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DATE: February 26, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 1657

RELATING TO: Mergers of business entities or corporations

SPONSOR(S): Rep. Kosmas

COMPANION BILL(S): SB 518

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES
(2)
(3)
(4)
(5)

I. SUMMARY:

Currently there are no specific provisions in Florida law which permit the merger of different kinds of business organizations; for example, a corporation cannot merge with a limited partnership. The bill makes the following changes to Florida law:

- The bill amends Chapters 607, 608, and 620, F.S. to permit mergers of Florida corporations, limited liability companies, and limited partnerships with or into each other and with or into other business entities both domestic or foreign.

- The bill corrects a drafting error in Chapter 48, F.S., dealing with service of process on dissolved corporations.

- The bill amends the shareholder agreement provisions contained in s. 607.0732, F.S., to add an additional criterion to the existing list of criteria which allow corporations with 100 or fewer shareholders to adopt shareholder agreements that include provisions inconsistent with statutes governing the exercise of corporate powers of management.

HB 1657 allows corporations, limited liability companies and limited partnerships to merge with each other. The ability of corporations and LLCs to acquire title to real estate or other property without requiring the assuming entity to record any deed or other conveyance of property which would otherwise require the payment of documentary stamp taxes would be extended to partnerships.

According to the Revenue Estimating Conference, the exemption from documentary stamp tax may result in a negative fiscal impact of $3.0 million for FY 1998-99, and $3.5 million for FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Business entities

Florida law recognizes various types of business entities, including corporations, limited liability companies, professional associations, general partnerships, limited partnerships, and limited liability partnerships. In instances when the organizational documents of these entities are silent as to issues regarding the formation, management and dissolution of these entities, Florida law provides the missing framework.

Corporations

The traditional corporate entity is a separate legal entity, apart from the owners of the corporation. The corporation may own, buy, and sell property in its own name; make contracts; sue and be sued in its own name; and may continue its existence independent and apart from the turnover of its originators, pursuant to its charter. This separate existence serves to "shield" the owners from liability for actions "committed" by the corporate entity. Stockholders in corporations enjoy the advantage of limited liability, which generally extends no further then to payment of the full par value of the issued and outstanding stock.

Limited liability companies ("LLC")

There are two types of LLCs: (a) member-managed, which resembles partnerships in that the members participate in the control and direction of the company; and, (b) manager-managed, in which a manager directs the company and members are passive like shareholders in a corporation. An LLC is corporate in nature, but is typically not publicly traded.

Partnerships

Florida law recognizes three types of partnerships: general partnerships, limited partnerships and the limited liability partnerships.

The principal difference among the partnership forms is in the extent of partner liability.

In a *general partnership*, general partners are jointly and severally liable for liabilities of the partners, the partnership and the partnership employees. The general theory is that general partners are permitted to reap the full benefit of the partnership and, therefore, should be liable for partnership losses.

The *limited partnership* has two classes of partner: the general partner and the limited partner. General partners are liable in the same manner as general partners are in a general partnership. Limited partners are liable only to the extent of their capital contribution to the limited partnership. For instance, a limited partner that contributes $100 to the partnership is held accountable only to the extent of the $100 contribution in the event of a devaluation of partnership assets through debt or judgment.

A *limited liability partnership* (LLP) is, in essence, a partnership with an additional layer of liability protection. A partner *is not* personally liable for obligations or liabilities arising in tort resulting from partnership actions, or liabilities arising from errors or omissions committed by another partner, by employees, by agents, or by representatives of the partnership. A partner *is* personally liable for (1) any debts or obligations arising from the ordinary course of business of the partnership; (2) the partner's own errors or omissions or those committed by any person under the partner's direct supervision and control; and, (3) debts for which a partner has agreed in writing to accept.

Table 1 compares the authority, duration of existence, owners, management, tax liability and civil liability of corporations, LLCs and limited partnerships.

