308B.805 MERGER OF SUBSIDIARY.

Subdivision 1. **When authorized; contents of plan.** (a) For purposes of this section, "subsidiary" means a domestic cooperative, a Minnesota limited liability company, or a foreign cooperative, and "cooperative" means a domestic cooperative. A Minnesota limited liability company may only participate in a merger under this section to the extent authorized under section 322C.1002. A parent domestic cooperative or a subsidiary that is a domestic cooperative may complete the merger of a subsidiary as provided in this section, provided however, if either the parent or the subsidiary is a business entity organized under the laws of this state, the merger of the subsidiary is not authorized under this section unless the law governing the business entity expressly authorizes merger with a cooperative. A parent cooperative owning at least 90 percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding ownership interests of each class and series of which is owned by the parent cooperative directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the members of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent cooperative present shall set forth a plan of merger that contains:

(1) the name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving cooperative;

(2) the manner and basis of converting the membership interests of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another cooperative or, in the whole or in part, into money or other property;

(3) if the parent is a constituent cooperative but is not the surviving cooperative in the merger, a provision for the pro rata issuance of membership interests of the surviving cooperative to the holders of membership interests of the parent on surrender of any certificates for shares of the parent; and

(4) if the surviving cooperative is a subsidiary, a statement of any amendments to the articles of the surviving cooperative that will be part of the merger.

(b) If the parent is a constituent cooperative and the surviving cooperative in the merger, it may change its cooperative name, without a vote of its members, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the name of the parent shall be changed.

(c) If the parent is a constituent cooperative but is not the surviving cooperative in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting if the parent is a cooperative, or in accordance with the laws under which it is organized if the parent is a foreign business entity or cooperative.

Subd. 2. **Notice to members of subsidiary.** Notice of the action, including a copy of the plan of merger, shall be given to each member, other than the parent and any subsidiary of each subsidiary that is a constituent cooperative in the merger before, or within ten days after, the effective date of the merger.

Subd. 3. **Articles of merger; contents of articles.** Articles of merger shall be prepared that contain:

(1) the plan of merger;

(2) the number of outstanding membership interests of each series and class of each subsidiary that is a constituent cooperative in the merger, other than the series or classes that, absent this section, would otherwise not be entitled to vote on the merger, and the number of membership interests of each series and class of the subsidiary or subsidiaries, other than series or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly, or indirectly through related organizations; and

(3) a statement that the plan of merger has been approved by the parent under this section.

Subd. 4. **Articles signed, filed.** The articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent cooperative but is not the surviving cooperative in the merger, to the surviving cooperative or its legal representative.

Subd. 6. **Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under section 308B.801 instead of this section, in which case this section does not apply.

History: *2003 c 105 art 1 s 69; 2014 c 157 art 2 s 22,29,31*