STORAGE NAME: h1657s1a.gg
DATE: April 23, 1998

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1657

RELATING TO: Mergers of business entities or corporations

SPONSOR(S): Committee on Financial Services and Representative Kosmas

COMPANION BILL(S): SB 518

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) CIVIL JUSTICE & CLAIMS (W/D)
(3) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
(4) FINANCE AND TAXATION YEAS 13 NAYS 0
(5) GENERAL GOVERNMENT APPROPRIATIONS YEAS 10 NAYS 0

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 would amend 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.

CS/HB 1657 would allow corporations, limited liability companies and limited partnerships to merge with each other. In the instance of a corporation merging with an "other business entity," the bill specifically references a not-for-profit corporation as an "other business entity." In addition, 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.

In addition to the aforementioned:

- Section 607.0730, F.S., would be amended by removing the ten year limitation on voting trusts.

- A publicly-held Florida corporation would be permitted to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval so long as certain conditions are met (e.g., articles of incorporation are not changed, and valuation of shares remains the same).

- The number of persons needed to form a limited liability company would be reduced from two to one.

According to the Revenue Estimating Conference, the exemption from documentary stamp tax may result in a fiscal impact of ($2.95) million to the state and ($0.05) to local governments for FY 1998-99, and ($3.441) million to the state and ($0.059) to local governments for FY 1999-00.
[See section VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES]

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 than to payment of the full par value of the issued and outstanding stock. At least one person is needed to form a corporation.

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. At least two people are needed to form an LLC.

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.

In all cases, at least two persons are needed to form a partnership.

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 (for profit); Chapter 617, FS (not-for-profit)	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 (for profit) 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.

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
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 (for profit) 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 not-for-profit corporations are permitted to merge with other corporations (including for-profit and foreign corporations) provided that the surviving entity is a not-for-profit corporation. 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 CS/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.

Voting Trusts

A voting trust is essentially a voluntary contract whereby one or more shareholders place their shares in a trust which is administered by a trustee and governed by the trust documents. Section 607.0307, F.S., places a ten year limitation on voting trusts. The ten year limitation on voting trusts is cited as a disincentive for its use and is alleged to have become in some instances a "trap for the unwary" because of the effect of an inadvertent non-renewal of the trust. For instance, in an active and current voting trust, if a voting trust member dies, the members' shares remain in and are distributed in accordance with the trust document. If members of a voting trust inadvertently forget to renew the trust after ten years, and a member dies afterward, those shares may be required to go through the probate process.

Corporation merger with wholly-owned subsidiaries

A corporation may be organized according to a plan articulated in its articles of incorporation and bylaws in order to actively pursue a business interest or product. As the corporation's business grows and diversifies, a corporation may find itself owning other corporation subsidiaries. In order to take advantage of business and tax opportunities, such a corporation may find it advantageous to reorganize as a holding company in order to allow each segment of its business to occupy its own subsidiary unit. According to a representative of the Business Law Section of The Florida Bar, the process for accomplishing this reorganization under current law can be expensive and time consuming. For example, if a corporation that owned another company wanted to take advantage of an IRS ruling the corporation would be required to take several steps which include, but are not limited to, filing a registration statement with the Securities and Exchange Commission, and exhaustion of the proxy and voting process which includes ballot mailing and counting (and fees for attorney involvement), before a merger could be consummated.

Minimum number needed to form an LLC

Chapter 608 regulates limited liability companies (LLC). Current law requires that at least two people are needed to form an LLC. This requirement may have its origins in the fact the Internal Revenue Service originally viewed LLCs as a partnership rather than a corporation for tax purposes. Partnerships require at least two people to form. The IRS has altered its view of LLCs and now no longer requires LLCs to have the attributes of a partnership in order to receive preferential tax treatment. The IRS has streamlined tax filings for LLCs and now treats them more like corporations. Florida law requires at least one person to form a corporation.

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. After 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.

In the instance of a corporation merging with an “other business entity,” the bill specifically references a not-for-profit corporation as an “other business entity.” In the instance of a LLC merging with a “other business entity,” only corporations and limited partnerships are listed as “other business entities.” In the instance of a limited partnership merging with an “other business entity,” only corporations and LLCs are listed as “other business entities.”

