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance
3879 of the derivative proceeding is not in the best interests of the corporation, the corporation having
3880 in all cases the burden of proof regarding the qualifications, good faith and reasonable inquiry of
3881 the group making the determination.

3882 (2) Unless a panel is appointed pursuant to subsection (3), the determination required in
3883 subsection (1) shall be made by:

3884 (a) A majority of qualified directors present at a meeting of the board of directors if the
3885 qualified directors constitute a quorum; or

3886 (b) A majority vote of a committee consisting of two or more qualified directors
3887 appointed by majority vote of qualified directors present at a meeting of the board of
3888 directors, regardless of whether such qualified directors constitute a quorum.

3889 (3) Upon motion by the corporation, the court may appoint a panel consisting of one or
3890 more disinterested and independent individuals to make a determination required in subsection
3891 (1).

3892 (4) This s. 607.0744 does not prevent the court from:

3893 (a) Enforcing a person's rights under the corporation's articles of incorporation,
3894 bylaws or this chapter, including the person's rights to information under s. 607.1602; or

3895 (b) Exercising its equitable or other powers, including granting extraordinary relief in
3896 the form of a temporary restraining order or preliminary injunction.

3897

3898 **Commentary to Section 607.0744:**

3899 Section 607.07401(3) currently states that a court may dismiss a derivative proceeding under
3900 certain circumstances. Similarly, s. 605.0804(5) of the FRLICA gives the court discretion to
3901 dismiss a derivative action based on the recommendation of a disinterested litigation committee
3902 in a situation where the committee is disinterested and independent and the committee has acted
3903 in good faith, independently and with reasonable care. Both of these provisions are different
3904 from the Model Act, which requires a court to dismiss the derivative action on the
3905 recommendation of a disinterested special litigation committee (s. 7.44 – "A derivative
3906 proceeding shall be dismissed...." under certain enumerated circumstances).

3907 Given the complexities that may exist within derivative actions, and the multiplicity of issues,
3908 and to maintain consistency with the approach taken in both the current FBCA and in the
3909 recently-enacted FRLICA, maintaining court discretion with regard to a motion to dismiss is
3910 warranted. The use of the more discretionary term "may" does not preclude a court from granting
3911 a motion where it finds the report to be well-founded. See, e.g. *Atkins v. Topp Telecom, Inc.*, 874
3912 So. 2d 626 (4th DCA 2004). However, there often may be circumstances where a court should
3913 not be bound to accept or reject in toto the report of a special litigation committee, and Florida
3914 cases have not revealed any problem with the current standard that grants judicial discretion.

3915 Subsections (1), (2) and (3) are largely based on s. 7.44 of the Model Act.

3916 New subsection (4) is adapted from s. 605.0804(1) of FRLICA.

3917 Although the "group" referred to in this section as making the determination as to whether the
3918 maintenance of the derivative proceeding is in the best interests of the corporation is not referred
3919 to herein as a "special litigation committee," it is recognized that some practitioners and some
3920 courts may well use that nomenclature to define or identify the group making the determination.
3921 In all respects, any such use of the term "special litigation committee" to refer to the group
3922 making the determination does not change the application or meaning of this provision.

3923

3924 607.0745. Discontinuance or settlement; notice.

3925 (1) A derivative action on behalf of a corporation may not be discontinued or settled
3926 without the court's approval.

3927 (2) If the court determines that a proposed discontinuance or settlement will substantially
3928 affect the interest of the corporation's shareholders or a class, series, or voting group of
3929 shareholders, the court shall direct that notice be given to the shareholders affected. The court
3930 may determine which party or parties to the derivative action shall bear the expense of giving the
3931 notice.

3932

3933 **Commentary to Section 607.0745:**

3934 This provision is substantially the same as s. 607.07401(4). The language is modeled on the
3935 language in s. 605.0806 of the FRLCA and, except as noted below, is substantively similar to s.
3936 7.45 of the Model Act.

3937 The language in the last sentence of subsection (2) which allows the court to determine which
3938 party or parties to the derivative action shall bear the expense of giving the notice is not in the
3939 corresponding Model Act provision, but is in the current Florida statute, and has been carried
3940 forward.

3941

3942 607.0746. Proceeds and expenses.

3943 On termination of the derivative proceeding the court may:

3944 (1) order the corporation to pay from the amount recovered in the derivative proceeding by
3945 the corporation the plaintiff's reasonable expenses, including reasonable attorneys' fees and
3946 costs, incurred in the derivative proceeding if it finds that, in the derivative proceeding, the
3947 plaintiff was successful in whole or in part; or

3948 (2) order the plaintiff to pay any defendant's reasonable expenses, including reasonable
3949 attorneys' fees and costs, incurred in defending the proceeding if it finds that the proceeding was
3950 commenced or maintained without reasonable cause or for an improper purpose.

3951

3952 **Commentary to Section 607.0746:**

3953 The current Florida derivative action statute on this subject includes the following language:

3954 (6) The court may award reasonable expenses for maintaining the proceeding,
3955 including reasonable attorney's fees, to a successful plaintiff or to the person commencing
3956 the proceeding who receives any relief, whether by judgment, compromise, or settlement,
3957 and require that the person account for the remainder of any proceeds to the corporation;
3958 however, this subsection does not apply to any relief rendered for the benefit of injured
3959 shareholders only and limited to a recovery of the loss or damage of the injured
3960 shareholders.

3961 The substance of s. 607.0746 as drafted is, for the most part, similar to the existing statute, but is
3962 different than Model Act s. 7.46 (which states that any payment to plaintiff requires a
3963 "substantial benefit" to the corporation). "Substantial" is an ambiguous term and could well lead
3964 to extensive argumentation. Settlements of derivative actions often deal principally with
3965 procedural matters, and may involve only a small amount of monetary recovery and non-
3966 monetary elements. Defendants may argue that the term "substantial" precludes a plaintiff from
3967 recovering expenses in many instances. As a result, such arguments should be avoided and,
3968 instead, judicial discretion should be allowed.

3969 While not covered in the current statute, the language in Model Act s. 7.46(2) allowing the
3970 plaintiffs to pay the defendant's fees if the action was filed without reasonable cause or for an
3971 improper purpose has been added.

3972 Subsection (3) of s. 7.46 of the Model Act has not been added to the FBCA. The Model Act
3973 language, which addresses other abuses in the conduct of derivative litigation, is believed
3974 unnecessary, since these types of abuses are believed to be already addressed under applicable
3975 rules of civil procedure and other Florida statutory provisions.

3976

3977 607.0747. Applicability to foreign corporations.

3978 In any derivative proceeding in the right of a foreign corporation brought in the courts of
3979 this state, the matters covered by this subchapter shall be governed by the laws of the jurisdiction
3980 of incorporation of the foreign corporation except for ss. 607.0743, 607.0745 and 607.0746.

3981

3982 **Commentary to Section 607.0747:**

3983 There is currently no analogous provision in the FBCA. The section carve outs relate to judicial
3984 discretionary decisions that are appropriately governed by Florida local standards and do not
3985 implicate the internal affairs doctrine.

3986

3987 607.0748. Shareholder action to appoint custodian or receiver.

3988

3989 (1) A circuit court may appoint one or more persons to be custodians, or, if the corporation
3990 is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is
3991 established that:

3992

3993 (a) The directors are deadlocked in the management of the corporate affairs, the
3994 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
3995 threatened or being suffered; or

3996

3997 (b) The directors or those in control of the corporation are acting fraudulently and
3998 irreparable injury to the corporation is threatened or being suffered.

3999

4000 (2) The court:

4001

4002 (a) May issue injunctions, appoint a temporary custodian or temporary receiver with
4003 all the powers and duties the court directs, take other action to preserve the corporate assets
4004 wherever located, and carry on the business of the corporation until a full hearing is held;

4005

4006 (b) Shall hold a full hearing, after notifying all parties to the proceeding and any
4007 interested persons designated by the court, before appointing a custodian or receiver; and

4008

4009 (c) Has jurisdiction over the corporation and all of its property, wherever located.

4010

4011 (3) The court may appoint an individual or domestic or foreign corporation (authorized to
4012 transact business in this state) as a custodian or receiver and may require the custodian or
4013 receiver to post bond, with or without sureties, in an amount the court directs.

4014

4015 (4) The court shall describe the powers and duties of the custodian or receiver in its
4016 appointing order, which may be amended from time to time. Among other powers,

4017

4018 (a) A custodian may exercise all of the powers of the corporation, through or in place
4019 of its board of directors, to the extent necessary to manage the business and affairs of the
4020 corporation; and

4021

4022 (b) A receiver (i) may dispose of all or any part of the assets of the corporation
4023 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and
4024 defend in the receiver's own name as receiver in all courts of this state.

4025

4026 (5) The court during a custodianship may redesignate the custodian a receiver, and during a
4027 receivership may redesignate the receiver a custodian, if doing so is in the best interests of the
4028 corporation.

4029

4030 (6) The court from time to time during the custodianship or receivership may order
4031 compensation paid and expense disbursements or reimbursements made to the custodian or
4032 receiver from the assets of the corporation or proceeds from the sale of its assets.

4033 **Commentary to Section 607.0748:**

4034 Section 607.0748 is based on Section 7.48 of the Model Act. Section 607.0748 provides a basis
4035 for shareholders of any corporation to obtain the appointment of a receiver or custodian in two
4036 situations arising outside the context of seeking a judicial dissolution: (i) when directors are
4037 deadlocked in the management of the corporate affairs, the shareholders are unable to break the
4038 deadlock and irreparable injury to the corporation is threatened or is being suffered, or (ii) when
4039 the directors or those in control of the corporation are acting fraudulently and irreparable injury
4040 to the corporation is threatened or being suffered.

4041 This section is also designed to provide guidance to the courts relative to the latitude of the
4042 court's authority to make such appointments in these situations. Without this section, the express
4043 statutory power and authority to appoint a receiver or custodian is only available ancillary to an
4044 action for judicial dissolution (although Florida courts, through common law equitable powers,
4045 may be able to fashion, and have from time to time fashioned, such a remedy under current law).

4046 Section 607.0748 is in addition to other shareholder remedies provided by this Chapter or
4047 otherwise available under principles of law or equity, including common law principles relating
4048 to the appointment of custodians and receivers, and could, but only for example, be relied upon
4049 by a shareholder of a nonpublic corporation in lieu of involuntary dissolution under s.
4050 607.1430(2)(b).

4051 The Model Act provision upon which this statute is based is itself based on Section 226 of the
4052 DGCL.

4053

4054 607.0749 Provisional director.

4055 (1) In a proceeding by a shareholder, a provisional director may be appointed in the
4056 discretion of the court if it appears that such action by the court will remedy a situation in which
4057 the directors are deadlocked in the management of the corporate affairs and the shareholders are
4058 unable to break the deadlock. A provisional director may be appointed notwithstanding the
4059 absence of a vacancy on the board of directors, and such director shall have all the rights and
4060 powers of a duly elected director, including the right to notice of and to vote at meetings of
4061 directors, until such time as the provisional director is removed by order of the court or, unless
4062 otherwise ordered by a court, removed by a vote of the shareholders sufficient either to elect a
4063 majority of the board of directors or, if greater than majority voting is required by the articles of
4064 incorporation or the bylaws, to elect the requisite number of directors needed to take action. A
4065 provisional director shall be an impartial person who is neither a shareholder nor a creditor of the
4066 corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications,
4067 if any, may be determined by the court.

4068 (2) A provisional director shall report from time to time to the court concerning the matter
4069 complained of, or the status of the deadlock, if any, and of the status of the corporation's
4070 business, as the court shall direct. No provisional director shall be liable for any action taken or
4071 decision made, except as directors may be liable under s. 607.0831. In addition, the provisional
4072 director shall submit to the court, if so directed, recommendations as to the appropriate
4073 disposition of the action. Whenever a provisional director is appointed, any officer or director of
4074 the corporation may, from time to time, petition the court for instructions clarifying the duties
4075 and responsibilities of such officer or director.

4076 (3) In any proceeding under this section, the court shall allow reasonable compensation to
4077 the provisional director for services rendered and reimbursement or direct payment of reasonable
4078 costs and expenses, which amounts shall be paid by the corporation.

4079

4080 **Commentary to Section 607.0749:**

4081 Section 607.0749 is new and is not a Model Act provision. This section is a corollary to s.
4082 607.1435 of the FBCA dealing with the appointment of a provisional director outside the context
4083 of seeking a judicial dissolution when the directors are deadlocked in the management of the
4084 corporate affairs and the shareholders are unable to break the deadlock. Without this section, the
4085 express statutory power and authority to appoint a provisional director is only available ancillary
4086 to an action for judicial dissolution (although Florida courts, through common law equitable
4087 powers, may be able to fashion, and have from time to time fashioned, such a remedy under
4088 current law).

4089

4090 Section 7.49 of the Model Act – Judicial determination of corporate offices and review of
4091 elections and shareholder votes

4092
4093 Section 7.49 of the Model Act establishes procedures for judicial resolution of disputes with
4094 respect to the identity of the corporation's directors or officers, the identity of the members of any
4095 committee of its board of directors, the validity of nominations for director or the results or validity
4096 of shareholder votes. It confers subject matter jurisdiction on the specified court to resolve these
4097 disputes. That jurisdiction may be exercised either in a new proceeding or by an application made
4098 in an already pending proceeding. Model Act s. 7.49 also requires an expedited review of disputes
4099 to prevent them from immobilizing the corporation. There is currently no comparable provision in
4100 the FBCA.

4101 The Subcommittee believes that Florida courts in equity have always had the power to deal with
4102 (and have dealt with) election disputes of the type covered by this section. As a result, the
4103 decision was made not to include this Model Act section in the FBCA.

4104

ARTICLE 8

DIRECTORS AND OFFICERS

4105 607.0801. Requirement for and duties of board of directors.

4106 (1) Except as may be provided in an agreement authorized under s. 607.0732(1), each
4107 corporation must have a board of directors.

4108 (2) All corporate powers shall be exercised by or under the authority of the board of
4109 directors of the corporation, and the business and affairs of the corporation shall be managed by
4110 or under the direction of, and subject to the oversight of, its board of directors, subject to any
4111 limitation set forth in the articles of incorporation or in an agreement authorized under s.
4112 607.0732.

4113

4114 **Commentary for Section 607.0801:**

4115 No substantive changes have been made.

4116

4117 607.0802. Qualifications of directors.

4118 (1) Directors must be natural persons who are 18 years of age or older but need not be
4119 residents of this state or shareholders of the corporation unless the articles of incorporation or
4120 bylaws so require. The articles of incorporation or bylaws may prescribe additional qualifications
4121 for directors or nominees for directors.

4122 (2) A qualification for nomination for director prescribed before a person's nomination
4123 shall apply to such person at the time of nomination. A qualification for nomination for director
4124 prescribed after a person's nomination shall not apply to such person with respect to such
4125 nomination.

4126 (3) A qualification for director prescribed before a director has been elected or appointed
4127 may apply only at the time an individual becomes a director or may apply during a director's
4128 term. A qualification prescribed after a director has been elected or appointed shall not apply to
4129 that director before the end of that director's term.

4130 (42) In the event that the eligibility to serve as a member of the board of directors of a
4131 condominium association, cooperative association, homeowners' association, or mobile home
4132 owners' association is restricted to membership in such association and membership is
4133 appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s.
4134 733.707(3), or a qualified beneficiary as defined in s. 736.0103 of a trust which owns a unit,
4135 parcel, or mobile home shall be deemed a member of the association and eligible to serve as a
4136 director of the condominium association, cooperative association, homeowners' association, or
4137 mobile home owners' association, provided that said beneficiary occupies the unit, parcel, or
4138 mobile home.

4139

4140 **Commentary for Section 607.0802:**

4141 The language in the last sentence of s. 8.02(a) of the Model Act, which provides that
4142 "qualifications must be reasonable as applied to the corporation and must be lawful," has not
4143 been added to the FBCA. Similarly, s. 802(b) of the Model Act, which limits the qualifications
4144 that may be adopted under particular circumstances, was not added. Determinations as to what
4145 particular qualifications are appropriate or inappropriate under particular circumstances should
4146 be left to the courts to decide.

4147 The language in subsection (2) follows the exact wording contained in s. 8.02(d) of the Model
4148 Act; however, the reference to a "person's nomination" in the second sentence presumes that
4149 such person's nomination was proper, even though the word "proper" is not expressly set forth.

4150 Although new subsection (2) and (3) are being added to incorporate the language from
4151 subsections (d) and (e) of s. 8.02 of the Model Act, the intent of these additions is to follow the
4152 plain language of the added sections. In that regard, a disagreement is noted with respect to the
4153 aspect of the commentary to this section of the Model Act which states that if a director meets a
4154 qualification at the beginning of his or her term, but later circumstances change and such director
4155 no longer meets such qualification, such director would no longer be entitled to continue as a
4156 director from and after such date. The determination of whether such a director should be
4157 allowed to continue to hold the director position under such circumstances should be left to the
4158 corporation and to the courts to determine, rather than there being a hard and fast rule of that
4159 director automatically losing the right to continue as a director.

4160

4161 607.0803. Number of directors.

4162 (1) A board of directors must consist of one or more individuals, with the number
4163 specified in or fixed in accordance with the articles of incorporation or bylaws.

4164 (2) The number of directors may be increased or decreased from time to time by
4165 amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

4166 (3) Directors are elected at the first annual shareholders' meeting and at each annual
4167 shareholders' meeting thereafter, unless elected by written consent in lieu of an annual
4168 shareholders' meeting as permitted by s. 607.0704 or unless their terms are staggered under s.
4169 607.0806.

4170

4171 **Commentary for Section 607.0803:**

4172 The changes are non-substantive clarifying changes based on changes made in the 2016 version
4173 of the Model Act.

4174

4175 607.0804. Election of directors by certain voting groups; special voting rights of certain
4176 directors if applicable.

4177 The articles of incorporation may confer upon holders of any voting group the right to elect
4178 one or more directors who shall serve for such term and have such voting powers as are stated in
4179 the articles of incorporation. The terms of office and voting powers of the directors elected in the
4180 manner provided in the articles of incorporation may be greater than or less than those of any
4181 other director or class of directors. If the articles of incorporation provide that directors elected
4182 by the holders of a voting group shall have more or less than one vote per director on any matter,
4183 every reference in this chapter ~~act~~ to a majority or other proportion of directors shall refer to a
4184 majority or other proportion of the votes of such directors. Further, if a shareholders' agreement
4185 meeting the requirements of s. 607.0732 provides that directors shall have more or less than one
4186 vote per director on any matter, every reference in this chapter to a majority or other proportion
4187 of directors shall refer to a majority or other proportion of the votes of such directors.

4188

4189 **Commentary for Section 607.0804:**

4190 Despite certain differences between language in the current version of s. 8.04 of the Model Act
4191 and s. 607.0804 of the FBCA, no conforming changes were made. The FBCA’s reference to
4192 “voting group”, as defined in s. 607.01401(32) of the FBCA, is believed to be more appropriate
4193 than the Model Act’s use of the term “class.” Although the FBCA language is considered more
4194 precise, the Model Act language and the FBCA language on this subject are believed to mean
4195 essentially the same thing.

4196 Although the concept of weighted proportional director voting (if permitted in the articles of
4197 incorporation) in s. 8.04 of the FBCA does not appear in the Model Act, it has been in the FBCA
4198 for more than 20 years (and was originally adopted based upon section 141(d) of the DGCL) and
4199 such concept should continue to remain in this section of the FBCA.

4200 The title to this section is being changed to reflect the fact that this section not only addresses the
4201 authorization of election of certain directors by separate voting groups but also the authority for
4202 such designated directors to maintain voting rights that are “weighted” if permitted in the articles
4203 of incorporation. It is important to recognize that this provision in s. 607.0804 authorizes certain
4204 specific changes to traditional corporate norms that can be implemented without the need to
4205 follow the requirements and conditions of s. 607.0732 of the FBCA.

4206 To eliminate any ambiguity, language is being added to make it clear that if a shareholders'
4207 agreement has been adopted in compliance with s. 607.0732 which changes the weight of
4208 director votes, then all references in Chapter 607 to a majority or other proportion of directors
4209 shall refer to a majority or other proportion of the votes of such directors.

4210

4211 607.0805. Terms of directors generally.

4212 (1) The terms of the initial directors of a corporation expire at the first shareholders'
4213 meeting at which directors are elected.

4214 (2) The terms of all other directors expire at the next annual shareholders' meeting
4215 following their election, except to the extent (i) provided in s. 607.0806, (ii) provided in s.
4216 607.1023 if a bylaw electing to be governed by that section is in effect or (iii) that a shorter term
4217 is specified in the articles of incorporation in the event of a director nominee failing to receive a
4218 specified vote for election, unless their terms are staggered under s. 607.0806.

4219 (3) A decrease in the number of directors does not shorten an incumbent director's term.

4220 (4) The term of a director elected to fill a vacancy expires at the next shareholders'
4221 meeting at which directors are elected.

4222 (5) Except to the extent otherwise provided in the articles of incorporation or under s.
4223 607.1023 if a bylaw electing to be governed by that section is in effect, dDespite the expiration
4224 of a director's term, the director continues to serve until his or her successor is elected and
4225 qualifies or until there is a decrease in the number of directors.

4226

4227 **Commentary for Section 607.0805:**

4228 Clarifying language was added to subsection (2) to address when the term of directors expire if
4229 director terms are staggered under s. 607.0806. Based on subsections 8.05 (b) and (e) of the
4230 Model Act, a cross reference has been added to each of the corresponding subsections in this s.
4231 607.0805 to provide that s. 607.0805 shall not apply to the extent provided in s. 607.1023 of the
4232 Model Act.

4233

4234

4235

4236

4237 607.0806. Staggered terms for directors.

4238 (1) The directors of any corporation organized under this ~~chapter~~ act may, by the articles
4239 of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, be
4240 divided into ~~one, two, or three~~ classes with the number of directors in each class being as nearly
4241 equal as possible; the term of office of those of the first class to expire at the annual
4242 shareholders' meeting next following such classification and election ~~ensuing~~; the term of office
4243 of those of the second class to expire at the second annual shareholders' meeting next following
4244 such classification and election ~~1 year thereafter~~; the term of office of those of the third class, if
4245 any, to expire at the third annual shareholders' meeting next following such classification and
4246 election ~~2 years thereafter~~; and at each subsequent annual shareholders' meeting, election held
4247 ~~after such classification and election~~, directors shall be ~~chosen~~ elected for a full term of two
4248 years or three years, as the case may be, to succeed those whose terms expire, with each such full
4249 term expiring at the second annual shareholders' meeting next following their election, if the full
4250 term is two years, or the third annual shareholders' meeting next following their election, if the
4251 full term is three years. If the directors have staggered terms, then any increase or decrease in the
4252 number of directors shall be so apportioned among the classes as to make all classes as nearly
4253 equal in number as possible.

4254 (2) In the case of any Florida corporation in existence prior to July 1, 1990, directors of
4255 such corporation divided into four classes may continue to serve staggered terms as the articles
4256 of incorporation or bylaws of such corporation provided immediately prior to the effective date
4257 of this act, unless and until the articles of incorporation or bylaws are amended to alter or
4258 terminate such classes.

4259

4260 **Commentary for Section 607.0806:**

4261 The changes are not intended to be and should not in any way be viewed as substantive changes.
4262 Rather, these changes are wordsmithing designed to (i) eliminate a reference (i.e., to the word
4263 “one”), which makes no sense under the circumstances of a staggered board, and (ii) clarify the
4264 applicable terms of office and specified dates of expiration of term upon the initial classification
4265 and then upon subsequent annual elections when a staggered board is in place.

4266 The language in s. 607.0806(1) of the FBCA dealing with apportioning increase or decreases in
4267 the number of directors among classes to make classes as nearly equal in number as possible was
4268 retained, even though such language is not included in s. 8.06 of the Model Act. Although such
4269 language may be implicit in the Model Act language, because this language has been in the
4270 FBCA for many years, the language dealing with this subject has been retained.

4271

4272

4273

4274 607.0807. Resignation of directors.

4275 (1) A director may resign at any time by delivering written notice of resignation to the
4276 board of directors or its chair or to the secretary of the corporation.

4277 (2) A resignation is effective when the notice of resignation is delivered unless the notice
4278 of resignation specifies a later effective date or an effective date determined upon the subsequent
4279 happening of an event or events. If a resignation is made effective at a later date or upon the
4280 subsequent happening of an event or events, the board of directors may fill the pending vacancy
4281 before the effective date occurs if the board of directors provides that the successor does not take
4282 office until the effective date.

4283 (3) A resignation that specifies a later effective date or that is conditioned upon the
4284 subsequent happening of an event or events or upon failing to receive a specified vote for
4285 election as a director may provide that the resignation is irrevocable.

4286

4287 **Commentary for Section 607.0807:**

4288 The FBCA requirement that any resignation must be in writing was continued, although such
4289 requirement of a writing is not included in either the corresponding Model Act provision or the
4290 corresponding DGCL provision. The language in s. 607.0807(1) of the FBCA was modified to
4291 better coordinate with language in the corresponding Model Act provision and for clarity by
4292 using the words "notice of resignation " (as opposed to simply using the word "notice" or simply
4293 using the word "resignation").

4294 The language additions in subsections (2) and (3) are derived from s. 8.07(b) of the Model Act
4295 and are intended to update and modernize these sections. These changes are clarifying and not
4296 substantive. However, one of those changes (i.e., adding the Model Act language that a
4297 resignation "conditioned upon failing to receive a specified vote for as a director" can be
4298 irrevocable) has somewhat of a substantive aspect; this change is designed to coordinate with the
4299 majority voting (as provided in s. 607.0728) issue for public companies that adopt such
4300 provisions.

4301

4302 607.0808. Removal of directors by shareholders.

4303 (1) The shareholders may remove one or more directors with or without cause unless the
4304 articles of incorporation provide that directors may be removed only for cause.

4305 (2) If a director is elected by a voting group of shareholders, only the shareholders of that
4306 voting group may participate in the vote to remove him or her.

4307 (3) A director may be removed if the number of votes cast to remove exceeds the number
4308 of votes cast not to remove the director, except to the extent the articles of incorporation or
4309 bylaws require a greater number; provided that if If cumulative voting is authorized, a director
4310 may not be removed if, in the case of a meeting, the number of votes sufficient to elect the
4311 director under cumulative voting is voted against removal and, if action is taken by less than
4312 unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect
4313 the director under cumulative voting do not consent to the removal. ~~If cumulative voting is not~~
4314 ~~authorized, a director may be removed only if the number of votes cast to remove exceeds the~~
4315 ~~number of votes cast not to remove the director.~~

4316 (4) A director may be removed by the shareholders only at a meeting of shareholders
4317 called for the purpose of removing the director and the meeting notice must state that, ~~provided~~
4318 ~~the notice of the meeting states that the purpose, or one of the purposes of the meeting is the~~
4319 ~~removal of the director~~ is a purpose of the meeting.

4320

4321 **Commentary for Section 607.0808:**

4322 The changes to subsections (3) and (4) are non-substantive clarifying changes based on changes
4323 to the Model Act made in the 2016 version of the Model Act.

4324

4325 607.08081. Removal of directors by judicial proceedings.

4326 (1) The circuit court in the applicable county may remove a director from office, and may
4327 order other relief, including barring the director from reelection for a period prescribed by the court,
4328 in a proceeding commenced by or in the right of the corporation if the court finds that:

4329 (a) The director engaged in fraudulent conduct with respect to the corporation or its
4330 shareholders, grossly abused the position of director, or intentionally inflicted harm on the
4331 corporation; and

4332 (b) Considering the director's course of conduct and the inadequacy of other available
4333 remedies, removal or such other relief would be in the best interest of the corporation.

4334 (2) A shareholder proceeding on behalf of the corporation under subsection (a) shall
4335 comply with all of the requirements of ss. 607.0741 through 607.0747, except s. 607.0741(1).

4336

4337 **Commentary for s. 607.08081:**

4338

4339 The section is modeled after Model Act s. 8.09. This Model Act section was originally adopted
4340 in 2001 and the language was substantially revised in the 2016 version of the Model Act. It is
4341 intended to apply in limited circumstances where other remedies are inadequate to address
4342 serious misconduct by a director and it is impracticable for shareholders to invoke the usual
4343 remedy of removal under s. 8.08 of the Model Act (s. 607.0808). While there was a general
4344 view that courts already have this power in equity and in an injunction proceeding, having this
4345 power expressly set forth in the statute is considered a good policy decision, particularly when
4346 more than 30 states (including Delaware, in DGCL section 225(c)) have included some form of
4347 judicial remedy to remove directors in their statute.

4348 This new section is not intended to restrict a court from exercising its equitable powers under
4349 particular circumstances.

4350

4351 607.0809. Vacancy on board.

4352 (1) Unless the articles of incorporation provide otherwise, if ~~Whenever~~ a vacancy occurs
4353 on a board of directors, including a vacancy resulting from an increase in the number of
4354 directors, ~~it may be filled by the affirmative vote of a majority of the remaining directors,~~
4355 ~~though less than a quorum of the board of directors, or by the shareholders, unless the articles of~~
4356 ~~incorporation provide otherwise.~~

4357 (a) the shareholders may fill the vacancy;

4358 (b) the board of directors may fill the vacancy; or

4359 (c) if the directors remaining in office are less than a quorum, the vacancy may be
4360 filled by the affirmative vote of a majority of all the directors then remaining in office.

4361 (2) If the vacant office was held by a director elected by a voting group of shareholders,
4362 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled
4363 by the shareholders, and only the remaining directors elected by that voting group, even if less
4364 than a quorum, are entitled to fill the vacancy if it is filled by the directors. ~~Whenever the holders~~
4365 ~~of shares of any voting group are entitled to elect a class of one or more directors by the~~
4366 ~~provisions of the articles of incorporation, vacancies in such class may be filled by holders of~~
4367 ~~shares of that voting group or by a majority of the directors then in office elected by such voting~~
4368 ~~group or by a sole remaining director so elected. If no director elected by such voting group~~
4369 ~~remains in office, unless the articles of incorporation provide otherwise, directors not elected by~~
4370 ~~such voting group may fill vacancies as provided in subsection (1).~~

4371 (3) A vacancy that ~~will~~ may occur at a specified later date (~~under s. 607.0807(2)~~ by reason
4372 of a resignation effective at a later date under s. 607.0807(2) or otherwise) ~~or upon the~~
4373 ~~subsequent happening of an event or events or otherwise~~) may be filled before the vacancy
4374 occurs, but the new director may not take office until the vacancy occurs.

4375

4376 **Commentary for Section 607.0809:**

4377 With one exception, the changes to this section are non-substantive clarifying changes based on
4378 changes to the Model Act made in the 2016 version of the Model Act.

4379 Subsection (2) now provides that if a particular director is to be elected by a particular voting
4380 group, only the remaining directors elected by that particular voting group or the shareholders in
4381 that particular voting group may fill that director vacancy. Thus, if there are no remaining
4382 directors elected by that voting group, the other remaining directors no longer have the ability to
4383 fill the vacancy (and, in that case, only the shareholders in the particular voting group will be
4384 able to fill the vacancy).

4385

4386 607.08101. Compensation of directors.

4387 Unless the articles of incorporation or bylaws provide otherwise, the board of directors may
4388 fix the compensation of directors.

4389

4390 **Commentary for Section 607.08101:**

4391 No changes have been made to this section of the FBCA.

4392

4393 607.0820. Meetings.

4394 (1) The board of directors may hold regular or special meetings in or out of this state.

4395 (2) A majority of the directors present, whether or not a quorum exists, may adjourn any
4396 meeting of the board of directors to another time and place. Unless the bylaws otherwise provide,
4397 notice of any such adjourned meeting shall be given to the directors who were not present at the
4398 time of the adjournment and, unless the time and place of the adjourned meeting are announced
4399 at the time of the adjournment, to the other directors.

4400 (3) Meetings of the board of directors may be called by the chair of the board or by the
4401 president unless otherwise provided in the articles of incorporation or the bylaws.

4402 (4) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
4403 may permit any or all directors to participate in any a regular or special meeting of the board of
4404 directors ~~by, or conduct the meeting~~ through the use of, any means of communication by which
4405 all directors participating may simultaneously hear each other during the meeting. A director
4406 participating in a meeting by this means is deemed to be present in person at the meeting.

4407

4408 **Commentary for Section 607.0820:**

4409 Although minor clean up changes were made to this section to conform the language to certain of
4410 the language in the 2016 version of the Model Act, no substantive changes are have been made.
4411 Although subsections (2) and (3) of s. 607.0820 of the FBCA (which deal with who may call a
4412 meeting of the board and with respect to adjournments of board meetings) are not contained in
4413 the Model Act, because these subsections have been in the FBCA since 1989, they are retained in
4414 the statute.

4415

4416 607.0821. Action by directors without a meeting.

4417 (1) Unless the articles of incorporation or bylaws provide otherwise, action required or
4418 permitted by this ~~chapter~~ act to be taken at a board of directors' meeting or committee meeting
4419 may be taken without a meeting if the action is taken by all members of the board or of the
4420 committee. The action must be evidenced by one or more written consents describing the action
4421 taken, ~~and~~ signed by each director or committee member and delivered to the corporation.

4422 (2) Action taken under this section is effective when the last director signs the consent and
4423 delivers the consent to the corporation, unless the consent specifies a different effective date. A
4424 director's consent may be withdrawn by a revocation signed by the director and delivered to the
4425 corporation prior to delivery to the corporation of unrevoked written consents signed by all the
4426 directors.

4427 (3) A consent signed under this section has the effect of a meeting vote and may be
4428 described as such in any document.

4429

4430 **Commentary for Section 607.0821:**

4431 The concept of required delivery of the board consent to the corporation has been added to the
4432 statute in subsections (1) and (2). This is not intended to be a substantive change, since the
4433 concept of delivery was believed to be implicit under existing law.

4434 The last sentence of s. 8.21(b) of the Model Act has been added to s. 607.0821(2) of the FBCA.
4435 This sentence deals with revocation of consents before a board action by written consent
4436 becomes effective (i.e., upon delivery of unrevoked written consents signed by all directors).

4437 The revised statute does not specify where and how delivery to the corporation of a written
4438 consent shall be made. This issue is left to the determination of courts as to whether delivery was
4439 appropriate under particular circumstances. Cross references are noted to (i) s. 607.08401(3)
4440 providing that the board or the bylaws shall delegate to one or more officers the responsibility for
4441 authenticating records of the corporation, (ii) s. 607.0141, which defines the term "notice," and
4442 (iii) s. 607.1601, which requires the corporation to keep a record of items such as written
4443 consents of directors. However, based on concepts of apparent authority, delivery to the
4444 corporation's secretary or the corporation's president should, in most cases, be considered proper
4445 delivery to the corporation.

4446

4447 607.0822. Notice of meetings.

4448 (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of
4449 the board of directors may be held without notice of the date, time, place, or purpose of the
4450 meeting.

4451 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
4452 special meetings of the board of directors must be preceded by at least 2 days' notice of the date,
4453 time, and place of the meeting. The notice need not describe the purpose of the special meeting
4454 unless required by the articles of incorporation or bylaws.

4455

4456 **Commentary for Section 607.0822:**

4457 No changes have been made to this section of the FBCA.

4458

4459 607.0823. Waiver of notice.

4460 Notice of a meeting of the board of directors need not be given to any director who signs a
4461 waiver of notice either before or after the meeting. Attendance of a director at a meeting shall
4462 constitute a waiver of notice of such meeting and a waiver of any and all objections to the date,
4463 time, place or purpose of the meeting, ~~the time of the meeting,~~ or the manner in which it has been
4464 called or convened, except when a director states, at the beginning of the meeting or promptly
4465 upon arrival at the meeting, any objection to holding the meeting or to the transaction of business
4466 because the meeting is not lawfully called or convened and where the director, after objecting,
4467 does not vote for or consent to action taken at the meeting.

4468

4469 **Commentary for Section 607.0823:**

4470 The statute has been clarified to reflect that a director’s attendance at a meeting constitutes a
4471 waiver of not only the place and time of the meeting, but also the date and purpose of the
4472 meeting, unless the director properly objects.

4473 The language contained in s. 8.23(a) of the Model Act requiring that a waiver be “filed with the
4474 minutes or corporate records” of the corporation in order for the waiver to be effective has not
4475 been added. Although such practice is considered good corporate practice and may even be an
4476 obligation of the corporation under s. 607.1601(1), this technical requirement for effectiveness of
4477 the waiver should not be mandated (leaving it to the corporation to determine whether it has
4478 received proper evidence of a waiver). However, whether or not such a requirement is included
4479 in the statutory language, since the corporation likely has the burden of proving that a waiver has
4480 been provided, it behooves the corporation to obtain the waiver in writing and place it in the
4481 corporation’s records.

4482 Clarifying language has been added (i) to allow for objecting to the holding of the meeting, in
4483 addition to the ability to object to the transaction of business at the meeting, and (ii) to require
4484 not only that the director object to the transaction of business at the meeting (for failure to give
4485 notice) at the start of the meeting, but also not to vote for or consent to the action(s) taken
4486 thereafter at the meeting. Through this change, s. 607.0823 of the FBCA is brought into
4487 conformity with the language in s. 8.23(b) of the Model Act. The Model Act commentary on
4488 this section provides that this additional provision presumes that a director has waived his or her
4489 objection to the meeting if he or she votes for or assents to the action taken at the meeting.

4490

4491 607.0824. Quorum and voting.

4492 (1) Unless the articles of incorporation or bylaws provide for a greater or lesser ~~require a~~
4493 ~~different number~~ or unless otherwise expressly provided in this chapter, a quorum of a board of
4494 directors consists of a majority of the number of directors specified in or fixed in accordance
4495 with ~~prescribed by~~ the articles of incorporation or the bylaws.

4496 (2) The quorum of the board of directors specified in or fixed in accordance with the
4497 articles of incorporation or bylaws may not consist of less ~~authorize a quorum of a board of~~
4498 ~~directors to consist of less than a majority but no fewer than one-third of the~~ specified or fixed
4499 ~~prescribed number of directors determined under the articles of incorporation or the bylaws.~~

4500 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of
4501 directors present is the act of the board of directors unless the articles of incorporation or bylaws
4502 require the vote of a greater number of directors or unless otherwise expressly provided in this
4503 chapter.

4504 (4) A director of a corporation who is present at a meeting of the board of directors when
4505 corporate action is taken is deemed to have assented to the action taken unless the director:

4506 (a) Objects at the beginning of the meeting (or promptly upon his or her arrival) to
4507 holding it or transacting specified business at the meeting; or

4508 (b) Votes against or abstains from the action taken.

4509

4510 **Commentary for Section 607.0824:**

4511 The changes in subsections (1) and (2) of s. 607.0824 of the FBCA bring this section of the
4512 FBCA into conformity with s. 8.24 of the 2016 version of the Model Act. The language in the
4513 Model Act provision is viewed as doing a better job than subsections (1) and (2) of existing s.
4514 607.0824 of expressing the default rule regarding a quorum of the board of directors for the
4515 transaction of business.

4516 The revised language also provides greater clarity by including an exception, in the lead in
4517 portion of subsection (1) of s. 607.0824, for other sections of the FBCA that may, under certain
4518 circumstances, require a different quorum or voting of the board on a particular issue.

4519 The words "or a committee of the board of directors" contained in subsection (4) of s. 607.0824
4520 have been deleted. However, this is not a substantive change because this concept is now
4521 addressed generally in subsection (3) of s. 607.0825.

4522 The language of subsection (4)(b) of s. 607.0824 was retained and the requirement from the
4523 corresponding provision of the Model Act that a negative vote must be contained in a writing
4524 delivered by the director to the corporation to avoid the implicit assent to the action by a director
4525 who is present at a board meeting was not added.

4526

4527 607.0825. Committees.