TABLE 1. Comparison of the authority, duration of existence, ownership, management, tax liability and civil liability for corporations, limited liability companies and limited partnerships.

BUSINESS ENTITY	CORPORATION	LIMITED LIABILITY COMPANY	LIMITED PARTNERSHIP
Authority	Chapter 607, Florida Statutes	Chapter 608, Florida Statutes	Chapter 620, Florida Statutes
Duration	Perpetual duration	Perpetual duration	The duration depends upon the certificate of limited partnership filed with the Department of State.
Owners	Shareholders	Members	Partners, general or limited
Management	An elected board of directors oversee directors and officers who manage the company	Elected managers or members manage the company	General partners manage the company. Limited partners may not manage the company
Tax Liability	Entity is subject to state corporate income tax. Shareholders pay federal income taxes on dividends Merging corporations incur no documentary stamp tax liability	Entity is subject to state corporate income tax. Members pay federal income taxes on dividends Merging LLCs incur no documentary stamp tax liability.	Entity is not subject to state corporate income tax. Partners pay federal income taxes on profits Merging partnerships may incur documentary stamp tax liability.
Liability	Officers and directors of corporations are shielded from personal liability for wrongful acts committed by the corporation, other directors or officers, or employees but are held accountable for their own misfeasance Shareholders are shielded from liability for acts committed by the corporation.	Managers of an LLC managed by a manger or managers are shielded from personal liability for wrongful acts committed by the LLC, other managers, other members, or employees but are held accountable for their own misfeasance	Limited partnership has two classes of partner: the general partner and the limited partner. General partners are jointly and severally liable for the liabilities of the partners, the partnership and the partnership employees Limited partners are liable only to the extent of their capital contribution to the limited partnership.

Florida law permits the merger of like entities (e.g., corporation to corporation, partnership to partnership). Florida law does not permit the merger of different entities (e.g., corporation to partnership, LLC to partnership). When there were only two principal types of business entities (i.e., corporations and partnerships) the differences between corporations and partnerships in regard to tax treatment, property interests and liability were widely disparate. For instance, partners in partnerships were held jointly and severally liable whereas shareholders in corporations were shielded from liability. Over the years, the Legislature has recognized hybrid business entities like the LLC and the LLP which have narrowed the gap between the two traditional business entities. For instance, LLCs are corporate in structure yet are managed much a like a partnership with LLC members managing the company. Further, LLCs shield their members from personal liability in a manner similar to the way in which a corporation shields a manager or director from personal liability.

According to the Business Law Section of the Florida Bar, there are at least 26 states with statutes authorizing some type of cross-entity merger. These states take different approaches to mergers. Some states prohibit mergers between certain business entities such as limited liability companies and limited partnerships. States differ on the approval requirements of limited liability companies and limited partnerships (e.g., majority vs. unanimous approval). Some states allow the mergers contemplated by HB 1657, but require the surviving entity to be either a corporation or a limited liability company. Finally, some states do not afford dissenter rights to the owners of a business entity which is a party to the merger. Each state's acceptance of cross-entity mergers may be a function of the extent to which a state has embraced the various hybrid business entities. Delaware, for instance, recognizes the hybridization of business entities and has no restrictions on cross-entity mergers.

Service of process on dissolved corporations

Section 48.101, F.S., requires process on a dissolved corporation be served on the directors as trustees of the dissolved corporation. This procedure was in place prior to the revisions to Chapter 607 which took effect in 1990.

"Closely-held" corporation shareholder agreements

Finally, s. 607.0732, F.S., allows a "closely-held" corporation (generally, a corporation with fewer than 100 shareholders, of which there are generally no public investors and the shareholders are active in the conduct of the business) to adopt a shareholder agreement that is inconsistent with other corporation statutes provided that the agreement: (a) eliminates the board of directors or restricts the board's power or discretion; (b) governs the authorization of shareholder distributions, subject to limitations in s. 607.06401, F.S.; (c) establishes the directors or officers of the corporation, their terms of office, or manner of selection and removal; (d) governs the exercise or division of voting powers by the shareholders or directors; (e) establishes terms and conditions for agreements for the use or transfer of property or services between the corporation and the shareholders or directors; (f) transfers to any shareholder or other person the authority to manage the business or affairs of the corporation, including the resolution of deadlocks between the shareholders and directors; or (g) requires the dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event.