Not-for-profit corporations will be permitted to merge with for profit corporations, notwithstanding section 617.0302(16) which provides, in relevant part, that the surviving entity of a merger between a not-for-profit corporation and a for-profit corporation is a not-for-profit corporation.

Voting Trusts

Section 607.0730, F.S., would be amended by removing the ten year limitation on voting trusts.

Merger with wholly-owned subsidiaries

A publicly-held Florida corporation would be permitted to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval so long as certain conditions are met (e.g., articles of incorporation are not changed, and valuation of shares remains the same).

Minimum number needed to form an LLC

The number of persons needed to form an LLC would be reduced from two to one.

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. Lower Taxes:

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:

CS/HB 1657 amends s. 607.0730, and creates ss. 607.1108, 607.1109, 607.11101, 607.10112, 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 607.0703, F.S., removing the ten year limitation on voting trusts.

Section 2: Creates s. 607.10112, F.S., authorizing a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval so long as certain conditions are met (e.g., articles of incorporation are not changed, and valuation of shares remains the same).

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.

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.

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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 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 time line 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)

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues
TOTAL ($ 2,949,748)
($3,441,373)

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.

Local Government Housing TF	($ 50,252)	($ 58,627)

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:

With the removal of the ten-year limitation on voting trusts, corporation shareholders using voting trusts would no longer have to renew the trust every ten years and would no longer run the risk of the trust "lapsing" inadvertently. In addition, corporations will be permitted to reform as holding companies and merge with wholly-owned subsidiaries without a shareholder vote. Finally, some business entities may be able 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. In addition, corporations will be permitted to reform as holding companies and merge with wholly-owned subsidiaries without a shareholder vote.

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:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

1. In the instance of a corporation merging with an “other business entity,” the bill specifically references a not-for-profit corporation as an “other business entity.” In the instance of a LLC merging with a “other business entity,” only corporations and limited partnerships are listed as “other business entities.” In the instance of a limited partnership merging with an “other business entity, only corporations and LLCs are listed as “other business entities.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The differences between the original bill and the committee substitute reported out of the Committee on Financial Services are as follows:

- Sections 1 and 2 of the bill, relating to service of process on dissolved corporations, and relating to shareholder agreements for “closely-held” corporations, respectively, were removed from the bill because these amendments to Florida law were passed in the 1997 legislative session under a separate bill (see, Chapter 97-230, Laws of Florida).

- A new section 1 of the bill amends s. 607.0730, F.S., by removing the ten year limitation on voting trusts.

- A new section 2 of the bill creates s. 607.10112, F.S., authorizing a publicly-held Florida corporation to re-organize itself as a holding company through a merger with a wholly-owned subsidiary without shareholder approval so long as certain conditions are met (e.g., articles of incorporation are not changed, and valuation of shares remains the same).

- Section 608.407(2), F.S., would be amended, reducing the minimum number of members needed to form a limited liability company from two to one.

- Not-for-profit corporations were included by reference in the bill section relating to corporations merging with “other business entities” so that not-for-profit corporations could take advantage of the merger provisions provided that assets of the not-for-profit corporation are disposed of in a way that follows the provisions of the articles of incorporation regarding dissolution.

- A scrivener’s error was corrected on page 11, line 2 of the bill, in which “608.43884" was removed and “608.4384" was inserted in its place.

On April 14, 1998, the Finance and Tax committee adopted two amendments which will travel with the committee substitute and do the following:

1) By making specific reference to s. 617.0302(16), a not-for profit corporation may take advantage of the merger provisions of CS/HB 1657, notwithstanding the aforementioned section which provides that a not-for-profit may merge with a for profit corporation provided that the surviving entity is a not-for-profit.

2) This amendment conforms statutory provisions to the elimination of the Name Reservation program, which was de-funded at the request by the Department of State, and as provided in the 1997-1998 General Appropriations Act.

   This amendment is really technical in nature. Because the Dept. of State no longer reserves business names, all references to this duty may be removed from statute.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
Michael A. Kliner	Stephen T. Hogge

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:	Legislative Research Director:
David M. Greenbaum	David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Legislative Research Director:
Carol L. Dickson-Carr	Keith G. Baker, Ph.D.

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:	Legislative Research Director:
Juliette Noble	Cynthia P. Kelly