4528 (1) Unless this chapter, the articles of incorporation or the bylaws provide otherwise
4529 ~~provide~~, the board of directors, ~~by resolution adopted by a majority of the full board of directors,~~
4530 ~~may designate from among its members~~ establish an executive committee and one or more other
4531 board committees to perform functions of the board of directors. Such committees shall be
4532 composed exclusively of one or more directors. ~~each of which, to the extent provided in such~~
4533 ~~resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may~~
4534 ~~exercise all the authority of the board of directors, except that no such committee shall have the~~
4535 ~~authority to:~~

4536 (a) ~~Approve or recommend to shareholders actions or proposals required by this act to~~
4537 ~~be approved by shareholders~~

4538 (b) ~~Fill vacancies on the board of directors or any committee thereof.~~

4539 (c) ~~Adopt, amend, or repeal the bylaws.~~

4540 (d) ~~Authorize or approve the reacquisition of shares unless pursuant to a general~~
4541 ~~formula or method specified by the board of directors.~~

4542 (e) ~~Authorize or approve the issuance or sale or contract for the sale of shares, or~~
4543 ~~determine the designation and relative rights, preferences, and limitations of a voting group~~
4544 ~~except that the board of directors may authorize a committee (or a senior executive officer of~~
4545 ~~the corporation) to do so within limits specifically prescribed by the board of directors.~~

4546 (2) Unless this chapter, the articles of incorporation or bylaws provide otherwise, the
4547 establishment of a board committee, the appointment of members to it, the dissolution of a
4548 previously created board committee, and the removal of members from a previously created
4549 board committee must be approved by a majority of all the directors in office when the action is
4550 taken.

4551 (23) ~~Unless the articles of incorporation or bylaws provide otherwise, Sections ss. 607.0820,~~
4552 ~~6070.822, 607.0823 and through 607.0824 which govern meetings, notice and waiver of notice,~~
4553 ~~and quorum and voting requirements of the board of directors apply to board committees and~~
4554 ~~their members as well.~~

4555 (4) A board committee may exercise the powers of the board of directors under s.
4556 607.0801, except that a board committee may not:

4557 (a) Authorize or approve the reacquisition of shares unless pursuant to a formula or
4558 method, or within limits, prescribed by the board of directors.

4559 (b) Approve, recommend to shareholders, or propose to shareholders action that this
4560 chapter requires be approved by shareholders.

4561 (c) Fill vacancies on the board of directors or on any board committee.

4562 (d) Adopt, amend, or repeal bylaws.

4563 (e) Authorize or approve the issuance or sale or contract for the sale of shares, or
4564 determine the designation and relative rights, preferences, and limitations of a voting group,
4565 except that the board of directors may authorize a committee (or a senior executive officer of
4566 the corporation) to do so within limits specifically prescribed by the board of directors.

4567 (25) The establishment of, delegation of authority to, or action by a committee does not
4568 alone constitute compliance by a director with the standards of conduct described in s. 607.0830.

4569 ~~(36) Each committee must have two or more members who serve at the pleasure of the~~
4570 ~~board of directors. The board of directors, by resolution adopted in accordance with subsection~~
4571 ~~(1), may designate appoint one or more directors as alternate members of any board such~~
4572 ~~committee to fill a vacancy on the committee or who may act in the place and stead of to replace~~
4573 ~~any absent or disqualified member of such committee or members at any meeting of such~~
4574 ~~committee during the member's absence or disqualification. If the articles of incorporation, the~~
4575 ~~bylaws, or the resolution creating the board committee so provide, the member or members present~~
4576 ~~at any board committee meeting and not disqualified from voting, by unanimous action, may~~
4577 ~~appoint another director to act in place of an absent or disqualified member during that member's~~
4578 ~~absence or disqualification.~~

4579 ~~(4) Neither the designation of any such committee, the delegation thereto of authority, nor~~
4580 ~~action by such committee pursuant to such authority shall alone constitute compliance by any~~
4581 ~~member of the board of directors not a member of the committee in question with his or her~~
4582 ~~responsibility to act in good faith, in a manner he or she reasonably believes to be in the best~~
4583 ~~interests of the corporation, and with such care as an ordinarily prudent person in a like position~~
4584 ~~would use under similar circumstances.~~

4585

4586 **Commentary for Section 607.0825:**

4587 The language in subsection (1), in subsection (2), in the first sentence of subsection (3), and in
 4588 subsection (4) has been replaced with language from subsections (a), (b), (c), (d) and (e) of s.
 4589 8.25 of the Model Act, except to the extent discussed below. Of note, this change now allows
 4590 board committees to be comprised of only one member, unless a greater number is otherwise
 4591 required in the chapter (such as, for example, in ss. 607.0741 and 607.0832) or in the particular
 4592 corporation’s articles of incorporation or bylaws. The prior law (s. 607.0825(3)) required at least
 4593 two persons to comprise each board committee.

4594 The matters that may not be delegated to a committee have been changed (i) to retain subsection
 4595 (1)(d) of the current statute relative to delegation to committees of the right to authorize and
 4596 approve reacquisition of shares (i.e., redemption payments), to redesignate it as subsection (4)(a)
 4597 and not to extend that exception to follow the language of subsection (e)(1) of s. 8.25 of the
 4598 Model Act (covering all “distributions”), (ii) to follow the second, third and fourth matters set
 4599 forth in subsection (d) of s. 8.25 of the Model Act (which is mostly a reordering of what already
 4600 appeared in subsection (1)(a) through (c) of the current statute), except that the limited override
 4601 for filling committee vacancies reflected in the Model Act is added, and (iii) to retain subsection
 4602 (1)(e) of the current statute, redesignated as subsection (4)(e). By retaining subsection (1)(d) of
 4603 the current statute (now subsection (4)(a)) relative to delegation to committees of the right to
 4604 authorize and approve reacquisition of shares (i.e., redemption payments) and not covering all
 4605 “distributions,” a board of a Florida corporation continues to have the ability to delegate to a
 4606 committee of the board the right to approve a dividend distribution (subject to any limitations
 4607 and restrictions applicable to the board itself), without the board having to approve the particular
 4608 distribution or to approve any formula or other parameters with respect to any distribution before
 4609 it is authorized by a committee.

4610 Old subsection (4) has been deleted. The duties of members of board committees are left to the
 4611 provisions governing the duties of directors under s. 607.0830. A cross reference to this effect
 4612 has been added in new subsection (5).

4613 By way of clarifying language from s. 8.25 of the Model Act, this section confirms the intent of
 4614 prior s. 607.0825 to the effect that this section relates only to board committees exercising one or
 4615 more board functions. This section does not apply to other committees set up by the board that
 4616 may include officers, employees, or others who are not board members and that might be created
 4617 to deal with non-board issues or to make recommendations for the board or a board committee to
 4618 consider. Moreover, it does not limit the board’s power to designate non-board member
 4619 observers to attend meetings of board committees. However, no such non-board member
 4620 observer can be a voting member of a board committee.

4621

4622 607.0826. Submission of matters for a shareholder vote.

4623 A corporation may agree to submit a matter to a vote of its shareholders even if, after
4624 approving the matter, the board of directors determines it no longer recommends the matter.

4625

4626 **Commentary for Section 607.0826:**

4627 This section, which is new to the FBCA, follows the language of Model Act s. 8.26 added in
4628 2008. This section expressly authorizes a corporation to enter into an agreement (such as a
4629 merger agreement) with a “force the vote” provision. The Model Act commentary notes,
4630 however, that this provision is not intended to relieve the board of directors from its duty to
4631 carefully consider a proposed transaction and the interests of its shareholders. Thirteen states,
4632 including Delaware, have statutes similar to s. 8.26. Of these states, six (i.e., Connecticut,
4633 Georgia, Maine, Massachusetts, Mississippi and Washington) are Model Act states.

4634

4635 607.0830. General standards for directors.

4636 (1) Each member of the board of directors, when discharging the duties of a director,
4637 including in discharging his or her duties as a member of a board committee, shall act:—A
4638 director shall discharge his or her duties as a director, including his or her duties as a member of
4639 a committee:

4640 (a) In good faith; and

4641 (b) ~~With the care an ordinarily prudent person in a like position would exercise~~
4642 ~~under similar circumstances; and~~

4643 (c)—~~In a manner he or she reasonably believes to be in the best interests of the~~
4644 ~~corporation.~~

4645 (2) The members of the board of directors or a board committee, when becoming
4646 informed in connection with a decision-making function or devoting attention to an oversight
4647 function, shall discharge their duties with the care that an ordinary prudent person in a like
4648 position would reasonably believe appropriate under similar circumstances. ~~In discharging his or~~
4649 her duties, a director is entitled to rely on information, opinions, reports, or statements, including
4650 financial statements and other financial data, if prepared or presented by:

4651 (a) ~~One or more officers or employees of the corporation whom the director~~
4652 ~~reasonably believes to be reliable and competent in the matters presented;~~

4653 (b) ~~Legal counsel, public accountants, or other persons as to matters the director~~
4654 ~~reasonably believes are within the persons' professional or expert competence; or~~

4655 (c) ~~A committee of the board of directors of which he or she is not a member if~~
4656 ~~the director reasonably believes the committee merits confidence.~~

4657 (3) In discharging board or board committee duties, a director who does not have
4658 knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the
4659 persons specified in subsection (5)(a) or subsection (5)(b) to whom the board may have
4660 delegated, formally or informally by course of conduct, the authority or duty to perform one or
4661 more of the board's functions that are delegable under applicable law.

4662 (4) In discharging board or board committee duties, a director who does not have
4663 knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports
4664 or statements, including financial statements and other financial data, prepared or presented by
4665 any of the persons specified in subsection (5).

4666 (5) A director is entitled to rely, in accordance with subsection (3) or (4), on:

4667 (a) One or more officers or employees of the corporation whom the director
4668 reasonably believes to be reliable and competent in the functions performed or the
4669 information, opinions, reports or statements provided;

4670 (b) Legal counsel, public accountants, or other persons retained by the corporation
4671 or by a committee of the board of the corporation as to matters involving skills or
4672 expertise the director reasonably believes are matters (i) within the particular person's
4673 professional or expert competence or (ii) as to which the particular person merits
4674 confidence; or

4675 (c) A committee of the board of directors of which the director is not a member if
4676 the director reasonably believes the committee merits confidence.

4677 (36) In discharging board or board committee ~~his or her~~ duties, a director may consider
4678 such factors as the director deems relevant, including the long-term prospects and interests of the
4679 corporation and its shareholders, and the social, economic, legal, or other effects of any action on
4680 the employees, suppliers, customers of the corporation or its subsidiaries, the communities and
4681 society in which the corporation or its subsidiaries operate, and the economy of the state and the
4682 nation.

4683 ~~(4) A director is not acting in good faith if he or she has knowledge concerning the~~
4684 ~~matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.~~

4685 ~~(5) A director is not liable for any action taken, as a director, if he or she performed the~~
4686 ~~duties of his or her office in compliance with this section.~~

4687

4688 **Commentary for Section 607.0830:**

4689 This Section has been modified to follow the organization and the wording of Model Act s. 8.30,
4690 although for the most part the change in language does not change the substance of standards
4691 applicable to directors.

4692 Unlike s. 8.30(a) of the Model Act, s. 607.0830(1) retains the clarifying reference from the prior
4693 Florida statute that these standards apply to directors whether they are acting as members of the
4694 board or as members of a committee of the board. The applicability to service as a board
4695 committee member is believed to be implicit under the Model Act provision, but this express
4696 concept was retained because it was included in the prior Florida statute and there was concern
4697 that deleting it might be interpreted as taking that standard and its protections away from
4698 directors when acting in their capacity as a committee member of a board committee.

4699 The "prudent person" standard of care in subsection (1) of the existing statute was replaced in
4700 subsection (2) with a standard of care that "a person in a like position would reasonably believe
4701 appropriate under similar circumstances" standard, thus incorporating into the standard the
4702 concept of a "reasonable belief" under the circumstances. The new language is derived from the
4703 Model Act provision, and is not believed to change the standard in any meaningful way, but
4704 rather to give better guidance to courts about how to consider this standard under various
4705 circumstances and to allow courts to consider case law in other Model Act states that have
4706 adopted this Model Act provision as their standard of care for directors.

4707 The provisions that previously appeared in subsection (2) are now found, with substantially
4708 similar language, in subsections (3), (4) and (5).

4709 Subsection 8.30(c) of the Model Act, which was added to the Model Act in 2005, was not
4710 adopted for inclusion in the FBCA. Subsection (c), dealing with a director's obligations of
4711 disclosure to the board under various circumstances, was one of several Model Act changes that
4712 flowed from the Enron/WorldCom scandals, and the work of the ABA Task Force on Corporate
4713 Responsibility and the group addressing revisions to the conflict of interest provisions of the
4714 Mode Act. This concept of disclosure is believed to already be the standard in Florida. Silence
4715 on this issue will allow Florida courts the latitude to determine the scope of a director's
4716 obligation to disclose under each particular circumstance that may arise from time to time.

4717 In subsection (5)(b), language not found in the Model Act is added in an effort to more clearly
4718 recognize that, under certain circumstances, a committee of the board, rather the corporation
4719 itself, may engage its own legal counsel, accountants and/or other advisors.

4720 Old subsection (5) has been removed, based on the view that the topic is adequately covered in s.
4721 607.0831 and that the language in this section is ambiguous. However, the elimination of old
4722 subsection (5) is not intended to be a substantive change in the law. See s. 607.0831(1)(a).

4723 607.0831. Liability of directors.

4724 (1) A director is not personally liable for monetary damages to the corporation or any
4725 other person for any statement, vote, decision to take or not to take action, or any failure to take
4726 any action, or failure to act, regarding corporate management or policy, as by a director, unless:

4727 (a) The director breached or failed to perform his or her duties as a director; and

4728 (b) The director's breach of, or failure to perform, those duties constitutes any of the
4729 following:

4730 1. A violation of the criminal law, unless the director had reasonable cause to
4731 believe his or her conduct was lawful or had no reasonable cause to believe his or her
4732 conduct was unlawful. A judgment or other final adjudication against a director in any
4733 criminal proceeding for a violation of the criminal law estops that director from
4734 contesting the fact that his or her breach, or failure to perform, constitutes a violation of
4735 the criminal law; but does not estop the director from establishing that he or she had
4736 reasonable cause to believe that his or her conduct was lawful or had no reasonable
4737 cause to believe that his or her conduct was unlawful;

4738 2. A circumstance under which the a transaction at issue is one from which the
4739 director derived an improper personal benefit, either directly or indirectly;

4740 3. A circumstance under which the liability provisions of s. 607.0834 are
4741 applicable;

4742 4. In a proceeding by or in the right of the corporation to procure a judgment in
4743 its favor or by or in the right of a shareholder, conscious disregard for the best interest
4744 of the corporation, or willful or intentional misconduct; or

4745 5. In a proceeding by or in the right of someone other than the corporation or a
4746 shareholder, recklessness or an act or omission which was committed in bad faith or
4747 with malicious purpose or in a manner exhibiting wanton and willful disregard of
4748 human rights, safety, or property.

4749 (2) For the purposes of this section, the term "recklessness" means the action, or omission
4750 to act, in conscious disregard of a risk:

4751 (a) Known, or so obvious that it should have been known, to the director; and

4752 (b) Known to the director, or so obvious that it should have been known, to be so
4753 great as to make it highly probable that harm would follow from such action or omission.

4754 (3) A director is deemed not to have derived an improper personal benefit from any
4755 transaction if the transaction and the nature of any personal benefit derived by the director are
4756 not prohibited by state or federal law or regulation and, without further limitation:

4757 (a) In an action other than a derivative suit regarding a decision by the director to
4758 approve, reject, or otherwise affect the outcome of an offer to purchase the stock of, or to
4759 effect a merger of, the corporation, the transaction and the nature of any personal benefits
4760 derived by a director are disclosed or known to all directors voting on the matter, and the
4761 transaction was authorized, approved, or ratified by at least two directors who comprise a
4762 majority of the disinterested directors (whether or not such disinterested directors constitute
4763 a quorum);

4764 (b) ~~The transaction and the nature of any personal benefits derived by a director are~~
4765 ~~was authorized, approved or ratified as set forth in s. 607.0832(3)(a)1. or 2.; disclosed or~~
4766 ~~known to the shareholders entitled to vote, and the transaction was authorized, approved, or~~
4767 ~~ratified by the affirmative vote or written consent of such shareholders who hold a majority~~
4768 ~~of the shares, the voting of which is not controlled by directors who derived a personal~~
4769 ~~benefit from or otherwise had a personal interest in the transaction; or~~

4770 (c) The transaction was fair and reasonable to the corporation at the time it was
4771 authorized, approved or ratified by the board, a committee, or the shareholders,
4772 notwithstanding that a director received a personal benefit.

4773 (4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the
4774 existence of other circumstances under which a director will be deemed not to have derived an
4775 improper benefit.

4776
4777

4778 **Commentary for Section 607.0831:**

4779 This section does not follow the structure and approach of Model Act s. 8.31. Rather, it continues
4780 with the structure and approach of the current s. 607.0831; however, certain language and
4781 concepts from Model Act s. 8.31 has been incorporated into the changes to this section. Two of
4782 the key reasons for staying with the current statute as the base was the consensus that the
4783 provisions of the current statute (i) work well and (ii) are grafted by cross-reference into other
4784 Florida statutes such as Florida’s not-for-profit statute (Chapter 617).

4785 In that regard:

4786 1. The phrase “is not personally liable for monetary damages” has not been removed
4787 even though such language does not appear in Model Act s. 8.31. The phrase was retained
4788 in order to be clear that this provision is about monetary damages and not about equitable
4789 relief.

4790 2. The words "or any other person" were not changed to the language in the Model
4791 Act corollary, "or its shareholders". The 1989 commentary to the proposed FBCA included
4792 this provision and expressly stated that this provision was intentionally adopted to limit
4793 personal liability of directors to third parties in the manner set forth in the statute when they
4794 are acting in their capacity as directors.

4795 3. The phrase “regarding corporate management or policy” was deleted as being too
4796 limiting.

4797 4. The reference to “by a director” was changed to “as a director” to match the Model
4798 Act approach and to make it clear that the exculpation is available only when the director is
4799 acting in the capacity of a director.

4800 5. The description of decisions and actions that are covered by the exculpation
4801 provision in this Section was changed to match the Model Act approach (i.e., “to take or not
4802 take action or any failure to take action”) because the Model Act approach was viewed as
4803 being clearer. Similar language has been added in s. 607.0830(7).

4804 6. The burden of proof language in the Model Act language providing that a director
4805 has no liability unless “the party asserting liability establishes that:” has not been added and
4806 leaves the issue of who has the burden of proof in appropriate circumstances to the courts.

4807 The language in Model Act subsections 8.31(b)(1), (2) and (3) was not added to the statute.

4808 Revised s. 607.0831 retains the “self-executing” nature of the existing Florida statute under
4809 which a director is generally not personally liable to the corporation, instead of following the
4810 Model Act’s “opt-in” language. Because the exculpation in s. 607.0831 remains self-executing,

4811 the provisions in the Model Act language cross referencing to the ability to add authorization
4812 language in a corporation's Articles of Incorporation in s. 8.31(a)(1) was not added.

4813 In subsection (3)(b), rather than repeating how an interested party transaction is to be approved,
4814 the statute provides a cross reference to the applicable standard for approval contained in s.
4815 607.0832(3)(a)1. or 2.

4816

4817 607.0832. Director conflicts of interest.

4818 (1) ~~No contract or other transaction between a corporation and one or more of its directors~~
4819 ~~or any other corporation, firm, association, or entity in which one or more of its directors are~~
4820 ~~directors or officers or are financially interested shall be either void or voidable because of such~~
4821 ~~relationship or interest, because such director or directors are present at the meeting of the board~~
4822 ~~of directors or a committee thereof which authorizes, approves, or ratifies such contract or~~
4823 ~~transaction, or because his or her or their votes are counted for such purpose, if:~~

4824 (a) ~~The fact of such relationship or interest is disclosed or known to the board of~~
4825 ~~directors or committee which authorizes, approves, or ratifies the contract or transaction by a~~
4826 ~~vote or consent sufficient for the purpose without counting the votes or consents of such~~
4827 ~~interested directors;~~

4828 (b) ~~The fact of such relationship or interest is disclosed or known to the shareholders~~
4829 ~~entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or~~
4830 ~~written consent; or~~

4831 (c) ~~The contract or transaction is fair and reasonable as to the corporation at the time it~~
4832 ~~is authorized by the board, a committee, or the shareholders.~~

4833 (2) ~~For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized,~~
4834 ~~approved, or ratified if it receives the affirmative vote of a majority of the directors on the board~~
4835 ~~of directors, or on the committee, who have no relationship or interest in the transaction~~
4836 ~~described in subsection (1), but a transaction may not be authorized, approved, or ratified under~~
4837 ~~this section by a single director. If a majority of the directors who have no such relationship or~~
4838 ~~interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present~~
4839 ~~for the purpose of taking action under this section. The presence of, or a vote cast by, a director~~
4840 ~~with such relationship or interest in the transaction does not affect the validity of any action~~
4841 ~~taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as~~
4842 ~~provided in that subsection, but such presence or vote of those directors may be counted for~~
4843 ~~purposes of determining whether the transaction is approved under other sections of this act.~~

4844 (3) ~~For purposes of paragraph (1)(b), a conflict of interest transaction is authorized,~~
4845 ~~approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under~~
4846 ~~this subsection. Shares owned by or voted under the control of a director who has a relationship~~
4847 ~~or interest in the transaction described in subsection (1) may not be counted in a vote of~~
4848 ~~shareholders to determine whether to authorize, approve, or ratify a conflict of interest~~
4849 ~~transaction under paragraph (1)(b). The vote of those shares, however, is counted in determining~~
4850 ~~whether the transaction is approved under other sections of this act. A majority of the shares,~~
4851 ~~whether or not present, that are entitled to be counted in a vote on the transaction under this~~
4852 ~~subsection constitutes a quorum for the purpose of taking action under this section.~~

4853 (1) As used in this section, the following terms and definitions apply:

4854 (a) A director is “indirectly” a party to a transaction if that director has a
4855 material financial interest in or is a director, officer, member, manager, or partner of a
4856 person, other than the corporation, who is a party to the transaction.

4857 (b) A director has an “indirect material financial interest” if a family member
4858 has a material financial interest in the transaction, other than having an indirect interest as
4859 a shareholder of the corporation, or if the transaction is with an entity, other than the
4860 corporation, which has a material financial interest in the transaction and controls, or is
4861 controlled by, the director or another person specified in this subsection.

4862 (c) “Director’s conflict of interest transaction” means a transaction between a
4863 corporation and one or more of its directors, or another entity in which one or more of the
4864 corporation’s directors is directly or indirectly a party to the transaction, other than being
4865 an indirect party as a result of being a shareholder of the corporation, and has a direct or
4866 indirect material financial interest or other material interest.

4867 (d) “Fair to the corporation” means that the transaction, as a whole, is beneficial
4868 to the corporation and its shareholders, taking into appropriate account whether it is:

4869 1. Fair in terms of the director’s dealings with the corporation in connection
4870 with that transaction; and

4871 2. Comparable to what might have been obtainable in an arm’s length
4872 transaction.

4873 (e) “Family member” includes (i) the director’s spouse, or (ii) a child, stepchild,
4874 parent, step parent, grandparent, sibling, step sibling or half sibling of the director or the
4875 director’s spouse.

4876 (f) “Material financial interest” means a financial interest in the transaction that
4877 would reasonably be expected to impair the objectivity of the director’s judgment when
4878 participating in the action on the authorization of the transaction.

4879 (2) If a director’s conflict of interest transaction is fair to the corporation at the time it
4880 is authorized, approved, effectuated, or ratified:

4881 (a) Such transaction is not void or voidable; and

4882 (b) The fact that the transaction is a director’s conflict of interest transaction is
4883 not grounds for any equitable relief, an award of damages or other sanctions.

4884 because of that relationship or interest, because such director or directors are present at the
4885 meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies
4886 such transaction, or because his or her or their votes are counted for such purpose.

4887 (3)(a) In a proceeding challenging the validity of a director's conflict of interest
4888 transaction or seeking equitable relief, award of damages or other sanctions with respect to a
4889 director's conflict of interest transaction, the person challenging the validity or seeking
4890 equitable relief, award of damages or other sanctions has the burden of proving the lack of
4891 fairness of the transaction if:

4892 1. The material facts of the transaction and the director's interest in the
4893 transaction were disclosed or known to the board of directors or committee which
4894 authorizes, approves, or ratifies the transaction and the transaction was authorized,
4895 approved or ratified by a vote of a majority of the qualified directors even if the
4896 qualified directors constitute less than a quorum of the board or the committee;
4897 however, the transaction cannot be authorized, approved, or ratified under this
4898 subsection solely by a single director; or

4899 2. The material facts of the transaction and the director's interest in the
4900 transaction were disclosed or known to the shareholders who voted upon such
4901 transaction and the transaction was authorized, approved, or ratified by a majority
4902 of the votes cast by disinterested shareholders or by the written consent of
4903 disinterested shareholders representing a majority of the votes that could be cast by
4904 all disinterested shareholders. Shares owned by or voted under the control of a
4905 director who has a relationship or interest in the director's conflict of interest
4906 transaction shall not be considered shares owned by a disinterested shareholder and
4907 thus may not be counted in a vote of shareholders to determine whether to
4908 authorize, approve, or ratify a director's conflict of interest transaction under this
4909 subsection (3)(a)2. The vote of those shares, however, is counted in determining
4910 whether the transaction is approved under other sections of this chapter. A
4911 majority of the shares, whether or not present, that are entitled to be counted in a
4912 vote on the transaction under this subsection constitutes a quorum for the purpose
4913 of taking action under this section.

4914 (b) If neither of the conditions provided in paragraph (a) has been satisfied, the
4915 person defending or asserting the validity of a director's conflict of interest transaction
4916 has the burden of proving its fairness in a proceeding challenging the validity of the
4917 transaction.

4918 (4) The presence of or a vote cast by a director with an interest in the transaction does not
4919 affect the validity of an action taken under paragraph (3)(a) if the transaction is otherwise
4920 authorized, approved, or ratified as provided in subsection (3), but the presence or vote of the

4921 director may be counted for purposes of determining whether the transaction is approved under
4922 other sections of this chapter.

4923 (5) In addition to other grounds for challenge, a party challenging the validity of the
4924 transaction is not precluded from asserting and proving that a particular director or shareholder
4925 was not disinterested on grounds of financial or other interest for purposes of the vote on,
4926 consent to, or approval of the transaction.

4927 (6) Where directors' action under this section does not otherwise satisfy a quorum or
4928 voting requirement applicable to the authorization of the transaction by directors as required by
4929 the articles of incorporation, the bylaws, this chapter or any other provision of law, an action to
4930 satisfy those authorization requirements, whether as part of the same action or by way of another
4931 action, must be taken by the board of directors or a committee in order to authorize the
4932 transaction. In such action, the vote or consent of directors who are not disinterested may be
4933 counted.

4934 (7) Where shareholders' action under this section does not satisfy a quorum or voting
4935 requirement applicable to the authorization of the transaction by shareholders as required by the
4936 articles of incorporation, the bylaws, this chapter or any other provision of law, an action to
4937 satisfy those authorization requirements, whether as part of the same action or by way of another
4938 action, must be taken by the shareholders in order to authorize the transaction. In such action,
4939 the vote or consent of shareholders who are not disinterested shareholders may be counted.

4940

4941 **Commentary for Section 607.0832:**

4942 Section 607.0832 is revised to follow the approach taken in and to parallel the language
4943 appearing in s. 605.04092 of FRLCA, in an effort to harmonize the two entity statutes and
4944 because the FRLCA provision does a good job of answering the two key questions that need to
4945 be covered by the director conflicts of interest transactions section of the FBCA, as follows:

4946 (i) can an unfair conflict of interest transaction that is approved by disinterested directors
4947 or disinterested shareholders get clearance under the statute; and
4948

4949 (ii) if, under all circumstances, the conflict of interest transaction must be fair, should
4950 approval by disinterested directors or disinterested shareholders shift the burden of proof to the
4951 persons challenging the transaction.
4952

4953 Current s. 607.0832 can be read to provide that an "unfair" director conflict of interest
4954 transaction would not be void or voidable if it were approved by disinterested directors or
4955 disinterested shareholders. The revised statute expressly removes that ambiguity from the statute.

4956 The changes made to this section are as follows:

4957 1. Following the approach taken by s. 605.04092, and based on a view that
4958 "contracts" are a subset of "transactions," the "contracts and other transactions" language
4959 has not been retained; instead all references are instead to just "transactions." The removal
4960 of the references to "contracts" is not intended to be a substantive change; but rather is
4961 consistent with the belief that "contracts" are a subset of "transactions" and thus the
4962 references to "contracts" are considered superfluous. Furthermore, the removal of the
4963 references to "contracts" eliminates the risk that the transactions (including contracts)
4964 covered by s. 607.0832 of FBCA should be in any way different from the transactions
4965 (including contracts) covered by s. 605.04092 of FRLCA.

4966 2. With respect to "indirect interests," the FRLCA construct is followed. Section
4967 607.0832 defines an "indirect interest" as one where the "director has an indirect material
4968 financial interest in or is a director, officer, member, manager or partner of a person, other
4969 than the corporation, who is a party to the transaction."

4970 3. The word "control," which is defined in the Model Act, is not being defined in s.
4971 607.0832, following the approach taken in the predecessor s. 607.0832 and in s. 605.04092
4972 of FRLCA.

4973 4. In subsection (3), the words "at the time it is authorized" are continued to be used
4974 rather than the Model Act concept of "relevant time."

4975

4976 5. The word “material” as set forth in s. 605.04092 of FRLCA is used in s.
4977 607.0832. Although it could be argued that the Model Act definition may be better worded,
4978 it is believed that the FRLCA terminology is perfectly acceptable; using the FRLCA
4979 terminology respects consistency and avoids the potential that a court might give undue
4980 meaning to differences in wording, where no difference in meaning was intended.

4981 6. A definition of the term “related person” has not been added. Instead, the term
4982 “indirect material financial interest” is defined and used in this statute.

4983 7. A definition of the phrase “fair to the corporation” is added, mirroring the defined
4984 phrase as it currently appears in s. 605.04092.

4985 8. A decision was made not to define what is meant by “required disclosure,” based
4986 on the view that the concept of required disclosure is already built into the language of s.
4987 605.04092(4), which language has now been mirrored in s. 607.0832.

4988 9. A decision was made to leave it to the courts to determine who may challenge an
4989 interested director transaction and not to expressly address this subject in the statute. Both
4990 the predecessor s. 607.0832 and s. 605.04092 of FRLCA are silent on this issue; however,
4991 s. 605.04092, because of the way the burden of proof is now defined, might imply that there
4992 is a broader group of persons who could seek to challenge a conflict of interest transaction.

4993 10. In an attempt to streamline the language used throughout the statute, a definition of
4994 “director’s conflict of interest transaction” has been added, but the approach taken is
4995 different from the approach taken in the Model Act. By adding this definition and using this
4996 term in subsection 607.0832(3), the confusion created in parallel subsections
4997 605.04092(4)(a) and (b) by the cross references used in those subsections is eliminated, with
4998 clarity provided as to which transactions are being referenced. **Conforming changes are**
4999 **being recommended for s. 605.04092 so as to eliminate the confusion caused by what**
5000 **appears to be incorrect cross references in subsections 605.04092(4)(a) and (b).**

5001 11. Although not defined, the term “disinterested shareholder” has been used, and
5002 continues to be used, throughout the statute. With respect to board approval, the statute now
5003 uses the defined term "qualified directors."

5004 12. In securing approval from “qualified directors,” s. 607.0832 continues to require
5005 that more than one qualified director on the board or board committee considering the
5006 transaction must approve the transaction in order for the transaction to be approved under
5007 subsection 607.0832(4)(a)1.

5008 13. In subsection (3)(a)1., the vote to approve the transaction must be by “a majority of
5009 the qualified directors.” However, because the reference did not deal with the possibility
5010 that director votes might be weighted under s. 607.0804, there was some confusion as to

5011 how the majority was to be determined in cases where director votes were weighted under s.
5012 607.0804. The issue was resolved by adding language to s. 607.0804 of the FBCA to make
5013 it clear that if a shareholders' agreement has been adopted in compliance with s. 607.0732
5014 which changes the weight of director votes, then all references in Chapter 607 to a majority
5015 or other proportion of directors shall refer to a majority or other proportion of the votes of
5016 such directors. Based on this change, it was determined that there was no need to also make
5017 a change in s. 607.0824(3).

5018

5019 607.0833. Loans to officers, directors, and employees; guaranty of obligations.

5020 Any corporation may lend money to, guarantee any obligation of, or otherwise assist any
5021 officer, director, or employee of the corporation or of a subsidiary, whenever, in the judgment of
5022 the board of directors, such loan, guaranty, or assistance may reasonably be expected to benefit
5023 the corporation. The loan, guaranty, or other assistance may be with or without interest and may
5024 be unsecured or secured in such manner as the board of directors shall approve, including,
5025 ~~without limitation,~~ a pledge of shares of stock of the corporation. Nothing in this section shall be
5026 deemed to deny, limit, or restrict the powers of guaranty or warranty of any corporation at
5027 common law or under any statute. Loans, guarantees, or other types of assistance are subject to s.
5028 607.0832.

5029

5030 **Commentary for Section 607.0833:**

5031 This section is identical to DGCL Section 143 and was in the predecessor Florida corporate
5032 statute prior to the adoption of the FBCA (old s. 607.141). Although the provision does not
5033 appear in the Model Act, the provision is retained in the FBCA.

5034

5035

5036 607.0834. Directors' liability for unlawful distributions.

5037 (1) A director who votes for or assents to a distribution made in violation of s. 607.06401,
5038 s. 607.1410(a) or the articles of incorporation is personally liable to the corporation for the
5039 amount of the distribution that exceeds what could have been distributed without violating s.
5040 607.06401, s. 607.1410(a), or the articles of incorporation if it is established that the director did
5041 not perform his or her duties in compliance with s. 607.0830. In any proceeding commenced
5042 under this section, a director has all of the defenses ordinarily available to a director.

5043 (2) A director held liable under subsection (1) for an unlawful distribution is entitled to
5044 contribution:

5045 (a) From every other director who could be liable under subsection (1) for the
5046 unlawful distribution; and

5047 (b) From each shareholder for the amount the shareholder accepted knowing the
5048 distribution was made in violation of s. 607.06401 or the articles of incorporation.

5049 (3) A proceeding under this section is barred unless it is commenced

5050 (a) Within ~~2~~ two years after the date on which the effect of the distribution was
5051 measured under s. 607.06401(6) or (8);

5052 (b) Within two years after the date as of which the violation of s. 607.06401 occurred as
5053 the consequence of disregard of a restriction in the articles of incorporation;

5054 (c) Within two years after the date on which the distribution of assets to shareholders
5055 under s. 607.1410(a) was made; or

5056 (c) With regard to contribution or recoupment under subsection (2) above, within one
5057 year after the liability of the claimant has been finally adjudicated under subsection (1).

5058

5059 **Commentary for Section 607.0834:**

5060 The changes to subsection (3) (adding new subsections (b) and (c)) follow s. 8.33(c)(1) and (2)
5061 of the Model Act that was added to the Model Act in 2000. Subsection (3)(b) adds a two-year
5062 statute of limitations based upon the date on which the violation of s. 607.06401 occurs in
5063 circumstances where the violation is in disregard of a restriction contained in the articles of
5064 incorporation. For actions brought under s. 607.0834(2) for contribution or recoupment,
5065 subsection (3)(d) establishes a one year statute of limitation from when the liability of the
5066 claimant has been finally adjudicated under subsection (1). Addressing the issue of whether
5067 there was an overlap between subsections (3)(a), (b), (c) and (d), it was determined that because
5068 the word “or” is used at the end of subsection (3)(b), the applicable statute of limitations
5069 becomes the last to expire of the three applicable periods.

5070

5071 607.08401. Required officers.

5072 (1) A corporation shall have the officers described in its bylaws or appointed by the board
5073 of directors in accordance with the bylaws.

5074 (2) A duly appointed officer may appoint one or more officers or assistant officers if
5075 authorized by the bylaws or the board of directors.

5076 (3) The bylaws or the board of directors shall ~~delegate~~ assign to one of the officers
5077 responsibility for preparing minutes of the directors' and shareholders' meetings and for
5078 authenticating the records of the corporation required to be kept under sections 607.1601(1) and
5079 607.1601(5).

5080 (4) The same individual may simultaneously hold more than one office in a corporation.

5081

5082 **Commentary for Section 607.08401:**

5083 Subsection (1) was left unchanged, despite the fact that there is a slight difference in its wording
5084 as compared to s. 8.40 of the Model Act. No change was made because it is believed that the
5085 language is substantively the same and because the language in subsection (1) has been in place
5086 since before adoption of the FBCA in 1989.

5087 Subsection (2) was left in its current form, even though, unlike the corresponding provision of
5088 the Model Act, it uses the words “duly appointed” instead of the words “duly authorized” and
5089 adds the possibility of appointing “assistant officers.”

5090 The lead-in sentence from s. 8.40(b) of the Model Act, which states that "The board of directors
5091 may elect individuals to fill one or more officers if authorized by the bylaws or the board of
5092 directors," was not added. This first sentence has been part of the Model Act provision since
5093 before 1989 but was not adopted by Florida in 1989 presumably because its substance was
5094 considered implicit in the Florida statute as written. Because the substance of this initial
5095 sentence from the Model Act was still considered implicit, the decision to not add the sentence
5096 was reaffirmed.

5097 The word “delegate” in subsection (3) was changed to “assign” to be consistent with the wording
5098 used in the Model Act and because the change in wording was viewed as being more reflective
5099 of how such obligations are imposed on officers.

5100 Similarly, to be consistent with the wording of the Model Act and to make clear which of the
5101 records identified in Chapter 607 are to be the subject of authentication, subsection (3) was
5102 further changed. It was noted that the Delaware statute does not provide expressly for the
5103 appointment of an officer to authenticate records, since as a practical matter when records must
5104 be authenticated an officer will be assigned to handle that function even if not required by the
5105 statute. However, since this provision for authentication has been in this section of the FBCA
5106 since 1989, the decision was made to leave this concept of assigning the “authentication”
5107 function in the statute, but to add the parallel qualifying language from the Model Act.

5108

5109 607.0841. Duties of officers.

5110 Each officer has the authority and shall perform the duties set forth in the bylaws or, to the
5111 extent consistent with the bylaws, the duties prescribed by the board of directors or by direction
5112 of any officer authorized by the bylaws or the board of directors to prescribe the duties of other
5113 officers.

5114

5115 **Commentary for Section 607.0841:**

5116 While the Model Act, in s. 8.41, uses the term "function" instead of "duties" in the four places
5117 where the word appears in this section, since the corollary section of the DGCL uses the term
5118 "duties" in this context, and since this provision has been in the FBCA in this form since 1989
5119 and is believed adequate to describe the duties (or functions) of officers, the Model Act wording
5120 has not been added to this section of the FBCA.

5121

5122 607.08411 General standards for officers.

5123 (1) An officer, when performing in such capacity, has the duty to act:

5124 (a) In good faith; and

5125 (b) In a manner the officer reasonably believes to be in the best interests of the
5126 corporation.

5127 (2) An officer, when becoming informed in connection with a decision-making function,
5128 shall discharge his or her duties with the care that an ordinary prudent person in a like position
5129 would reasonably believe appropriate under similar circumstances.

5130 (3) The duty of an officer includes the obligation:

5131 (a) To inform the superior officer to whom, or the board of directors or the committee to
5132 which, the officer reports of information about the affairs of the corporation known to the
5133 officer, within the scope of the officer's functions, and known or should be known to the
5134 officer to be material to such superior officer, board or committee; and

5135 (b) To inform his or her superior officer, or another appropriate person within the
5136 corporation, or the board of directors, or a committee thereof, of any actual or probable
5137 material violation of law involving the corporation or material breach of duty to the
5138 corporation by an officer, employee, or agent of the corporation, that the officer believes has
5139 occurred or is likely to occur.

5140 (4) In discharging his or her duties, an officer who does not have knowledge that makes
5141 reliance unwarranted is entitled to rely on the performance by any of the persons specified in
5142 subsection (6) to whom the responsibilities were properly delegated, formally or informally by
5143 course of conduct.