Documentary stamp tax

Corporations and LLCs are permitted to acquire title to real estate or other property through mergers without requiring the assuming entity to record any deed or other conveyance of property which would otherwise require the payment of documentary stamp taxes. In contrast, merging partnerships are required to transfer property by deed and the surviving entity must record the deed and pay documentary stamp tax. The tax imposed on deeds and other documents relating to realty is 70 cents per $100 or fractional part of $100 of the consideration.

The disposition of the Documentary Stamp Tax, after seven percent of total collections are deducted as a general revenue service charge, is as follows:

The General Revenue Fund receives 62.63 percent *;*
The Land Acquisition Trust Fund receives 9.5 percent;
The Water Management Lands Trust Fund receives 5.84 percent;
The Conservation and Recreation Lands Trust Fund receives 5.84 percent;
The State Housing Trust Fund receives 16.19 percent (11.125 percent share is distributed to The Local Government Housing Trust Fund).

B. EFFECT OF PROPOSED CHANGES:

Business entities

Corporations, limited liability companies and partnerships would be authorized to merge into one another provided all business entities that are parties to the merger consent to the merger. Upon the effective date of the merger:

(a) only the surviving entity would exist;

(b) title to all real estate, other property, or any interest therein would be vested in the surviving entity without a requirement to file a new deed or other conveyance;

(c) the surviving entity would be liable for all liabilities of all business entities which are a party to the merger, including dissenting shareholders' liabilities;

(d) all claims, actions, or proceedings against a business entity which is a party to the merger could be continued as if the merger had not taken place;

(e) creditors' rights or liens of a business entity which is a party to the merger would not be impaired by the merger;

(f) the surviving entity's governing document (i.e., articles of incorporation, articles of organization, or partnership agreement) would be the governing documents of the surviving entity except as amended or restated in the plan of merger; and

(g) the shares, partnership interests, and the like would be converted into the same of the surviving entity or cash or other property as provided by the plan of merger.

Service of process on dissolved corporations

Service of process would be made upon the directors of corporations which are dissolved prior to July 1, 1990, as trustees of the dissolved corporation. For corporations which were dissolved after July 1, 1990, service of process would be made pursuant to s. 48.081, F.S. This amendment corrects an anomaly created when Chapter 607, F.S., the Florida Business Corporation Act was amended in 1990. The act eliminated the concept of a board of trustees for dissolved corporations yet continued the authority of the officers, directors and registered agents upon dissolution. See, Section V., COMMENTS, for a discussion of the impact of Chapter 97-230, Laws of Florida, on this section.

"Closely-held" corporation shareholder agreements

A closely-held corporation currently is allowed to adopt a shareholder agreement that is inconsistent with other corporation statutes if the shareholder agreement meets one of seven statutory criteria. See Part II. A., PRESENT SITUATION. An eighth criterion would be added to that section, allowing a closely-held corporation to adopt a shareholder agreement which governs the power and management of the corporation so long as the agreement is not contrary to public policy. The following agreements would be deemed contrary to public policy:

(a) modifying the directors' duties of loyalty or care;

(b) adversely affecting the shareholders' rights to bring derivative actions;

(c) abrogating dissenting shareholder rights;

(d) abrogating shareholder rights to distributions.

See, Section V., COMMENTS, for a discussion of the impact of Chapter 97-230, Laws of Florida, on this section.

