
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 4, 1998 Revised: _____

Subject: Mergers of business entities or corporations

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Schmeling</u> | <u>Austin</u> | <u>CM</u> | <u>Favorable/CS</u> |
| 2. | <u> </u> | <u> </u> | <u>JU</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u>WM</u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

I. Summary:

The bill provides a process for mergers of Florida corporations, not-for-profit corporations, limited liability companies, and limited partnerships with or into each other and with or into other business entities, both domestic and foreign. The bill also removes the ten year limit on voting trusts, permits publicly-held Florida corporations to reorganize as holding companies under certain circumstances, and reduces the number of members necessary to form a limited liability company from two to one.

This bill amends ss. 607.0730 and 608.407, F.S. This bill creates ss. 607.1108, 607.1109, 607.11101, 608.438, 608.4381, 608.4382, 608.4383, 608.4384, 620.201, 620.202, 620.203, 620.204, and 620.205, F.S.

II. Present Situation:

Chapter 607, F.S., is the "Florida Business Corporation Act" and provides for the creation of corporations in Florida. Section 607.0730, F.S., provides for voting trusts, whereby one or more shareholders may create such a trust, conferring on a trustee the right to vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. Unless extended, a voting trust is valid for not more than 10 years after its effective date.

Section 608.407, F.S., requires articles of organization to be filed to form a limited liability company. These articles of organization must be accompanied by an affidavit declaring that the limited liability company has at least two members.

Section 607.1101, F.S., allows the merger of one or more corporations upon the adoption of a merger plan by the board of directors and the approval of the plan by the shareholders. Section 607.1103, F.S., sets forth the procedure for shareholder action on a merger plan, including notice to shareholders of the meeting to consider the merger, the ability to amend the merger plan after approval, and the ability of the corporation to abandon the merger.

Section 607.1105, F.S., requires “articles of merger” to be filed with the Secretary of State upon the approval of the merger plan by all affected corporations. Section 607.1106, F.S., describes the effect of the merger, as far as the distribution of shares in the merged corporation and continuity of legal actions and creditor’s rights. Section 607.1107, F.S., allows a domestic corporation to merge with a foreign corporation. Finally, ss. 607.1301, 607.1302, and 607.1320, F.S., provide for the exercise of dissenters’ rights for those minority shareholders who do not wish to participate in a merger.

Chapter 608, F.S., is the “Florida Limited Liability Company Act” and provides for the creation of limited liability companies in the state. The chapter sets forth the various requirements for organizing a limited liability company, including management of the company by members or managers and the voting rights of each. Articles of organization of a limited liability company must be filed with the Secretary of State.

Part I of ch. 620, F.S., is the “Florida Revised Uniform Limited Partnership Act” and provides for the creation of limited partnerships in Florida. The part describes the requirements for forming limited partnerships in the state, including the ownership rights and responsibilities of general and limited partners and the voting rights of each. A certificate of partnership for a limited partnership must be filed with the Secretary of State.

Although ch. 607, F.S., provides for the merger of corporations with other corporations, there are no specific provisions in Florida law that allow the merger of corporations, not-for-profit corporations, limited liability companies, limited partnerships, and other business entities with each other. If business entities other than corporations wish to merge, they are generally required to dissolve and then re-form. Section 620.8905, F.S., does provide for the merger of a partnership with one or more partnerships or limited partnerships and s. 617.1101, F.S., provides for the merger of two or more domestic not-for-profit corporations into one domestic not-for-profit corporation.

Many states have statutes authorizing one or more different types of business entities to merge. Some states prohibit mergers between certain business entities, such as limited liability companies and limited partnerships. States differ on the number of members or partners required to approve a merger of limited liability companies and limited partnerships (e.g., majority vs. unanimous approval). Some states limit the type of entity that can result from a merger (e.g., a corporation or limited liability company, but not a partnership). In addition, some states take different approaches to the rights of owners dissenting to the merger.

III. Effect of Proposed Changes:

The bill amends s. 607.0730, F.S., to remove the ten year limit on voting trusts.