5144 (5) In discharging his or her duties, an officer who does not have knowledge that makes
5145 reliance unwarranted is entitled to rely on information, opinions, reports or statements, including
5146 financial statements and other financial data, prepared or presented by any of the persons
5147 specified in subsection (6).

5148 (6) An officer is entitled to rely, in accordance with subsection (4) or (5), on:

5149 (a) One or more other officers of the corporation or one or more employees of the
5150 corporation whom the officer reasonably believes to be reliable and competent in the
5151 functions performed or the information, opinions, reports or statements provided;

5152 (b) Legal counsel, public accountants, or other persons retained by the corporation as to
5153 matters involving skills or expertise the officer reasonably believes are matters (i) within the

5154 particular person's professional or expert competence or (ii) as to which the particular person
5155 merits confidence.

5156

5157 **Commentary to s. 607.08411.**

5158 While this new section of the FBCA is modeled after s. 8.42 of the Model Act, it includes
5159 language intended to make it consistent with the language used in s. 607.0830 (general standards
5160 for directors).

5161 Section 8.42 first became part of the Model Act in 1984 and was amended in 1999 and again in
5162 2005. This section was excluded from the FBCA as adopted in 1989. The following commentary
5163 explained the rationale for the omission of this section in 1989:

5164 "Currently, Florida does not have a statute dictating standards of conduct for officers.
5165 These standards are currently imposed under common law and general contract law.
5166 Although Georgia has recently adopted a statute that is similar to Model Act Section
5167 8.42, the Committee believes there is no need to adopt a similar statute at this time".

5168 Today, 28 of the 34 Model Act jurisdictions, including Georgia, Massachusetts, North Carolina,
5169 Oregon, Pennsylvania, Washington DC, and Washington State, have adopted either the 1984 or
5170 updated versions of this Model Act provision. Further, the current version of the Model Act is far
5171 more robust than it was in the 1984 version of the Model Act, and the commentary is lengthy and
5172 detailed on this topic.

5173 As a result, this provision has been added to the FBCA. It provides clear guidance to its audience
5174 (counselors to corporate officers and directors) with as little as possible left to interpretation,
5175 including a roadmap for courts as to the duties of officers. It replaces common law principles of
5176 an agent's duties, which arguably do not provide clear guidance. Further, the more specific
5177 guidance provided by this section could be helpful in determining an officer's entitlement to
5178 indemnification and in providing offensive and defensive arguments when an officer is named as
5179 a defendant in litigation (derivative or otherwise). Other aspects of this new provision that are
5180 considered to be of some significance are the specific requirements for "up the line" reporting
5181 and transparency, and the very specific (and corporate structure-related) definitions of reasonable
5182 "reliance", the latter of which is not necessarily believed to be part of traditional agency rules.

5183 In some cases, the failure to observe relevant standards of conduct may give rise to an officer's
5184 liability to the corporation or its shareholders. A court review of challenged conduct will involve
5185 an evaluation of the particular facts and circumstances in light of applicable law. In this
5186 connection, a court may considered whether the relevant principles of s. 607.0831, such as duties
5187 to deal fairly with the corporation and its shareholders and the challenger's burden of
5188 establishing proximately caused harm, should be taken into account. In addition, a court may
5189 find that the business judgment rule applies to decisions within an officer's discretionary
5190 authority. Liability to others can also arise from an officer's own acts or omissions (*e.g.*,
5191 violations of law or tort claims) and, in some cases, an officer with supervisory responsibilities
5192 can have risk exposure in connection with the acts or omissions of others.

5193 607.0842. Resignation and removal of officers.

5194 (1) An officer may resign at any time by delivering a written notice to the corporation. A
5195 resignation is effective as provided in s. 607.0141(5) when the notice is delivered unless the
5196 notice provides for a delayed effectiveness, including effectiveness determined upon a future
5197 event or events specifies a later effective date. If effectiveness of a resignation is stated to be
5198 delayed and the ~~corporation~~ board of directors or appointing officer ~~made effective at a later date~~
5199 accepts the delay ~~future effective date,~~ the its board of directors or the appointing officer may fill
5200 the pending vacancy before the delayed effectiveness ~~effective date~~ if the board of directors or
5201 the appointing officer provides that the successor does not take office until the vacancy occurs
5202 effective date.

5203 (2) ~~A board of directors may remove any officer at any time with or without cause. Any~~
5204 ~~officer or assistant officer, if appointed by another officer, may likewise be removed by such~~
5205 ~~officer.~~ An officer may be removed at any time with or without cause by: (i) the board of
5206 directors, (ii) the appointing officer, unless the bylaws or the board of directors provide
5207 otherwise, or (iii) any other officer, if authorized by the bylaws or the board of directors.

5208 (3) In this section, "appointing officer" means the officer (including any successor to that
5209 officer) who appointed the officer resigning or being removed.

5210

5211 **Commentary for Section 607.0842:**

5212 Changes to this section of the FBCA update this section for wording changes made in Model Act
5213 s. 8.43 in 2000. These changes are believed to be better wording and clarifying/cleanup changes,
5214 but are not intended to change the substance of the statute.

5215

5216 607.0843. Contract rights of officers.

5217 (1) The election or appointment of an officer does not itself create contract rights.

5218 (2) An officer's removal does not affect the officer's contract rights, if any, with the
5219 corporation. An officer's resignation does not affect the corporation's contract rights, if any, with
5220 the officer.

5221

5222 **Commentary for Section 607.0843:**

5223 A minor language change was made to conform subsection (1) to the 2016 version of the Model

5224 Act. Otherwise, no changes were made.

5225

5226 607.0850. Definitions. ~~Indemnification of officers, directors, employees, and agents.~~

5227 (1) ~~A corporation shall have power to indemnify any person who was or is a party to any~~
5228 ~~proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that~~
5229 ~~he or she is or was a director, officer, employee, or agent of the corporation or is or was serving~~
5230 ~~at the request of the corporation as a director, officer, employee, or agent of another corporation,~~
5231 ~~partnership, joint venture, trust, or other enterprise against liability incurred in connection with~~
5232 ~~such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he~~
5233 ~~or she reasonably believed to be in, or not opposed to, the best interests of the corporation and,~~
5234 ~~with respect to any criminal action or proceeding, had no reasonable cause to believe his or her~~
5235 ~~conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or~~
5236 ~~conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a~~
5237 ~~presumption that the person did not act in good faith and in a manner which he or she reasonably~~
5238 ~~believed to be in, or not opposed to, the best interests of the corporation or, with respect to any~~
5239 ~~criminal action or proceeding, had reasonable cause to believe that his or her conduct was~~
5240 ~~unlawful.~~

5241 (2) ~~A corporation shall have power to indemnify any person, who was or is a party to any~~
5242 ~~proceeding by or in the right of the corporation to procure a judgment in its favor by reason of~~
5243 ~~the fact that the person is or was a director, officer, employee, or agent of the corporation or is or~~
5244 ~~was serving at the request of the corporation as a director, officer, employee, or agent of another~~
5245 ~~corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts~~
5246 ~~paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense~~
5247 ~~of litigating the proceeding to conclusion, actually and reasonably incurred in connection with~~
5248 ~~the defense or settlement of such proceeding, including any appeal thereof. Such indemnification~~
5249 ~~shall be authorized if such person acted in good faith and in a manner he or she reasonably~~
5250 ~~believed to be in, or not opposed to, the best interests of the corporation, except that no~~
5251 ~~indemnification shall be made under this subsection in respect of any claim, issue, or matter as to~~
5252 ~~which such person shall have been adjudged to be liable unless, and only to the extent that, the~~
5253 ~~court in which such proceeding was brought, or any other court of competent jurisdiction, shall~~
5254 ~~determine upon application that, despite the adjudication of liability but in view of all~~
5255 ~~circumstances of the case, such person is fairly and reasonably entitled to indemnity for such~~
5256 ~~expenses which such court shall deem proper.~~

5257 (3) ~~To the extent that a director, officer, employee, or agent of a corporation has been~~
5258 ~~successful on the merits or otherwise in defense of any proceeding referred to in subsection (1)~~
5259 ~~or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be~~
5260 ~~indemnified against expenses actually and reasonably incurred by him or her in connection~~
5261 ~~therewith.~~

5262 (4) ~~Any indemnification under subsection (1) or subsection (2), unless pursuant to a~~
5263 ~~determination by a court, shall be made by the corporation only as authorized in the specific case~~

5264 upon a determination that indemnification of the director, officer, employee, or agent is proper in
5265 the circumstances because he or she has met the applicable standard of conduct set forth in
5266 subsection (1) or subsection (2). Such determination shall be made:

5267 (a) — By the board of directors by a majority vote of a quorum consisting of directors
5268 who were not parties to such proceeding;

5269 (b) — If such a quorum is not obtainable or, even if obtainable, by majority vote of a
5270 committee duly designated by the board of directors (in which directors who are parties may
5271 participate) consisting solely of two or more directors not at the time parties to the
5272 proceeding;

5273 (c) — By independent legal counsel:

5274 1. — Selected by the board of directors prescribed in paragraph (a) or the committee
5275 prescribed in paragraph (b); or

5276 2. — If a quorum of the directors cannot be obtained for paragraph (a) and the
5277 committee cannot be designated under paragraph (b), selected by majority vote of the
5278 full board of directors (in which directors who are parties may participate); or

5279 (d) — By the shareholders by a majority vote of a quorum consisting of shareholders
5280 who were not parties to such proceeding or, if no such quorum is obtainable, by a majority
5281 vote of shareholders who were not parties to such proceeding.

5282 (5) — Evaluation of the reasonableness of expenses and authorization of indemnification
5283 shall be made in the same manner as the determination that indemnification is permissible.
5284 However, if the determination of permissibility is made by independent legal counsel, persons
5285 specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize
5286 indemnification.

5287 (6) — Expenses incurred by an officer or director in defending a civil or criminal proceeding
5288 may be paid by the corporation in advance of the final disposition of such proceeding upon
5289 receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or
5290 she is ultimately found not to be entitled to indemnification by the corporation pursuant to this
5291 section. Expenses incurred by other employees and agents may be paid in advance upon such
5292 terms or conditions that the board of directors deems appropriate.

5293 (7) — The indemnification and advancement of expenses provided pursuant to this section
5294 are not exclusive, and a corporation may make any other or further indemnification or
5295 advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw,
5296 agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or
5297 her official capacity and as to action in another capacity while holding such office. However,
5298 indemnification or advancement of expenses shall not be made to or on behalf of any director,

5299 officer, employee, or agent if a judgment or other final adjudication establishes that his or her
5300 actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

5301 (a) — A violation of the criminal law, unless the director, officer, employee, or agent had
5302 reasonable cause to believe his or her conduct was lawful or had no reasonable cause to
5303 believe his or her conduct was unlawful;

5304 (b) — A transaction from which the director, officer, employee, or agent derived an
5305 improper personal benefit;

5306 (c) — In the case of a director, a circumstance under which the liability provisions of s.
5307 607.0834 are applicable; or

5308 (d) — Willful misconduct or a conscious disregard for the best interests of the
5309 corporation in a proceeding by or in the right of the corporation to procure a judgment in its
5310 favor or in a proceeding by or in the right of a shareholder.

5311 (8) — Indemnification and advancement of expenses as provided in this section shall
5312 continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to
5313 be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and
5314 administrators of such a person, unless otherwise provided when authorized or ratified.

5315 (9) — Unless the corporation's articles of incorporation provide otherwise, notwithstanding
5316 the failure of a corporation to provide indemnification, and despite any contrary determination of
5317 the board or of the shareholders in the specific case, a director, officer, employee, or agent of the
5318 corporation who is or was a party to a proceeding may apply for indemnification or advancement
5319 of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another
5320 court of competent jurisdiction. On receipt of an application, the court, after giving any notice
5321 that it considers necessary, may order indemnification and advancement of expenses, including
5322 expenses incurred in seeking court ordered indemnification or advancement of expenses, if it
5323 determines that:

5324 (a) — The director, officer, employee, or agent is entitled to mandatory indemnification
5325 under subsection (3), in which case the court shall also order the corporation to pay the
5326 director reasonable expenses incurred in obtaining court ordered indemnification or
5327 advancement of expenses;

5328 (b) — The director, officer, employee, or agent is entitled to indemnification or
5329 advancement of expenses, or both, by virtue of the exercise by the corporation of its power
5330 pursuant to subsection (7); or

5331 (c) — The director, officer, employee, or agent is fairly and reasonably entitled to
5332 indemnification or advancement of expenses, or both, in view of all the relevant

5333 circumstances, regardless of whether such person met the standard of conduct set forth in
5334 subsection (1), subsection (2), or subsection (7).

5335 (10) ~~For purposes of this section, the term “corporation” includes, in addition to the~~
5336 ~~resulting corporation, any constituent corporation (including any constituent of a constituent)~~
5337 ~~absorbed in a consolidation or merger, so that any person who is or was a director, officer,~~
5338 ~~employee, or agent of a constituent corporation, or is or was serving at the request of a~~
5339 ~~constituent corporation as a director, officer, employee, or agent of another corporation,~~
5340 ~~partnership, joint venture, trust, or other enterprise, is in the same position under this section with~~
5341 ~~respect to the resulting or surviving corporation as he or she would have with respect to such~~
5342 ~~constituent corporation if its separate existence had continued.~~

5343 (11) ~~For purposes of this section:~~

5344 (a) ~~The term “other enterprises” includes employee benefit plans;~~

5345 (b) ~~The term “expenses” includes counsel fees, including those for appeal;~~

5346 (c) ~~The term “liability” includes obligations to pay a judgment, settlement, penalty,~~
5347 ~~fine (including an excise tax assessed with respect to any employee benefit plan), and~~
5348 ~~expenses actually and reasonably incurred with respect to a proceeding;~~

5349 (d) ~~The term “proceeding” includes any threatened, pending, or completed action,~~
5350 ~~suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and~~
5351 ~~whether formal or informal;~~

5352 (e) ~~The term “agent” includes a volunteer;~~

5353 (f) ~~The term “serving at the request of the corporation” includes any service as a~~
5354 ~~director, officer, employee, or agent of the corporation that imposes duties on such persons,~~
5355 ~~including duties relating to an employee benefit plan and its participants or beneficiaries;~~
5356 ~~and~~

5357 (g) ~~The term “not opposed to the best interest of the corporation” describes the actions~~
5358 ~~of a person who acts in good faith and in a manner he or she reasonably believes to be in the~~
5359 ~~best interests of the participants and beneficiaries of an employee benefit plan.~~

5360 (12) ~~A corporation shall have power to purchase and maintain insurance on behalf of any~~
5361 ~~person who is or was a director, officer, employee, or agent of the corporation or is or was~~
5362 ~~serving at the request of the corporation as a director, officer, employee, or agent of another~~
5363 ~~corporation, partnership, joint venture, trust, or other enterprise against any liability asserted~~
5364 ~~against the person and incurred by him or her in any such capacity or arising out of his or her~~
5365 ~~status as such, whether or not the corporation would have the power to indemnify the person~~
5366 ~~against such liability under the provisions of this section.~~

5367

5368 In ss. 607.0850 through 607.0859:

5369 (1) "Agent" includes a volunteer.

5370 (2) "Corporation" includes, in addition to the resulting corporation, any constituent
5371 corporation (including any constituent of a constituent) absorbed in a merger, so that any person
5372 who is or was a director or officer of a constituent corporation, or is or was serving at the request
5373 of a constituent corporation as a director or officer, member, manager, partner, trustee, employee
5374 or agent of another corporation, limited liability company, partnership, joint venture, trust, or
5375 other enterprise, is in the same position under this section with respect to the resulting or
5376 surviving corporation as he or she would have been with respect to such constituent corporation
5377 if its separate existence had continued.

5378 (3) "Director" or "officer" means an individual who is or was a director or officer,
5379 respectively, of a corporation or who, while a director or officer of the corporation, is or was
5380 serving at the corporation's request as a director or officer, manager, partner, trustee, employee or
5381 agent of another domestic or foreign corporation, limited liability company, partnership, joint
5382 venture, trust, employee benefit plan, or another enterprise or entity. A director or officer is
5383 considered to be serving an employee benefit plan at the corporation's request if the individual's
5384 duties to the corporation or such plan also impose duties on, or otherwise involve services by, the
5385 individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer"
5386 includes, unless the context requires otherwise, the estate, heirs, executors, administrators and
5387 personal representatives of a director or officer.

5388 (4) "Expenses" includes reasonable counsel fees and expenses, including those incurred in
5389 connection with any appeal.

5390 (5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including
5391 an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred
5392 with respect to a proceeding.

5393 (6) "Party" means an individual who was, is, or is threatened to be made, a defendant or
5394 respondent in a proceeding.

5395 (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding,
5396 whether civil, criminal, administrative, arbitrative, or investigative and whether formal or
5397 informal.

5398 (8) "Serving at the corporation's request" includes any service as a director, officer,
5399 employee, or agent of the corporation that imposes duties on such persons, including duties
5400 relating to an employee benefit plan and its participants or beneficiaries.

5401 **Commentary for Section 607.0850:**

5402 Subsection (2) is derived from the definition of corporation in s. 607.0850(10).

5403 Subsections (1), (4), (5), (7) and (8) are derived from existing s. 607.0850(11).

5404 The definition of “official capacity” from s. 8.50 of the Model Act was not included because the
5405 proposal does not include different standards for indemnification when a director is acting in an
5406 official capacity or otherwise.

5407 The last sentence of subsection (3) states that “[D]irector” or “officer” includes, unless the
5408 context requires otherwise, the estate, heirs, executors, administrators and personal
5409 representatives of a director or officer. Although this adds slightly to the list of parties who
5410 receive the benefits of indemnity that are currently included in s. 607.0850(8), the changes are
5411 believed to be consistent with the intent of the current statute.

5412 While a definition of "expenses" was added to s. 607.01401 (including within that definition the
5413 concept of reasonableness of such expenses), the definition of expenses in subsection (4) deals
5414 with reasonable expenses of counsel, so it is retained.

5415

5416 607.0851. Permissible indemnification.

5417 (1) Except as otherwise provided in this section and in s. 607.0859, and not in limitation of
5418 indemnification permitted under s. 607.0858(1), a corporation may indemnify an individual who
5419 is a party to a proceeding because the individual is or was a director or officer against liability
5420 incurred in the proceeding if:

5421 (a) The director or officer acted in good faith; and

5422 (b) The director or officer acted in a manner he or she reasonably believed to be in, or
5423 not opposed to, the best interests of the corporation; and

5424 (c) In the case of any criminal proceeding, the director or officer had no reasonable
5425 cause to believe his or her conduct was unlawful.

5426 (2) The conduct of a director or officer with respect to an employee benefit plan for a
5427 purpose the director or officer reasonably believed to be in the best interest of the participants in,
5428 and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection (1)(b).

5429 (3) The termination of a proceeding by judgment, order, settlement, or conviction, or upon
5430 a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the
5431 director or officer did not meet the relevant standard of conduct described in this section.

5432 (4) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify an
5433 officer or director in connection with a proceeding by or in the right of the corporation except for
5434 expenses and amounts paid in settlement not exceeding, in the judgment of the board of
5435 directors, the estimated expense of litigating the proceeding to conclusion, actually and
5436 reasonably incurred in connection with the defense or settlement of such proceeding, including
5437 any appeal thereof, where such person acted in good faith and in a manner he or she reasonably
5438 believed to be in, or not opposed to, the best interests of the corporation.

5439

5440 **Commentary for Section 607.0851:**

5441 The Model Act leaves indemnity of employees and agents to the laws of agency. Although the
5442 Florida statute in effect prior to this revision included employees and agents in the applicable
5443 sections of s. 607.0850 that provided for permissible and mandatory indemnification, the new
5444 structure of which this new section is a part follows the Model Act structure and elects to cover
5445 employees and agents under the laws of agency. Notwithstanding, this change is not believed or
5446 intended to substantively cut back on the power of a corporation to indemnify its employees or
5447 agents. Section 607.0858(6) states that nothing in s. 607.0850-607.0859 limits the power of the
5448 corporation to indemnify agents and employees.

5449 Section 8.56 of the Model Act provides for indemnification of officers. However, the new
5450 structure of which this new section is a part includes officers as covered persons directly in the
5451 applicable sections of s. 607.0851, s. 607.0852 and s. 607.0853, thus eliminating the need for
5452 inclusion of a parallel of Model Act s. 8.56.

5453 Section 8.51(a)(2) of the Model Act, dealing with indemnity beyond the statutory provisions that
5454 is included in the corporation's articles of incorporation, has not been included. Further, s.
5455 607.0202 of the FBCA does not include the Model Act language which would expressly
5456 authorize indemnity beyond the statutory provisions, but would require any such authorization,
5457 in order to be effective, to be set forth in the corporation's articles of incorporation.

5458 This section acknowledges that, subject to the limitations contained in s. 607.0859(1), s.
5459 607.0858(1) allows the corporation to provide any other or further indemnification or
5460 advancement of expenses beyond that permitted in the statute. However, in comparison to the
5461 corollary Model Act provisions, s. 607.0858(1), consistent with the Florida statute in effect prior
5462 to this revision, allows this expanded indemnification to be included in the corporation's articles
5463 of incorporation, in its bylaws or in any agreement, or to be approved by a vote of shareholders
5464 or disinterested directors, or otherwise. See commentary to s. 607.0858(1).

5465 The statute does not follow the Model Act construct that creates a different standard of what
5466 needs to be established for indemnification of directors when they are acting in an "official
5467 capacity" compared to when they are not acting in an "official capacity." Under s. 8.51(a)(1)(ii)
5468 of the Model Act, if a director is acting in his or her official capacity, to obtain indemnification
5469 he or she must establish that he or she reasonably believed that his or her conduct was in the best
5470 interest of the corporation, and in all other cases, to obtain indemnification, he or she must
5471 establish that he or she reasonably believed that his or her conduct was at least not opposed to the
5472 best interests of the corporation.

5473

5474 607.0852. Mandatory indemnification.

5475 A corporation shall indemnify an individual who is or was a director or officer who was
5476 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the
5477 individual was a party because he or she is or was a director or officer of the corporation against
5478 expenses incurred by the individual in connection with the proceeding.

5479

5480 **Commentary for Section 607.0852:**

5481 The standard for statutory mandatory indemnification under the new structure of which this new
 5482 section is a part follows the Model Act requirement that an officer or director must be "wholly
 5483 successful" to be entitled to mandatory indemnification. This is in contrast with the "successful"
 5484 standard in s. 607.0850(3) that was in effect prior to this revision. The commentary to s. 8.52 of
 5485 the Model Act provides:

5486 A defendant is "wholly successful" only if the entire proceeding is disposed of on a basis
 5487 which does not involve a finding of liability. A director who is precluded from mandatory
 5488 indemnification by this requirement may still be entitled to permissible indemnification
 5489 under section 8.51(a) [s. 607.0851(1)] or court-ordered indemnification under section
 5490 8.54(a)(3) [s. 607.0854(1)(C)].

5491 Under the structure of the statute, those corporations that desire to continue to be obligated to
 5492 provide mandatory indemnification based on some other standard, such as the "successful"
 5493 standard in s. 607.0850(3) that was in effect prior to this revision, are entitled to do so by way of
 5494 provisions in articles, bylaws, agreements or otherwise, consistent with the authorization in new
 5495 s. 607.0858, but subject to the restrictions provided for in new s. 607.0859.

5496 In *Banco Industrial de Venezuela C.A., Miami Agency v. De Saad*, 68 S.3d 895 (Fla. 2011), the
 5497 Florida Supreme Court, in *dicta*, grafted a good faith requirement into s. 607.0850(3) dealing
 5498 with mandatory indemnification, despite the fact that no such express requirement appears to be
 5499 required under the current statute in the context of mandatory indemnification. The *Banco* case
 5500 appeared to base its grafting of the good faith requirement, in significant part, on the cross
 5501 reference in s. 607.0850(3) to subsections (1) and (2) of s. 607.0850.

5502 Because of the concerns about the *Banco* court's reading of the intent of the cross reference, a
 5503 comparable cross reference to s. 607.0851 has not been included in s. 607.0852. The decision
 5504 not to bring forward such cross reference is designed to more clearly reflect that any such cross
 5505 reference was intended to merely identify the type of proceeding to which mandatory
 5506 indemnification applied and not to link to the good faith requirement that applies to permissive
 5507 indemnification. It is also believed that the change in the standard for mandatory indemnification
 5508 from "successful" to "wholly successful" makes it unlikely that a situation such as the *Banco*
 5509 case will arise in the future. However, if there were to be such a case where, for technical
 5510 reasons, a defendant (who had not necessarily acted in good faith) were to have been wholly
 5511 successful by virtue of some procedural grounds rather than on the merits, it is the view of the
 5512 Subcommittee that such defendant would have a right to mandatory indemnification, with no
 5513 requirement under s. 607.0853 to demonstrate good faith on the part of the defendant. As set
 5514 forth in the Model Act commentary to s. 8.52:

5515 While this standard may result in an occasional defendant becoming entitled to
5516 indemnification because of procedural defenses not related to the merits, *e.g.* the statute of
5517 limitations or disqualification of the plaintiff, it is unreasonable to require a defendant with a
5518 valid procedural defense to undergo a possible prolonged and expensive trial on the merits
5519 in order to establish eligibility for mandatory indemnification.

5520

5521 607.0853. Advance for expenses.

5522 (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or
5523 reimburse expenses incurred in connection with the proceeding by an individual who is a party to
5524 the proceeding because that individual is or was a director or an officer if the director or officer
5525 delivers to the corporation a signed written undertaking of the director or officer to repay any
5526 funds advanced if

5527 (a) The director or officer is not entitled to mandatory indemnification under s.
5528 607.0852, and

5529 (b) It is ultimately determined under s. 607.0854 or s. 607.0855 that the director has
5530 not met the relevant standard of conduct described in s. 607.0851 or the director or officer is
5531 not entitled to indemnification by virtue of s. 607.0859.

5532 (2) The undertaking required by subsection (1)(b) must be an unlimited general obligation
5533 of the director or officer but need not be secured and may be accepted without reference to the
5534 financial ability of the director or officer to make repayment.

5535 (3) Authorizations under this section shall be made:

5536 (a) By the board of directors:

5537 1. If there are two or more qualified directors, by a majority vote of all of the
5538 qualified directors (a majority of whom shall for such purpose constitute a quorum) or
5539 by a majority of the members of a committee appointed by such vote and comprised of
5540 two or more qualified directors; or

5541 2. If there are fewer than two qualified directors, by the vote necessary for action
5542 by the board of directors under s. 607.0824(3), in which authorization vote directors
5543 who are not qualified directors may participate; or

5544 (b) By the shareholders, but shares owned by or voted under the control of a director or
5545 officer who at the time of the authorization is not a qualified director or an officer who is a
5546 party to the proceeding may not be counted as a vote in favor of the authorization.

5547

5548

5549 **Commentary for Section 607.0853:**

5550 Subsection (2) is intended to mean that the undertaking may, but need not, be secured and may,
5551 but need not, be accepted without reference to the financial ability of the director or officer to
5552 make the repayment. It is up to the board of directors to decide whether these issues should or
5553 should not be considered in agreeing to advance expenses in the proper exercise of their
5554 fiduciary duties.

5555 Subsection (3) expressly provides that a decision to advance expenses on behalf of a director or
5556 officer is to be made by the board of directors or the shareholders. Although the statute in effect
5557 prior to this revision (s. 607.0850(6)) does not specifically state who makes this decision, it is
5558 believed to be implied under the statute in effect prior to this revision.

5559 The provisions in Model Act s. 8.53(c), which establish how advancement of expenses is to be
5560 determined when there are directors who are parties to the proceeding at the time of
5561 authorization, has been included in the statute to clearly reflect how this decision is to be made
5562 under different circumstances. The language on shareholder votes in subsection (3)(b) is
5563 modeled on the language in the Model Act, and not the language in s. 607.0850(4)(d) that was in
5564 effect prior to this revision. Further, the term “qualified director” as defined in s. 607.0143 is
5565 used to reflect true independent directors making the decision as to advancement of expenses.

5566 Model Act s. 8.53(a)(1) regarding advancement of expenses if the proceeding involves conduct
5567 for which liability has been eliminated under a provision of the articles of incorporation as
5568 authorized by s. 2.02 of the Model Act has not been included. See Commentary regarding s.
5569 607.0851 above.

5570

5571 607.0854. Court-ordered indemnification and advance for expenses.

5572 (1) Unless the corporation's articles of incorporation provide otherwise, notwithstanding
5573 the failure of a corporation to provide indemnification, and despite any contrary determination of
5574 the board of directors or of the shareholders in the specific case, a director or officer of the
5575 corporation who is a party to a proceeding because he or she is or was a director or officer may
5576 apply for indemnification or an advance for expenses, or both, to a court having jurisdiction over
5577 the corporation that is conducting the proceeding, or to a circuit court of competent jurisdiction.
5578 After receipt of an application and after giving any notice it considers necessary, the court may:

5579 (a) Order indemnification if the court determines that the director or officer is entitled
5580 to mandatory indemnification under s. 607.0852;

5581 (b) Order indemnification or advance for expenses if the court determines that the
5582 director or officer is entitled to indemnification or advance for expenses pursuant to a
5583 provision authorized by s. 607.0858(1); or

5584 (c) Order indemnification or advance for expenses if the court determines, in view
5585 of all the relevant circumstances, that it is fair and reasonable

5586 1. To indemnify the director or officer, or

5587 2. To advance expenses to the director or officer;

5588 even if, in the case of subsection (1) and (2) above, he or she has not met the relevant
5589 standard of conduct set forth in s. 607.0851(1), failed to comply with s. 607.0853 or was
5590 adjudged liable in a proceeding referred to in s. 607.0859, but if the director or officer
5591 was adjudged so liable, indemnification shall be limited to expenses incurred in
5592 connection with the proceeding.

5593 (2) If the court determines that the director or officer is entitled to indemnification under
5594 subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall
5595 also order the corporation to pay the director's or officer's expenses incurred in connection with
5596 obtaining court-ordered indemnification or advance for expenses. If the court determines that the
5597 director or officer is entitled to indemnification or advance for expenses under subsection (1)(c),
5598 it may also order the corporation to pay the director's or officer's expenses to obtain court-
5599 ordered indemnification or advance for expenses.

5600

5601 **Commentary for Section 607.0854:**

5602 The lead in language that has been added to subsection (1) is derived from existing s.
5603 607.0850(9). Further, language has been added to subsection (1) to make clear that the
5604 corporation must be a party to the proceeding in which indemnification is ordered (which, while
5605 not expressly stated in the statute that was in effect prior to this revision, is believed to be the
5606 rule under that statute).

5607 In subsection (1), the word "shall" in Model Act s. 8.54 was changed to "may" based on the view
5608 that such action is within the discretion of the court.

5609 Subsection (2) is consistent with existing s. 607.0850(9).

5610

5611 607.0855. Determination and authorization of indemnification.

5612 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5613 director or officer under s. 607.0851 unless authorized for a specific proceeding after a
5614 determination has been made that indemnification is permissible because the director or officer
5615 has met the relevant standard of conduct set forth in s. 607.0851.

5616 (2) The determination shall be made:

5617 (a) If there are two or more qualified directors, by the board of directors by a majority
5618 vote of all of the qualified directors (a majority of whom shall for such purposes constitute a
5619 quorum), or by a majority of the members of a committee of two or more qualified directors
5620 appointed by such a vote; or

5621 (b) By independent special legal counsel:

5622 1. Selected in the manner prescribed in paragraph (a); or

5623 2. If there are fewer than two qualified directors, selected by the board of
5624 directors (in which selection directors who are not qualified directors may participate);
5625 or

5626 (c) by the shareholders, but shares owned by or voted under the control of a director or
5627 officer who, at the time of the determination, is not a qualified director or an officer who is a
5628 party to the proceeding may not be counted as votes in favor of the determination.

5629 (3) Authorization of indemnification shall be made in the same manner as the determination
5630 that indemnification is permissible, except that if the determination of permissibility has been
5631 made by independent special legal counsel under subsection (2)(b), any authorization of
5632 indemnification associated with such determination shall be made by either such independent
5633 special legal counsel or by those who otherwise would be entitled to select independent special
5634 legal counsel under subsection (2)(b).

5635

5636 **Commentary for Section 607.0855:**

5637 This section combines the substance and the wording of Model Act s. 8.55 with the existing
5638 language contained in s. 607.0850(4) and (5) of the FBCA. It uses the term “qualified director” s
5639 defined in s. 607.0143 so that the decision is clearly made by independent directors.

5640 Model Act § 8.56 Indemnification of officers.

5641 This section of the Model Act has not been included since officers remain within the scope of
5642 coverage under ss. 607.0851, 607.0852 and 607.0853. See commentary to s. 607.0851.

5643

5644

5645

5646 607.0857. Insurance.

5647 A corporation shall have the power to purchase and maintain insurance on behalf of and for
5648 the benefit of an individual who is or was a director or officer of the corporation, or who, while a
5649 director or officer of the corporation, is or was serving at the corporation's request as a director,
5650 officer, manager, member, partner, trustee, employee, or agent of another domestic or foreign
5651 corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or
5652 other enterprise or entity, against liability asserted against or incurred by the individual in that
5653 capacity or arising from his or her status as a director or officer, whether or not the corporation
5654 would have power to indemnify or advance expenses to the individual against the same liability
5655 under this chapter.

5656

5657 **Commentary for Section 607.0857:**

5658 The language contained in s. 607.0850(12) that was in effect prior to this revision has been
5659 largely followed in this s. 607.0857. Minor changes have been made to add limited liability
5660 companies to the types of entities to which a director or officer can be serving at the
5661 corporation's request and to eliminate employees and agents from the coverage of this provision
5662 (with respect to this second issue, see the commentary to s. 607.0851).

5663

5664 607.0858. Variation by corporate action; Application of subchapter.

5665 (1) The indemnification provided pursuant to s. 607.0851 and 607.0852 and the
5666 advancement of expenses provided pursuant to s. 607.0853 are not exclusive, and a corporation
5667 may, by a provision in its articles of incorporation, bylaws or any agreement, or by vote of
5668 shareholders or disinterested directors, or otherwise, obligate itself in advance of the act or
5669 omission giving rise to a proceeding to provide any other or further indemnification or
5670 advancement of expenses to any of its directors or officers. Any such obligatory provision shall
5671 be deemed to satisfy the requirements for authorization referred to in s. 607.0853(3) and in s.
5672 607.0855(3). Any such provision that obligates the corporation to provide indemnification to the
5673 fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to
5674 pay for or reimburse expenses in accordance with s. 607.0853 to the fullest extent permitted by
5675 law, unless the provision specifically provides otherwise.

5676 (2) A right of indemnification or to advance for expenses created by this chapter or under
5677 subsection (1) and in effect at the time of an act or omission shall not be eliminated or impaired
5678 with respect to such act or omission by an amendment of the articles of incorporation or bylaws
5679 or a resolution of the directors or shareholders, adopted after the occurrence of such act or
5680 omission, unless, in the case of a right created under subsection (1), the provision creating such
5681 right and in effect at the time of such act or omission explicitly authorizes such elimination or
5682 impairment after such act or omission has occurred.

5683 (3) Any provision pursuant to subsection (1) shall not obligate the corporation to indemnify
5684 or advance for expenses to a director or officer of a predecessor of the corporation, pertaining to
5685 conduct with respect to the predecessor, unless otherwise specifically provided. Any provision
5686 for indemnification or advance for expenses in the articles of incorporation, bylaws, or a
5687 resolution of the board of directors or shareholders of a predecessor of the corporation in a
5688 merger or in a contract to which the predecessor is a party, existing at the time the merger takes
5689 effect, shall be governed by s. 607.1107(1)(d).

5690 (4) Subject to subsection (2), a corporation may, by a provision in its articles of
5691 incorporation, limit any of the rights to indemnification or advance for expenses created by or
5692 pursuant to this chapter.

5693 (5) Sections 607.0850-607.0859 do not limit a corporation's power to pay or reimburse
5694 expenses incurred by a director, an officer, an employee or an agent in connection with
5695 appearing as a witness in a proceeding at a time when he or she is not a party.

5696 (6) Sections 607.0850-607.0859 do not limit a corporation's power to indemnify, advance
5697 expenses to or provide or maintain insurance on behalf of or for the benefit of an individual who
5698 is or was an employee or agent.

5699

5700 **Commentary for Section 607.0858:**

5701 This statute follows the construct of s. 8.57(f) of the Model Act and leaves the issue of
5702 indemnification of employees and agents to the laws of agency and related principles. See the
5703 commentary to s. 607.0851.

5704 The wording of s. 607.0850(7) that was in effect prior to this revision, which sets forth how a
5705 corporation may obligate itself to provide indemnification beyond the provisions contained in s.
5706 607.0851-607.0853, has been retained in s. 607.0858(1) rather than following the more limited
5707 corollary provision contained in the Model Act. However, even under this subsection, as in the
5708 FBCA provision that was in effect prior to this revision, indemnification cannot be provided
5709 under the circumstances described in s. 607.0859.

5710 The elimination of the wording from s. 607.0850 that was in effect prior to this revision, which
5711 references both acting in an official capacity or acting in any other capacity, is not intended in
5712 any way to limit the ability of a corporation to vary or expand indemnification. The broad
5713 language contained in subsection (1) is intended to operate as broadly as the language in s.
5714 607.0850 that was in effect prior to this revision, thus allowing a corporation to indemnify and to
5715 advance expenses for an action taken by a director or officer, in whatever capacity (whether
5716 official or otherwise). No substantive change from the broad authorization provided in the statute
5717 that was in effect prior to this revision is intended.

5718

5719 607.0859. Overriding restrictions on indemnification.

5720 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5721 director or officer under s. 607.0851 or s. 607.0858 or advance expenses to a director or officer
5722 under s. 607.0853 or s. 607.0858 if a judgment or other final adjudication establishes that his or
5723 her actions, or omissions to act, were material to the cause of action so adjudicated and
5724 constitute:

5725 (a) Willful or intentional misconduct or a conscious disregard for the best interests of
5726 the corporation in a proceeding by or in the right of the corporation to procure a judgment in
5727 its favor or in a proceeding by or in the right of a shareholder; or

5728 (b) A transaction in which a director or officer derived an improper personal benefit; or

5729 (c) A violation of the criminal law, unless the director or officer had reasonable cause
5730 to believe his or her conduct was lawful or had no reasonable cause to believe his or her
5731 conduct was unlawful; or

5732 (d) In the case of a director, a circumstance under which the liability provisions of s.
5733 607.0834 are applicable.

5734 (2) A corporation may provide indemnification or advance expenses to a director or an
5735 officer only as permitted by ss. 607.0850 - 607.0859.

5736

5737 **Commentary for Section 607.0859:**

5738 The limits of permitted indemnification are contained in subsection (1). They are derived from s.
5739 607.0850(7) that was in effect prior to this revision. These limits are intentionally not applicable
5740 to mandatory indemnification. It is believed that if a director or officer is able to satisfy the
5741 relatively high threshold conditions of being entitled to mandatory indemnification under s.
5742 607.0852, it is highly unlikely that the limitations set forth in s. 607.0859 will have been
5743 exceeded. The choice that has been made, consistent with s. 607.0850 that was in effect prior to
5744 this revision, was to always mandate indemnification where the requirements of s. 607.0852 are
5745 met, rather than to impose on the director or officer or on the corporation an obligation to further
5746 establish that none of the limits in s. 607.0859 were exceeded. It is recognized that, at least in
5747 theory, there could be those very rare cases where the facts would otherwise support having
5748 exceeded the limits in s. 607.0859, but meet the requirements for mandatory indemnification
5749 under s. 607.0852.

5750 In conformity with s. 8.59 of the Model Act, ss. 607.0850-607.8059 are expressly stated to be the
5751 exclusive source for the power of a corporation to indemnify or advance expenses to a director or
5752 officer. While this exclusivity was not expressly stated in the current statute, this is not believed
5753 to be a substantive change.

5754

5755 **ARTICLE 10**

5756 **AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**

5757

5758 607.1001 Authority to amend the articles of incorporation.