Documentary stamp tax

The ability of corporations and LLCs to acquire title to real estate or other property without requiring the assuming entity to record any deed or other conveyance of property which would otherwise require the payment of documentary stamp taxes would be extended to partnerships.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill permits mergers of disparate business entities which are currently not authorized to merge.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

HB 1657 amends s. 48.101, and s. 607.0732, Florida Statutes, and creates ss. 607.1108, 607.1109, 607.11101, 608.4382, 608.4383, 608.4384, 620.201, 620.202, 620.203, 620.204, 620.205, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends 48.101, F.S., to limit the service of process of dissolved corporations to corporations dissolved prior to July 1, 1990. Provides that service of process on a corporation dissolved after July 1, 1990, is to be done in accordance with s. 48.081, F.S.

Section 2: Amends the shareholder agreement provisions of s. 607.0732(1), F.S., to allow shareholders for a corporation of fewer than 100 shareholders to agree to

provisions which govern the exercise of its powers or management even if inconsistent with Chapter 607, F.S. However, the shareholder agreement cannot be contrary to public policy. The following agreements would be deemed contrary to public policy:
(a) modifying the directors' duties of loyalty or care;
(b) adversely affecting the shareholders' rights to bring derivative actions;
(c) abrogating dissenting shareholder rights; and
(d) abrogating shareholder rights to distributions.

Section 3:[1] Creates ss. 607.1108, 607.1109, 607.11101, F.S., which would be applicable when a domestic corporation is a party of a merger.

A domestic corporation is authorized to merge with another domestic or foreign business entity provided each business entity complies with its own governing statutory authority.

A plan of merger must include the names of the entity/party to the merger, terms and conditions for the merger, asset conversion and valuation, names and address for principles of the surviving entity, and any statements required by a foreign jurisdiction.

The plan of merger must be adopted and approved by each domestic corporation that is a party to the merger. If the surviving entity is a partnership, no shareholder becomes a general partner unless that shareholder specifically consents in writing. Should any shareholder refuse to become a general partner, the merger does not become effective.

The surviving entity files articles of merger with the Secretary of State which must set forth the plan of merger, written approval by all participants, the effective date of the merger; and, if the surviving entity is a foreign business entity, its address, a statement that the Secretary of State is appointed as its agent for service of process, and a promise to pay all dissenting shareholders of each corporation that is a party.

Upon the effective date of the merger the surviving entity acquires title to all property without a requirement to file a new deed or other conveyance; assumes the liability of all business entities which are a party to the merger; honors all claims, actions, or proceedings against a business entity which is a party to the merger; honors creditors' rights or liens of a business entity which is a party to the merger; maintains the surviving entity's governing documents; and converts the shares, partnership interests, and the like into the same of the surviving entity or cash or other property as provided by the plan of merger.

Section 4: Creates ss. 608.438, 608.4381, 608.4382, 608.4383, 608.4384, F.S., which would be applicable when a limited liability company is a party to the merger.

A domestic limited liability company is authorized to merge with another domestic or foreign business entity provided each business entity complies with its own governing statutory authority.

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[1]NOTE: Section 3 the bill pertains to statutory provisions that apply when a corporation is a party to a merger. Section 4 pertains to provisions that apply when a limited liability company is a party to a merger. Section 5 pertains to provisions that apply when a partnership is a party to a merger. Sections 3, 4, and 5 of the bill are nearly identical in terms of procedure and content.

The required elements in a plan of merger are the same as they are for a domestic corporation.

The plan of merger may include a provision authorizing one or more of the limited liability companies which are a party to the merger to abandon the proposed merger and a statement of the method of determining the "fair value"of an interest in the limited liability company.

The merger plan must be approved in writing by a majority of the managers of the limited liability company, unless the articles of organization or regulations state otherwise. All members of the limited liability company are to be notified 30 to 60 days prior to the date of meeting or action to approve the plan of merger. The notification may be waived in writing.

If the surviving entity is a partnership, no member becomes a general partner unless that member specifically so consents in writing. Should any member refuse to become a general partner, the merger does not become effective.

Between the time the plan of merger is approved and the date of filing of the articles of merger with the Secretary of State, the merger may be abandoned by majority vote, unless the articles of organization or regulations state otherwise.