Section two of the bill provides for publicly-held Florida corporations to reorganize themselves as a holding company with one or more operating subsidiaries through a merger with a wholly-owned subsidiary in which the securities to be used to the corporation's shareholders in the merger are identical in terms of value and governing provisions, to the share of the public company which are exchanged in the merger.

The bill amends s. 608.407, F.S., reducing the number of members necessary to form a limited liability company from two to one.

The bill amends chs. 607, 608, and 620, F.S., to specifically allow corporations, not-for-profit corporations, limited liability companies, and limited partnerships to merge with each other and with other business entities, both domestics and foreign, to form a "surviving entity" that can be either a corporation, limited liability company, limited partnership, or other business entity. Generally, the process set forth in the bill should streamline the merger process, and enhance the flexibility of business structures.

The bill allows mergers of domestic corporations, not-for-profit corporations, limited liability companies, and limited partnerships with each other or other business entities, in accordance with procedures that are generally consistent with those currently provided for the merger of two or more corporations in ch. 607, F.S. The merger may occur upon the adoption of a plan of merger, which must include, among other things: the names of all business entities that are a party to the merger; the name of the surviving entity, all general partners if the surviving entity is a partnership, and all managers if the surviving entity is a limited liability company; the terms and conditions of the merger; and the manner and basis of converting shares, partnership interests, and the like of business entities into similar interests in the surviving entity.

The bill establishes the voting rights of members and managers of limited liability companies and general and limited partners in limited partnerships. The voting rights of shareholders are set forth in s. 607.1103, F.S. If the surviving entity is to be a partnership, all shareholders, general partners, and the members of a limited liability company must consent in writing to becoming a general partner, with the resulting exposure to joint and several liability. If a shareholder, general partner, or member refuses to consent to becoming a general partner, the merger does not take place. All business entities involved must approve the plan for merger.

The bill references current procedures in s. 607.1103, F.S., as applicable to corporation merging with other business entities. The bill provides for notice of a meeting to consider a merger plan to all limited liability company members and managers and all limited partnership general and limited partners. Information that must appear in the notice includes an explanation of dissenters' rights and a mechanism for establishing the "fair value" of a dissenting member's or partner's interest.

Additionally, the bill provides the ability for limited liability companies and limited partnerships to amend or abandon a merger plan after approval, similar to that provided for corporations.

The bill requires a surviving entity to file articles of merger with the Secretary of State. The merger is effective on the date indicated in the articles or on the date of filing if no effective date is specified.

The bill provides that, on the effective date of the merger: only the surviving entity exists and all other entities cease to exist; title to all real estate and other property owned by a domestic party to the merger is vested in the surviving entity without the requirement to record any deed or other conveyance; the surviving entity is liable for all liabilities of all business entities which are a party to the merger; all claims, actions or proceedings against a party to the merger may be continued against the surviving entity; creditors' rights are not affected by the merger; and shares, partnership interests, and the like are converted into a similar interest in the surviving entity.

The bill recognizes dissenters' rights for shareholders as provided in ss. 607.1301, 607.1302, and 607.1320, F.S., and establishes such rights for members and managers of limited liability companies and partners of limited partnerships. It also provides a procedure to establish the fair value of a member's or partner's interest in a business entity, similar to the procedure provided for shareholders, except for certain differences which reflect the types of entities involved.

The bill provides that the act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The revenue impact conference related the following costs associated with HB 1657, containing similar provisions as SB 518. Currently, the transfer of real property during a

merger is subject to taxation (excise tax on documents) upon the transfer of any deed. These costs are quite speculative:

| 1998-99 | | | | | | | |
|-----------------|--------|-------------|--------|-------|--------|-------|--------|
| General Revenue | | State Trust | | Local | | Total | |
| Cash | Recurr | Cash | Recurr | Cash | Recurr | Cash | Recurr |
| (2.0) | (2.1) | (1.0) | (1.2) | 0 | 0 | (3.0) | (3.3) |

B. Private Sector Impact:

Business entities may realize cost-savings from the bill's provisions because of the easier and less costly process it envisions for mergers.

C. Government Sector Impact:

According to the Department of State, the bill is anticipated to have no discernible fiscal impact on the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.