5759

5760 (1) A corporation may amend its articles of incorporation at any time to add or change a
5761 provision that is required or permitted in the articles of incorporation or to delete a provision not
5762 required to be contained in the articles of incorporation. Whether a provision is required or
5763 permitted in the articles of incorporation is determined as of the effective date of the amendment.

5764

5765 (2) A shareholder of the corporation does not have a vested property right resulting from
5766 any provision in the articles of incorporation, including provisions relating to management,
5767 control, capital structure, dividend entitlement, or purpose or duration of the corporation.

5768

5769 **Commentary to s. 607.1001:**

5770 This section of the FBCA follows the prior version of the Model Act. Although minor, non-
5771 substantive changes were made to the language in the Model Act, the current language was
5772 considered clearer. The clarifying change made to this section is not considered substantive.
5773 Thirty-one jurisdictions, including Connecticut, Georgia, and Massachusetts, have similar
5774 sections. Other states, like Delaware (in DGCL s. 242) provide a shortened "laundry list" of
5775 possible subjects of amendments.

5776 Subsection (2) expressly rejects the concept that an otherwise lawful amendment to the articles
5777 of incorporation might be restricted or invalidated because it modified particular rights conferred
5778 on shareholders by the original or prior version of the articles of incorporation. At the same time,
5779 subsection (2) does not override contracts by a corporation outside its articles of incorporation
5780 which might be violated by an otherwise lawful amendment to the articles of incorporation or
5781 invalidate provisions in articles of incorporation that require procedures for approval of
5782 amendments that limit the power to amend the articles of incorporation without particular
5783 shareholder consent.

5784

5785 607.1002 Amendment by board of directors.

5786 Unless the articles of incorporation provide otherwise, a corporation's board of directors
5787 may adopt one or more amendments to the corporation's articles of incorporation without
5788 shareholder ~~action~~ approval:

5789 (1) To extend the duration of the corporation if it was incorporated at a time when limited
5790 duration was required by law;

5791 (2) To delete the names and addresses of the initial directors;

5792 (3) To delete the name and address of the initial registered agent or registered office, if a
5793 statement of change is on file with the ~~D~~epartment of State;

5794 (4) To delete any other information contained in the articles of incorporation that is solely
5795 of historical interest;

5796 (5) To delete the authorization for a class or series of shares authorized pursuant to s.
5797 607.0602, if no shares of such class or series are issued.

5798 (6) To change the corporate name by substituting the word "corporation," "incorporated,"
5799 or "company," or the abbreviation "corp.," "Inc.," or "Co.," for a similar word or abbreviation in
5800 the name, or by adding, deleting, or changing a geographical attribution for the name;

5801 (7) To change the par value for a class or series of shares;

5802 (8) To provide that if the corporation acquires its own shares, such shares belong to the
5803 corporation and constitute treasury shares until disposed of or canceled by the corporation;

5804 (9) To reflect a reduction in authorized shares, as a result of the operation of s. 607.0631(2),
5805 when the corporation has acquired its own shares and the articles of incorporation prohibit the
5806 reissue of the acquired shares;

5807 (10) To delete a class of shares from the articles of incorporation, as a result of the operation
5808 of s. 607.0631(2), when there are no remaining shares of the class because the corporation has
5809 acquired all shares of the class and the articles of incorporation prohibit the reissue of the
5810 acquired shares; or

5811 ~~(11)~~ 9) To make any other change expressly permitted by this ~~aet~~ chapter to be made
5812 without shareholder ~~action~~ approval.

5813

5814 **Commentary to s. 607.1002:**

5815 The changes to the articles of incorporation may be made by the board of directors without
5816 shareholder approval because they are routine and ministerial and are not believed to affect the
5817 substantive rights of shareholders in a meaningful way.

5818 Section 607.1002 compares to the corollary section of the Model Act (s. 10.05) as follows:

5819 Subsections (1), (2), and (3) of Florida's statute match subsections (a)(1), (2), and (3) of the
5820 Model Act.

5821 Subsection (4) was added to this section of the FBCA in 1989. It is not in the corollary section of
5822 the Model Act.

5823 New subsection (d) of the Model Act has not been added because of the inclusion of s.
5824 607.10025 in the FBCA.

5825 Subsection (6) of Florida's statute substantially matches subsection (e) of the corollary provision
5826 of the Model Act. The FBCA provision, when adopted in 1989, did not to include the use of the
5827 word "limited" or the abbreviation "Ltd." for a corporation, and this limitation has been carried
5828 forward in current proposed version of the FBCA.

5829 Subsection (7) of the FBCA does not appear in the Model Act, but has been retained to allow the
5830 ministerial task of changing par value to be undertaken by the directors, without shareholder
5831 approval, in those cases where the corporation continues to have shares that have a par value.

5832 Subsection (8) was added in 1997. It was added to permit the board of directors of any
5833 corporation (not just public companies) on its own to amend the articles of incorporation to treat
5834 reacquired shares as treasury shares.

5835 New subsections (9) and (10) follow subsections (f) and (g) of the corollary Model Act provision
5836 and relate to changes made in light of s. 607.0631.

5837 Subsection (9) of Florida's statute (renumbered subsection (11) matches the pre-1999 version of
5838 the Model Act. Cleanup changes matching the current version of this section to the current
5839 version of the Model Act have been made to the statute.

5840 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s.
5841 10.02 to s. 10.05. However, since this concept has been numbered as s. 607.1002 since 1982, this
5842 section was not moved from its current place in Article 10.

5843

5844 607.10025 Shares; combination or division.

5845 (1) A corporation may effect a division or combination of its shares in the manner as
5846 provided in this section. For purposes of this section, the terms “division” and “combination”
5847 mean dividing or combining shares of any issued and outstanding class or series into a greater or
5848 lesser number of shares of the same class or series.

5849 (2) Unless the articles of incorporation provide otherwise, a division or combination may
5850 be effected solely by the action of the board of directors. In effecting a share combination or
5851 division, the board shall have authority to amend the articles to:

5852 (a) Increase or decrease the par value of shares;

5853 (b) Increase or decrease the number of authorized shares; or

5854 (c) Make any other changes necessary or appropriate to assure that the rights or
5855 preferences of each holder of outstanding shares of all classes and series will not be adversely
5856 affected by the combination or division.

5857 The board shall not have the authority to amend the articles, and shareholder approval of any
5858 amendment shall be required pursuant to s. 607.1003, if, as a result of the amendment, the rights
5859 or preferences of the holders of any outstanding class or series will be adversely affected, or the
5860 percentage of authorized shares remaining unissued after the share division or combination will
5861 exceed the percentage of authorized shares that was unissued before the division or combination.

5862 (3) Fractional shares created by a division or combination effected under this section may
5863 not be redeemed for cash under s. 607.0604.

5864 (4) If a division or combination is effected by a board action without shareholder approval
5865 and includes an amendment to the articles of incorporation, there shall be executed in accordance
5866 with s. 607.0120 on behalf of the corporation and filed in the office of the ~~D~~department of State
5867 articles of amendment which shall set forth:

5868 (a) The name of the corporation.

5869 (b) The date of adoption by the board of directors of the resolution approving the
5870 division or combination.

5871 (c) That the amendment to the articles of incorporation does not adversely affect the
5872 rights or preferences of the holders of outstanding shares of any class or series and does not
5873 result in the percentage of authorized shares that remain unissued after the division or
5874 combination exceeding the percentage of authorized shares that were unissued before the
5875 division or combination.

5876 (d) The class or series and number of shares subject to the division or combination
5877 and the number of shares into which the shares are to be divided or combined.

5878 (e) The amendment of the articles of incorporation made in connection with the
5879 division or combination.

5880 (f) If the division or combination is to become effective at a time subsequent to the
5881 time of filing, the date, which may not exceed 90 days after the date of filing, when the division
5882 or combination becomes effective.

5883 (5) Within 30 days after effecting a division or combination without shareholder approval,
5884 the corporation shall give written notice to its shareholders setting forth the material terms of the
5885 division or combination.

5886 (6) If a division or combination is effected by action of the board and of the shareholders,
5887 there shall be executed on behalf of the corporation and filed with the ~~D~~department of State
5888 articles of amendment as provided in s. 607.1003, which articles shall set forth, in addition to the
5889 information required by s. 607.1003, the information required in subsection (4).

5890 (7) Upon the effectiveness of a combination, the authorized shares of the classes or series
5891 affected by the combination shall be reduced by the same percentage by which the issued shares
5892 of such class or series were reduced as a result of the combination, unless the articles of
5893 incorporation otherwise provide or the combination was approved by the shareholders pursuant
5894 to s. 607.1003.

5895 ~~(8) This section applies only to corporations with more than 35 shareholders of record.~~

5896

5897 **Commentary to s. 607.10025:**

5898 This section of the FBCA was added to the statute in 1993. It is not in the Model Act. It was
5899 added to the FBCA to allow forward stock splits and reverse stock splits without shareholder
5900 approval. The statute contains protective provisions to avoid squeeze-outs, forced buy-outs of
5901 fractional shares, and dilution, along with a provision in subsection (2)(c) precluding the board
5902 from acting without shareholder approval where the division or combination would adversely
5903 affect pre-existing shareholder rights.

5904 Section (8) has been eliminated. Since the protective provisions of this statute (particularly
5905 subsections (3) and (7) make it impossible for this statute to be used for squeeze out transactions
5906 or to dilute the interests of minority shareholders, the limitation of this provision to use in
5907 corporations with more than 35 shareholders of record is no longer believed to serve a useful
5908 purpose.

5909

5910 607.1003 Amendment by board of directors and shareholders.

5911 ~~(1) A corporation's board of directors may propose one or more amendments to the~~
5912 ~~articles of incorporation for submission to the shareholders. If a corporation has issued shares, an~~
5913 ~~amendment to the articles of incorporation shall be adopted in the following manner:~~

5914 (1) the proposed amendment shall first be adopted by the board of directors.

5915 (2) Except as provided in ss. 607.1002, 607.10025, 607.1007 (with respect to
5916 restatements that do not require shareholder approval under that section), and 607.1008, the
5917 amendment shall then be approved by the shareholders. In submitting the proposed amendment
5918 to the shareholders for approval, the board of directors shall recommend that the shareholders
5919 approve the amendment unless (a) the board of directors makes a determination that because of a
5920 conflict of interest or other special circumstances it should not make such a recommendation, or
5921 (b) s. 607.0826 applies. If either (a) or (b) applies, the board must inform the shareholders of the
5922 basis for its proceeding without such recommendation.

5923 For the amendment to be adopted:

5924 ~~(a)The board of directors must recommend the amendment to the shareholders,~~
5925 ~~unless the board of directors determines that because of conflict of interest or other~~
5926 ~~special circumstances it should make no recommendation and communicates the basis for~~
5927 ~~its determination to the shareholders with the amendment; and~~

5928 ~~(b)The shareholders entitled to vote on the amendment must approve the~~
5929 ~~amendment as provided in subsection (5).~~

5930 (3) The board of directors may set conditions for the approval of the amendment by the
5931 shareholders or the effectiveness of the amendment ~~its submission of the proposed amendment~~
5932 ~~on any basis.~~

5933 (4) If the amendment is required to be approved by the shareholders, and the approval is to
5934 be given at a meeting, the corporation must notify each shareholder, whether or not entitled to
5935 vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The
5936 notice must be given in accordance with s. 607.0705 and must state that the purpose, or one of
5937 the purposes, of the meeting is to consider the amendment, and must contain or be accompanied
5938 by a copy of the amendment. The corporation shall notify each shareholder, whether or not
5939 entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The
5940 notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to
5941 consider the proposed amendment and contain or be accompanied by a copy or summary of the
5942 amendment.

5943 (5) Unless this ~~chapter act~~, the articles of incorporation, or the board of directors (acting
5944 pursuant to subsection (3)), requires a greater vote or a greater quorum vote ~~by voting groups~~, the
5945 ~~amendment to be adopted must be approved by~~ approval of the amendment requires the approval
5946 of the shareholders at a meeting at which a quorum consisting of at least a majority of the shares
5947 entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote
5948 as a separate group on the amendment, except as provided in s. 607.1004(3), the approval of each
5949 such separate voting group at a meeting at which a quorum of the voting group exists consisting
5950 of at least a majority of the votes entitled to be cast on the amendment by that voting group.

5951 (a) ~~A majority of the votes entitled to be cast on the amendment by any voting~~
5952 ~~group with respect to which the amendment would create dissenters' rights; and~~

5953 (b) ~~The votes required by ss. 607.0725 and 607.0726 by every other voting group~~
5954 ~~entitled to vote on the amendment.~~

5955 (6) If the amendment by any voting group would create appraisal rights, approval of the
5956 amendment shall also require the vote of a majority of the votes entitled to be cast by such voting
5957 group.

5958 (6) Unless otherwise provided in the articles of incorporation, the shareholders of a
5959 corporation having 35 or fewer shareholders may amend the articles of incorporation without an
5960 act of the directors at a meeting for which notice of the changes to be made is given. For
5961 purposes of this subsection, the term "shareholder" means a record shareholder, a beneficial
5962 shareholder, and an unrestricted voting trust beneficial owner.

5963

5964 **Commentary to s. 607.1003:**

5965 Subsections (1) through (5) were modified to reflect language changes to the current version of
5966 the Model Act. These provisions substantially clean up the language of the statute, but are not
5967 considered substantive. The language in subsection (6) also continues the bifurcated required
5968 vote in Florida in situations where a voting group will receive appraisal rights as a result of the
5969 amendment.

5970 In line with the Model Act, subsection (4) has been modified to require that a copy of the
5971 amendment be provided, rather than allowing, as an alternative, a summary of the amendment to
5972 be provided (as is permitted in the current version of this section of the FBCA). Allowing just a
5973 summary to be presented to shareholders raises the issue of whether the summary is complete,
5974 and, as a result, it is believed best that shareholders receive a full copy of the amendment so they
5975 can read and make their own decisions on the entire provision. It is also not believed to be an
5976 onerous burden to provide a copy of the full amendment.

5977 New subsections (f) and (g) of s. 10.3 of the Model Act have added the concept of separate
5978 approval by interest holders on amendments where the interest holder will have interest holder
5979 liability following the transaction. The Subcommittee will consider this topic when it reviews new
5980 Article 9 (Domestication and Conversion) and Article 11 (Mergers and Share Exchanges) of the
5981 Model Act.

5982 (f) If as a result of an amendment of the articles of incorporation one or more
5983 shareholders of a domestic corporation would become subject to new interest holder
5984 liability, approval of the amendment requires the signing in connection with the
5985 amendment, by each such shareholder, of a separate written consent to become subject to
5986 such new interest holder liability, unless in the case of a shareholder that already has
5987 interest holder liability the terms and conditions of the new interest holder liability (i) are
5988 substantially identical to those of the existing interest holder liability, or (ii) are
5989 substantially identical to those of the existing interest holder liability (other than changes
5990 that eliminate or reduce such interest holder liability).

5991 (g) For purposes of subsection (f) and section 10.09, “new interest holder
5992 liability” means interest holder liability of a person resulting from an amendment of the
5993 articles of incorporation if (i) the person did not have interest holder liability before the
5994 amendment becomes effective, or (ii) the person had interest holder liability before the
5995 amendment becomes effective, the terms and conditions of which are changed when the
5996 amendment becomes effective.

5997 Subsection (7) is not a Model Act provision. It was included in the FBCA in 1989 and
5998 represented a compromise between those that believed that the provisions of this section should
5999 apply to all amendments regardless of the size of the corporation and those who believed that

6000 shareholders should have more control in a closely held corporation. While this provision has
6001 been retained in the FBCA, the definition of "shareholder" for purposes of this subsection has
6002 been modified so that this provision only applies in true closely held corporations.

6003

6004 607.1004 Voting on amendments by voting groups.

6005 (1) If the corporation has more than one class of shares outstanding, the holders of the
6006 outstanding shares of a class are entitled to vote as a separate voting group class (if shareholder
6007 voting is otherwise required by this chapter ~~act~~) upon a proposed amendment to the articles of
6008 incorporation, if the amendment would:

6009 (a) Effect an exchange or reclassification of all or part of the shares of the class into
6010 shares of another class;

6011 (b) Effect an exchange or reclassification, or create a right of exchange, of all or part
6012 of the shares of another class into the shares of the class;

6013 (c) Change the designation, rights, preferences, or limitations of all or part of the
6014 shares of the class;

6015 (d) Change the shares of all or part of the class into a different number of shares of
6016 the same class;

6017 (e) Create a new class of shares having rights or preferences with respect to
6018 distributions or to dissolution that are prior or superior to the shares of the class;

6019 (f) Increase the rights, preferences, or number of authorized shares of any class that,
6020 after giving effect to the amendment, have rights or preferences with respect to distributions or
6021 to dissolution that are prior or superior to the shares of the class;

6022 (g) Limit or deny an existing preemptive right of all or part of the shares of the
6023 class; or

6024 (h) Cancel or otherwise affect rights to distributions or dividends that have
6025 accumulated but not yet been declared on all or part of the shares of the class.

6026 (2) If a proposed amendment would affect a series of a class of shares in one or more of the
6027 ways described in subsection (1), the shares of that series are entitled to vote as a separate voting
6028 group class on the proposed amendment.

6029 (3) If a proposed amendment that entitles the holders of two or more classes or series of
6030 shares to vote as separate voting groups under this section would affect those two or more classes
6031 or series in the same or substantially similar way, the holders of ~~the~~ shares of all the classes or
6032 series so affected must vote together as a single voting group on the proposed amendment, unless
6033 otherwise provided in the articles of incorporation or added as a condition by the board of
6034 directors pursuant to s. 607.1003(3).

6035 (4) A class or series of shares is entitled to the voting rights granted by this section even if
6036 ~~although~~ the articles of incorporation provide that the shares are nonvoting shares.

6037

6038 **Commentary to s. 607.1004:**

6039 This section substantially follows the Model Act. Cleanup changes were made to conform to the
6040 current version of the corollary section of the Model Act. One minor change was to retain the
6041 words “or to dissolution” in subsections (1)(e) and (1)(f). While it can be argued that the
6042 statutory term "distribution" includes all forms of distribution, including payments in liquidation
6043 or dissolution, there was a concern that there may be cases where there are rights or preferences
6044 triggered upon dissolution that are not in the nature of distributions.

6045

6046 607.1005 Amendment before issuance of shares.

6047 If a corporation has not yet issued shares, its board of directors or its ~~a majority of its~~
6048 incorporators, if it has no ~~or~~ board of directors, may adopt, by majority vote, one or more
6049 amendments to the corporation's articles of incorporation.

6050

6051 **Commentary to s. 607.1005:**

6052 This section is substantively similar to s. 10.02 of the Model Act. Although not in the Model Act,
6053 language requiring that the vote of the incorporators or the directors approving an such
6054 amendment be a majority vote of the incorporators or the board of directors, as applicable, has
6055 been retained.

6056 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s.
6057 10.05 to s. 10.02.¹⁷

6058

¹⁷ The co-chairs intend to discuss with bill drafting whether s. 607.1002 and 607.1005 can be put in the Model Act order without violating a bill drafting convention, since that is a more logical sequence for these sections. If such a reordering is made, s. 607.10025 will need to be renumbered as s. 607.10055.

6059 607.1006 Articles of Amendment.

6060 (1) After an amendment to the A corporation amending its articles of incorporation has
6061 been adopted and approved in the manner required by this chapter, the corporation shall deliver
6062 to the Department of State for filing articles of amendment which shall be executed in
6063 accordance with s. 607.0120 and which shall set forth:

6064 (a1) The name of the corporation;

6065 (b2) The text of each amendment adopted, or the information required by s.
6066 607.0120(11)(e), if applicable;

6067 (c3) If an amendment provides for an exchange, reclassification, or
6068 cancellation of issued shares, provisions for implementing the amendment if not
6069 contained in the amendment itself, which may be made dependent upon facts objectively
6070 ascertainable outside of the articles of amendment in accordance with s. 607.0120(11);

6071 (d4) The date of each amendment's adoption; and

6072 (e5) If an amendment:

6073 1. was adopted by the incorporators or board of directors without
6074 shareholder approval action, a statement that the amendment was duly adopted by
6075 the incorporators or by the board of directors, as the case may be, to that effect
6076 and that shareholder approval action was not required;

6077 (6)2. If an amendment was approved required approval by the
6078 shareholders, a statement that the number of votes cast for the amendment by the
6079 shareholders in the manner required by the chapter and by the articles of
6080 incorporation was sufficient for approval and, if more than one voting group was
6081 entitled to vote on the amendment, a statement designating each voting group
6082 entitled to vote separately on the amendment, and a statement that the number of
6083 votes cast for the amendment by the shareholders in each voting group was
6084 sufficient for approval by that voting group; or

6085 3. is being filed pursuant to s. 607.0120(11)(e), a statement to that effect.

6086 2. Articles of amendment shall take effect at the effective date determined in accordance
6087 with s. 607.0123.

6088

6089

6090 **Commentary to s. 607.1006:**

6091 With some exceptions, the current Florida statute follows the pre-1999 version of the Model Act,
6092 except that Florida (in current subsection (6) is unique in requiring a broad statement regarding
6093 what voting groups had a separate vote on the amendment. The revised statute modifies the
6094 wording of this provision to bring it in line with the language in the 2016 version of the Model
6095 Act. With two exceptions (noted below), these are not substantive changes.

6096 While the vast majority of state corporate statutes require only a statement that the amendment
6097 was duly approved by the shareholders in the manner required by the act and by the articles of
6098 incorporation, Florida has always required a statement in the amendment as filed as to what
6099 voting groups had a separate vote on the amendment. While this difference pre-dates the 1989
6100 statute, it is believed that this language adds meaningfully to the public information about the
6101 corporation available in the filed articles of incorporation and forces practitioners to consider this
6102 issue in interpreting the statute.

6103 Conforming language has been added to the text of this section to implement the changes to s.
6104 607.0120(11) that allow a filed document to be dependent on facts objectively ascertainable
6105 outside a filed document.

6106

6107 607.1007 Restated articles of incorporation.

6108 (1) A corporation's board of directors may restate its articles of incorporation at any time
6109 ~~with or~~ without shareholder ~~action~~ approval, subject to subsection (2).

6110 (2) ~~The restatement may~~ If the restated articles include one or more new amendments to the
6111 articles. If the restatement includes an amendment requiring that require shareholder approval, it
6112 the amendments must be adopted and approved as provided in s. 607.1003.

6113 (3) If, notwithstanding subsection (1), the board of directors submits a restatement for
6114 shareholder approval action, and the approval is to be given at a meeting, the corporation must
6115 shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at
6116 which the restatement is to be submitted for approval. The notice must be given of the proposed
6117 shareholders' meeting in accordance with s. 607.0705 and. ~~The notice must also state that the~~
6118 ~~purpose, or one of the purposes, of the meeting is to consider the proposed restatement and must~~
6119 ~~contain or be accompanied by a copy of the restatement that identifies any amendment or other~~
6120 ~~change it would make in the articles.~~

6121 (4) A corporation ~~restating that restates~~ its articles of incorporation shall execute and
6122 deliver to the ~~Department of State~~ for filing articles of restatement, that comply with the
6123 provisions of s. 607.0120, and to the extent applicable, s. 607.0202, setting forth:

6124 (a) the name of the corporation,

6125 (b) ~~and~~ the text of the restated articles of incorporation,

6126 (c) ~~together with a certificate setting forth:~~ a statement that the restated articles
6127 consolidate all amendments into a single document, and,

6128 (d) if one or more new amendments are included in the restated articles, the
6129 statements required under s. 607.1006 with respect to each new amendment.

6130 (a) ~~Whether the restatement contains an amendment to the articles requiring~~
6131 ~~shareholder approval and, if it does not, that the board of directors adopted the~~
6132 ~~restatement; or~~

6133 (b) ~~If the restatement contains an amendment to the articles requiring~~
6134 ~~shareholder approval, the information required by s. 607.1006.~~

6135 (5) Duly adopted restated articles of incorporation supersede the original articles of
6136 incorporation and all amendments to ~~them~~ the articles of incorporation.

6137 (6) The ~~D~~department of ~~S~~State may certify restated articles of incorporation, as the articles
6138 of incorporation currently in effect, without including the statements ~~certificate information~~
6139 required by subsection (4).

6140

6141 **Commentary to s. 607.1007:**

6142 Florida's current statute was identical to the pre-1999 version of the Model Act. The changes
6143 proposed to be made to this section add confirming language to bring this section into line with
6144 the current version of the Model Act. These changes are not believed to be substantive.

6145 Subsection (3), which is not in the Model Act, but is in the current Florida statute, has been
6146 retained, but the language has been modified to make it consistent with s. 607.1003(4).

6147

6148 607.1008 Amendment pursuant to reorganization.

6149 (1) A corporation's articles of incorporation may be amended without action by the board
6150 of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of
6151 competent jurisdiction under ~~any federal or Florida statute if the articles of incorporation after~~
6152 ~~amendment contain only provisions required or permitted by s. 607.0202~~ the authority of a law
6153 of the United States or of the State of Florida.

6154 (2) The individual or individuals designated by the court shall deliver to the ~~D~~department
6155 ~~of State~~ for filing articles of amendment setting forth:

6156 (a) The name of the corporation;

6157 (b) The text of each amendment approved by the court;

6158 (c) The date of the court's order or decree approving the articles of amendment;

6159 (d) The title of the reorganization proceeding in which the order or decree was
6160 entered; and

6161 (e) A statement that the court had jurisdiction of the proceeding under a federal or
6162 Florida statute.

6163 (3) Shareholders of a corporation undergoing reorganization do not have appraisal
6164 ~~dissenters'~~ rights except as and to the extent provided in the reorganization plan.

6165 (4) This section does not apply after entry of a final decree in the reorganization proceeding
6166 even though the court retains jurisdiction of the proceeding for limited purposes unrelated to
6167 consummation of the reorganization plan.

6168

6169 **Commentary to s. 607.1008:**

6170 Changes made to subsection (1) mirror clarifying changes in the Model Act. These changes are
6171 not believed to be substantive.

6172 The Model Act only references reorganizations under federal law. The concept of a Florida state
6173 law reorganization was added to the FBCA in 1989 and has been retained.

6174 Subsection (3) has been retained, notwithstanding its removal from the Model Act in 1999.

6175

6176 607.1009 Effect of amendment.

6177 An amendment to articles of incorporation does not affect a cause of action existing
6178 against or in favor of the corporation, a proceeding to which the corporation is a party, or the
6179 existing rights of persons other than shareholders of the corporation. An amendment changing a
6180 corporation's name does not affect ~~abate~~ a proceeding brought by or against the corporation in its
6181 former name.

6182

6183 **Commentary to s. 607.1009:**

6184 This section mirrors the Model Act.

6185 **New subsections (b) and (c) of s. 10.9 of the Model Act govern the effects of amendments to the**
6186 **articles of incorporation that impose or change interest holder liability. The Subcommittee will**
6187 **consider whether to include these provisions when it reviews new Article 9 (Domestication and**
6188 **Conversion) and Article 11 (Mergers and Share Exchanges) of the Model Act.**

6189 **The new subsections read as follows:**

6190 **(b)A shareholder who becomes subject to new interest holder liability in respect of**
6191 **the corporation as a result of an amendment to the articles of incorporation shall have that**
6192 **new interest holder liability only in respect of interest holder liabilities that arise after the**
6193 **amendment becomes effective.**

6194 **(c) Except as otherwise provided in the articles of incorporation of the**
6195 **corporation, the interest holder liability of a shareholder who had interest holder liability in**
6196 **respect of the corporation before the amendment becomes effective and has new interest**
6197 **holder liability after the amendment becomes effective shall be as follows:**

6198 **(1) The amendment does not discharge that prior interest holder liability**
6199 **with respect to any interest holder liabilities that arose before the amendment**
6200 **becomes effective.**

6201 **(2) The provisions of the articles of incorporation of the corporation relating**
6202 **to interest holder liability as in effect immediately prior to the amendment shall**
6203 **continue to apply to the collection or discharge of any interest holder liabilities**
6204 **preserved by subsection (c)(1), as if the amendment had not occurred.**

6205 **(3) The shareholder shall have such rights of contribution from other**
6206 **persons as are provided by the articles of incorporation relating to interest holder**
6207 **liability as in effect immediately prior to the amendment with respect to any interest**
6208 **holder liabilities preserved by subsection (c)(1), as if the amendment had not**
6209 **occurred.**

6210 **(4) The shareholder shall not, by reason of such prior interest holder**
6211 **liability, have interest holder liability with respect to any interest holder liabilities**
6212 **that arise after the amendment becomes effective.**

6213

6214 607.1020 Amendment of bylaws by board of directors or shareholders.

6215 (1) A corporation's board of directors may amend or repeal the corporation's bylaws
6216 unless:

6217 (a) ~~The articles of incorporation or this chapter act, reserves ~~the~~ that power to~~
6218 ~~amend the bylaws generally or a particular bylaw provision~~ exclusively to the
6219 shareholders in whole or in part; or

6220 (b) Except as provided in s. 607.0206(5), ~~the~~ shareholders, in amending, ~~or~~
6221 ~~repealing, or adopting~~ the bylaws generally or a particular bylaw provision, ~~provide~~
6222 expressly provide that the board of directors may not amend, ~~or~~ repeal, adopt or reinstate
6223 the bylaws generally or that particular bylaw provision.

6224 (2) A corporation's shareholders may amend or repeal the corporation's bylaws even
6225 though the bylaws may also be amended or repealed by its board of directors.

6226 (3) A shareholder does not have a vested property right resulting from any provision in the
6227 bylaws.

6228

6229 **Commentary to s. 607.1020:**

6230 Except for the fact that subsections (1) and (2) in the FBCA are reversed, this section mirrors the
6231 Model Act. The changes made do not affect the substance of these provisions.

6232 Florida is among thirty-eight jurisdictions that authorize both the board of directors and the
6233 shareholders to amend the bylaws, and one of 36 that allow this to be restricted by the articles of
6234 incorporation. This is in opposition to the Delaware model, followed by six jurisdictions other
6235 than Delaware, which authorize the shareholders to amend the bylaws but allow for board
6236 amendment as allowed by the articles of incorporation.

6237 Subsection (3) was added to this section of the FBCA. It follows the language in s. 10.20(c) of
6238 the Model Act. Like s. 607.1001(2) dealing with the same issue with respect to articles of
6239 incorporation, it expressly rejects the concept that an otherwise lawful amendment to the bylaws
6240 might be restricted or invalidated because it modified particular rights conferred on shareholders
6241 by the original or prior version of the bylaws. At the same time, subsection (3) does not override
6242 contracts by a corporation outside its bylaws which might be violated by an otherwise lawful
6243 amendment to the bylaws or invalidate provisions in bylaws that require procedures for approval
6244 of amendments that limit the power to amend the articles of incorporation without particular
6245 shareholder consent.

6246

6247 607.1021 Bylaw increasing quorum or voting requirements for shareholders.

6248 (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a
6249 bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of
6250 shareholders) than is required by this chapter ~~act~~. The adoption or amendment of a bylaw that
6251 adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the
6252 same quorum requirement and be adopted by the same vote and voting groups required to take
6253 action under the quorum and voting requirement then in effect or proposed to be adopted,
6254 whichever is greater.

6255 (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under
6256 subsection (1) may not be adopted, amended, or repealed by the board of directors.

6257

6258 **Commentary to s. 607.1021:**

6259 The 1984 version of the Model Act included Section 10.21, which deals with quorum or voting
6260 requirements for shareholders, and Section 10.22, which deals with quorum or voting
6261 requirements for directors. In the 1999 amendments, Section 10.21, regarding quorum and
6262 voting requirements for shareholders, was deleted. Section 10.22, regarding quorum and voting
6263 requirements for directors, was amended and renumbered as s. 10.21. A new section 10.22,
6264 relating to bylaw provisions dealing with the election of directors, was added to the Model Act in
6265 2006 as a way to help corporations and shareholder groups who want to alter the traditional
6266 plurality vote for electing directors (renumbered s. 607.1023 in the FBCA).

6267 This section, which has been in the FBCA since 1989, has been retained.

6268

6269 607.1022 Bylaw increasing quorum or voting requirements for directors.

6270 (1) A bylaw that increases ~~fixes~~ a ~~greater~~ quorum or voting requirement for the board of
6271 directors may be amended or repealed:

6272 (a) If originally adopted by the shareholders, only by the shareholders, unless the
6273 bylaw otherwise provides; or

6274 (b) If originally adopted by the board of directors, either by the shareholders or by
6275 the board of directors.

6276 (2) A bylaw adopted or amended by the shareholders that increases ~~fixes~~ a ~~greater~~ quorum
6277 or voting requirement for the board of directors may provide that it may be amended or repealed
6278 only by a specified vote of either the shareholders or the board of directors.

6279 (3) Action by the board of directors under subsection ~~paragraph~~ (1) to ~~adopt or amend or~~ or
6280 repeal a bylaw that changes the quorum or voting requirement for the board of directors must
6281 meet the same quorum requirement and be adopted by the same vote required to take action
6282 under the quorum and voting requirement then in effect or proposed to be adopted, whichever is
6283 greater.

6284

6285 **Commentary to s. 607.1022:**

6286 See commentary to s. 607.0121 above.

6287 The changes bring the FBCA section into conformity with the corollary provision in the Model

6288 Act (s. 10.21).

6289

6290 607.1023 Bylaw Provisions Relating to the Election of Directors

6291 (1) Unless the articles of incorporation (x) specifically prohibit the adoption of a bylaw
6292 pursuant to this section, (y) alter the vote specified in s. 607.0728(1), or (z) provide for
6293 cumulative voting, a corporation may elect in its bylaws to be governed in the election of
6294 directors as follows:

6295 (a) each vote entitled to be cast may be voted for or against up to that number of
6296 candidates that is equal to the number of directors to be elected, or a shareholder may
6297 indicate an abstention, but without cumulating the votes;

6298 (b) to be elected, a nominee must have received a plurality of the votes cast by
6299 holders of shares entitled to vote in the election at a meeting at which a quorum is
6300 present, provided that a nominee who is elected but receives more votes against than for
6301 election shall serve as a director for a term that shall terminate on the date that is the
6302 earlier of (x) 90 days from the date on which the voting results are determined pursuant to
6303 s. 607.0729(2)(e) or (y) the date on which an individual is selected by the board of
6304 directors to fill the office held by such director, which selection shall be deemed to
6305 constitute the filling of a vacancy by the board to which s. 607.0809 applies. Subject to
6306 clause (c) of this section, a nominee who is elected but receives more votes against than
6307 for election shall not serve as a director beyond the 90-day period referenced above; and

6308 (c) the board of directors may select any qualified individual to fill the office held
6309 by a director who received more votes against than for election.

6310 (2) Subsection (1) does not apply to an election of directors by a voting group if (a) at
6311 the expiration of the time fixed under a provision requiring advance notification of director
6312 candidates, or (b) absent such a provision, at a time fixed by the board of directors which is not
6313 more than 14 days before notice is given of the meeting at which the election is to occur, there
6314 are more candidates for election by the voting group than the number of directors to be elected,
6315 one or more of whom are properly proposed by shareholders. An individual shall not be
6316 considered a candidate for purposes of this subsection if the board of directors determines before
6317 the notice of meeting is given that such individual's candidacy does not create a bona fide
6318 election contest.

6319 (3) A bylaw electing to be governed by this section may be repealed:

6320 (a) if originally adopted by the shareholders, only by the shareholders, unless the
6321 bylaw otherwise provides;

6322 (b) if adopted by the board of directors, by the board of directors or the
6323 shareholders.

6324 **Commentary to s. 607.1023:**

6325 This new section was added to the Model Act in 2006, as new s. 10.22. It deals with bylaws
6326 relating to the election of directors and concepts of majority voting and holdover directors. It has
6327 to be expressly adopted into a corporation's bylaws for this statutory provision to apply to a
6328 particular corporation, and is largely for use by public companies, although all corporations can
6329 elect to be governed by this provision.

6330

6331 **ARTICLE 14**

6332 **DISSOLUTION**

6333

6334 607.1401 Dissolution by incorporators or directors.

6335 A majority of the incorporators or initial directors of a corporation that has not issued
6336 shares or has not commenced business may dissolve the corporation by delivering to the
6337 ~~D~~department of ~~S~~State for filing articles of dissolution that set forth:

6338 (1) The name of the corporation;

6339 (2) The date of its incorporation ~~filing of its articles of incorporation~~;

6340 (3) Either:

6341 (a) That none of the corporation's shares have been issued, or

6342 (b) That the corporation has not commenced business;

6343 (4) That no debt of the corporation remains unpaid;

6344 (5) That the net assets of the corporation remaining after winding up have been distributed
6345 to the shareholders, if shares were issued; and

6346 (6) That a majority of the incorporators or initial directors authorized the dissolution.

6347

6348 **Commentary to Section 607.1401:**

6349 Minor non-substantive changes have been made to conform this section to the current version of
6350 the corollary section of the Model Act.

6351 Nearly all Model Act states, along with California and Delaware, have adopted very similar
6352 statutes regarding dissolution by incorporators or initial directors. California expressly allows
6353 dissolution where the corporation has not issued shares at the time of dissolution (Cal. Corp.
6354 Code. §1900.5(6) in a situation where: "the known assets of the corporation remaining after
6355 payment of, or adequately providing for, known debts and liabilities have been distributed to the
6356 persons entitled thereto or that the corporation acquired no known assets, as the case may be".)
6357 Other states, including Illinois and Maryland, permit dissolution by incorporators only where no
6358 shares have been issued, while Kansas and Pennsylvania permit dissolution only where the
6359 corporation has not commenced business. Eight states, including Nevada and Texas, require both
6360 that shares must not have been issued and business has not commenced.

6361

6362 607.1402 Dissolution by board of directors and shareholders; dissolution by written
6363 consent of shareholders.

6364 (1) A corporation's board of directors may propose dissolution for submission to the
6365 shareholders by first adopting a resolution authorizing the dissolution.

6366 (2) For a proposal to dissolve to be adopted: ~~(a) T~~, it shall then be approved by the
6367 shareholders as provided in subsection (5). In submitting the proposal to dissolve to the
6368 shareholders for approval, the board of directors must recommend ~~dissolution that~~ to the
6369 shareholders ~~approve the dissolution,~~ unless (a) the board of directors determines that because of
6370 conflict of interest or other special circumstances it should make no recommendation, or (b) s.
6371 607.0826 applies. If either (a) or (b) applies, the board shall inform the shareholders of the basis
6372 for its proceeding in such manner and communicates the basis for its determination to the
6373 shareholders; and (b) The shareholders entitled to vote must approve the proposal to dissolve as
6374 provided in subsection (5).

6375 (3) The board of directors may set conditions for the approval of its submission of the
6376 proposal for dissolution ~~on any basis~~ by shareholders or for the effectiveness of the dissolution.

6377 (4) If the approval of the shareholders is to be given at a meeting, Tthe corporation shall
6378 notify, in accordance with s. 607.0705, each shareholder of record, regardless of whether or not
6379 entitled to vote, of the ~~proposed shareholders'~~ meeting of shareholders at which the dissolution is
6380 to be submitted for approval in accordance with s. 607.0705. The notice must also state that the
6381 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

6382 (5) Unless the articles of incorporation or the board of directors (acting pursuant to
6383 subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be
6384 adopted must be approved by a majority of all the votes entitled to be cast on ~~that~~ the proposal to
6385 dissolve.

6386 (6) Alternatively, without action of the board of directors, action to dissolve a corporation
6387 may be taken by the written consent of the shareholders pursuant to s. 607.0704.

6388

6389 **Commentary for Section 607.1402:**

6390 The language in subsections (1) through (4) has been modified to adopt many of the language
6391 changes in the Model Act in these provisions. None of these changes are substantive.

6392 There are two substantive differences between this section of the FBCA and the corollary Model
6393 Act provision. First, the Florida only provision in subsection (6) that allows shareholders to
6394 approve dissolution of the corporation by written consent without action of the board of directors
6395 has been retained. This non-Model Act provision was specifically added to the FBCA in 1989.
6396 Second, the statute continues the requirement in subsection (5) that the shareholders approve a
6397 proposal for dissolution by a vote of a majority of the shares entitled to vote on the proposal,
6398 compared to the requirement in the corollary provision of the Model Act only requiring approval
6399 by a majority of the quorum in attendance at a meeting called to consider the proposal.