The surviving entity files articles of merger with the Secretary of State which must set forth the plan of merger, written approval by all participants, the effective date of the merger; and, if the surviving entity is a foreign business entity, its address, a statement that the Secretary of State is appointed as its agent for service of process, and a promise to pay all dissenting shareholders of each limited liability company that is a party.

Upon the effective date of the merger the surviving entity acquires title to all property without a requirement to file a new deed or other conveyance; assumes the liability of all business entities which are a party to the merger; honors all claims, actions, or proceedings against a business entity which is a party to the merger; honors creditors' rights or liens of a business entity which is a party to the merger; maintains the surviving entity's governing documents; and converts the shares, partnership interests, and the like into the same of the surviving entity or cash or other property as provided by the plan of merger.

The bill provides for the rights of dissenting members, including a time line for filing written demand for fair value of the member’s interest, who may be named as parties plaintiff and defendant in a legal challenge to the merger, and rights and responsibilities if the merger is terminated.

The bill does not apply to a limited liability company:
(a) with more than 500 members, or
(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Section 5: Creates ss. 620.201, 620.202, 620.203, 620.204, and 620.205, F.S. which would be applicable when a limited partnership is a party to the merger.

A domestic limited partnership is authorized to merge with another domestic or foreign business entity provided each business entity complies with its own governing statutory authority.

The required elements in a plan of merger are the same as they are for a domestic corporation and a limited liability company.

The plan of merger may include a provision authorizing one or more of the limited partnerships which are a party to the merger to abandon the proposed merger and a statement of the method of determining the "fair value"of an interest in the limited partnership.

The plan of merger must be approved in writing by all of the general partners and by those limited partners which own more than a majority of the current interests in the profits of the limited partnership, unless the partnership agreement states otherwise. If the surviving entity is a limited partnership or a general partnership, no general partner shall continue as a general partner unless that general partner specifically consents in writing. Should any general partner refuse to continue as a general partner, the merger does not become effective.

All general partners are to be notified 30 to 60 days prior to the date of meeting or action to approve the plan of merger. The notification may be waived in writing.

Between the time the plan of merger is approved and the date of filing of the articles of merger with the Secretary of State, the merger may be abandoned by majority vote of the general partners, unless the partnership agreement or the plan of merger state otherwise.

The surviving entity files articles of merger with the Secretary of State which must set forth the plan of merger, written approval by all participants, the effective date of the merger; and, if the surviving entity is a foreign business entity, its address, a statement that the Secretary of State is appointed as its agent for service of process, and a promise to pay all dissenting shareholders of each limited partnership that is a party. The articles of merger may function as a certificate of cancellation pursuant to 620.113.

Upon the effective date of the merger the surviving entity acquires title to all property without a requirement to file a new deed or other conveyance; assumes the liability of all business entities which are a party to the merger; honors all claims, actions, or proceedings against a business entity which is a party to the merger; honors creditors' rights or liens of a business entity which is a party to the merger; maintains the surviving entity's governing documents; and converts the shares, partnership interests, and the like into the same of the surviving entity or cash or other property as provided by the plan of merger.

A merger of a domestic limited liability, even if not the surviving entity, does not require the domestic limited partnership to wind up its business as required by 620.159, F.S., or pay its liabilities and distribute its assets as required by s. 620.162, F.S.

The bill provides for the rights of dissenting partners, including a timeline for filing written demand for fair value of the partner’s interest, who may be named as parties

plaintiff and defendant in a legal challenge to the merger, and rights and responsibilities if the merger is terminated.