6400

6401 607.1403 Articles of dissolution.

6402 (1) At any time after dissolution is authorized, the corporation may dissolve by
6403 delivering to the ~~D~~department of State for filing articles of dissolution which shall be executed in
6404 accordance with s. 607.0120 and which shall set forth:

6405 (a) The name of the corporation;

6406 (b) The date dissolution was authorized;

6407 (c) If dissolution was approved by the shareholders, a statement that the
6408 proposal to dissolve was duly approved by the shareholders in the manner required by
6409 this chapter and by the articles of incorporation ~~the number east for dissolution by the~~
6410 ~~shareholders was sufficient for approval.~~

6411 ~~(d) If dissolution was approved by the shareholders and if voting by voting~~
6412 ~~groups was required, a statement that the number east for dissolution by the shareholders~~
6413 ~~was sufficient for approval must be separately provided for each voting group entitled to~~
6414 ~~vote separately on the plan to dissolve.~~

6415 (2) The articles of dissolution shall take effect at the effective date determined in
6416 accordance with s. 607.0123. A corporation is dissolved upon the effective date of its articles of
6417 dissolution.

6418 (3) For purposes of s. 607.1401 – s. 607.1410, “dissolved corporation” means a corporation
6419 whose articles of dissolution have become effective and includes a successor entity, as defined in
6420 subsection (4).

6421 (4) As used in ss. 601.1401 – 607.1409, the term “successor entity” includes a trust,
6422 receivership, or other legal entity governed by the laws of this state to which the remaining assets
6423 and liabilities of a dissolved corporation are transferred and which exists solely for the purposes
6424 of prosecuting and defending suits by or against the dissolved corporation, thereby enabling the
6425 dissolved corporation to settle and close the business of the dissolved corporation, to dispose of
6426 and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved
6427 corporation, and to distribute to the dissolved corporation’s shareholders any remaining assets,
6428 but not for the purpose of continuing the activities and affairs for which the dissolved
6429 corporation was organized.

6430

6431 **Commentary for Section 607.1403:**

6432 The statute has been modified to make the clarifying language changes contained in the corollary
6433 version of the Model Act. These changes are not substantive.

6434 Two issues were considered:

6435 1. Subsection 1(c) of the FBCA was modified to conform to the Model Act. However, it
6436 removes the requirement that the vote of voting groups be noted in the articles of
6437 dissolution. This difference has existed in the FBCA since 1989.
6438

6439 2. The language "in accordance with s. 607.0120" in the FBCA in subsection (1) has been
6440 retained, although not in the corollary section of the Model Act. It has been in the statute
6441 since 1989 and has been retained as a reminder to users of the FBCA that they need to
6442 comply with the FBCA section on filing requirements in filing articles of dissolution.
6443

6444 Thirty-four states, including most Model Act states, along with Delaware and New York follow
6445 the general process of Model Act s. 14.03. Some states additionally require certain statements as
6446 to the settlement of debts, distribution of property, and the status of any pending litigation
6447 against the company. These are not in the Model Act or the existing FBCA provision, and have
6448 not been included.

6449 Following dissolution, the existence of the corporation continues as a "dissolved corporation"
6450 while the corporation is being liquidated under s. 607.1405. However, after the dissolution
6451 becomes effective, the corporation can conduct no business other than to wind down and
6452 liquidate. Dissolved corporation also includes a "successor entity," as that term is defined in s.
6453 607.1406(15).

6454 Subsection (4) includes the definition of a "successor entity" that was previously included in s.
6455 607.1406(15). A successor entity is included within the definition of dissolved corporation under
6456 subsection (3).

6457

6458 607.1404 Revocation of dissolution.

6459 (1) A corporation may revoke its dissolution at any time prior to the expiration of 120 days
6460 following the effective date of the articles of dissolution.

6461 (2) Revocation of dissolution must be authorized in the same manner as the dissolution
6462 was authorized unless that authorization permitted revocation by action of the board of directors
6463 alone, in which event the board of directors may revoke the dissolution without shareholder
6464 action.

6465 (3) After the revocation of dissolution is authorized, the corporation may revoke the
6466 dissolution by delivering to the ~~Department of State~~, within the 120 day period following the
6467 effective date of the articles of dissolution, for filing articles of revocation of dissolution,
6468 together with a copy of its articles of dissolution, that set forth:

6469 (a) The name of the corporation;

6470 (b) The effective date of the dissolution that was revoked;

6471 (c) The date that the revocation of dissolution was authorized;

6472 (d) If the corporation's board of directors or incorporators revoked the dissolution, a
6473 statement to that effect;

6474 (e) If the corporation's board of directors revoked a dissolution authorized by the
6475 shareholders, a statement that revocation was permitted by action by the board of directors alone
6476 pursuant to that authorization; and

6477 (f) If shareholder action was required to revoke the dissolution, ~~the information~~
6478 ~~required by s. 607.1403(1)(e) or (d)~~ a statement that the revocation was authorized by the
6479 shareholders in the manner required by this chapter and by the articles of incorporation.

6480 (4) Revocation of dissolution is effective upon the effective date of the articles of
6481 revocation of dissolution.

6482 (5) When the revocation of dissolution is effective, it relates back to and takes effect as of
6483 the effective date of the dissolution and the corporation resumes carrying on its business as if
6484 dissolution had never occurred.

6485

6486 **Commentary to Section 607.1404:**

6487 The FBCA provision is identical to the Model Act.

6488 Many states allow a corporation to revoke dissolution as long as the revocation occurs prior to
6489 120 days after the effective date of the articles of dissolution. Delaware allows it for three years,
6490 while California allows for revocation prior to the distribution of assets, with no time limit. Four
6491 states, including New York, do not allow for revocation of a voluntarily dissolution.

6492

6493 607.1405 Effect of dissolution.

6494 (1) A ~~dissolved~~ corporation that has dissolved continues its corporate existence but the
6495 dissolved corporation may not carry on any business except that appropriate to wind up and
6496 liquidate its business and affairs, including:

6497 (a) Collecting its assets;

6498 (b) Disposing of its properties that will not be distributed in kind to its
6499 shareholders;

6500 (c) Discharging or making provision for discharging its liabilities;

6501 (d) Making distributions of ~~Distributing~~ its remaining assets ~~property~~ among its
6502 shareholders according to their interests; and

6503 (e) Doing every other act necessary to wind up and liquidate its business and affairs.

6504 (2) Dissolution of a corporation does not:

6505 (a) Transfer title to the corporation's property;

6506 (b) Prevent transfer of its shares or securities, ~~although the authorization to~~
6507 ~~dissolve may provide for closing the corporation's share transfer records;~~

6508 (c) Subject its directors or officers to standards of conduct different from those
6509 prescribed in ss. 607.0801-607.08590 ~~except as provided in s. 607.1421(4);~~

6510 (d) Change quorum or voting requirements for its board of directors or
6511 shareholders, change provisions for selection, resignation, or removal of its directors or
6512 officers or both; or change provisions for amending its bylaws;

6513 (e) Prevent commencement of a proceeding by or against the corporation in its
6514 corporate name;

6515 (f) Abate or suspend a proceeding pending by or against the corporation on the
6516 effective date of dissolution; or

6517 (g) Terminate the authority of the registered agent of the corporation.

6518 (3) A distribution in liquidation under this section may only be made by a dissolved
6519 corporation. For purposes of determining the shareholders entitled to receive a distribution in
6520 liquidation, the board of directors may fix a record date for determining shareholders entitled to a
6521 distribution in liquidation, which date may not be retroactive. If the board of directors does not fix a

6522 record date for determining shareholders entitled to a distribution in liquidation, the record date is the
6523 date the board of directors authorizes the distribution in liquidation.

6524 (34) The directors, officers, and agents of a corporation dissolved pursuant to s. 607.1403
6525 shall not incur any personal liability thereby by reason of their status as directors, officers, and
6526 agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.

6527 (45) The name of a dissolved corporation is not ~~shall not be~~ available for assumption or
6528 use by another business entity corporation until 1 year ~~120 days~~ after the effective date of
6529 dissolution unless the dissolved corporation provides the ~~D~~department of State with an affidavit,
6530 executed as required pursuant to s. 607.0120, permitting the immediate assumption or use of the
6531 name by another business entity corporation.

6532 (56) For purposes of this section, the circuit court, upon application of a shareholder, may
6533 appoint a trustee, custodian or receiver for any property owned or acquired by the corporation
6534 who may engage in any act permitted under subsection (1) if any director or officer of the
6535 dissolved corporation is unwilling or unable to serve or cannot be located.

6536

6537 **Commentary to Section 607.1405:**

6538 Subsections (1) and (2) of the FBCA follow subsections (a) and (b) of the corollary section of the
6539 Model Act. The reference to s. 607.1421(4) of the FBCA, which deals with possible personal
6540 liability of officers or directors in dissolution, has been removed because that provision was not
6541 retained in the FBCA.

6542 Distributions in liquidation that occur after dissolution are distinct from the pre-dissolution
6543 distributions governed by s. 607.0640. As a result, new subsection (3) has been added to allow
6544 for setting a record date for determining shareholders entitled to receive a distribution in
6545 liquidation.

6546 Subsections (3), (4), and (5) of the FBCA (renumbered as sections (4), (5) and (6) above) do not
6547 appear in the Model Act. Subsection (3) was added to the FBCA in 1989 to make clear that
6548 dissolution does not change the duty of care, fiduciary duty, limitations on liability or right to
6549 indemnification of officers, directors and agents of the dissolved corporation. Subsection (6)
6550 expressly allows a court to appoint a trustee, custodian or receiver to carry out the winding up
6551 process, presumably at the behest of creditors or shareholders who have a stake in the liquidation
6552 of the corporation if the directors or officers are unwilling to serve. Finally, subsection (5) deals
6553 with use of a corporate name following dissolution.

6554

6555 607.1406 Known claims against dissolved corporation.

6556 (1) A dissolved corporation may dispose of the known claims against it by giving
6557 written notice, satisfying the requirements of subsection (2), to its known claimants at any time
6558 after the effective date of the dissolution (but no later than the date which is 270 days prior to the
6559 date which is 3 years after the effective date of the dissolution).

6560 (2) The written notice must:

6561 (a) State the name of the corporation that is the subject of a dissolution;

6562 (b) State that the corporation is the subject of a dissolution and the effective date
6563 of the dissolution;

6564 (c) Specify the information that must be included in a claim;

6565 (d) State that a claim must be in writing and provide a mailing address where a
6566 claim may be sent;

6567 (e) State the deadline, which may not be fewer than 120 days after the date the
6568 written notice is received by the claimant, by which the dissolved corporation must
6569 receive the claim;

6570 (f) State that the claim will be barred if not received by the deadline;

6571 (g) State that the dissolved corporation may make distributions thereafter to
6572 other claimants and to the dissolved corporation's shareholders or persons interested
6573 without further notice; and

6574 (h) Be accompanied by a copy of ss. 607.1405-607.1410 of this chapter.

6575 (3) A dissolved corporation may reject, in whole or in part, a claim submitted by a
6576 claimant and received prior to the deadline specified in the written notice given pursuant to
6577 subsections (1) and (2) by mailing notice of the rejection to the claimant on or before the date
6578 which is the earlier of (i) 90 days after the dissolved corporation receives the claim and (ii) the
6579 date which is 150 days prior to the date which is 3 years after the effective date of the
6580 dissolution. A rejection notice sent by the dissolved corporation pursuant to this subsection must
6581 state that the claim will be barred unless the claimant, not later than 120 days after the claimant
6582 receives the rejection notice, commences an action in the circuit court in the applicable county
6583 against the dissolved corporation to enforce the claim.

6584 (4) A claim against the dissolved corporation is barred:

6585 (a) If a claimant who was given written notice pursuant to subsections (1) and (2)
6586 does not deliver the claim to the dissolved corporation by the specified deadline; or

6587 (b) If the claim was timely received by the dissolved corporation but was timely
6588 rejected by the dissolved corporation under subsection (3) and the claimant does not
6589 commence the required action in the applicable county within 120 days after the claimant
6590 receives the rejection notice.

6591 (5) For purposes of this section, “known claims” means any claim or liability that, as
6592 of the date of the giving of the written notice contemplated by subsections (1) and (2), either:

6593 (a) Has matured sufficiently on or prior to the effective date of the dissolution
6594 to be legally capable of assertion against the dissolved corporation; or

6595 (b) Is unmatured as of the effective date of the dissolution but will mature in
6596 the future solely based on the passage of time.

6597 Notwithstanding, a “known claim” does not include a claim based on an event occurring after the
6598 effective date of the dissolution or a claim that is a contingent claim.

6599 (6) The giving of any notice pursuant to the provisions of this section shall not revive
6600 any claim then barred or constitute acknowledgment by the dissolved corporation that any person
6601 to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense
6602 or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

6603 ~~(1) A dissolved corporation or successor entity, as defined in subsection (15), may~~
6604 ~~dispose of the known claims against it by following the procedures described in subsections (2)~~
6605 ~~(3), and (4).~~

6606 ~~(2) The dissolved corporation or successor entity shall deliver to each of its known~~
6607 ~~claimants written notice of the dissolution at any time after its effective date. The written notice~~
6608 ~~shall:~~

6609 ~~(a) Provide a reasonable description of the claim that the claimant may be~~
6610 ~~entitled to assert;~~

6611 ~~(b) State whether the claim is admitted or not admitted, in whole or in part, and,~~
6612 ~~if admitted:~~

6613 ~~1. The amount that is admitted, which may be as of a given date; and~~

6614 ~~2. Any interest obligation if fixed by an instrument of indebtedness;~~

6615 ~~(c) Provide a mailing address where a claim may be sent;~~

6616 ~~(d) State the deadline, which may not be fewer than 120 days after the effective~~
6617 ~~date of the written notice, by which confirmation of the claim must be delivered to the~~
6618 ~~dissolved corporation or successor entity; and~~

6619 ~~(e) State that the corporation or successor entity may make distributions~~
6620 ~~thereafter to other claimants and the corporation's shareholders or persons interested as~~
6621 ~~having been such without further notice.~~

6622 ~~(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim~~
6623 ~~made by a claimant pursuant to this subsection by mailing notice of such rejection to the~~
6624 ~~claimant within 90 days after receipt of such claim and, in all events, at least 150 days before~~
6625 ~~expiration of 3 years following the effective date of dissolution. A notice sent by the dissolved~~
6626 ~~corporation or successor entity pursuant to this subsection shall be accompanied by a copy of this~~
6627 ~~section.~~

6628 ~~(4) A dissolved corporation or successor entity electing to follow the procedures described~~
6629 ~~in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons~~
6630 ~~with known claims, that are contingent upon the occurrence or nonoccurrence of future events or~~
6631 ~~otherwise conditional or unmatured, and request that such persons present such claims in~~
6632 ~~accordance with the terms of such notice. Such notice shall be in substantially the same form,~~
6633 ~~and sent in the same manner, as described in subsection (2).~~

6634 ~~(5) A dissolved corporation or successor entity shall offer any claimant whose known~~
6635 ~~claim is contingent, conditional, or unmatured such security as the corporation or such entity~~
6636 ~~determines is sufficient to provide compensation to the claimant if the claim matures. The~~
6637 ~~dissolved corporation or successor entity shall deliver such offer to the claimant within 90 days~~
6638 ~~after receipt of such claim and, in all events, at least 150 days before expiration of 3 years after~~
6639 ~~following the effective date of dissolution. If the claimant offered such security does not deliver~~
6640 ~~in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120~~
6641 ~~days after receipt of such offer for security, the claimant is deemed to have accepted such~~
6642 ~~security as the sole source from which to satisfy his or her claim against the corporation.~~

6643 ~~(6) A dissolved corporation or successor entity which has given notice in accordance with~~
6644 ~~subsections (2) shall petition the circuit court in the county where the corporation's principal~~
6645 ~~office is located or was located at the effective date of dissolution to determine the amount and~~
6646 ~~form of security that will be sufficient to provide compensation to any claimant who has rejected~~
6647 ~~the offer for security made pursuant to subsection (5).~~

6648 ~~(7) A dissolved corporation or successor entity which has given notice in accordance with~~
6649 ~~subsection (2) shall petition the circuit court in the county where the corporation's principal~~
6650 ~~office is located or was located at the effective date of dissolution to determine the amount and~~
6651 ~~form of security which will be sufficient to provide compensation to claimants whose claims are~~

6652 known to the corporation or successor entity but whose identities are unknown. The court shall
6653 appoint a guardian ad litem to represent all claimants whose identities are unknown in any
6654 proceeding brought under this subsection. The reasonable fees and expenses of such guardian,
6655 including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

6656 (8) ~~The giving of any notice or making of any offer pursuant to the provisions of this~~
6657 ~~section shall not revive any claim then barred or constitute acknowledgment by the dissolved~~
6658 ~~corporation or successor entity that any person to whom such notice is sent is a proper claimant,~~
6659 ~~and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted~~
6660 ~~by any person to whom such notice is sent.~~

6661 (9) ~~A dissolved corporation or successor entity which has followed the procedures~~
6662 ~~described in subsections (2) (7):~~

6663 (a) ~~Shall pay the claims admitted or made and not rejected in accordance with~~
6664 ~~subsection (3);~~

6665 (b) ~~Shall post the security offered and not rejected pursuant to subsection (5);~~

6666 (c) ~~Shall post any security ordered by the circuit court in any proceeding under~~
6667 ~~subsections (6) and (7); and~~

6668 (d) ~~Shall pay or make provision for all other known obligations of the~~
6669 ~~corporation or such successor entity.~~

6670 Such claims or obligations shall be paid in full, and any such provision for payments shall
6671 be made in full if there are sufficient funds. If there are insufficient funds, such claims and
6672 obligations shall be paid or provided for according to their priority and, among claims of equal
6673 priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be
6674 distributed to the shareholders of the dissolved corporation; however, such distribution may not
6675 be made before the expiration of 150 days from the date of the last notice of rejections given
6676 pursuant to subsection (3). In the absence of actual fraud, the judgment of the directors of the
6677 dissolved corporation or the governing persons of such successor entity as to the provisions made
6678 for the payment of all obligations under paragraph (d) is conclusive.

6679 (10) ~~A dissolved corporation or successor entity which has not followed the procedures~~
6680 ~~described in subsections (2) and (3) shall pay or make reasonable provision to pay all known~~
6681 ~~claims and obligations, including all contingent, conditional, or unmatured claims known to the~~
6682 ~~corporation or such successor entity and all claims which are known to the dissolved corporation~~
6683 ~~or such successor entity but for which the identity of the claimant is unknown. Such claims shall~~
6684 ~~be paid in full, and any such provision for payment made shall be made in full if there are~~
6685 ~~sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or~~

6686 provided for according to their priority and, among claims of equal priority, ratably to the extent
6687 of funds legally available therefor. Any remaining funds shall be distributed to the shareholders
6688 of the dissolved corporation.

6689 (11) ~~Directors of a dissolved corporation or governing persons of a successor entity which~~
6690 ~~has complied with subsection (9) or subsection (10) are not personally liable to the claimants of~~
6691 ~~the dissolved corporation.~~

6692 (12) ~~A shareholder of a dissolved corporation the assets of which were distributed~~
6693 ~~pursuant to subsection (9) or subsection (10) is not liable for any claim against the corporation in~~
6694 ~~an amount in excess of such shareholder's pro rata share of the claim or the amount distributed to~~
6695 ~~the shareholder, whichever is less.~~

6696 (13) ~~A shareholder of a dissolved corporation, the assets of which were distributed~~
6697 ~~pursuant to subsection (9), is not liable for any claim against the corporation, which claim is~~
6698 ~~known to the dissolved corporation or successor entity, on which a proceeding is not begun prior~~
6699 ~~to the expiration of 3 years following the effective date of dissolution.~~

6700 (14) ~~The aggregate liability of any shareholder of a dissolved corporation for claims~~
6701 ~~against the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not~~
6702 ~~exceed the amount distributed to the shareholder in dissolution.~~

6703 (15) ~~As used in ss. 601.1401—607.1409 this section, or s. 607.1407, the term “successor~~
6704 ~~entity” includes a trust, receivership, or other legal entity governed by the laws of this state to~~
6705 ~~which the remaining assets and liabilities of a dissolved corporation are transferred and which~~
6706 ~~exists solely for the purposes of prosecuting and defending suits by or against the dissolved~~
6707 ~~corporation, thereby enabling the dissolved corporation to settle and close the business of the~~
6708 ~~dissolved corporation, to dispose of and convey the property of the dissolved corporation, to~~
6709 ~~discharge the liabilities of the dissolved corporation, and to distribute to the dissolved~~
6710 ~~corporation's shareholders any remaining assets, but not for the purpose of continuing the~~
6711 ~~activities and affairs for which the dissolved corporation was organized.~~

6712

6713 **Commentary to Section 607.1406:**

6714 The current FBCA provisions dealing with claims against a dissolved corporation are largely
6715 Florida only provisions. The original s. 607.1406 was adopted in 1989 and, according to the
6716 commentary from the 1989 committee, was based on DGCL ss. 280, 281 and 282 as those
6717 statutes existed at that time. The revised section of the FBCA is largely based on the corollary
6718 section of the Model Act, with some language and structure borrowed from the corollary
6719 provision in RULLCA. However, some of the wording from the existing FBCA provision has
6720 been retained where the Subcommittee believes it reflects more clarity than the Model Act.

6721 The words “or successor entity” are no longer contained in the statute because the definition of
6722 “dissolved corporation” under s. 607.1403(3) now includes a successor entity

6723 The Model Act commentary describes what is a “known claim” (covered by s. 14.06) and what is an
6724 other claim (covered by s. 14.07), in the following manner:

6725 Sections 14.06 and 14.07 provide a simplified system for handling claims against a dissolved
6726 corporation. Section 14.06 deals solely with known claims while section 14.07 deals with
6727 unknown or subsequently arising claims. Known claims may be unliquidated, but a claim
6728 that is contingent or has not yet matured (or in certain cases has matured but has not been
6729 asserted) is not a “claim” for purposes of section 14.06(d). For example, an unmatured
6730 liability under a guarantee, a potential default under a lease, or an unasserted claim based
6731 upon a defective product manufactured by the dissolved corporation would not be a “claim”
6732 under section 14.06.”

6733 Notwithstanding, unlike the Model Act, s. 607.1406 treats claims that are unmatured as of the
6734 effective date of the dissolution, but that will mature solely with the passage of time, as known
6735 claims. An example would be a debt due under a promissory note that is not yet due or a trade
6736 payable that has been accrued for accounting purposes but is not yet due.

6737 A “known claim” does not include a claim that would accrue upon the occurrence of an event
6738 after the effective date of the dissolution or a claim that is a contingent claim. Examples would
6739 include an unmatured liability under a guarantee, a potential default under a lease, or an
6740 unasserted claim based on a defective product manufactured by the dissolved corporation.

6741 The principles of s 607.1406 do not lengthen the statute of limitations applicable under general
6742 state law and claims that are not barred under s. 607.1406 may be made within the general statute
6743 of limitations.

6744 Section 607.1406 is voluntary. If the corporation does not follow this section in handling known
6745 claims in dissolution, the directors and the shareholders do not get the protections of this section
6746 and s. 607.1410.

6747 Under s. 607.1406, claimants who comply with the statutory requirements and are not barred
6748 have the ability to have recourse to the remaining assets of the corporation or to recover from
6749 shareholders. Such recovery from each shareholder is limited to the lesser of the respective
6750 shareholder's pro rata share of the claim or the total amount of assets received by the respective
6751 shareholder as a liquidating distribution. However, if s. 607.1406 is not followed, the shareholder
6752 could be liable for its share of any claim not barred by the regular statute of limitation up to the
6753 amount of the distribution which it received in liquidation. See s. 607.1408.

6754

6755 607.1407 ~~Other Unknown~~ Other claims against dissolved corporation.

6756 (1) A dissolved corporation ~~or successor entity, as defined in s. 607.1406(15),~~ may choose
6757 to execute ~~one of the following procedures to resolve payment of unknown claims~~ claims against
6758 the dissolved corporation that are other than known claims. ~~(a) A dissolved corporation or~~
6759 ~~successor entity~~ may file notice of its dissolution with the ~~Department of State~~ on the form
6760 prescribed by the ~~Department of State~~ and request that persons with claims against the
6761 corporation which are not known claims present them in accordance with the notice. The notice
6762 shall must:

6763 (a) State the name of the corporation and the date that is the subject of the
6764 dissolution;

6765 (b) ~~Describe the information that must be included in a claim and provide a~~
6766 ~~mailing address to which the claim may be sent~~ State that the corporation is the subject of
6767 a dissolution and the effective date of the dissolution; and

6768 (c) Specify the information that must be included in a claim;

6769 (d) State that a claim must be in writing and provide a mailing address where a
6770 claim may be sent;

6771 (e) State that a claim against the corporation under this subsection will be barred
6772 unless a proceeding to enforce the claim is commenced within 4 years after the filing of
6773 the notice.

6774 (2)¹⁸ ~~A dissolved corporation or successor entity may, within 10 days after filing~~
6775 ~~articles of dissolution with the Department of State publish a "Notice of Corporate Dissolution."~~
6776 ~~The notice shall appear once a week for 2 consecutive weeks in a newspaper of general~~
6777 ~~circulation in a county in the state in which the corporation has its principal office, if any, or, if~~
6778 ~~none, in a county in the state in which the corporation owns real or personal property. Such~~
6779 ~~newspaper shall meet the requirements as are prescribed by law for such purposes. The notice~~
6780 ~~shall:~~

¹⁸ This proposal eliminates the publication option for notice of other claims of a dissolved corporation. At the meeting held on December 5, 2017, the subcommittee was of the view that the DOS filing option was the appropriate notice, since it puts all of these notices in a singular spot that creditors with claims against a dissolved corporation can look. This was consistent with the view taken by the 2002 BLS committee that originally proposed the addition of s. 607.1407 to the FBCA. It was also agreed that we should be prepared to put the publication option back into this statute if get flak from the newspaper lobby during the legislative process.

- 6781 ~~(a) State the name of the corporation and the date of dissolution;~~
- 6782 ~~(b) Describe the information that must be included in a claim and provide a~~
6783 ~~mailing address to which the claim may be sent; and~~
- 6784 ~~(c) State that a claim against the corporation under this subsection will be barred~~
6785 ~~unless a proceeding to enforce the claim is commenced within 4 years after the date of~~
6786 ~~the second consecutive weekly publication of the notice authorized by this section.~~
- 6787 ~~(23) If the dissolved corporation or successor entity complies with subsection (1) or~~
6788 ~~subsection (2), unless sooner barred by another statute limiting actions, the claim of each of the~~
6789 ~~following claimants is barred unless the claimant commences a proceeding to enforce the claim~~
6790 ~~against the dissolved corporation within 4 years after the date of filing the notice with the~~
6791 ~~Department of State or the date of the second consecutive weekly publication, as applicable:~~
- 6792 ~~(a) A claimant who did not receive written notice under s. 607.1406(9)¹⁹ or~~
6793 ~~whose claim was not provided for under s. 607.1406(1), whether such claim is based on~~
6794 ~~an event occurring before or after the effective date of dissolution.~~
- 6795 ~~(b) A claimant whose claim was timely sent to the dissolved corporation but on~~
6796 ~~which no action was taken by the dissolved corporation.~~
- 6797 ~~(c) A claimant whose claim is not a known claim under s. 607.1406(5).~~
- 6798 ~~(4) A claim may be entered under this section:~~
- 6799 ~~(a) Against the dissolved corporation, to the extent of its undistributed assets; or~~
- 6800 ~~(b) If the assets have been distributed in liquidation, against a shareholder of the~~
6801 ~~dissolved corporation to the extent of such shareholder's pro rata share of the claim or the~~
6802 ~~corporate assets distributed to such shareholder in liquidation, whichever is less, provided~~
6803 ~~that the aggregate liability of any shareholder of a dissolved corporation arising under~~
6804 ~~this section, s. 607.1406, or otherwise may not exceed the amount distributed to the~~
6805 ~~shareholder in dissolution.~~
- 6806 ~~(3) Nothing in this section shall preclude or relieve the corporation from its notification~~
6807 ~~to claimants otherwise set forth in this chapter.~~
- 6808

¹⁹ This language is not in s. 605.0712(2)

6809 **Commentary to Section 607.1407:**

6810 The FBCA is one of two state corporate statutes (along with California) with a four year statute
6811 of limitations. Most jurisdictions have a three year limitations period (the statute of limitations
6812 under the Model Act) or five years (the statute of limitations in Delaware), while seven
6813 jurisdictions, including New York, provide no statute of limitations (instead, the statute of
6814 limitations is dictated by the underlying cause of action).

6815 The Model Act allows for posting on the dissolved corporation's website and newspaper
6816 publication as the means to notify potential claimants of a dissolved corporation. Section
6817 607.1407 previously included the right to notify claimants by either publication or the filing of a
6818 notice with the Department of State on a form prescribed by the Department. This statute
6819 eliminates the publication option based on the belief that filing with the Department is a more
6820 permanent, accessible notice to potential claimants than the publication of a notice in a
6821 newspaper of limited circulation.

6822 The principles of s. 607.1407 do not lengthen the statute of limitations applicable under general
6823 state law and claims that are not barred under s. 607.1407 may be made within the general statute
6824 of limitations.

6825 Section 607.1407 is voluntary. If the corporation does not follow this section in handling claims
6826 other than known claims in dissolution, the corporation, its board and its shareholders do not get
6827 the protections afforded by this section and by s. 607.1410.

6828 Section 607.1407 addresses problems created by possible claims that might rise long after the
6829 dissolution process is completed and the corporate assets distributed to shareholders. The
6830 problems raised by these claims are difficult. On the one hand, the application of a mechanical
6831 limitation period of a claim for injury that occurs after the period has expired may involve
6832 injustice to the plaintiff. On the other hand, to permit these suits generally could make it
6833 impossible to ever complete the winding up of the corporation, make suitable provisions for
6834 creditors and distribute the balance of the corporate assets to the shareholders. The approach
6835 taken in s. 607.1407 is to continue the liability of the dissolved corporation for an arbitrary
6836 period of time (three years in the Model Act provision; four years in the current corollary FBCA
6837 provision).

6838 Under s. 607.1407, claimants have the ability within this arbitrary statute of limitations to have
6839 recourse to the remaining assets of the corporation or to recover from shareholders. Such
6840 recovery from each shareholder is limited to the lesser of the respective shareholder's pro rata
6841 share of the claim or the total amount of assets received by the respective shareholder as a
6842 liquidating distribution. However, if s. 607.1407 is not followed, the shareholder could be liable
6843 for its share of any claim not barred by the regular statute of limitation up to the amount of the
6844 distribution which it received in liquidation. See s. 607.1408.

6845 Section 607.1407 allows a dissolved corporation to initiate a court proceeding to establish what,
6846 if any, provision should be made for contingent or unknown claims that are not reasonably
6847 expected to be barred after the limitations period in s. 607.1407(2). This provision is designed to
6848 permit the court to adopt procedures appropriate to the circumstances. If the dissolved
6849 corporation provides for security for claims under s. 607.1409(4), that section protects
6850 shareholders who receive distributions against those claims and also protects directors for a
6851 breach of their duty under s. 607.1410(1) to discharge or make reasonable provision for payment
6852 of claims, thereby protecting the directors from liability for those distributions.

6853

6854 s. 607.1408 Enforcement of claims against dissolved corporations.

6855 A claim that is not barred by s. 607.1406(4), by s. 607.1407(2), or by another statute
6856 limiting actions may be enforced:

6857 (a) Against the dissolved corporation, to the extent of its undistributed assets; or

6858 (b) Except as provided in s. 607.1409(4), if the assets have been distributed in
6859 liquidation, against a shareholder of the dissolved corporation to the extent of the
6860 shareholder's pro rata share of the claim or the corporate assets distributed to the
6861 shareholder in liquidation, whichever is less, provided that the aggregate liability of any
6862 shareholder of a dissolved corporation arising under s. 607.1406, s. 607.1407, or
6863 otherwise may not exceed the total amount of assets distributed to the shareholder in
6864 dissolution.

6865

6866 **Commentary to Section 607.1408:**

6867 Although this section is a new section, it effectively keeps in the FBCA the voluntary claims
6868 provisions from ss. 607.1406 and 607.1407 of the existing statute that are beneficial to
6869 shareholders of those corporations that elect to utilize those particular sections to deal with the
6870 corporation's claims in dissolution.

6871

6872 607.1409 Court proceedings.
6873

6874 (1) A dissolved corporation that has filed²⁰ a notice under s. 607.1407(1) may file an
6875 application with the circuit court in the applicable county, for a determination of the amount and
6876 form of security to be provided for payment of claims that are contingent or have not been
6877 made known to the dissolved corporation or that are based on an event occurring after the
6878 effective date of dissolution but that, based on the facts known to the dissolved corporation, are
6879 reasonably estimated to arise after the effective date of dissolution. Provision need not be
6880 made for any claim that is or is reasonably anticipated to be barred under s. 607.1407(2).
6881

6882 (2) Within 10 days after the filing of the application under subsection (1), notice of the
6883 proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim
6884 whose identity and contingent claim is known to the dissolved corporation. Such notice shall be
6885 accompanied by a copy of ss. 607.1405-607.1410 of this chapter.

6886 (3) In any proceeding under this section, the court may appoint a guardian ad litem to
6887 represent all claimants whose identities are unknown. The reasonable fees and expenses of such
6888 guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.
6889

6890 (4) Provision by the dissolved corporation for security in the amount and the form
6891 ordered by the court under subsection (1) shall satisfy the dissolved corporation's obligations
6892 with respect to claims that are contingent, have not been made known to the dissolved
6893 corporation or are based on an event occurring after the effective date of dissolution, and such
6894 claims may not be enforced against a shareholder who received assets in liquidation.
6895

6896

²⁰ If we add back publication, we will need to change this section to read as follows:

A dissolved corporation that has filed **or published** a notice under s. 607.1407(1)(a) **or (1)(b)** may file...

6897 **Commentary to Section 607.1409.**

6898 This section was added to the Model Act in 2000 to provide a procedure for handling unknown
6899 and contingent claims against the dissolved corporation. It has now been added to the FBCA.

6900 Subsection (4) was part of the current version of s. 607.1406, but has been moved here because
6901 those types of claims are now to be covered under s. 607.1407.

6902

6903 607.1410 Director duties

6904 (1) Directors shall cause the dissolved corporation to discharge or make reasonable
6905 provision for the payment of claims and make distributions in liquidation of assets to
6906 shareholders after payment or provision for claims.

6907 (2) Directors of a dissolved corporation that has disposed of claims under ss. 607.1406,
6908 607.1407, or 607.1409 shall not be liable to any claimant or shareholder for breach of s.
6909 607.1410(1) with respect to claims against the dissolved corporation that are barred or satisfied
6910 under ss. 607.1406, 607.1407, or 607.1409.

6911

6912 **Commentary to Section 607.1410.**

6913 This is a new section. It is based on the corollary section of the Model Act (s. 14.09).

6914 Section 14.09 of the Model Act was added to the Model Act in 2000 and establishes the terms
6915 under which a director could be relieved of liability for unlawful distributions in liquidation
6916 under s. 607.1401 et seq., and thus avoid the general distribution liability under s. 607.06401.
6917 Although similar in large respect, the new terms under which a director could be relieved of such
6918 liability differ somewhat from the exculpatory provisions that previously had appeared in
6919 subsection (11) of s. 607.1406.

6920

6921 607.1420 Grounds for Administrative dissolution.

6922 (1) ~~The Department of State may commence a proceeding under s. 607.1421 to~~
6923 ~~administratively dissolve a corporation administratively if the corporation does not:~~

6924 (a) Deliver its annual report to the department ~~The corporation has failed to file~~
6925 ~~its annual report and pay the annual report filing fee by 5:00 p.m. Eastern Time on the~~
6926 ~~third Friday in September of each year;~~

6927 (b) Pay a fee or penalty due to the department under this chapter;

6928 (c) Appoint and maintain ~~The corporation is without a registered agent and or~~
6929 ~~registered office as required by s. 607.0501 in this state for 30 days or more;~~

6930 (de) Deliver for filing a statement of change under s. 607.0502 ~~The corporation~~
6931 ~~does not notify the department of State within 30 days after a change has occurred in the~~
6932 ~~name or address of the agent unless, within 30 days after the change occurred: that its the~~
6933 ~~corporation's registered agent or registered office has been changed, that its registered~~
6934 ~~agent has resigned, or that its registered office has been discontinued;~~

6935 1. The agent filed a statement of change under s. 607.05031; or

6936 2. The change was made in accordance with s. 607.0502(4);

6937 ~~(d) The corporation has failed to answer truthfully and fully, within the time~~
6938 ~~prescribed by this act, interrogatories propounded by the Department of State; or~~

6939 (e) The corporation's period of duration stated in its articles of incorporation
6940 expires ~~has expired.~~

6941 (2) ~~The foregoing enumeration in subsection (1) of grounds for administrative dissolution~~
6942 ~~shall not exclude actions or special proceedings by the Department of Legal Affairs or any state~~
6943 ~~officials for the annulment or dissolution of a corporation for other causes as provided in any~~
6944 ~~other statute of this state.~~

6945 (3) Administrative dissolution of a corporation for failure to file an annual report must
6946 occur on the fourth Friday in September of each year. The department shall issue a notice in a
6947 record of administrative dissolution to the corporation dissolved for failure to file an annual
6948 report. Issuance of the notice may be by electronic transmission to a corporation that has
6949 provided the department with an e-mail address.

6950 (4) If the department determines that one or more grounds exist for administratively
6951 dissolving a corporation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the

6952 department shall serve notice in a record to the corporation of its intent to administratively
6953 dissolve the corporation. Issuance of the notice may be by electronic transmission to a
6954 corporation that has provided the department with an e-mail address.

6955 (5) If, within 60 days after sending the notice of intent to administratively dissolve
6956 pursuant to subsection (3), a corporation does not correct each ground for dissolution under
6957 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable
6958 satisfaction of the department that each ground determined by the department does not exist, the
6959 department shall dissolve the corporation administratively and issue to the corporation a notice in
6960 a record of administrative dissolution that states the grounds for dissolution. Issuance of the
6961 notice of administrative dissolution may be by electronic transmission to a corporation that has
6962 provided the department with an e-mail address.

6963 (6) A corporation that has been administratively dissolved continues in existence but
6964 may only carry on activities necessary to wind up its activities and affairs, liquidate and
6965 distribute its assets, and notify claimants under ss. 607.1405, 607.1406 and 607.1407.

6966 (7) The administrative dissolution of a corporation does not terminate the authority of
6967 its registered agent for service of process.

6968

6969 **Commentary to Section 607.1420:**

6970 This provision has been updated and modernized to follow the substance of FRLICA s.
6971 605.0714.

6972 The FBCA contains provisions allowing for administrative dissolution in other situations
6973 (paragraphs (1)(e) and (f), and subsection (2)). Neither of these grounds for administrative
6974 dissolution was included in the corollary provision of FRLICA, although both grounds were in
6975 the corollary section of Chapter 608 (in s. 608.448). In both cases, the Subcommittee believes
6976 that these provisions are almost never used, and the Division of Corporations has advised the
6977 Subcommittee that they have no objection to removing these provisions from the FBCA.²¹

6978

²¹ The Subcommittee will reconsider this issue if another Florida government agency has a concern with this change.

6979 ~~607.1421—Procedure for and effect of administrative dissolution.~~

6980 ~~(1) If the Department of State determines that one or more grounds exist under s. 607.1420~~
6981 ~~for dissolving a corporation, it shall serve the corporation with notice of its intention to~~
6982 ~~administratively dissolve the corporation. If the corporation has provided the Department with an~~
6983 ~~electronic mail address, such notice shall be by electronic transmission. Administrative~~
6984 ~~dissolution for failure to file an annual report shall occur on the fourth Friday in September of~~
6985 ~~each year. The Department of State shall issue a certificate of dissolution to each dissolved~~
6986 ~~corporation. Issuance of the certificate of dissolution may be by electronic transmission to any~~
6987 ~~corporation that has provided the department with an electronic mail address.~~

6988 ~~(2) If the corporation does not correct each ground for dissolution under s. 607.1420(1)(b),~~
6989 ~~(c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each~~
6990 ~~ground determined by the department does not exist within 60 days of issuance of the notice, the~~
6991 ~~department shall administratively dissolve the corporation by issuing a certificate of dissolution~~
6992 ~~that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate~~
6993 ~~of dissolution may be by electronic transmission to any corporation that has provided the~~
6994 ~~department with an electronic mail address.~~

6995 ~~(3) A corporation administratively dissolved continues its corporate existence but may not~~
6996 ~~carry on any business except that necessary to wind up and liquidate its business and affairs~~
6997 ~~under s. 607.1405 and notify claimants under ss. 607.1406 and 607.1407.~~

6998 ~~(4) A director, officer, or agent of a corporation dissolved pursuant to this section,~~
6999 ~~purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and~~
7000 ~~liabilities of the corporation arising from such action and incurred subsequent to the~~
7001 ~~corporation's administrative dissolution only if he or she has actual notice of the administrative~~
7002 ~~dissolution at the time such action is taken; but such liability shall be terminated upon the~~
7003 ~~ratification of such action by the corporation's board of directors or shareholders subsequent to~~
7004 ~~the reinstatement of the corporation under ss. 607.1401-607.14401.~~

7005 ~~(5) The administrative dissolution of a corporation does not terminate the authority of its~~
7006 ~~registered agent.~~

7007

7008

7009 **Commentary to Section 607.1421:**

7010 The substance of this section has been added to s. 607.1420 to follow the corollary FRLUCA
7011 model. As a result, this section has been eliminated.

7012 One of the subsections eliminated was subsection (4), which previously provided that:

7013 (4)A director, officer, or agent of a corporation dissolved pursuant to this section,
7014 purporting to act on behalf of the corporation, is personally liable for the debts,
7015 obligations, and liabilities of the corporation arising from such action and incurred
7016 subsequent to the corporation's administrative dissolution only if he or she has actual
7017 notice of the administrative dissolution at the time such action is taken; but such liability
7018 shall be terminated upon the ratification of such action by the corporation's board of
7019 directors or shareholders subsequent to the reinstatement of the corporation under ss.
7020 607.1401-607.14401.

7021 This subsection was not added to the corollary provisions of FRLUCA and is not in the Model
7022 Act. Its exclusion is not intended to say that a director or agent cannot be personally liable for the
7023 debts of a corporation that has been administratively dissolved, but rather to leave that topic to
7024 agency law and courts to make the determination under the particular circumstances.

7025

7026 607.1422 Reinstatement following administrative dissolution.

7027 (1) A corporation that is administratively dissolved under s. 607.1420~~4~~ or former s.
7028 607.1421 may apply to the Department of State for reinstatement at any time after the effective
7029 date of dissolution. The corporation must submit all fees and penalties then owed by the
7030 corporation at the rates provided by laws at the time the corporation applies for reinstatement,
7031 together with an application for a reinstatement form prescribed and furnished by the
7032 Department of State, which is or a current uniform business report signed by both the registered
7033 agent and an officer or director of and all fees then owed by the corporation, and states:
7034 computed at the rate provided by law at the time the corporation applies for reinstatement.

7035 (a) The name of the corporation.

7036 (b) The street address of the corporation's principal office and mailing address.

7037 (c) The date of the corporation's organization.

7038 (d) The corporation's federal employer identification number or, if none, whether
7039 one has been applied for.

7040 (e) The name, title or capacity, and address of at least one officer or director of
7041 the corporation.

7042 (f) Additional information that is necessary or appropriate to enable the
7043 department to carry out this chapter.

7044 (2) In lieu of the requirement to file an application for reinstatement as described in
7045 subsection (1), an administratively dissolved corporation may submit all fees and penalties owed
7046 by the corporation at the rates provided by law at the time the corporation applies for
7047 reinstatement, together with a current annual report, signed by both the registered agent and an
7048 officer or director of the corporation, which contains the information described in subsection (1).

7049 (3) If the department determines that an application for reinstatement contains the
7050 information required under subsection (1) or subsection (2) and that the information is correct,
7051 upon payment of all required fees and penalties, the department shall reinstate the corporation.

7052 (4) When reinstatement under this section becomes effective:

7053 (a) The reinstatement relates back to and takes effect as of the effective date of
7054 the administrative dissolution.

7055 (b) The corporation may resume its activities and affairs as if the administrative
7056 dissolution had not occurred.

7057 (c) The rights of a person arising out of an act or omission in reliance on the
7058 dissolution before the person knew or had notice of the reinstatement are not affected.

7059 ~~(2) If the Department of State determines that the application contains the information~~
7060 ~~required by subsection (1) and that the information is correct, it shall reinstate the corporation.~~

7061 ~~(3) When the reinstatement is effective, it relates back to and takes effect as of the~~
7062 ~~effective date of the administrative dissolution and the corporation resumes carrying on its~~
7063 ~~business as if the administrative dissolution had never occurred.~~

7064 (54) The name of the dissolved corporation is shall not be available for assumption or use
7065 by another business entity corporation until 1 year after the effective date of dissolution unless
7066 the dissolved corporation provides the ~~Department of State~~ with an affidavit executed as
7067 required pursuant to by s. 607.0120 permitting the immediate assumption or use of the name by
7068 another business entity corporation.²²

7069 (65) If the name of the dissolved corporation has been lawfully assumed in this state by
7070 another business entity corporation, the ~~Department of State~~ shall require the dissolved
7071 corporation to amend its articles of incorporation to change its name before accepting its
7072 application for reinstatement.²³

²² Similar to this change, the last words of s. 605.0715(5) should be changed from "limited liability company" to "business entity."

²³ This subsection is not in FRLCA, and needs to be added into FRLCA.

7073 **Commentary to Section 607.1422:**

7074 This section has been modified to make it consistent with the corollary section of FRLICA.

7075 The corollary provision of the Model Act limits administrative dissolution to a two-year period
7076 following the administrative dissolution. Florida is one of twenty-four jurisdictions, including
7077 Delaware, that do not expressly limit the period for reinstatement. Another twenty-four
7078 jurisdictions permit reinstatement for time periods between two and ten years after dissolution.
7079 This section retains the ability to reinstate a corporation at any time after dissolution.

7080

7081 607.1423 Judicial review of ~~appeal from~~ denial of reinstatement.

7082 (1) If the ~~D~~department of ~~S~~State denies a corporation's application for reinstatement after
7083 following administrative dissolution, the department ~~it~~ shall serve the corporation under s.
7084 607.0504(2) with a written notice that explains the reason or reasons for denial.

7085 (2) Within 30 days after service of a notice of denial of reinstatement, a ~~After exhaustion~~
7086 ~~of administrative remedies, the corporation may appeal the denial of reinstatement to by~~
7087 petitioning the circuit court in the applicable county to set aside the dissolution ~~the appropriate~~
7088 ~~court as provided in s. 120.68 within 30 days after service of the notice of denial is perfected~~
7089 effected. The petition must be served on the department and contain a copy of the department's
7090 notice of administrative corporation appeals by petitioning the court to set aside the dissolution
7091 ~~and attaching to the petition copies of the D~~department's ~~of State's~~ certificate of dissolution, the
7092 corporation's application for reinstatement, and the department's notice of denial.

7093 (3) The court may ~~summarily~~ order the ~~D~~department of ~~S~~State to reinstate the dissolved
7094 corporation or ~~may~~ take other action the court considers appropriate.

7095 (4) ~~The court's final decision may be appealed as in other civil proceedings.~~

7096

7097

7098 **Commentary to Section 607.1423:**

7099 This section is revised to follow the wording of the corollary section of FRLUCA.

7100 Subsection (4) was deleted. It is a rule of court that is believed to be the applicable rule whether
7101 or not expressly stated in the statute. This subsection was not added to FRLUCA when FRLUCA
7102 was adopted.

7103

7104 607.1430 Grounds for judicial dissolution.

7105 (1) A circuit court may dissolve a corporation or order such other remedy as provided
7106 in s. 607.1434:

7107 (4a) In a proceeding by the Department of Legal Affairs to dissolve a
7108 corporation if it is established that:

7109 1. The corporation obtained its articles of incorporation through fraud; or

7110 2. The corporation has continued to exceed or abuse the authority
7111 conferred upon it by law.

7112 ~~(b)~~The enumeration in subparagraphs 1. and 2. above paragraph (a) of grounds for
7113 involuntary dissolution does not exclude actions or special proceedings by the
7114 Department of Legal Affairs or any state official for the annulment or dissolution
7115 of a corporation for other causes as provided in any other statute of this state;

7116 ~~(b)(2)~~ In a proceeding by a shareholder to dissolve a corporation if it is
7117 established that:

7118 ~~(a)~~ 1. The directors are deadlocked in the management of the corporate
7119 affairs, the shareholders are unable to break the deadlock, and either (i)
7120 irreparable injury to the corporation is threatened or being suffered, (ii) the
7121 business and affairs of the corporation can no longer be conducted to the
7122 advantage of the shareholders generally because of the deadlock, or (iii) both (i)
7123 and (ii); or

7124 ~~(b)~~ 2. The shareholders are deadlocked in voting power and have failed to
7125 elect successors to directors whose terms have expired or would have expired
7126 upon qualification of their successors;

7127 ~~(3)~~ ~~In a proceeding by a shareholder or group of shareholders in a corporation~~
7128 ~~having 35 or fewer shareholders if it is established that:~~

7129 ~~(a)~~ 3. The corporate assets are being misapplied or wasted, causing
7130 material injury to the corporation; or

7131 ~~(b)~~ 4. The directors or those in control of the corporation have acted,
7132 are acting, or will ~~are reasonably expected to~~ act in a manner that is illegal,
7133 oppressive or fraudulent;

7134 ~~(4)(c)~~ In a proceeding by a creditor if it is established that:

7135 ~~(a)~~ 1. The creditor's claim has been reduced to judgment, the execution
7136 on the judgment returned unsatisfied, and the corporation is insolvent; or

7137 ~~(b)~~ 2. The corporation has admitted in writing that the creditor's claim
7138 is due and owing and the corporation is insolvent; ~~or~~

7139 ~~(5)~~(d) In a proceeding by the corporation to have its voluntary dissolution
7140 continued under court supervision; or

7141 (e) In a proceeding by a shareholder if the corporation has abandoned its
7142 business and has failed within a reasonable period of time to liquidate and distribute its
7143 assets and dissolve.

7144 (2) Subsection (1)(b) shall not apply in the case of a corporation that, on the date of the
7145 filing of the proceeding, has shares which are:

7146 (a) A covered security under section 18(b)(1)(A) or (B) of the Securities
7147 Act of 1933; or

7148 (b) Not a covered security, but are held by at least 300 shareholders and the
7149 shares outstanding have a market value of at least \$20 million (exclusive of the
7150 value of such shares held by the corporation's subsidiaries, senior executives, directors
7151 and beneficial shareholders and voting trust beneficial owners owning more than 10%
7152 of such shares).

7153 (3) A proceeding by a shareholder under paragraph (1)(b)4. asserting that the directors or those
7154 in control of the corporation have acted, are acting, or will act in a manner that is oppressive may
7155 only be brought by a shareholder who at the time that a proceeding is commenced under
7156 paragraph (1)(b)4. owns at least 10% of the outstanding shares of the corporation.

7157 (4) In the event of a deadlock situation that satisfies s. 607.1430(1)(b), if the shareholders
7158 are subject to a shareholders' agreement that complies with s. 607.0732 and contains a deadlock
7159 sale provision, then such deadlock sale provision applies to the resolution of such deadlock
7160 instead of the court entering an order of judicial dissolution or an order directing the purchase of
7161 petitioner's interest under s. 607.1436, so long as the provisions of such deadlock sale provision
7162 are initiated and effectuated within the time period for the corporation to act under s. 607.1436
7163 and in accordance with the terms of such deadlock sale provision. As used in this section, the
7164 term "deadlock sale provision" means a provision in a shareholders' agreement which is or may
7165 be applicable in the event of a deadlock among the directors or shareholders of the corporation
7166 which neither the directors nor the shareholders of the corporation are unable to break and which
7167 provides for a deadlock breaking mechanism, including, but not limited to: a purchase and sale
7168 of interests or a governance change, among or between shareholders; the sale of all or

7169 substantially all of the assets of the company; or a similar provision that, if initiated and
7170 effectuated, breaks the deadlock by causing the transfer of interests, a governance change, or the
7171 sale of all or substantially all of the company's assets.

7172 (5) For purposes of subsections (1) (2) and (3), the term "shareholder" means a record
7173 shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

7174

7175 **Commentary to Section 607.1430:**

7176 Florida largely follows the Model Act.

7177 This section changes existing law such that the rights of shareholders to petition the circuit court
7178 to seek judicial dissolution are limited to corporations other than those that are essentially public
7179 companies from current Florida law under which such rights are limited to shareholders of
7180 smaller corporations with 35 or fewer shareholders in Florida.

7181 Following the Model Act, this section adds "oppressive" conduct as a grounds for judicial
7182 dissolution and changes the prospective trigger from "reasonably expected to act" to "will act."
7183 Previously, the FBCA did not include "oppression" of minority holders as a grounds for judicial
7184 dissolution.

7185 **Background on the topic of "oppression" of minority shareholders as a ground for judicial**
7186 **dissolution**

7187 Currently, s. 607.1430 provides, among other grounds for judicial dissolution, that the directors
7188 or those in control of the corporation have acted, are acting, or are reasonably expected to act in a
7189 manner that is illegal or fraudulent. The corollary section of the Model Act (s. 14.30) includes
7190 one additional ground for judicial dissolution, "oppression of minority shareholders" and
7191 includes the higher threshold "will act" language as the prospective trigger.

7192 In 1994, when Florida's current judicial dissolution statute was adopted, there was a view among
7193 some Business Law Section members who worked on the draft that the concept of oppression
7194 was too vague and would present the possibility of vexatious litigation based on an uncertain
7195 standard. In contrast, other Business Law Section members working on the draft advocated for
7196 including the oppression provision, arguing that oppression is capable of reasonable definition
7197 and that minority shareholders might not otherwise have an adequate basis for relief in squeeze-
7198 out situations such as loss of office, salary or dividends. Such advocates also argued that the
7199 failure to include "oppression" as a grounds for judicial dissolution has a definite chilling effect
7200 on the rights of minority shareholders in Florida.

7201
7202 It is believed that some Florida courts, by applying fiduciary principles, have been able to get
7203 around the absence of "oppression" as a ground for dissolution so as to provide an equitable
7204 remedy for a minority shareholder who may have been oppressed by the majority; however, that
7205 analysis is purely anecdotal.

7206
7207 Some believe that Florida has been out of the mainstream on this issue. Today, over 35 states
7208 have adopted oppression (or some analogous language) as a ground for judicial dissolution.
7209 Some of these states have limited this particular right to seek judicial dissolution to only those
7210 shareholders who meet certain minimum ownership requirements (for example, (i) Maryland and

7211 Georgia, both of which are Model Act states, have such requirements, requiring the ownership of
7212 25% and 20% of the outstanding shares respectively, (ii) California requires the ownership of
7213 1/3rd of the outstanding shares, and (iii) New York sets a 20% ownership requirement), while
7214 others (such as California and Michigan) include language which has the effect of requiring more
7215 egregious conduct to constitute oppression or an equivalent of oppression. At the same time,
7216 certain states (such as Indiana, Nevada, North Carolina, Ohio, and Texas) have not (consistent
7217 with current Florida law) included oppression as a ground for judicial dissolution, and
7218 Massachusetts has not adopted as a grounds for dissolution any conduct other than deadlock
7219 (although Massachusetts has a closely held corporation statute that allows the parties to broadly
7220 add dissolution remedies into their articles of incorporation).

7221
7222 The Uniform Revised Limited Liability Company Act also includes "oppression of minority
7223 members" as a ground for judicial dissolution. However, when Chapter 605 was adopted, it was
7224 decided to defer the question of including this ground for judicial dissolution in the LLC statute
7225 pending consideration of the topic as part of the consideration of modifications to the FBCA, in
7226 an effort to address harmonization.

7227
7228 The issue of adding "oppression" as a ground for judicial dissolution was discussed extensively at
7229 several meetings of the Corporations, Securities and Financial Services Committee and of the
7230 Subcommittee during the summer and fall of 2017 and in early 2018. In addition to addressing the
7231 gating issue of whether to add "oppression" there was consideration given to (i) whether the term
7232 "willful" should be added before the term "oppression," (ii) whether to add "oppression" without
7233 definition (following the Model Act), leaving it to the courts to define that term or to add a definition
7234 of "oppression," considering different approaches to such a definition, (iii) whether there should be
7235 an ownership threshold to pursue judicial dissolution based on "oppression," and (iv) whether to add
7236 an express carve out from this provision for conduct permitted by a shareholders' agreement.

7237
7238 At of the Corporations, Securities and Financial Services Committee held on January 18, 2018 in
7239 conjunction with the Business Law Section's winter meeting, the following decisions were
7240 made:

- 7241
- 7242 • To follow the Model Act language and thus to add "oppression" of minority shareholders
7243 to the FBCA as a grounds for judicial dissolution;
 - 7244
 - 7245 • Not to expressly define "oppression" in the statute, or to change the definition to "willful
7246 oppression", but rather to allow the courts to define the term "oppression" over time,
7247 consistent with the Model Act and based on the extensive case law on the topic that has
7248 developed around the country;
- 7249

7250 • To provided that an action relating to “oppressive” conduct under s. 607.1430 may only be
7251 brought by a shareholder who at the time that the proceeding is commenced owns at least
7252 10% of the corporation’s outstanding shares; and
7253

7254 • Not to add an express carve out from this provision for conduct permitted by a
7255 shareholders’ agreement, but rather to allow the courts to determine when a carve out for
7256 conduct permitted by a shareholders’ agreement will apply, again consistent with the
7257 Model Act and based on the extensive case law on the topic that has developed around
7258 the country.
7259

7260 In connection with making this decision, the Committee noted certain protections in the FBCA
7261 for corporations faced with an action for judicial dissolution. First, it was noted that under s.
7262 607.1431(5), a court may award attorneys’ fees and other reasonable expenses to party who has
7263 been adversely affected by such actions if the court determines that a party who has commenced,
7264 continued, or participated in a proceeding under s. 607.1430 has acted arbitrarily, frivolously,
7265 vexatiously, or not in good faith in bringing such proceeding. Second, it was noted that the
7266 corporation has an absolute right to purchase the interest in the corporation of the petitioning
7267 shareholder for fair value under s. 607.1436, which provides the corporation and the remaining
7268 shareholders with an ability to end the litigation if they so choose.
7269

7270 607.1431 Procedure for judicial dissolution.

7271 (1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court in ~~of the~~
7272 applicable county ~~where the corporation's principal office is or was last located, as shown by the~~
7273 ~~records of the Department of State, or, if none in this state, where its registered office is or was~~
7274 ~~last located.~~

7275 (2) It is not necessary to make shareholders parties to a proceeding to dissolve a
7276 corporation unless relief is sought against them individually.

7277 (3) A court in a proceeding brought under s. 607.1430 ~~to dissolve a corporation~~ may issue
7278 injunctions, appoint a receiver or custodian ~~pendent lite~~ during the proceeding with all powers
7279 and duties the court directs, take other action required to preserve the corporate assets wherever
7280 located, and carry on the business of the corporation until a full hearing can be held.

7281 (4) Within 30 days of the commencement of a proceeding under s. 607.1430(1)(b), the
7282 corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the
7283 shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the
7284 petitioner's shares under section 607.1436 and accompanied by a copy of section 607.1436.

7285 (4~~5~~) If the court determines that any party has commenced, continued, or participated in a
7286 proceeding ~~an action~~ under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not
7287 in good faith, the court may, in its discretion, award attorney's fees and other reasonable
7288 expenses to the other parties to the action who have been affected adversely by such actions.

7289

7290 **Commentary to Section 607.1431:**

7291 With some non-material differences, subsections (1)-(3) of the FBCA match their corresponding
7292 subsections in the Model Act. Subsection (5) of the FBCA is unique to the FBCA.

7293 The FBCA did not previously include subsection (d) of the corollary provision of the Model Act,
7294 which relates to notification to shareholders of their rights to purchase the holdings of the
7295 petitioning shareholders under s. 607.1436 of the FBCA. This subsection has been added to the
7296 FBCA in new subsection (4).

7297

7298 607.1432 Receivership or custodianship.

7299 (1) A court in a judicial proceeding brought under s. 607.1430 ~~to dissolve a corporation~~
7300 may appoint one or more receivers to wind up and liquidate, or one or more custodians to
7301 manage, the business and affairs of the corporation. The court shall hold a hearing, after
7302 notifying all parties to the proceeding and any interested persons designated by the court, before
7303 appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive
7304 jurisdiction over the corporation and all of its property wherever located.

7305 (2) The court may appoint a natural person or a business entity ~~corporation~~ authorized to
7306 act as a receiver or custodian. The business entity ~~corporation~~ may be a domestic business entity
7307 ~~corporation~~ or a foreign business entity ~~corporation~~ authorized to transact business in this state.
7308 The court may require the receiver or custodian to post bond, with or without sureties, in an
7309 amount the court directs.

7310 (3) The court shall describe the powers and duties of the receiver or custodian in its
7311 appointing order, which may be amended from time to time. Among other powers:

7312 (a) The receiver:

7313 1. May dispose of all or any part of the assets of the corporation
7314 wherever located, at a public or private sale, if authorized by the court; and

7315 2. May sue and defend in his, ~~or her,~~ or its own name as receiver of the
7316 corporation in all courts of this state.

7317 (b) The custodian may exercise all of the powers of the corporation, through or
7318 in place of its board of directors or officers, to the extent necessary to manage the affairs
7319 of the corporation in the best interests of its shareholders and creditors.

7320 (4) The court during a receivership may redesignate the receiver a custodian, and
7321 during a custodianship may redesignate the custodian a receiver, if doing so is determined by the
7322 court to be in the best interests of the corporation and its shareholders and creditors.

7323 (5) The court from time to time during the receivership or custodianship may order
7324 compensation paid and expense disbursements or reimbursements made to the receiver or
7325 custodian and his, ~~or her,~~ or its counsel from the assets of the corporation or proceeds from the
7326 sale of the assets.

7327 (6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of
7328 a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state,
7329 whenever the court deems that circumstances exist requiring the appointment of such a receiver.
7330 The court may appoint such an ancillary receiver for a foreign corporation even though no

7331 receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary
7332 receivership when an order entered by a court of competent jurisdiction in the other state
7333 provides for a receivership of the corporation.

7334

7335 **Commentary to Section 607.1432:**

7336 Subsections (1)-(5) of this section of the FBCA are materially the same as their counterpart
7337 subsections in the Model Act. The only difference appears in subsection (1). The Model Act
7338 provision provides that a receiver or custodian cannot be appointed during the 90-day period in
7339 which the corporation and other shareholders are given the right in s. 607.1436 to purchase the
7340 shares of the complaining shareholder. The corollary provision of the FBCA does not include
7341 that limitation, and that limitation has not been added to this section. In exigent circumstances,
7342 the court should have the right to immediately appoint a receiver or custodian during such 90-
7343 day period, even if it turns out that the receiver or custodian can be dismissed after a purchase of
7344 the complaining shareholders' interest is completed under s. 607.1436.

7345 Subsection (6) of the FBCA has been retained in the statute even though it is not in the Model
7346 Act.

7347

7348 607.1433 Judgment of dissolution.

7349 (1) If after a hearing in a proceeding under s. 607.1430 the court determines that one or
7350 more grounds for judicial dissolution described in s. 607.1430 exist, it may enter a judgment
7351 dissolving the corporation and specifying the effective date of the dissolution, and the clerk of
7352 the court shall deliver a certified copy of the judgment to the ~~D~~epartment of ~~S~~tate, which shall
7353 file it.

7354 (2) After entering the judgment of dissolution, the court shall direct the winding up and
7355 liquidation of the corporation's business and affairs in accordance with s. 607.1405 and the
7356 notification of claimants in accordance with ss. 607.1406 and 607.1407, subject to the provisions
7357 of subsection (3).

7358 (3) In a proceeding for judicial dissolution, the court may require all creditors of the
7359 corporation to file with the clerk of the court or with the receiver, in such form as the court may
7360 prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it
7361 shall fix a date, which shall be not less than 4 months from the date of the order, as the last day
7362 for filing of claims. The court shall prescribe the method by which such notice of the deadline for
7363 filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may
7364 extend the time for the filing of claims by court order. Creditors and claimants failing to file
7365 proofs of claim on or before the date so fixed shall ~~may~~ be barred, ~~by order of court~~, from
7366 participating in the distribution of the assets of the corporation. Nothing in this section affects the
7367 enforceability of any recorded mortgage or lien or the perfected security interest or rights of a
7368 person in possession of real or personal property.

7369

7370 **Commentary to Section 607.1433:**

7371 Subsections (1) and (2) of s. 607.1433 generally follow the Model Act. One minor clean-up
7372 change was made in subsection (2) to require notice to potential claimants in accordance with s.
7373 607.1407, consistent with the Model Act language.

7374 Florida is one of nine jurisdictions (including California) that limits the claims to four months (or
7375 120 days) after the date of the order. Some other jurisdictions (including New York) provide for
7376 a six month period. The Model Act does not have a comparable subsection.

7377 607.1434 Alternative remedies to judicial dissolution.

7378 (1) In a proceeding an action for dissolution under pursuant to s. 607.1430, the court
7379 may, as an alternative to directing the dissolution of the corporation and upon a showing of
7380 sufficient merit to warrant such remedy:

7381 (a) Appoint a receiver or custodian ~~pendent lite~~ during the proceeding as
7382 provided in s. 607.1432;

7383 (b) Appoint a provisional director as provided in s. 607.1435;

7384 (c) Order a purchase of the complaining shareholder's shares pursuant to s.
7385 607.1436; or

7386 (d) Upon proof of good cause, make any order or grant any equitable relief
7387 other than dissolution ~~or liquidation~~ as in its discretion it may deem appropriate.

7388 (2) Alternative remedies, such as the appointment of a receiver or custodian, may also be
7389 ordered in the discretion of the court, upon a showing of sufficient merit to warrant such remedy,
7390 in advance of directing the dissolution of the corporation or, after a judgment of dissolution is
7391 entered, to assist in facilitating the winding up of the corporation.

7392

7393 **Commentary to s. 607.1434:**

7394 Section 607.1434 was added to the FBCA in 1994 to enumerate and clarify the alternative
7395 remedies available for actions brought under s. 607.1430. The “sufficient merit” phrase in the
7396 opening clause is intended to require that none of these remedies be imposed unless the
7397 petitioner meets the burden of proving the necessity of such relief. This section is intended to
7398 explicitly recognize the existing equity powers of courts to fashion a remedy other than
7399 dissolution in circumstances where the grounds for judicial dissolution are present.

7400 A minor change was included in subsection (2) to match a similar change made in Section
7401 607.1431(3).

7402

7403 607.1435 Provisional director.

7404 (1) In a proceeding under s. 607.1430, aA provisional director may be appointed in the
7405 discretion of the court if it appears that such action by the court will remedy the grounds alleged
7406 by the complaining shareholder to support the jurisdiction of the court under s. 607.1430. A
7407 provisional director may be appointed notwithstanding the absence of a vacancy on the board of
7408 directors, and such director shall have all the rights and powers of a duly elected director,
7409 including the right to notice of and to vote at meetings of directors, until such time as the
7410 provisional director is removed by order of the court or, unless otherwise ordered by a court,
7411 removed by a vote of the shareholders sufficient either to elect a majority of the board of
7412 directors or, if greater than majority voting is required by the articles of incorporation or the
7413 bylaws, to elect the requisite number of directors needed to take action. A provisional director
7414 shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of
7415 any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be
7416 determined by the court.

7417 (2) A provisional director shall report from time to time to the court concerning the matter
7418 complained of, or the status of the deadlock, if any, and of the status of the corporation's
7419 business, as the court shall direct. No provisional director shall be liable for any action taken or
7420 decision made, except as directors may be liable under s. 607.0831. In addition, the provisional
7421 director shall submit to the court, if so directed, recommendations as to the appropriate
7422 disposition of the action. Whenever a provisional director is appointed, any officer or director of
7423 the corporation may, from time to time, petition the court for instructions clarifying the duties
7424 and responsibilities of such officer or director.

7425 (3) In any proceeding under which a provisional director is appointed pursuant to this
7426 section, the court shall allow reasonable compensation to the provisional director for services
7427 rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts
7428 shall be paid by the corporation.

7429

7430 **Commentary to s. 607.1435:**

7431 This section was added to the FBCA in 1994. It allows a court, on its own or at the request of
7432 one of the parties, under circumstances where the court by such an action can remedy a situation
7433 under s. 607.1430, to appoint a provisional director to act with full power and authority along
7434 with the corporation's other directors. The remedy, which could be used to break a deadlock on
7435 the board of directors, is considered less intrusive on corporate management than the
7436 appointment of a receiver or custodian.

7437 Because the remedy discussed in s. 607.1435 can only be granted in connection with a suit for
7438 dissolution, a new standalone section has been added to the FBCA (s. 607.0749) to allow a court
7439 to appoint a provisional director in the event of a deadlock even if no party is seeking to dissolve
7440 the corporation.

7441

7442 607.1436 Election to purchase instead of dissolution.

7443 (1) In a proceeding under s. 607.1430(1)(b) ~~(2) or (3) to dissolve a corporation~~, the
7444 corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all
7445 shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant
7446 to this section shall be irrevocable unless the court determines that it is equitable to set aside or
7447 modify the election.

7448 (2) An election to purchase pursuant to this section may be filed with the court at any time
7449 within 90 days after the filing of the petition under s. 607.1430(1)(b) ~~(2) or (3)~~ or at such later
7450 time as the court in its discretion may allow. If the election to purchase is filed by one or more
7451 shareholders, the corporation shall, within 10 days thereafter, give written notice to all
7452 shareholders, other than the petitioner. The notice must state the name and number of shares
7453 owned by the petitioner and the name and number of shares owned by each electing shareholder
7454 and must advise the recipients of their right to join in the election to purchase shares in
7455 accordance with this section. Shareholders who wish to participate must file notice of their
7456 intention to join in the purchase no later than 30 days after the effective date of the notice to
7457 them. All shareholders who have filed an election or notice of their intention to participate in the
7458 election to purchase thereby become parties to the proceeding and shall participate in the
7459 purchase in proportion to their ownership of shares as of the date the first election was filed,
7460 unless they otherwise agree or the court otherwise directs. After an election has been filed by the
7461 corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ may
7462 not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of
7463 his or her shares, unless the court determines that it would be equitable to the corporation and the
7464 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other
7465 disposition.

7466 (3) If, within 60 days after the filing of the first election, the parties reach agreement as to
7467 the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order
7468 directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the
7469 parties.

7470 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the
7471 court, upon application of any party, may shall stay the proceeding to dissolve under s.
7472 607.1430(1)(b) ~~proceeding~~ and shall, whether or not the proceeding is stayed, determine the fair
7473 value of the petitioner's shares as of the day before the date on which the petition under s.
7474 607.1430 was filed or as of such other date as the court deems appropriate under the
7475 circumstances.

7476 (5) Upon determining the fair value of the shares, the court shall enter an order directing
7477 the purchase upon such terms and conditions as the court deems appropriate, which may include
7478 payment of the purchase price in installments, when necessary in the interests of equity,

7479 provision for security to assure payment of the purchase price and any additional costs, fees, and
7480 expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the
7481 allocation of shares among such shareholders. In allocating the petitioner's shares among holders
7482 of different classes of shares, the court shall attempt to preserve any ~~the~~ existing distribution of
7483 voting rights among holders of different classes and series insofar as practicable and may direct
7484 that holders of any a specific class or classes or series shall not participate in the purchase.
7485 Interest may be allowed at the rate and from the date determined by the court to be equitable;
7486 however, if the court finds that the refusal of the petitioning shareholder to accept an offer of
7487 payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court
7488 finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(1)(b)(3),
7489 it may award expenses to the petitioning shareholder, including reasonable fees and expenses of
7490 counsel and of any experts employed by petitioner.

7491 (6) ~~The Upon~~ entry of an order under subsection (3) or subsection (5); shall be subject to
7492 the provisions of subsection (8), and the order shall not be entered unless and until the award is
7493 determined by the court to be permitted under the provisions of subsection (8). In determining
7494 compliance with s. 607.06401, the court may rely on an affidavit from the corporation as to
7495 compliance with that section as of the measurement date. Upon entry of an order under
7496 subsection (3) or subsection (5), the court shall dismiss the petition to dissolve the corporation
7497 under s. 607.1430(1)(b) and the petitioning shareholder shall no longer have any rights or status
7498 as a shareholder of the corporation, except the right to receive the amounts awarded by the order
7499 of the court, which shall be enforceable in the same manner as any other judgment.

7500 (7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the
7501 date the order becomes final ~~unless, before that time, the corporation files with the court a notice~~
7502 ~~of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which~~
7503 ~~articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of~~
7504 ~~dissolution, the corporation shall be dissolved in accordance with the provisions of ss. 607.1405~~
7505 ~~and 607.1406, and the order entered pursuant to subsection (5) shall no longer be of any force or~~
7506 ~~effect, except that the court may award the petitioning shareholder reasonable fees and expenses~~
7507 ~~of counsel and any experts in accordance with the provisions of subsection (5) and the petitioner~~
7508 ~~may continue to pursue any claims previously asserted on behalf of the corporation.~~

7509 (8) Any award pursuant to an order under subsection (3) or subsection (5), other than an
7510 award of fees and expenses pursuant to subsection (5), is subject to the provisions of s.
7511 607.06401. Unless otherwise provided in the court's order, the effect of the distribution under s.
7512 607.06401 shall be measured as of the date of the court's order under subsection (3) or subsection
7513 (5).

7514

7515 **Comments to Section 607.1436:**

7516 This section largely follows the Model Act.

7517 Section 14.36(g) of the Model Act no longer includes the right to dissolve the corporation in lieu
7518 of completing the purchase based on the purchase price determined by the court. This change
7519 was made because the Corporate Laws Committee determined that giving the corporation the
7520 option to purchase and then reversing its course and dissolving would be unfair to petitioning
7521 shareholders and discourage them from making such petitions. The revised FBCA eliminates
7522 subsection (7) for this reason.

7523 Eliminating subsection (7) also eliminates the concerns raised by the decision in Jones v. Pfaff,
7524 77 So.3rd 884 (2nd DCA, Florida, 2012). In that case, the court determined, in a situation where
7525 the corporation elected not to complete its purchase of the petitioning shareholders' shares under
7526 s. 607.1436, but rather elected to wind up and liquidate, that such action moved the liquidation
7527 under the auspices of a voluntary dissolution and thus eliminated the jurisdiction of the court to
7528 oversee the dissolution proceedings.

7529 In subsection (4), the requirement that the court stay the dissolution proceeding while
7530 determining the fair value of the shares to be purchased has been eliminated in favor of giving
7531 the court the option to do so under appropriate circumstances. While it may be appropriate to
7532 stay the dissolution proceeding under many circumstances, this change leaves the court with the
7533 discretion to continue to monitor the activities of the corporation and to take other equitable
7534 actions, as it deems appropriate, and to continue the dissolution proceedings while the purchase
7535 process is being completed in those circumstances where the court determines that such
7536 oversight remains appropriate. That may also include, for example, the equitable power to
7537 require the corporation to post a bond where that may be reasonable or appropriate.

7538 Under subsection (8), after entry of an order under subsection (5), the petitioner is a creditor with
7539 respect to the corporation or the electing shareholder who participate in the purchase, but any
7540 payments to be made by the corporation, other than expenses awarded under s. subsection (5) fall
7541 within the definition of "distribution" under s. 607.06401. Subsection (8) provides that the
7542 evaluation of whether the "distribution" is permissible under the requirements of s. 607.06401
7543 shall be tested at the time of the order unless the order expressly provides that such determination
7544 shall be made at the time of payment. A cross reference of this section has been added to
7545 subsection (6) to make clear that the Court should consider the measurement under subsection
7546 (8) before dismissing the petition to dissolve the corporation under that subsection.

7547

7548 607.14401 Deposit with Department of Financial Services.

7549 Assets of a dissolved corporation that should be transferred to a creditor, claimant, or
7550 shareholder of the corporation who cannot be found or who is not competent to receive them
7551 shall be reduced to cash and deposited, ~~within 6 months from the date fixed for the payment of~~
7552 ~~the final liquidating distribution~~, with the Department of Financial Services for safekeeping,
7553 ~~where such assets shall be held as abandoned property~~. When the creditor, claimant, or
7554 shareholder furnishes satisfactory proof of entitlement to the amount ~~or assets~~ deposited, the
7555 Department of Financial Services shall pay such person ~~the creditor, claimant, or shareholder~~ or
7556 his or her representative that amount ~~or those assets~~.

7557

7558 **Commentary to s. 607.14401:**

7559 This provision has been modified to match the corollary provision in the Model Act.

7560

7561 ARTICLE 15

7562 FOREIGN CORPORATIONS

7563 607.1501 Authority of foreign corporation to transact business required; activities not
7564 constituting transacting business.

7565 (1) A foreign corporation may not transact business in this state until it obtains a certificate
7566 of authority from the ~~D~~department of State.

7567 (2) The following activities, among others, do not constitute transacting business within
7568 the meaning of subsection (1):

7569 (a) Maintaining, defending, mediating, arbitrating, or settling any proceeding.

7570 (b)Carrying on any activity concerning the internal affairs of the foreign
7571 corporation, including hHolding meetings of its shareholders or the board of directors or
7572 shareholders or carrying on other activities concerning internal corporate affairs.

7573 (c) Maintaining bank accounts in financial institutions.

7574 (d)Maintaining ~~officers~~ offices or agencies for the transfer, exchange, and
7575 registration of ~~the corporation's own~~ securities of the foreign corporation or maintaining
7576 trustees or depositaries with respect to those securities.

7577 (e) Selling through independent contractors.

7578 (f) Soliciting or obtaining orders, whether by mail or through employees, agents,
7579 or otherwise, if the orders require acceptance outside this state before they become
7580 contracts.

7581 (g)Creating or acquiring indebtedness, mortgages, or ~~and~~ security interests in real
7582 or personal property.

7583 (h)Securing or collecting debts or enforcing mortgages or ~~and~~ security interests in
7584 property securing the debts, and holding, protecting, or maintaining property so acquired.

7585 (i) Transacting business in interstate commerce.

7586 (j) Conducting an isolated transaction that is completed within 30 days and that is
7587 not one in the course of repeated transactions of a like nature.

7588 (k)Owning and controlling a subsidiary corporation incorporated in or limited
7589 liability company formed in, or transacting business within, this state; voting the stock of

7590 any such subsidiary corporation; or voting the membership interests of any such limited
7591 liability company, which it has lawfully acquired.

7592 (l) Owning a limited partnership interest in a limited partnership that is transacting
7593 ~~doing~~ business within this state, unless the ~~such~~ limited partner manages or controls the
7594 partnership or exercises the powers and duties of a general partner.

7595 (m) Owning, protecting and maintaining, without more, real or personal
7596 property.

7597 (3) The list of activities in subsection (2) is not an exhaustive list of activities that do not
7598 constitute transacting business within the meaning of subsection (1).

7599 (4) This section ~~has no application to the question of whether any~~ does not apply in
7600 determining the contacts or activities that may subject a foreign corporation is subject to service
7601 of process, taxation, or regulation ~~and suit in~~ under any the law of this state other than this
7602 chapter.

7603

7604 **Note to Article 15 generally:**

7605 Article 15 is largely based on the substance contained in Article 9 of FRLUCA. At the same
7606 time, a number of sections are in different places than where they are found in FRLUCA, so as to
7607 make the form of this Article 15 continue to follow the structure of the current version of Article
7608 15 in the FBCA. Further, a number of changes have been made where appropriate to integrate
7609 into Article 15 some of the modifications in the Model Act, and corollary changes in Article 9 of
7610 FRLUCA are proposed. However, the Model Act's change in terminology to reflect the
7611 registration concept in the Model Act has not been incorporated.