The bill would not apply to a limited partnership:
(a) with more than 500 members, or
(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Section 6: Provides that the act takes effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

According to the Revenue Estimating Conference, the bill would have the following recurring effects on state funds as a result of potential, uncollected documentary stamp tax revenues:

	FY 1998-99	FY 1999-00
Revenues		
General Revenue Fund	($1,957,377)	($2,283,606.5)
Land Acquisition TF	($ 265,050)	($ 309,225)
Water Management Lands TF	($ 162,936)	($ 190,092)
Conservation and recreation Lands TF	($ 162,936)	($ 190,092)
State Housing TF	($ 401,449)	($ 468,357.5)
Local Government Housing TF	($ 50,252)	($ 58,627)
TOTAL	($ 3,000,000)	($3,500,000)

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Local Government Housing Trust Fund receives 11.125 percent of the State Housing Trust Fund's 16.19 percent share of Documentary Stamp Tax revenues. See, Part III. A. 2., for estimated fiscal impact.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The bill should allow some business entities to perform a less costly and more efficient merger than could be accomplished under current law.

3. Effects on Competition, Private Enterprise and Employment Markets:

Business opportunities will be enhanced due to the streamlined processes for both merging, and disengaging, limited partnerships with limited liability companies and/or corporations.

According to representatives from the Business Law Section of The Florida Bar, if two different business entities (e.g., a corporation and a partnership) wish to merge, in the absence of this bill, one of the entities (most likely the partnership) may dissolve and reform itself as a like entity and merge into the other. Another possibility is that the businesses will register in another jurisdiction that permits cross entity merger (e.g., Delaware) and perform the merger there. In either case, there is a strong chance that Florida will receive no documentary stamp tax revenue as a result of the merger.

D. FISCAL COMMENTS:

The fiscal amounts representing documentary stamp tax revenue are based on the assumption that mergers account for 10 percent of the value of the exemption from the excise tax on instruments relating to real property. Currently, the tax imposed on deeds and other documents relating to realty is 70 cents per $100 or fractional part of $100 of the consideration.

The Revenue Estimating Conference bases its negative fiscal impact estimate on the amount of documentary stamp tax revenue that *might* have been generated as a result of recording title transfers of certain business mergers, but is not generated because HB 1657 does not require the recordation of property title transfers due to mergers.

According to representatives from the Business Law Section of The Florida Bar, if two different business entities (e.g., a corporation and a partnership) wish to merge, in the absence of this bill, one of the entities (most likely the partnership) may dissolve and reform itself as a like entity and merge into the other. Another possibility is that the businesses will register in another jurisdiction that permits cross entity merger (e.g., Delaware) and perform the merger there. In either case, there is a strong chance that Florida will receive no documentary stamp tax revenue as a result of the merger.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Not applicable.

V. COMMENTS:

1. Regarding Section 1 of the bill: Chapter 97-230, Laws of Florida, amended s. 48.101, F. S., so that service of process is made upon the directors of corporations which are dissolved prior to July 1, 1990, as trustees of the dissolved corporation. For corporations which were dissolved after July 1, 1990, service of process is to be made pursuant to s. 48.081, F.S. This amendment was necessary to correct an anomaly created when Chapter 607, F.S., the Florida Business Corporation Act was amended in 1990. The act eliminated the concept of a board of trustees for dissolved corporations and continued the authority of the officers, directors and registered agents upon dissolution. Chapter 97-230, Laws of Florida, conformed Section 48.101, Florida Statutes, to those changes. Consequently, this section of the bill has already been addressed.

2. Regarding Section 2 of the bill: Chapter 97-230, Laws of Florida, amended s. 607.0732, F. S., partially in the manner as proposed by this bill. Chapter 97-230 specified additional criterion for “closely-held" corporation shareholder agreements and referenced sections within Chapter 607, F. S. HB 1657 affects Chapters 607 (corporations) and 608 (limited liability companies), as well as those sections created by the bill (Chapter 620). This section of the bill does not now conform to the new s. 607.0732, F.S. (1997).

3. Regarding Section 4 of the bill: The directory language requires a technical amendment on page 11, line 2, after the word "and" so that the referenced section of Florida Statute reads "608.4384," instead of 608.43884.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:
Prepared by: Legislative Research Director:

Michael A. Kliner Stephen T. Hogge