7612 **Commentary to Section 607.1501:**

7613 Florida substantially follows the Model Act's list of transactions that do not constitute transacting
7614 business in the state. Florida's list contains all of the transactions listed under the Model Act and
7615 adds two additional types of transactions (under subsections (2)(k) and (2)(l)) as well.
7616 Modifications have been made to reflect changes in subsection (2) from s. 605.0905 of
7617 FRLUCA. Further, subsections (a), (b), (c), (g), (h), and (m) reflect changes based on the 2016
7618 version of the Model Act.

7619 Subsection (3) does not appear in the Model Act. Modifications to this section reflect changes to
7620 bring this subsection into conformity with s. 605.0905 of FRLUCA.

7621

7622 607.15015 Governing law.

7623 (1) The law of the state or other jurisdiction under which a foreign corporation exists
7624 governs:

7625 (a) The organization and internal affairs of the foreign corporation; and

7626 (b) The interest holder liability of its shareholders.²⁴

7627 (2) A foreign corporation may not be denied a certificate of authority by reason of a
7628 difference between the laws of its jurisdiction of formation and the laws of this state.

7629 (3) A certificate of authority does not authorize a foreign corporation to engage in any
7630 business or exercise any power that a corporation may not engage in or exercise in this state.
7631

²⁴ Whether subsection (b) will be added will depend upon whether interest holder liability ends up being covered in Article 11 of the FBCA.

7632 **Commentary to Section 607.15015:**

7633 This section is based largely on the language used in s. 605.0901 of FRLICA. It also is similar
7634 to s. 15.01 of the Model Act, although it does not use the Model Act wording regarding
7635 “registration” to do business in this State. Subsection (2) is replaced in s. 607.1503(4)

7636

7637 607.1502 Effect of failure to have a certificate of ~~Consequences of transacting business~~
7638 without authority.

7639 (1) A foreign corporation transacting business in this state or its successors ~~without a~~
7640 ~~certificate of authority~~ may not maintain an action or proceeding in any court in this state until it
7641 has obtained ~~obtains~~ a certificate of authority to transact business in this state.

7642 (2) The successor to a foreign corporation that transacted business in this state without a
7643 certificate of authority and the assignee of a cause of action arising out of that business may not
7644 maintain a proceeding based on that cause of action in a any court in this state until the foreign
7645 corporation or its successor has obtained ~~obtains~~ a certificate of authority to transact business in
7646 this state.

7647 (3) A court may stay a proceeding commenced by a foreign corporation or its successor or
7648 assignee until it determines whether the foreign corporation or its successor requires a certificate
7649 of authority. If it so determines, the court may further stay the proceeding until the foreign
7650 corporation or its successor has obtained ~~obtains the~~ a certificate of authority to transact business
7651 in this state²⁵.

7652 (4) A foreign corporation which transacts business in this state without obtaining a
7653 certificate of authority ~~to do so shall be~~ is liable to this state for the years or parts thereof during
7654 which it transacted business in this state without obtaining a certificate of authority in an amount
7655 equal to all fees and penalties ~~taxes which that~~ would have been imposed by this chapter ~~aet~~
7656 upon the foreign ~~such~~ corporation had it duly applied for and received a certificate of authority to
7657 transact business in this state as required under ~~by~~ this chapter ~~aet~~. In addition to the payments
7658 thus prescribed, ~~such~~ the foreign corporation may, to the extent ordered by a court of competent
7659 jurisdiction, be ~~shall be~~ liable for a civil penalty of not less than \$500 but not ~~or~~ more than
7660 \$1,000 for each year or part thereof during which it transacts business in this state without a
7661 certificate of authority. The ~~Department of State~~ may collect all penalties due under this
7662 subsection ~~and may bring an action in circuit court to recover all penalties and fees due and~~
7663 ~~owing the state.~~

7664 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of a foreign corporation to have
7665 obtain a certificate of authority to transact business in this state does not impair the validity of
7666 any of its contracts, deeds, mortgages, security interests, or corporate acts²⁶ or prevent the
7667 foreign corporation ~~it~~ from defending an action or any proceeding in this state.

7668 (6) A shareholder, officer or director of a foreign corporation is not liable for the debts,
7669 obligations, or other liabilities of the foreign corporation solely because the foreign corporation
7670 transacted business in this state without a certificate of authority.

²⁵ Corollary changes should be made at the end of s. 605.0904(3).

²⁶ Corollary change should be made to the wording in s. 605.0904(4).

7671 (7) Section 607.15015(1) applies even if a foreign corporation fails to have a certificate of
7672 authority to transact business in this state.

7673 (8) If a foreign corporation transacts business in this state without a certificate of
7674 authority or cancels its certificate of authority, it appoints the department as its agent for service
7675 of process for rights of action arising out of the transaction of business in this state.

7676

7677 **Commentary to Section 607.1502:**

7678 This section has been harmonized with s. 605.0904 of FRLCA.

7679 The word “maintain” is defined in the commentary to s. 15.02 of the Model Act as follows:

7680 The distinction between “maintaining” and “defending” an action or proceeding is
7681 determined on the basis of whether affirmative relief is sought. Such a nonregistered
7682 foreign corporation may interpose any defense or permissive or mandatory counterclaim to
7683 defeat a claimed recovery, but may not obtain a judgment based on the counterclaim until it
7684 has registered.

7685 The word “maintain” in the derivative action sections of Article 7 is used in a different context
7686 than the context in which it is used in Article 15. The use of the same word in Article 7 (which
7687 deals with maintaining an interest in the corporation during the pendency of the derivative action
7688 proceeding) should not be confused with the way the word "maintain" is being used in Article
7689 15.

7690 The changes to subsection (4) clarifying when payment of the described penalty is required
7691 reflects the current position of the Department of State not to collect this penalty unless required
7692 to do so by a court of competent jurisdiction.

7693

7694 607.1503 Application for certificate of authority.

7695 (1) A foreign corporation may apply for a certificate of authority to transact business in
7696 this state by delivering an application to the ~~D~~department of State for filing. Such application
7697 shall be made on forms prescribed ~~and furnished~~ by the ~~D~~department of State. The application
7698 must contain the following and shall set forth:

7699 (a) ~~The name of the foreign corporation and, as long as its name satisfies the~~
7700 ~~requirements of if the name does not comply with s. 607.0401, an alternate name adopted~~
7701 ~~pursuant to but if its name does not satisfy such requirements, a corporate name that~~
7702 ~~otherwise satisfies the requirements of s. 607.1506.;~~
(a) The name of the foreign corporation and, as long as its name satisfies the requirements of s. 607.0401, an alternate name adopted pursuant to but if its name does not satisfy such requirements, a corporate name that otherwise satisfies the requirements of s. 607.1506.;

7703 (b) ~~The name of the foreign corporation's jurisdiction of incorporation under the~~
7704 ~~law of which it is incorporated.;~~
(b) The name of the foreign corporation's jurisdiction of incorporation under the law of which it is incorporated.;

7705 (c) Its date of incorporation and period of duration;

7706 (d) ~~The principal office and mailing street address of the foreign corporation its~~
7707 ~~principal office.;~~
(d) The principal office and mailing street address of the foreign corporation its principal office.;

7708 (e) ~~The name and street address of its registered office in this state of, and the~~
7709 ~~written acceptance by, the foreign corporation's initial and the name of its registered~~
7710 ~~agent at that office in this state.;~~
(e) The name and street address of its registered office in this state of, and the written acceptance by, the foreign corporation's initial and the name of its registered agent at that office in this state.;

7711 (f) The names and usual business addresses of its current directors and officers.;

7712 (g) ~~Such a~~ Additional information as may be necessary or appropriate in order to
7713 enable the ~~D~~department of State to determine whether the foreign ~~such~~ corporation is
7714 entitled to file an application for certificate of authority to transact business in this state
7715 and to determine and assess the fees ~~and taxes~~ payable as prescribed in this chapter ~~aet~~.

7716 (2) The foreign corporation shall deliver with ~~a~~ the completed application under
7717 subsection (1) a certificate of existence or a record (~~or a document~~ of similar import), duly
7718 authenticated, not more than 90 days prior to delivery of the application to the ~~D~~department of
7719 State signed by the secretary of state or other official having custody of the foreign corporation's
7720 publicly filed ~~corporate~~ records in its ~~the~~ jurisdiction of incorporation ~~under the law of which it is~~
7721 ~~incorporated~~. A translation of the certificate, under oath of the translator, must be attached to a
7722 certificate which is in a language other than the English language.

7723 (3) ~~A foreign corporation shall not be denied authority to transact business in this state~~
7724 ~~by reason of the fact that the laws of the jurisdiction under which such corporation is organized~~
7725 ~~governing its organization and internal affairs differ from the laws of this state.~~
(3) A foreign corporation shall not be denied authority to transact business in this state by reason of the fact that the laws of the jurisdiction under which such corporation is organized governing its organization and internal affairs differ from the laws of this state.

7726 **Commentary to Section 607.1503:**

7727 This section is harmonized with s. 605.0902 of FRLCA.

7728 The requirement for an English transaction in subsection (2) is consistent with the language in s.
7729 607.0120(5).

7730

7731 607.1504 Amended certificate of authority.

7732 (1) A foreign corporation authorized to transact business in this state shall deliver for
7733 filing an amendment to its make application to the Department of State to obtain an amended
7734 certificate of authority to reflect a change in any of the following if it changes:

7735 (a) ~~Its corporate name on the records of the department.;~~

7736 (b) ~~The period of its duration; or~~

7737 (e) The jurisdiction of its incorporation.

7738 (c) The name and street address in this state of the foreign corporation's registered
7739 agent in this state, unless the change was timely made in accordance with s. 607.0502 or
7740 s. 607.0503.²⁷

7741 (2) The amendment must be filed within 90 days²⁸ after the occurrence of a change
7742 described in subsection (1), must be signed by an officer of the foreign corporation, and must
7743 state the following ~~Such application shall be made within 90 days after the occurrence of any~~
7744 ~~change mentioned in subsection (1), shall be made on forms prescribed by the Department of~~
7745 ~~State, and shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver~~
7746 ~~with the completed application, a certificate, or a document of similar import, authenticated as of~~
7747 ~~a date not more than 90 days prior to delivery of the application to the Department of State by~~
7748 ~~the Secretary of State or other official having custody of corporate records in the jurisdiction~~
7749 ~~under the laws of which it is incorporated, evidencing the amendment. A translation of the~~
7750 ~~certificate, under oath or affirmation of the translator, must be attached to a certificate that is in a~~
7751 ~~language other than English. The application shall set forth:~~

7752 (a) ~~The name of the foreign corporation as it appears on the records of the~~
7753 ~~D~~epartment of State.

7754 (b) The jurisdiction of its incorporation.

7755 (c) The date the foreign corporation ~~it~~ was authorized to do business in this state.

7756 (d) ~~If the name of the foreign corporation has been changed, the name~~
7757 ~~relinquished, the~~ and its new name, a statement that the change of name has been effected

²⁷ Subsection (d) of s. 605.0909(1), requiring changes to managers or members to be disclosed in an amended certificate of authority, should be removed from that statute.

²⁸ The corollary provision in FRLCA has a 30 day period. Consistent with the prior Act, a 90 day period is considered more appropriate, and, as a result, the corollary provision in FRLCA should be modified to use the same 90 day period.

7758 ~~under the laws of the jurisdiction of its incorporation, and the date the change was~~
7759 ~~effected.~~

7760 (e) If the amendment changes its period of duration, a statement of such change.

7761 (f) If the amendment changes the jurisdiction of incorporation of the foreign
7762 corporation, a statement of that ~~such~~ change.

7763 (3) The requirements of s. 607.1503²⁹ for obtaining an original certificate of authority apply
7764 to obtaining an amended certificate under this section unless the Secretary of State or other
7765 official having custody of the foreign corporation's publicly filed records in its jurisdiction of
7766 incorporation did not require an amendment to effectuate the change on its records.

7767 (4) Subject to subsection (3), a foreign corporation authorized to do business in this state
7768 may make application to the department to obtain an amended certificate of authority to add,
7769 remove, or change the name, title, capacity, or address of an officer or director of the foreign
7770 corporation.

7771

7772

²⁹ The reference in s. 605.0907(4) of FRLCA is to subsection (2) of 605.0902 (Application for certificate of authority). The reference in this subsection (3) is to s. 607.1503 generally and not just to subsection (2) of s. 607.1503. The corollary FRLCA provision should remove the reference to subsection (2).

7773 **Commentary to Section 607.1504:**

7774 This section has been harmonized with s. 605.0907 of FRLCA.

7775

7776 607.1505 Effect of a certificate of authority.

7777 (1) Unless the department determines that an application for a A certificate of authority of a
7778 authorizes the foreign corporation to which it is issued to transact business in this state does not
7779 comply with the filing requirements of this chapter, subject, however, to the right of the
7780 Department of State shall, upon payment of all filing fees, authorize the foreign corporation to
7781 transact business in this state and file the application for to suspend or revoke the certificate of
7782 authority as provided in this act.

7783 (2) The filing by the department of an application for a certificate of authority means that
7784 the foreign corporation that filed³⁰ the application to transact business in this state has obtained a
7785 certificate of authority to transact business in this state and is authorized to transact business in
7786 this state, subject, however, to the right of the department to suspend or revoke the certificate of
7787 authority as provided in this chapter.³¹ A foreign corporation with a valid certificate of authority
7788 has the same but no greater rights and has the same but no greater privileges as, and except as
7789 otherwise provided by this act is subject to the same duties, restrictions, penalties, and liabilities
7790 now or later imposed on, a domestic corporation of like character.

7791 (3) ~~This act does not authorize this state to regulate the organization or internal affairs of a~~
7792 ~~foreign corporation authorized to transact business in this state.~~

7793

³⁰ The word "files" in s. 605.0903(2) should be changed to "filed".

³¹ The language in subsection (2) above is based in large part on the language from subsection (2) of 605.0903 of FRLUCA, but has been further refined to more clearly identify the effect of an acceptance of a filing by the Department of State. Section 605.0903(2) should be modified in the same manner as changed in subsection (2) above.

7794 **Commentary to Section 607.1505:**

7795 This section has been harmonized with s. 605.0903 of FRLCA.

7796 The language deleted in subsection (2) is now covered in s. 607.15015(3). While the language
7797 used in that section is slightly different than the wording in the existing FBCA (based on the
7798 wording in the corollary section of FRLCA), it is not intended to be a substantive change to
7799 existing law.

7800

7801 607.1506 Corporate name of foreign corporation.

7802 (1) A foreign corporation whose name is unavailable under or whose name does is-not
7803 otherwise comply with entitled to file an application for a certificate of authority unless the
7804 corporate name of such foreign such corporation satisfies the requirements of s. 607.0401 shall³²
7805 use an alternate name that complies with . If the corporate name of a foreign corporation does not
7806 satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a
7807 certificate of authority to transact business in this state. An alternate name adopted for use in
7808 this state shall be cross-referenced to the actual name of the foreign corporation in the records of
7809 the department, provided that no cross reference is required if the alternate name involves no
7810 more than adding the suffix “corporation,” “company,” or “incorporated” or the abbreviation
7811 “Corp.,” or “Inc.,” or Co.” or the designation “Corp.,” or “Inc.” or “Co.” to the name. If the
7812 actual name of the foreign corporation subsequently becomes available in this state and the
7813 foreign corporation elects to operate in this state under its actual name, or the foreign corporation
7814 chooses to change its alternate name, a record approving the election or change, as the case may
7815 be, by its directors or shareholders, and executed as required pursuant to s. 607.0120, shall be
7816 delivered to the department for filing.

7817 (a) ~~May add the word “corporation,” “company,” or “incorporated” or the~~
7818 ~~abbreviation “Corp.,” or “Inc.,” or “Co.,” or the designation “Corp.,” or “Inc.,” or “Co.,” as~~
7819 ~~will clearly indicate that it is a corporation instead of a natural person, partnership, or~~
7820 ~~other business entity; or~~

7821 (b) ~~May use an alternate name to transact business in this state if its real name is~~
7822 ~~unavailable. Any such alternate corporate name, adopted for use in this state, shall be~~
7823 ~~cross-referenced to the real corporate name in the records of the Division of~~
7824 ~~Corporations. If the corporation’s real corporate name becomes available in this state or~~
7825 ~~the corporation chooses to change its alternate name, a copy of the resolution of its board~~
7826 ~~of directors changing or withdrawing the alternate name, executed as required by s.~~
7827 ~~607.0120, shall be delivered for filing.~~

7828 (2) A The corporate name (including the alternate name) of a foreign corporation that
7829 adopts an alternate name under subsection (1) and obtains a certificate of authority with the
7830 alternate name need not comply with s. 865.09 with respect to the alternate name. must be
7831 distinguishable upon the records of the Division of Corporations from:

7832 (a) ~~Any corporate name of a corporation incorporated or authorized to transact~~
7833 ~~business in this state;~~

³² A corollary change should be made to s. 605.0906 to change the word “may” to “shall”.

7834 ~~(b)The alternate name of another foreign corporation authorized to transact~~
7835 ~~business in this state;~~

7836 ~~(c)The corporate name of a not for profit corporation incorporated or authorized~~
7837 ~~to transact business in this state; and~~

7838 ~~(d)The names of all other entities or filings, except fictitious name registrations~~
7839 ~~pursuant to s. 865.09, organized or registered under the laws of this state that are on file~~
7840 ~~with the Division of Corporations.~~

7841 (3) So long as a foreign corporation maintains a certificate of authority with an alternate
7842 name, a foreign corporation shall transact business in this state under the alternate name unless
7843 the corporation is authorized under s. 865.09 to transact business in this state under another
7844 name.

7845 (4) If a foreign corporation authorized to transact business in this state changes its
7846 corporate name to one that does not comply with satisfy the requirements of s. 607.0401, it may
7847 not thereafter transact business in this state under the changed name until it complies with
7848 subsection (1) adopts a name satisfying the requirements of s. 607.0401 and obtains an amended
7849 certificate of authority under s. 607.1504³³.

7850 (5) Notwithstanding the foregoing, a foreign corporation may register under a name
7851 that is not otherwise distinguishable on the records of the department with the written consent of
7852 the other entity if the consent is filed with the department at the time of registration of such name
7853 and if such name is not identical to the name of the other entity.

7854

³³ The reference to the section of FRLCA that is the corollary section to s. 607.1504 (s. 605.0907 of FRLCA) does not include a reference to the section dealing with an amended certificate of authority. A similar reference should be added to s. 605.0906(4).

7855 **Commentary for Section 607.1506:**

7856 This section has been harmonized with s. 605.0906 of FRLCA.

7857 Subsection (5), consistent with s. 607.0401(1)(e) with respect to domestic corporations, allows a
7858 name otherwise unavailable to be used by consent. The section also provides that the department
7859 shall deny such a request if the name of the entity requested with consent is identical to the name
7860 of the other entity.

7861
7862 **Twenty-four jurisdictions, including Connecticut, Massachusetts and New York, permit a**
7863 **corporation that is a party to a merger, reorganization, or sale of assets to use the name that it**
7864 **would otherwise be unavailable if it is the name of another party to the transaction that is to**
7865 **disappear or change its name pursuant to the transaction, as set forth in subsection (d) of the**
7866 **Model Act. Should we add such a provision to the FBCA³⁴?**

7867

³⁴ **To be taken up when the Subcommittee considers Articles 9,11, 12 and 13.**

7868 607.1507 Registered office and registered agent of foreign corporation.

7869 (1) Each foreign corporation authorized to transact business in this state shall designate and
7870 ~~must~~ continuously maintain in this state:

7871 (a) A registered office, which ~~that~~ may be the same as ~~any~~ of its places of business
7872 in this state; and

7873 (b) A registered agent, which must ~~who may~~ be:

7874 1. An individual who resides in this state and whose business address
7875 office is identical to the address of ~~with~~ the registered office; or

7876 2. A domestic entity which is an authorized entity and whose business
7877 address is identical to the address of the registered office, or another foreign entity
7878 authorized to transact business in this state which is an authorized entity and
7879 whose business address ~~corporation or not for profit corporation as defined in~~
7880 ~~chapter 617, the business office of which~~ is identical to the address of ~~with~~ the
7881 registered office; ~~or~~

7882 3. ~~Another foreign corporation or foreign not for profit corporation~~
7883 ~~authorized pursuant to this chapter or chapter 617, to transact business or conduct~~
7884 ~~its affairs in this state the business office of which is identical with the registered~~
7885 ~~office.~~

7886 (2) This section does not apply to corporations which are required by law to designate the
7887 Chief Financial Officer as their attorney for the service of process, associations subject to the
7888 provisions of chapter 665, and banks and trust companies subject to the provisions of the
7889 financial institutions codes.

7890 (32) Each initial A-registered agent, and each appointed pursuant to this section or a
7891 successor registered agent that is appointed, pursuant to s. 607.1508 on whom process may be
7892 served shall each file a statement in writing with the Department of State, in the such form and
7893 manner as shall be prescribed by the department, accepting the appointment as a-registered agent
7894 while simultaneously with his or her being designated as the registered agent. The Such
7895 statement of acceptance must provide shall state that the registered agent is familiar with, and
7896 accepts, the obligations of that position.

7897 (4) The duties of a registered agent are as follows:

7898 (a) To forward to the foreign corporation at the address most recently
7899 supplied to the registered agent by the foreign corporation, a process, notice or demand
7900 pertaining to the foreign corporation which is served on or received by the registered agent;

7901 (b) If the registered agent resigns, to provide the notice required under s.
7902 607.1509 to the foreign corporation at the address most recently supplied to the registered
7903 agent by the foreign corporation.

7904 (5) The department shall maintain an accurate record of the registered agents and
7905 registered offices for the service of process and shall promptly furnish any information disclosed
7906 thereby promptly upon request and payment of the required fee.

7907 (6) A foreign corporation may not prosecute or maintain any action in a court in this state
7908 until the foreign corporation complies with the provisions of this section, pays to the department
7909 the amounts required by this chapter, and, to the extent ordered by a court of competent
7910 jurisdiction, pays to the department a penalty of \$5 for each day it has failed to so comply or
7911 \$500, whichever is less.

7912 (7) A court may stay a proceeding commenced by a foreign corporation until the
7913 corporation complies with this section.

7914

7915

7916 **Commentary to Section 607.1507:**

7917 This section has been harmonized with s. 607.0501 of the FBCA.

7918 The change to subsection (1)(a) is to make it consistent with s. 607.0501 of the FBCA and the
7919 corollary section of FRLCA. It is not intended to a substantive change.

7920 New subsection (6) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
7921 commenced by a corporation until the corporation complies with this section. The change in
7922 subsection (6) relating to payment of a penalty reflects the current position of the Department of
7923 State not to collect this penalty unless required to do so by a court of competent jurisdiction.

7924

7925 607.1508 Change of registered office and registered agent of foreign corporation.

7926 (1) In order to change its registered agent or registered office address, a foreign
7927 corporation authorized to transact business in this state may deliver change its registered office
7928 or registered agent by delivering to the Department of State for filing a statement of change
7929 containing the following that sets forth:

7930 (a) The ~~its~~ name of the foreign corporation.;

7931 (b) The name ~~street address~~ of its current registered office.;

7932 (c) If the current registered agent is to be changed, the name of the new registered
7933 agent.

7934 (d) The street address of its current registered office for its current³⁵ registered
7935 agent.

7936 (e) If the street address of the current registered office is to be changed, the new
7937 street address of the ~~its new~~ registered office;

7938 (d) ~~The name of its current registered agent;~~

7939 (e) ~~If the current registered agent is to be changed, the name of its new registered~~
7940 ~~agent and the new agent's written consent (either on the statement or attached to it) to the~~
7941 ~~appointment;~~

7942 (f) ~~That, after the change or changes are made, the street address of its registered~~
7943 ~~office and the business office of its registered agent will be identical; and~~

7944 (g) ~~That such change was authorized by resolution duly adopted by its board of~~
7945 ~~directors or by an officer of the corporation so authorized by the board of directors.~~

7946 (2) ~~If a registered agent changes the street address of her or his business office, she or he~~
7947 ~~may change the street address of the registered office of any foreign corporation for which she or~~
7948 ~~he is the registered agent by notifying the corporation in writing of the change and signing (either~~
7949 ~~manually or in facsimile) and delivering to the Department of State for filing a statement of~~
7950 ~~change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the~~
7951 ~~corporation has been notified of the change. If the registered agent is changed, the written~~
7952 ~~acceptance of the successor registered agent described in s. 607.1507(3) must also be included in~~
7953 ~~or attached to the statement of change.~~

7954 (3) A statement of change is effective when filed by the department.

³⁵ Add the word "current" in the same places in s. 605.0114(1)(d) as it is used here and in s. 607.0502(1).

7955 (4) The changes described in this section may also be made on the foreign corporation's
7956 annual report or in an application for reinstatement filed with the department under s. 607.1622.
7957

7958 **Commentary to Section 607.1508:**

7959 This section has been harmonized with s. 607.0502 of the FBCA and s. 605.0114 of FRLCA.

7960

7961 607.1509 Resignation of registered agent of foreign corporation.

7962 (1) A registered agent may resign as agent for a foreign corporation by delivering to the
7963 department for filing a signed statement of resignation containing the name of the foreign
7964 corporation. The registered agent of a foreign corporation may resign his or her agency
7965 appointment by signing and delivering to the Department of State for filing a statement of
7966 resignation and mailing a copy of such statement to the corporation at the corporation's principal
7967 office address shown in its most recent annual report or, if none, shown in its application for a
7968 certificate of authority or other most recently filed document. The statement of resignation must
7969 state that a copy of such statement has been mailed to the corporation at the address so stated.
7970 The statement of resignation may include a statement that the registered office is also
7971 discontinued.

7972 (2) After delivering the statement of resignation to the department for filing, the registered
7973 agent shall promptly mail a copy to the foreign corporation at its current mailing address. The
7974 agency appointment is terminated as of the 31st day after the date on which the statement was
7975 filed and, unless otherwise provided in the statement, termination of the agency acts as a
7976 termination of the registered office.

7977 (3) A registered agent is terminated upon the earlier of:

7978 (a) The 31st day after the department files the statement of resignation; or

7979 (b) When a statement of change or other record designating a new registered
7980 agent is filed by the department.

7981 (4) When a statement of resignation takes effect, the registered agent ceases to have
7982 responsibility for a matter thereafter tendered to it as agent for the foreign corporation. The
7983 resignation does not affect contractual rights that the foreign corporation has against the agent or
7984 that the agent has against the foreign corporation.

7985 (5) A registered agent may resign from a foreign corporation regardless of whether the
7986 foreign corporation has active status.

7987

7988 **Commentary to Section 607.1509:**

7989 This section has been harmonized with s. 607.0503 of the FBCA and s. 605.0115 of FRLCA.

7990

- 7991 607.15091. Change of name or address by registered agent.
- 7992 (1) If a registered agent changes his or her name or address, the agent may deliver to the
- 7993 department for filing a statement of change that provides the following:
- 7994 (a) The name of the foreign corporation represented by the registered agent.
- 7995 (b) The name of the registered³⁶ agent as currently shown in the records of the
- 7996 department for the corporation.
- 7997 (c) If the name of the registered agent has changed, its new name.
- 7998 (d) If the address of the registered agent has changed, the new address.
- 7999 (e) A statement that the registered agent has given the notice required under
- 8000 subsection (2).
- 8001 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 8002 changes made by the statement filed with the department to the represented foreign corporation.
- 8003

³⁶ Add the word "registered" before the word "agent" in s. 605.0116(1)(b), (c), and (d).

8004 **Commentary to Section 607.15091:**

8005 This section has been harmonized with s. 607.05031 of the FBCA. It replaces s. 607.1509(2).

8006

8007 607.15092. Delivery of notice or other communication.

8008 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
8009 or other communication includes delivery by hand, the United States Postal Service, a
8010 commercial delivery service, and electronic transmission, all as more particularly described in s.
8011 607.0141.

8012 (2) Except as provided in subsection (3), delivery to the department is effective only when
8013 a notice or other communication is received by the department.

8014 (3) If a check is mailed to the department for payment of an annual report fee or the annual
8015 supplemental³⁷ fee required under s. 607.193, the check shall be deemed to have been received
8016 by the department as of the postmark date appearing on the envelope or package transmitting the
8017 check if the envelope or package is received by the department.

8018

³⁷ The word “supplemental” should also be added to s. 605.0118(3).

8019 **Commentary to Section 607.15092:**

8020 This section has been harmonized with s. 607.05032 of the FBCA which, in turn, was derived
8021 from s. 605.0118 of FRLCA. It is new to the FBCA.

8022

8023 607.15101 Service of process, notice, or demand on a foreign corporation.

8024 (1) A foreign corporation may be served with process required or authorized by law by
8025 serving on its registered agent.

8026 (2) If a foreign corporation ceases to have a registered agent or if its registered agent
8027 cannot with reasonable diligence be served, the process required or permitted by law may instead
8028 be served on the chair of the board, the president, any vice president, the secretary, or the
8029 treasurer of the foreign corporation at the principal office of the foreign corporation in this state.

8030 (3) If the process cannot be served on a foreign corporation pursuant to subsection (1)
8031 or subsection (2), the process may be served on the department as an agent of the foreign
8032 corporation.

8033 (4) Service of process on the department may be made by delivering to and leaving
8034 with the department duplicate copies of the process.

8035 (5) Service is effectuated under subsection (3) on the date shown as received by the
8036 department.

8037 (6) The department shall keep a record of each process, notice, and demand served
8038 pursuant to this section and record the time of and the action taken regarding the service.³⁸

8039 (7) Any notice or demand on a foreign corporation under this chapter may be given or
8040 made to the chair of the board, the president, any vice president, the secretary, or the treasurer of
8041 the foreign corporation; to the registered agent of the foreign corporation at the registered office
8042 of the foreign corporation in this state; or to any other address in this state that is in fact the
8043 principal office of the foreign corporation in this state.

8044 (8) This section does not affect the right to serve process, give notice, or make a
8045 demand in any other manner provided by law.

8046 ~~The registered agent of a foreign corporation authorized to transact business in this state~~
8047 ~~is the corporation's agent for service of process, notice, or demand required or permitted by law~~
8048 ~~to be served on the foreign corporation.~~

8049 ~~(2) A foreign corporation may be served by registered or certified mail, return receipt~~
8050 ~~requested, addressed to the secretary of the foreign corporation at its principal office shown in its~~
8051 ~~application for a certificate of authority or in its most recent annual report if the foreign~~
8052 ~~corporation:~~

³⁸ What is the Department's obligation to transmit the service to the foreign corporation?

8053 ~~(a) Has no registered agent or its registered agent cannot with reasonable diligence~~
8054 ~~be served;~~

8055 ~~(b) Has withdrawn from transacting business in this state under s. 607.1520; or~~

8056 ~~(c) Has had its certificate of authority revoked under s. 607.1531.~~

8057 ~~(3) — Service is perfected under subsection (2) at the earliest of:~~

8058 ~~(a) The date the foreign corporation receives the mail;~~

8059 ~~(b) The date shown on the return receipt, if signed on behalf of the foreign~~
8060 ~~corporation; or~~

8061 ~~(c) Five days after its deposit in the United States mail, as evidenced by the~~
8062 ~~postmark, if mailed postpaid and correctly addressed.~~

8063 ~~(4) — This section does not prescribe the only means, or necessarily the required means,~~
8064 ~~of serving a foreign corporation. Process against any foreign corporation may also be served in~~
8065 ~~accordance with chapter 48 or chapter 49.~~

8066 ~~(5) — Any notice to or demand on a foreign corporation made pursuant to this act may be~~
8067 ~~made in accordance with the procedures for notice to or demand on domestic corporations under~~
8068 ~~s. 607.0504.~~

8069

8070 **Commentary to Section 607.15101:**

8071 This section has been harmonized with s. 607.0504 of the FBCA.

8072

8073 607.1520 Withdrawal and cancellation of certificate of authority for of foreign
8074 corporation.

8075 (1) To cancel its certificate of authority to transact business in this state, a foreign
8076 corporation must deliver to the department for filing a notice of withdrawal of certificate of
8077 authority. The certificate of authority³⁹ is canceled when the notice of withdrawal becomes
8078 effective pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be
8079 signed by an officer or director and state the following:

8080 (a) The name of the foreign corporation as it appears on the records of the
8081 department.

8082 (b) The name of the foreign corporation's jurisdiction of incorporation.

8083 (c) The date the foreign corporation was authorized to transact business in this
8084 state.

8085 (d) That⁴⁰ the foreign corporation is withdrawing its certificate of authority in
8086 this state.

8087 (e) That it revokes the authority of its registered agent to accept service on its
8088 behalf and appoints the department as its agent for service of process based on a cause of
8089 action arising during the time it was authorized to transact business in this state;

8090 (f) A mailing address to which the department may mail a copy of any process
8091 served on it under paragraph (e); and

8092 (g) A commitment to notify the department in the future of any change in its
8093 mailing address.

8094 ~~A foreign corporation authorized to transact business in this state may not withdraw from~~
8095 ~~this state until it obtains a certificate of withdrawal from the Department of State.~~

8096 ~~(2) — A foreign corporation authorized to transact business in this state may apply for a~~
8097 ~~certificate of withdrawal by delivering an application to the Department of State for filing. The~~
8098 ~~application shall be made on forms prescribed and furnished by the Department of State and~~
8099 ~~shall set forth:~~

8100 ~~(a) The name of the foreign corporation and the jurisdiction under the law of~~
8101 ~~which it is incorporated;~~

³⁹ The words "of authority" should also be added to the second sentence of s. 605.0910.

⁴⁰ The word "that" should also be added in the same manner to s. 605.0910(4) of FRLCA.

8102 ~~(b)That it is not transacting business in this state and that it surrenders its~~
8103 ~~authority to transact business in this state;~~

8104 ~~(c)That it revokes the authority of its registered agent to accept service on its~~
8105 ~~behalf and appoints the Department of State as its agent for service of process based on a~~
8106 ~~cause of action arising during the time it was authorized to transact business in this state;~~

8107 ~~(d)A mailing address to which the Department of State may mail a copy of any~~
8108 ~~process served on it under paragraph (c); and~~

8109 ~~(e)A commitment to notify the Department of State in the future of any change in~~
8110 ~~its mailing address.~~

8111 ~~(23)~~⁴¹ After the withdrawal of the foreign corporation is effective, service of process on
8112 the ~~D~~department of State under this section is service on the foreign corporation. Upon receipt of
8113 the process, the ~~D~~department of State shall mail a copy of the process to the foreign corporation
8114 at the mailing address set forth under subsection ~~(1)(f)~~ ~~(2)~~.

8115

⁴¹ Add this subsection (2) to FRLUCA s. 605.0910.

8116 **Commentary to Section 607.1520:**

8117 This section has been harmonized with s. 605.0910 of FRLCA.

8118

8119 607.1521 Withdrawal deemed on conversion to domestic filing entity.

8120 A foreign corporation authorized to transact business in this state that converts to a
8121 domestic corporation or another domestic entity that is organized, incorporated, registered or
8122 otherwise formed through the delivery of a record to the department for filing is deemed to have
8123 withdrawn its certificate of authority on the effective date of the conversion.⁴²

8124

⁴² Harmonize this language in s. 605.0911 of FRLCA.

8125 **Commentary to Section 607.1521:**

8126 This section is new to the FBCA. It is based on s. 605.0911 of FRLCA and s. 15.08 of the
8127 Model Act.

8128

8129 607.1522 Withdrawal on dissolution, merger, or conversion to **certain** nonfiling
8130 entities.

8131
8132 (1) A foreign corporation that is authorized to transact business in this state that has
8133 dissolved and completed winding up, has merged into a foreign entity that is not authorized to
8134 transact business in this state, or has converted to a domestic or foreign entity that is not
8135 organized, incorporated, registered or otherwise formed through the public filing of a record,
8136 shall deliver a notice of withdrawal of certificate of authority to the department for filing in
8137 accordance with s. 607.1520.

8138 (2) After a withdrawal under this section of a foreign corporation that has converted to
8139 another type of entity is effective, service of process in any action or proceeding based on a
8140 cause of action arising during the time the foreign corporation was authorized to transact⁴³
8141 business in this state may be made pursuant to s. 607.15101.

8142

⁴³ The corollary FRLCA provision uses the words "do business". The FRLCA provision should be conformed to this section.

8143 **Commentary to Section 607.1522:**

8144 This section is new to the FBCA. It is based on s. 605.0912 of FRLCA and s. 15.09 of the
8145 Model Act.

8146

8147 607.1523 Action by Department of Legal Affairs.

8148

8149 The Department of Legal Affairs may maintain an action to enjoin a foreign corporation
8150 from transacting business in this state in violation of this chapter.

8151

8152 **Commentary to Section 607.1523:**

8153 This section is new to the FBCA. It is based on s. 605.0913 of FRLCA and s. 15.12 of the
8154 Model Act.

8155

8156 607.1530 ~~Grounds for~~ Revocation of certificate of authority to transact business.

8157 (1) ~~A The Department of State may commence a proceeding under s. 607.1531 to~~
8158 ~~revoke the certificate of authority of a foreign corporation authorized to transact business in this~~
8159 ~~state may be revoked by the department if:~~

8160 (a~~1~~) The foreign corporation does not deliver ~~has failed to file~~ its annual report
8161 ~~to with the Department of State by 5 p.m. Eastern Time on the third Friday in September~~
8162 ~~of each year;~~

8163 (b~~2~~) The foreign corporation does not pay, ~~within the time required by this act,~~
8164 ~~any a fees, taxes, or penalty penalties due to the department under this chapter imposed~~
8165 ~~by this act or other law;~~

8166 (c~~3~~) The foreign corporation does not appoint and maintain a ~~is without a~~
8167 ~~registered agent as required by s. 607.1507; or registered office in this state for 30 days or~~
8168 ~~more.~~

8169 (d~~4~~) The foreign corporation does not deliver for filing a statement of a change
8170 ~~under notify the Department of State under s. 607.1508 within 30 days after the change in~~
8171 ~~the name or address of the agent has occurred⁴⁴, unless, within 30 days after the change~~
8172 ~~occurred either; or s. 607.1509 that its registered agent has resigned or that its registered~~
8173 ~~office has been discontinued within 30 days of the resignation or discontinuance.~~

8174 1. The registered agent files a statement of change under s. 607.15091;
8175 or

8176 2. The change was made in accordance with s. 607.1508 or s.
8177 607.1503(1)(e);

8178 (e)The foreign corporation has failed to amend its certificate of authority to
8179 reflect a change in its name on the records of the department or its jurisdiction of
8180 incorporation;

8181 (f)The foreign corporation's period of duration stated in its articles of
8182 incorporation has expired;

8183 (g~~5~~) An incorporator, director, officer, or agent of the foreign corporation signs
8184 signed a document that she or he knew was false in a ~~any~~ material respect with the intent
8185 that the document be delivered to the Department of State for filing;

⁴⁴ Make a corresponding change in s. 605.0908(1)(d) of FRLCA.

8186 (h~~6~~) The ~~D~~department of ~~S~~State receives a duly authenticated certificate from
8187 the secretary of state or other official having custody of corporate records in the
8188 jurisdiction under the law of which the foreign corporation is incorporated stating that it
8189 has been dissolved or is no longer active on the official's records; or disappeared as the
8190 result of a merger.

8191 (i~~7~~) The foreign corporation has failed to answer truthfully and fully, within
8192 the time prescribed by this chapter act, interrogatories propounded by the ~~D~~department of
8193 State.

8194 (2) Revocation of a foreign corporation's certificate of authority for failure to file an
8195 annual report shall occur on the fourth Friday in September of each year. The department shall
8196 issue a notice in a record of the revocation to the revoked foreign corporation. Issuance of the
8197 notice may be by electronic transmission to a foreign corporation that has provided the
8198 department with an e-mail address.

8199 (3) If the department determines that one or more grounds exist under paragraph (1)(b)
8200 for revoking a foreign corporation's certificate of authority, the department shall issue a notice in
8201 a record to the foreign corporation of the department's intent to revoke the certificate of
8202 authority. Issuance of the notice may be by electronic transmission to a foreign corporation that
8203 has provided the department with an e-mail address.

8204 (4) If, within 60 days after the department sends the notice of intent to revoke in
8205 accordance with subsection (3), the foreign corporation does not correct each ground for
8206 revocation or demonstrate to the reasonable satisfaction of the department that each ground
8207 determined by the department does not exist, the department shall revoke the foreign
8208 corporation's authority to transact business in this state and issue a notice in a record of
8209 revocation which states the grounds for revocation. Issuance of the notice may be by electronic
8210 transmission to a foreign corporation that has provided the department with an e-mail address.

8211 (5) Revocation of a foreign corporation's certificate of authority does not terminate the
8212 authority of the registered agent of the corporation.

8213

8214 **Commentary to Section 607.1530:**

8215 This provision has been updated and modernized to follow the substance of FRLCA s.
8216 605.0908. Subsection (5) has been added from s. 607.0531(4) since s. 607.0131 is being
8217 removed.

8218

8219 ~~607.1531—Procedure for and effect of revocation.~~

8220 ~~(1) If the Department of State determines that one or more grounds exist under s. 607.1530~~
8221 ~~for revocation of a certificate of authority, the Department of State shall serve the foreign~~
8222 ~~corporation with notice of its intent to revoke the foreign corporation's certificate of authority. If~~
8223 ~~the foreign corporation has provided the department with an electronic mail address, such notice~~
8224 ~~shall be by electronic transmission. Revocation for failure to file an annual report shall occur on~~
8225 ~~the fourth Friday in September of each year. The department shall issue a certificate of~~
8226 ~~revocation to each revoked corporation. Issuance of the certificate of revocation may be by~~
8227 ~~electronic transmission to any corporation that has provided the department with an electronic~~
8228 ~~mail address.~~

8229 ~~—(2) If the foreign corporation does not correct each ground for revocation under s.~~
8230 ~~607.1530(2)-(7) or demonstrate to the reasonable satisfaction of the Department of State that~~
8231 ~~each ground determined by the Department of State does not exist within 60 days after issuance~~
8232 ~~of notice, the Department of State shall revoke the foreign corporation's certificate of authority~~
8233 ~~by issuing a certificate of revocation that recites the ground or grounds for revocation and its~~
8234 ~~effective date. Issuance of the certificate of revocation may be by electronic transmission to any~~
8235 ~~foreign corporation that has provided the department with an electronic mail address.~~

8236 ~~—(3) The authority of a foreign corporation to transact business in this state ceases on the~~
8237 ~~date shown on the certificate revoking its certificate of authority.~~

8238 ~~—(4) Revocation of a foreign corporation's certificate of authority does not terminate the~~
8239 ~~authority of the registered agent of the corporation.~~

8240 **Commentary to Section 607.1531:**

8241 The substance of this section has been added to s. 607.1530 of the FBCA in order to follow the
8242 corollary FRLCA model. As a result, this section has been eliminated.

8243

8244 607.15315 ~~Revocation; application for~~ Reinstatement following revocation of
8245 certificate of authority.

8246 (1)(a) A foreign corporation the certificate of authority of which has been revoked
8247 pursuant to s. 607.1530 or former s. 607.1531 may apply to the ~~D~~department of ~~S~~State for
8248 reinstatement at any time after the effective date of revocation of authority. ~~The application must~~
8249 foreign corporation applying for reinstatement must submit all fees and penalties then owed by
8250 the foreign corporation at rates provided by law at the time the foreign corporation applies for
8251 reinstatement, together with an application for reinstatement prescribed and furnished by the
8252 department, which is signed by both the registered agent and an officer or director of the
8253 company and states:

8254 (a)1. ~~Recite the name under which of the foreign corporation is authorized to~~
8255 transact business in this state and the effective date of its revocation of authority.;

8256 (b)2. The street address of the corporation's principal office and mailing address
8257 State that the ground or grounds for revocation of authority either did not exist or have
8258 been eliminated and that no further grounds currently exist for revocation of authority.;

8259 (c)3. The jurisdiction of State that the foreign corporation's formation and the
8260 date on which it became qualified to transact business in this state. name satisfies the
8261 requirements of s. 607.1506; and

8262 4. ~~State that all fees owed by the corporation and computed at the rate provided~~
8263 ~~by law at the time the foreign corporation applies for reinstatement have been paid; or~~

8264 (d) The foreign corporation's federal employer identification number or, if none,
8265 whether one has been applied for.;

8266 (e) The name, title or capacity, and address of at least one officer or director of
8267 the corporation.

8268 (f) Additional information that is necessary or appropriate to enable the
8269 department to carry out this chapter.

8270 (2) In lieu of the requirement to file an application for reinstatement as described in
8271 subsection (1), a foreign corporation whose certificate of authority has been revoked may submit
8272 all fees and penalties owed by the corporation at the rates provided by law at the time the
8273 corporation applies for reinstatement, together with a current annual report, signed by both the
8274 registered agent and an officer or director of the corporation, which contains the information
8275 described in subsection (1).

8276 ~~(b)As an alternative, the foreign corporation may submit a current annual report,~~
8277 ~~signed by the registered agent and an officer or director, which substantially complies~~
8278 ~~with the requirements of paragraph (a).~~

8279 (3) If the department determines that an application for reinstatement contains the
8280 information required under subsection (1) or subsection (2) and that the information is correct,
8281 upon payment of all required fees and penalties, the department shall reinstate the foreign
8282 corporation's certificate of authority.

8283 ~~(2) If the Department of State determines that the application contains the information~~
8284 ~~required by subsection (1) and that the information is correct, it shall cancel the certificate of~~
8285 ~~revocation of authority and prepare a certificate of reinstatement that recites its determination~~
8286 ~~and prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on~~
8287 ~~the corporation under s. 607.0504(2).~~

8288 ~~(4)~~ When a the reinstatement becomes is effective, it relates back to and takes effect as of
8289 the effective date of the revocation of authority and the foreign corporation may resume its
8290 activities in this state resumes carrying on its business as if the revocation of authority had not
8291 ~~never~~ occurred.

8292 (5) The name of the foreign corporation whose ~~the~~ certificate of authority of which has
8293 been revoked is not available for assumption or use by another business entity corporation until 1
8294 year after the effective date of revocation of authority unless the corporation provides the
8295 ~~D~~department of State with an affidavit executed as required by s. 607.0120 which authorizes
8296 ~~permitting~~ the immediate assumption or use of the name by another corporation.

8297 (6) If the name of the foreign corporation applying for reinstatement has been lawfully
8298 assumed in this state by another business entity corporation, the ~~D~~department of State shall
8299 require the foreign corporation to comply with s. 607.1506 before accepting its application for
8300 reinstatement.

8301

8302 **Commentary to Section 607.15315:**

8303 This section has been modified to harmonize with s. 605.0909 of FRLICA.

8304

8305 607.1532 Judicial review of denial of reinstatement ~~Appeal from revocation.~~

8306 (1) If the ~~Department of State~~ denies a foreign corporation's application for reinstatement
8307 after revocation of its certificate of authority, the department shall serve the foreign corporation
8308 under s. 607.15101 with a written notice that explains the reason or reasons for the denial
8309 ~~revokes the authority of any foreign corporation to transact business in this state pursuant to the~~
8310 ~~provisions of this act, such foreign corporation may likewise appeal to the circuit court of the~~
8311 ~~county where the registered office of such corporation in this state is situated by filing with the~~
8312 ~~clerk of such court a petition setting forth a copy of its application for authority to transact~~
8313 ~~business in this state and a copy of the certificate of revocation given by the Department of State,~~
8314 ~~whereupon the matter shall be tried de novo by the court, and the court shall either sustain the~~
8315 ~~action of the Department of State or direct the department to take such action as the court deems~~
8316 ~~proper.~~

8317 (2) Within 30 days after service of a notice of denial of reinstatement, a foreign corporation
8318 may appeal the denial by petitioning the circuit court in and for Leon County to set aside the
8319 revocation.⁴⁵ The petition must be served on the department and contain a copy of the
8320 department's notice of revocation, the foreign corporation's application for reinstatement, and
8321 the department's notice of denial. Appeals from all final orders and judgments entered by the
8322 ~~circuit court under this section in review of any ruling or decision of the Department of State~~
8323 ~~may be taken as in other civil actions.~~

8324 (3) The circuit court may order the department to reinstate the certificate of authority of
8325 the foreign corporation or take other action the court considers appropriate.

8326 (4) The circuit court's final decision may be appealed as in other civil proceedings.⁴⁶

8327

⁴⁵ Section 605.0716(2) uses the term "applicable county" as defined in s. 605.0711(14). The Department has requested that this section require such action to be brought in the circuit court in and for **Leon County**, Florida.

⁴⁶ Subsection (4) is not in FRLCA, but it should be added.

8328 **Commentary to Section 607.1532:**

8329 This section substantially follows s. 607.1423 of the FBCA. This section is not currently in
8330 Article 9 of FRLCA, but should be added.

8331 In subsection (2), Florida, unlike the Model Act, provides for a trial de novo. The Model Act,
8332 and the majority of Model Act states, do not specify the burden of proof applicable to an appeal.

8333

8334 ARTICLE 16

8335 RECORDS AND REPORTS

8336
8337 607.1601 Corporate records.

8338 (1) A corporation shall ~~keep as permanent records minutes of all meetings of its~~
8339 ~~shareholders and board of directors, a record of all actions taken by the shareholders or board of~~
8340 ~~directors without a meeting, and a record of all actions taken by a committee of the board of~~
8341 ~~directors in place of the board of directors on behalf of the corporation.~~

8342 (2) ~~A corporation shall maintain accurate accounting records.~~

8343 (3) ~~A corporation or its agent shall maintain a record of its shareholders in a form that~~
8344 ~~permits preparation of a list of the names and addresses of all shareholders in alphabetical order~~
8345 ~~by class of shares showing the number and series of shares held by each.~~

8346 (4) ~~A corporation shall maintain its records in written form or in another form capable~~
8347 ~~of conversion into written form within a reasonable time.~~

8348 (5) ~~A corporation shall keep a copy of the following records~~ maintain the following
8349 records:

8350 (a) ~~Its articles or restated articles of incorporation, as and all amendments to them~~
8351 ~~currently in effect;~~

8352 (b) Any notices to shareholders referred to in s. 607.0120(11)(e) specifying facts
8353 on which a filed document is dependent, if those facts are not included in the articles of
8354 incorporation or otherwise available as specified in s. 607.0120(11)(e);

8356 (bc) ~~Its bylaws or restated bylaws, as and all amendments to them currently in~~
8357 ~~effect;~~

8358 (e) ~~Resolutions adopted by its board of directors creating one or more classes or~~
8359 ~~series of shares and fixing their relative rights, preferences, and limitations, if shares~~
8360 ~~issued pursuant to those resolutions are outstanding;~~

8361 (d) ~~The minutes of all shareholders' meetings and records of all action taken by~~
8362 ~~shareholders without a meeting for the past 3 years;~~

8363 (de) All ~~W~~written communications within the past 3 years to all shareholders
8364 generally or to all shareholders of a class or series within the past 3 years, including the
8365 financial statements furnished for the past 3 years under s. 607.1620;

8366 (e) Minutes of all meetings of, and records of all actions taken without a meeting
8367 by, its shareholders, its board of directors, and any board committees established under s.
8368 607.0825;

8369 (f) A list of the names and business street addresses of its current directors and
8370 officers; and

8371 (g) Its most recent annual report delivered to the Department of State under s.
8372 607.1622.

8373 (2) A corporation shall maintain all annual financial statements prepared for the
8374 corporation for its last three fiscal years (or such shorter period of existence) and any audit or
8375 other reports with respect to such financial statements.

8376 (3) A corporation shall maintain accounting records in a form that permits preparation
8377 of its financial statements.

8378 (4) A corporation shall maintain a record of its current shareholders in alphabetical order by
8379 class or series of shares showing the address of, and the number and class or series of shares held
8380 by, each shareholder. Nothing contained in this subsection (4) shall require the corporation to
8381 include in such record the electronic mail address or other electronic contact information of a
8382 shareholder.

8383 (5) A corporation shall maintain the records specified in this section in a manner so that
8384 they may be available for inspection within a reasonable time.

8385

8386 **Commentary to Section 607.1601**

8387 This section has been modified to conform to the language used in the 2016 version of the Model
8388 Act. While the changes are not considered substantive, the Model Act language is considered
8389 clearer and easier to understand. Specifically, the deletion of the words "keep as permanent
8390 records" in subsection (1) and the adoption of the word "maintain" (which is used in the Model
8391 Act for this purpose) as to records required to be kept, is not considered or intended to be a
8392 substantive change or to change the duty to maintain the records required to be maintained under
8393 subsection (1).

8394 At some time in the future, the Section may wish to consider changes to the record keeping
8395 requirements to allow shareholder records to be maintained in a blockchain. However, a decision
8396 on that topic is believed to be premature for consideration.

8397

8398

8399 607.1602 Inspection of records by shareholders.

8400 (1) A shareholder of a corporation is entitled to inspect and copy, during regular business
8401 hours at the corporation's principal office, any of the records of the corporation described in s.
8402 607.1601(51), excluding minutes of meetings of, and records of actions taken without a meeting
8403 by, the corporation's board of directors and any board committees established under s. 607.0825,
8404 if the shareholder gives the corporation written notice of the shareholder's ~~his or her~~ demand at
8405 least 5 business days before the date on which the shareholder ~~he or she~~ wishes to inspect and
8406 copy.

8407 (2) A shareholder of a corporation is entitled to inspect and copy, during regular business
8408 hours at a reasonable location specified by the corporation, any of the following records of the
8409 corporation if the shareholder meets the requirements of subsection (3) and gives the corporation
8410 written notice of the shareholder's ~~his or her~~ demand at least 5 business days before the date on
8411 which he or she wishes to inspect and copy:

8412 (a) Excerpts from minutes of any meeting of, or records of any actions taken
8413 without a meeting by, the corporation's board of directors, and board committees
8414 maintained in accordance with s. 607.1601(1) records of any action of a committee of the
8415 board of directors while acting in place of the board of directors on behalf of the
8416 corporation, minutes of any meeting of the shareholders, and records of action taken by
8417 the shareholders or board of directors without a meeting, to the extent not subject to
8418 inspection under subsection (1);

8419 (b) The financial statements of the corporation maintained in accordance with s.
8420 607.1601(2);

8421 (c) Accounting records of the corporation;

8422 (d) The record of shareholders maintained in accordance with s. 607.1601(4)
8423 and

8424 (d) any other books and records.

8425 (3) A shareholder may inspect and copy the records described in subsection (2) only if:

8426 (a) The shareholder's demand is made in good faith and for a proper purpose;

8427 (b) The shareholder's demand describes with reasonable particularity the
8428 shareholder's ~~his or her~~ purpose and the records the shareholder ~~he or she~~ desires to
8429 inspect; and

8430 (c) The records are directly connected with the shareholder's purpose.

8431 (4) The corporation may impose reasonable restrictions on the disclosure, use, or
8432 distribution of, and reasonable obligations to maintain the confidentiality of, records described in
8433 subsection (2).

8434 ~~(4) A shareholder of a Florida corporation, or a shareholder of a foreign corporation~~
8435 ~~authorized to transact business in this state who resides in this state, is entitled to inspect and~~
8436 ~~copy, during regular business hours at a reasonable location in this state specified by the~~
8437 ~~corporation, a copy of the records of the corporation described in s. 607.1601(5)(b) and (f), if the~~
8438 ~~shareholder gives the corporation written notice of his or her demand at least 15 business days~~
8439 ~~before the date on which he or she wishes to inspect and copy.~~

8440 (5) For any meeting of shareholders for which the record date for determining shareholders
8441 entitled to vote at the meeting is different than the record date for notice of the meeting, any person
8442 who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to
8443 vote at the meeting is entitled to obtain from the corporation upon request the notice and any other
8444 information provided by the corporation to shareholders in connection with the meeting, unless the
8445 corporation has made such information generally available to shareholders by posting it on its website
8446 or by other generally recognized means. Failure of a corporation to provide such information does not
8447 affect the validity of action taken at the meeting.

8448 (6) The right of inspection granted by this section may not be abolished or limited by a
8449 corporation's articles of incorporation or bylaws.

8450 ~~(57)~~ This section does not affect:

8451 (a) The right of a shareholder to inspect and copy records under s. 607.0720 or,
8452 if the shareholder is in litigation with the corporation, to the same extent as any other
8453 litigant; or

8454 (b) The power of a court, independently of this chapter ~~act~~, to compel the
8455 production of corporate records for examination, and to impose reasonable restrictions as
8456 provided in s. 607.1604(3), provided that, in the case of production of records described
8457 in subsection (2) of this section at the request of a shareholder, the shareholder has met
8458 the requirements of subsection (3).

8459 ~~(68)~~ A corporation may deny any demand for inspection made pursuant to subsection (2) if
8460 the demand was made for an improper purpose, or if the demanding shareholder has within 2
8461 years preceding his or her demand sold or offered for sale any list of shareholders of the
8462 corporation or any other corporation, has aided or abetted any person in procuring any list of
8463 shareholders for any such purpose, or has improperly used any information secured through any
8464 prior examination of the records of the corporation or any other corporation.

8465 (79) A shareholder may not sell or otherwise distribute any information or records inspected
8466 under this section, except to the extent that such use is for a proper purpose as defined in
8467 subsection (311).

8468 (810) For purposes of this section, the term “shareholder” means a record shareholder,
8469 ~~includes a beneficial shareholder, and an unrestricted owner whose shares are held in a voting~~
8470 trust beneficial owner ~~or by a nominee on his or her behalf.~~

8471 (911) For purposes of this section, a “proper purpose” means a purpose reasonably
8472 related to such person’s interest as a shareholder.

8473 (12) The rights of a shareholder to obtain records under subsections (1) and (2) shall also
8474 apply to the records of subsidiaries of the corporation.

8475

8476 **Commentary to Section 607.1602**

8477 Changes have been made to conform this provision of the FBCA with the Model Act. The non-
8478 Model Act provisions contained in subsections (2)(d), (8), (9) and (11) have been retained. These
8479 provisions have been in the FBCA for many years. However, the civil penalty in subsection (9)
8480 has been eliminated, with the view that Courts faced with an issue under subsection (9) will
8481 determine the level of penalty or equitable relief that is appropriate under the circumstances.

8482

8483 607.1603 Scope of inspection right.

8484 (1) A shareholder's ~~may appoint an agent or attorney has the same to exercise the~~
8485 ~~shareholder's~~ inspection and copying rights as ~~the shareholder he or she represents~~ under s.
8486 607.1602.

8487 (2) The corporation may, if reasonable, satisfy the right of a shareholder to copy records
8488 under s. 607.1602 includes, if reasonable, by furnishing to the shareholder right to receive copies
8489 made by ~~photographic, xerographic, or other means~~ photocopy or other means chosen by the
8490 corporation, including furnishing copies through an electronic transmission.

8491 (3) The corporation may impose a reasonable charge, ~~covering to cover~~ to cover the costs of ~~labor~~
8492 ~~and material, for providing~~ copies of any documents ~~provided to the shareholder. The charge,~~
8493 which may not exceed the estimated cost of production or reproduction of the records be based
8494 on an estimate of such costs. If the records are kept in other than written form, the corporation
8495 shall convert such records into written form upon the request of any person entitled to inspect the
8496 same. The corporation shall bear the costs of converting any records described in s.
8497 607.1601(51). The requesting shareholder shall bear the costs, including the cost of compiling
8498 the information requested, incurred to convert any records described in s. 607.1602(2).

8499 (4) ~~If requested by a shareholder, ¶~~The corporation may shall comply at its expense with a
8500 shareholder's demand to inspect the records of shareholders under s. 607.1602(2)(ed) by
8501 providing the shareholder him or her with a list of its shareholders that was of the nature
8502 described in s. 607.1601(34). Such a list must be compiled no earlier than the date of the
8503 shareholder's demand as of the last record date for which it has been compiled or as of a
8504 subsequent date if specified by the shareholder.

8505

8506 **Commentary to Section 607.1603**

8507 Changes have been made to conform this section with the Model Act.

8508

8509 607.1604 Court-ordered inspection.

8510 (1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) ~~or (4)~~
8511 to inspect and copy any records required by that subsection to be available for inspection, the
8512 circuit court in the applicable county ~~where the corporation's principal office (or, if none in this~~
8513 ~~state, its registered office) is located~~ may summarily order inspection and copying of the records
8514 demanded at the corporation's expense upon application of the shareholder. If the court orders
8515 inspection and copying of the records demanded under s. 607.1601(1), it shall also order the
8516 corporation to pay the shareholder's expenses incurred, including reasonable attorney's fees,
8517 incurred to obtain the order and enforce its rights under this section.

8518 (2) If a corporation does not within a reasonable time allow a shareholder who complies
8519 with s. 607.1602(2) to inspect and copy ~~any other record~~ the records required by that section, the
8520 shareholder who complies with s. ~~607.1602(2) and~~ 607.1602(3); may apply to the circuit court in
8521 the applicable county ~~where the corporation's principal office (or, if none in this state, its~~
8522 ~~registered office) is located~~ for an order to permit inspection and copying of the records
8523 demanded. The court shall dispose of an application under this subsection on an expedited basis.

8524 (3) If the court orders inspection and ~~or~~ copying of the records demanded under s.
8525 607.1602(2), it may impose reasonable restrictions on the disclosure, use, or distribution of, and
8526 reasonable obligations to maintain the confidentiality of, such records, and it shall also order the
8527 corporation to pay the shareholder's expenses incurred ~~costs~~, including reasonable attorney's
8528 fees, ~~reasonably~~ incurred to obtain the order and enforce its rights under this section unless the
8529 corporation, ~~or the officer, director, or agent, as the case may be, proves~~ establishes that the
8530 corporation ~~it or she or he~~ refused inspection in good faith because the corporation ~~it or she or he~~
8531 had:

8532 (a) a reasonable basis for doubt about the right of the shareholder to inspect or
8533 copy the records demanded; ~~or~~

8534 (b) ~~If the court orders inspection or copying of the records demanded, it may~~
8535 ~~impose~~ required reasonable restrictions on the disclosure, use, or distribution of, and
8536 reasonable obligations to maintain the confidentiality of, such ~~use or distribution of the~~
8537 records demanded to which ~~by~~ the demanding shareholder had been unwilling to agree.

8538

8539 **Commentary to Section 607.1604**

8540 Changes were made to confirm this section to the corollary provision of the Model Act. These
8541 changes are not believed to be substantive.

8542

8543 607.1605 Inspection of records by directors **rights of directors.**

8544 (1) A director of a corporation is entitled to inspect and copy the books, records, and
8545 documents of the corporation at any reasonable time to the extent reasonably related to the
8546 performance of the director's duties as a director, including duties as a member of a board
8547 committee, but not for any other purpose or in any manner that would violate any duty to the
8548 corporation.

8549 (2) The circuit court of the applicable county ~~in which the corporation's principal office~~
8550 ~~or, if none in this state, its registered office is located~~ may order inspection and copying of the
8551 books, records, and documents at the corporation's expense, upon application of a director who
8552 has been refused such inspection rights, unless the corporation establishes that the director is not
8553 entitled to such inspection rights. The court shall dispose of an application under this subsection
8554 on an expedited basis.

8555 (3) If an order is issued, the court may include provisions protecting the corporation from
8556 undue burden or expense and prohibiting the director from using information obtained upon
8557 exercise of the inspection rights in a manner that would violate a duty to the corporation, and
8558 may also order the corporation to reimburse the director for the director's costs, including
8559 reasonable counsel fees, incurred in connection with the application.

8560

8561 **Commentary to Section 607.1605**

8562 This provision was added to the FBCA in 2003 and is identical to the corollary provision in the
8563 Model Act.

8564

8565

8566 607.1620 Financial statements for shareholders.

8567 (1) Upon the written request of any shareholder ~~Unless modified by resolution of the~~
8568 ~~shareholders within 120 days of the close of each fiscal year,~~ a corporation shall deliver ~~furnish~~
8569 or make available to the requesting shareholder the corporation's ~~its shareholders~~ annual financial
8570 statements for the most recent fiscal year of the corporation ~~which may be consolidated or~~
8571 ~~combined statements of the corporation and one or more of its subsidiaries, as appropriate, that~~
8572 ~~include a balance sheet as of the end of the fiscal year, an income statement for that year, and a~~
8573 ~~statement of cash flows for that year.~~ If annual financial statements are ~~have been~~ prepared for
8574 the corporation on the basis of generally accepted accounting principles for such specified
8575 period, the corporation shall deliver or make available such financial statements to the requesting
8576 shareholder. ~~the annual financial statements must also be prepared on that basis.~~(2) If the
8577 annual financial statements ~~are~~ to be delivered or made available to the requesting ~~its~~ shareholder
8578 are audited or otherwise reported upon by a public accountant, ~~his or her~~ the report of the public
8579 accountant shall also be delivered or made available to the requesting shareholder. ~~must~~
8580 ~~accompany them. If not, the statements must be accompanied by a statement of the president or~~
8581 ~~the person responsible for the corporation's accounting records:~~

8582 (a) ~~Stating his or her reasonable belief whether the statements were prepared on~~
8583 ~~the basis of generally accepted accounting principles and, if not, describing the basis of~~
8584 ~~preparation; and~~

8585 (b) ~~Describing any respects in which the statements were not prepared on a~~
8586 ~~basis of accounting consistent with the statements prepared for the preceding year.~~

8587 (32) ~~Any~~ A corporation required by subsection (1) to deliver or make available ~~furnish~~
8588 annual financial statements to a requesting shareholder ~~its shareholders~~ shall deliver or make
8589 available ~~furnish~~ such annual financial statements to such ~~each~~ shareholder within five (5)
8590 business days after the request if the annual financial statements have already been prepared and
8591 are available, or, if the annual financial statements have not been prepared, shall notify the
8592 shareholder within five (5) business days that the annual financial statements have not yet been
8593 prepared and shall deliver or make available such annual financial statements to the shareholder
8594 within 120 days after ~~the request or the close of each fiscal year~~ or within such additional time
8595 thereafter as is reasonably necessary to enable the corporation to prepare its annual financial
8596 statements if, for reasons beyond the corporation's control, it is unable to prepare its annual
8597 financial statements within the prescribed period. ~~Thereafter, on written request from a~~
8598 ~~shareholder who was not furnished the statements, the corporation shall furnish him or her the~~
8599 ~~latest annual financial statements.~~

8600 (3) If requested by the requesting shareholder in its written request under subsection (1), the
8601 corporation shall promptly notify all other shareholders that the annual financial statements that
8602 have or are to be delivered or made available to the requesting shareholder have been or are

8603 being made available to the requesting shareholder and will also be delivered or made available
8604 to any other shareholder who makes its own written request to the corporation under subsection
8605 (1).

8606 ~~(4) If a corporation does not comply with the shareholder's request for annual financial~~
8607 ~~statements pursuant to this section within [30] days of delivery of such request to the~~
8608 ~~corporation, the circuit court in the county where the corporation's principal office (or, if none in~~
8609 ~~this state, its registered office) is located may, upon application of the shareholder, summarily~~
8610 ~~order the corporation to furnish such financial statements. If the court orders the corporation to~~
8611 ~~furnish the shareholder with the financial statements demanded, it shall also order the~~
8612 ~~corporation to pay the shareholder's costs, including reasonable attorney's fees, reasonably~~
8613 ~~incurred to obtain the order and otherwise enforce its rights under this section.~~

8614 (45) A corporation may fulfill its responsibilities under this section by delivering the
8615 specified annual financial statements, by posting the specified annual financial statements on its
8616 website, by any other generally recognized means, or in any other manner permitted by the
8617 applicable rules and regulations of the United States Securities and Exchange Commission ~~The~~
8618 ~~requirement to furnish annual financial statements as described in this section shall be satisfied~~
8619 ~~by sending such annual financial statements by mail or electronic transmission. If a corporation~~
8620 ~~has an outstanding class of securities registered under s. 12 of the Securities Exchange Act of~~
8621 ~~1934, as amended, the requirement to furnish annual financial statements may be satisfied by~~
8622 ~~complying with 17 C.F.R. s. 240.14a-16, as amended, with respect to the obligation of a~~
8623 ~~corporation to furnish an annual financial report to shareholders pursuant to 17 C.F.R. s.~~
8624 ~~240.14a-3(b), as amended.~~

8625 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section:

8626 (a) As a condition to delivering or making available annual financial statements to
8627 any requesting shareholder, the corporation may require the requesting shareholder to agree
8628 to reasonable restrictions on the confidentiality, use and distribution of such annual
8629 financial statements; and

8630 (b) The corporation may, if it reasonably determines that the shareholder's request is
8631 not made in good faith or for a proper purpose, decline to deliver or make available such
8632 annual financial statements to that shareholder.

8633 (6) If a corporation does not respond to a shareholder's request for annual financial
8634 statements pursuant to this section in accordance with subsection (3) within the applicable period
8635 specified in subsection (2):

8636 (a) The requesting shareholder may apply to the circuit court in the applicable
8637 county for an order requiring delivery of or access to the requested annual financial

8638 statements. The court shall dispose of an application under this subsection on an expedited
8639 basis.

8640 (b)If the court orders delivery or access to the requested annual financial
8641 statements, it may impose reasonable restrictions on their confidentiality, use or
8642 distribution.

8643 (c)In such proceeding, if the corporation has declined to deliver or make available
8644 such annual financial statements because the shareholder had been unwilling to agree to
8645 restrictions proposed by the corporation on the confidentiality, use and distribution of such
8646 financials statements, the corporation shall have the burden of demonstrating that the
8647 restrictions proposed by the corporation were reasonable.

8648 (d)In such proceeding, if the corporation has declined to deliver or make available
8649 such annual financial statements pursuant to s. 607.1620(5)(b), the corporation shall have
8650 the burden of demonstrating that it had reasonably determined that the shareholder's
8651 request was not made in good faith or for a proper purpose.

8652 (7) If the court orders delivery or access to the requested annual financial statements it shall
8653 order the corporation to pay the shareholder's expenses incurred to obtain such order unless the
8654 corporation establishes that it had refused delivery or access to the requested annual financial
8655 statements because the shareholder had refused to agree to reasonable restrictions on the
8656 confidentiality, use or distribution of the annual financial statements or that the corporation had
8657 reasonably determined that the shareholder's request was not made in good faith or for a proper
8658 purpose.

8659

8660 **Commentary to Section 607.1620**

8661 Until 1978, the Model Act required only that the annual financial statements be furnished on
8662 request. Twenty-five jurisdictions currently follow that model. Eighteen jurisdictions follow the
8663 post-1978 Model Act model by requiring that the annual financial statements be furnished to all
8664 shareholders. In the 2016 revision to the Model Act, the Model Act has reversed itself yet again
8665 and now only requires the annual financial statements to be made available upon request.

8666 This provision takes a middle ground and requires that annual financial statements be delivered
8667 to or made available to a requesting shareholder. Like the corollary provision of the Model Act,
8668 it does not prescribe what constitutes annual financial statements, and there is extensive
8669 commentary in the comments to the corollary section of the Model Act that discusses what might
8670 constitute annual financial statements of a particular corporation under particular circumstances.

8671 New subsections (5), (6) and (7) are derived from the 2016 version of the Model Act. Further,
8672 the ability of the corporation's shareholders to waive the requirement to deliver annual financial
8673 statements has been eliminated in favor of the Model Act provision. Finally, while a shareholder
8674 must request annual financial statements before the corporation becomes obligated to provide
8675 them, new subsection (3) has been added to require that the corporation notify its other
8676 shareholders that annual financial statements are being delivered or made available to a
8677 requesting shareholder, and that such annual financial statements will be delivered or made
8678 available to any other shareholder who requests them in the manner provided in subsection (1).

8679

8680 ~~607.1621—Other reports to shareholders.~~

8681 ~~(1) If a corporation indemnifies or advances expenses to any director or, officer, employee,~~
8682 ~~or agent under ss. 607.0850 through 607.0859 otherwise than by court order or action by the~~
8683 ~~shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the~~
8684 ~~corporation shall report the indemnification or advance in writing to the shareholders with or~~
8685 ~~before the notice of the next shareholders' meeting, or prior to such meeting if the~~
8686 ~~indemnification or advance occurs after the giving of such notice but prior to the time such~~
8687 ~~meeting is held, which report shall include a statement specifying the persons paid, the amounts~~
8688 ~~paid, and the nature and status at the time of such payment of the litigation or threatened~~
8689 ~~litigation.~~

8690 ~~(2) If a corporation issues or authorizes the issuance of shares for promises to render~~
8691 ~~services in the future, the corporation shall report in writing to the shareholders the number of~~
8692 ~~shares authorized or issued, and the consideration received by the corporation, with or before the~~
8693 ~~notice of the next shareholders' meeting.~~

8694

8695 **Commentary to Section 607.1621**

8696 Section 607.1621 of the FBCA was added to the FBCA in 1989. It was based on an earlier
8697 version of the Model Act as it existed at the time. Subsection (1) requires Florida corporations to
8698 report to shareholders as to certain matters relating to indemnification and advancement of
8699 expenses. Subsection (2) requires disclosure to shareholders when shares are issued by the
8700 corporation for promises to render future services. This provision is no longer in the Model Act

8701 In its decision to recommend removal of this section from the FBCA, the Subcommittee was
8702 concerned that notwithstanding the fact that this section has been in the statute for many years, it
8703 is a trap for the unwary, because many users of the FBCA are not aware of the provision. The
8704 Subcommittee also concluded that, in its view, this section is unnecessary because shareholders
8705 can demand information about these types of matters under s. 607.1602 under appropriate
8706 circumstances.

8707

8708 607.1622 Annual report for Department of State department.

8709 (1) Each domestic corporation and each foreign corporation authorized to transact
8710 business in this state⁴⁷ shall deliver to the ~~Department of State~~ department for filing an a-sworn
8711 annual report on such forms as the Department of State prescribes that states the following sets
8712 forth:

8713 (a) The name of the corporation or, if a foreign corporation, the name under
8714 which the foreign corporation is authorized to transact business in this ~~and the state or~~
8715 ~~country under the law of which it is incorporated.~~

8716 (b) The date of its incorporation and ~~or, if a foreign corporation, the jurisdiction~~
8717 of its incorporation and the date on which it became qualified to transact ~~was admitted to~~
8718 ~~do~~ business in this state;

8719 (c) The street address of its principal office and the mailing address of the
8720 corporation;

8721 (d) The corporation's federal employer identification number, if any, or, if none,
8722 whether one has been applied for;

8723 (e) The names and business street addresses of its directors and principal
8724 officers; and

8725 (f) ~~The street address of its registered office and the name of its registered agent~~
8726 ~~at that office in this state;~~

8727 (g) ~~Language permitting a voluntary contribution of \$5 per taxpayer, which~~
8728 ~~contribution shall be transferred into the Election Campaign Financing Trust Fund. A~~
8729 ~~statement providing an explanation of the purpose of the trust fund shall also be included;~~
8730 ~~and~~

8731 (fh) Any Such additional information that is as may be necessary or appropriate
8732 to enable the ~~D~~department of State carry out the provisions of this chapter act.

8733 (2) ~~Proof to the satisfaction of the Department of State that on or before May 1 such~~
8734 ~~report was deposited in the United States mail in a sealed envelope, properly addressed with~~
8735 ~~postage prepaid, shall be deemed compliance with this requirement.~~

8736 (2) If an annual report contains the name and address of a registered agent which
8737 differs from the information shown in the records of the department immediately before the

⁴⁷ The words "in this state" need to be added to s. 605.0212 of FRLCA to harmonize these provisions.

8738 annual report becomes effective, the differing information in the annual report is considered a
8739 statement of change under s. 607.0502.

8740 (3) If an annual report does not contain the information required in ~~by~~ this section, the
8741 ~~D~~department of State shall promptly notify the reporting domestic corporation or foreign
8742 corporation ~~in writing and return the report to it for correction.~~ If the report is corrected to
8743 contain the information required in subsection (1) by this section and delivered to the
8744 ~~D~~department of State within 30 days after the effective date of the notice, it is ~~deemed to be~~ will
8745 be considered timely delivered filed.

8746 (4) ~~Each report shall be executed by the corporation by an officer or director or, if the~~
8747 ~~corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation~~
8748 ~~by such receiver or trustee, and the signing thereof shall have the same legal effect as if made~~
8749 ~~under oath, without the necessity of appending such oath thereto.~~

8750 (45) The first annual report must be delivered to the ~~Department of State~~ department
8751 between January 1 and May 1 of the year following the calendar year in which a domestic
8752 corporation's articles of incorporation became effective or the was incorporated or a foreign
8753 corporation obtained its certificate of authority was authorized to transact business in this state.
8754 Subsequent annual reports must be delivered to the ~~D~~department of State between January 1 and
8755 May 1 of each the subsequent calendar years thereafter. If one or more forms of annual report are
8756 submitted for a calendar year, the department shall file each of them and make the information
8757 contained in them part of the official record. The first form of annual report filed in a calendar
8758 year shall be considered the annual report for that calendar year, and each report filed after that
8759 one in the same calendar year shall be treated as an amended report for that calendar year.

8760 (56) Information in the annual report must be current as of the date the annual report is
8761 delivered to the department for filing ~~executed on behalf of the corporation.~~

8762 (7) ~~If an additional updated report is received, the department shall file the document~~
8763 ~~and make the information contained therein part of the official record.~~

8764 (68) A domestic corporation or foreign ~~Any corporation that fails failing~~ to file an
8765 annual report that which complies with the requirements of this section may not shall not be
8766 permitted to maintain or defend any action in any court of this state until the such report is filed
8767 and all fees and penalties taxes due under this chapter ~~aet~~ are paid, and shall be subject to
8768 dissolution or cancellation of its certificate of authority to transact de business as provided in this
8769 chapter ~~aet~~.

8770 (79) The department shall prescribe the forms, which may be in an electronic format,
8771 on which to make the annual report called for in this section and may substitute the uniform

8772 business report, pursuant to s. 606.06, as a means of satisfying the requirement of this chapter
8773 part.

8774 (10) As a condition of a merger under s. 607.[] , each party to a merger which
8775 exists under the laws of this state, and each party to the merger which exists under the laws of
8776 another jurisdiction and has a certificate of authority to transact business or conduct its affairs in
8777 this state, must be active and current in filing its annual reports in the records of the department
8778 through December 31 of the calendar year in which the articles of merger are submitted to the
8779 department for filing.

8780 (11) As a condition of a conversion of an entity to a corporation under s. 607.[] ,
8781 the entity, if it exists under the laws of this state, or if it exists under the laws of another
8782 jurisdiction and has a certificate of authority to transact business or conduct its affairs in this
8783 state, must be active and current in filing its annual reports in the records of the department
8784 through December 31 of the calendar year in which the articles of conversion are submitted to
8785 the department for filing.

8786 (12) As a condition of a conversion of a domestic corporation to another type of entity
8787 under s. 607.[] , the domestic corporation converting to the other type of entity must be
8788 active and current in filing its annual reports in the records of the department through December
8789 31 of the calendar year in which the articles of conversion are submitted to the department for
8790 filing.

8791 (13) As a condition of a share exchange between a corporation and another entity under
8792 s. 607.[] , the corporation, and each other entity that is a party to the share exchange which
8793 exists under the laws of this state, and each party to the share exchange which exists under the
8794 laws of another jurisdiction and has a certificate of authority to transact business or conduct its
8795 affairs in this state, must be active and current in filing its annual reports in the records of the
8796 department through December 31 of the calendar year in which the articles of share exchange are
8797 submitted to the department for filing.

8798

8799 **Commentary to Section 607.1622**

8800 This section has been modified to conform the language in this section to the corollary provision
8801 from FRLUCA (s. 605.0212) that was adopted in 2013.

8802 Subsections (10), (11), (12) and (13) are derived from s. 605.0212 and require that the
8803 corporation has filed an annual report before the corporation can make filings regarding mergers,
8804 share exchanges and conversions. The Subcommittee will review these sections in more detail in
8805 connection with its review of the merger, conversion and share exchange provisions of the
8806 FBCA.

8807