STORAGE NAME: s0704z.fs ****FINAL ACTION****
DATE: May 27, 1998 ****SEE FINAL ACTION STATUS SECTION****

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

BILL #: SB 704, 1st Engrossed

RELATING TO: Business entities

SPONSOR(S): Senator Klein

COMPANION BILL(S): SB 518 (s); HB 1657 (s)

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

(1) COMMERCE AND ECONOMIC OPPORTUNITIES YEAS 10 NAYS 0
(2) WAYS AND MEANS YEAS 27 NAYS 0
(3)
(4)
(5)

I. FINAL ACTION STATUS:

The Senate amended SB 704 with a revenue-neutral version of CS/HB 1657 and passed the Senate bill on April 29, 1998, by a vote of 39-0. The House passed the 1st engrossed version of SB 704 on April 30, 1998, by a vote of 108-0. It became law without the Governor's signature on May 22, 1998: Chapter 98-101, Laws of Florida.

II. SUMMARY:

The bill:

- removes the 10 year limit on voting trusts;
- permits 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);
- amends Chapters 607, 608, and 620, F.S. to permit mergers of Florida corporations, limited partnerships, and limited liability companies with or into each other and with or into other business entities both domestic or foreign;
- provides that qualified subchapter S subsidiaries are not treated as separate entities from their parent corporations for purposes of the Florida corporate income tax;
- states that the provisions pertaining to qualified subchapter S subsidiaries are intended to clarify the intent of the Legislature under existing law and are effective with respect to tax years beginning on or after January 1, 1997;
- adopts the term "limited liability company" and the abbreviation "LLC" as references in statute. The bill also exempts LLCs from the state corporate income tax, which they currently pay at the rate of 5.5%;
- reduces the minimum number of members necessary to form a limited liability company from two to one; and
- 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.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Cross-entity mergers

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")

The Florida Limited Liability Company Act of 1982 created the limited liability company (LLC) in Florida. The LLC is a hybrid entity; for liability purposes, it is treated as a corporation, and for federal taxation purposes, it is treated as a partnership. The Florida Limited Liability Company Act was enacted, in part, to attract capital to Florida by offering limited liability in conjunction with federal tax advantages.

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.

Income Tax and Limited Liability Companies

Limited liability companies are subject to the corporate income tax imposed under Chapter 220, F.S. They are taxed at a rate of 5.5 percent of their net income for the taxable year.

An October 1996, report by the Department of Revenue estimated that the 1996 state corporate income tax liability of the approximately 3,780 LLCs operating in Florida in year end 1996 was $3.1 million. If trends from the past couple of years continue, then the Department projects approximately 8,000 LLCs in Florida by the end of calendar

year 1997. As of May 20, 1998, the Department did not have any actual numbers for the number of LLCs in Florida by the end of 1997.

The growth in the number of LLCs is a relatively recent phenomenon and due, in large part, to changes in how they are treated under federal tax law. The U.S. Internal Revenue Service (IRS) first ruled in 1988 that under certain conditions an LLC could qualify as a partnership for purposes of the federal income tax. In determining whether an LLC was to be classified as a partnership, and therefore entitled to the pass-through tax treatment, or classified as an association taxable as a corporation, the IRS examined the nature of an organization, for example by analyzing the LLC's articles of organization.[1] Recently, the IRS issued new regulations allowing an LLC to elect its federal tax classification on a special tax form (61 Fed. Reg. 66584 (1996)).

Under Florida law, partnerships of any type are specifically excluded from the definition of a corporation and are not subject to the state's corporate income tax (s. 220.03(1)(e), F.S.). Under the Florida corporate income tax code, a taxpayer's net income for state tax purposes is based on the taxpayer's adjusted federal income (s. 220.12, F.S.). In the case of an LLC, adjusted federal income means "taxable income determined *as if* such limited liability company were required to file or had filed a federal corporate income tax return under the Internal Revenue Code" (s. 220.13(2)(j), F.S.)(emphasis provided).

Tax Treatment for S Corporations and Subsidiaries

Effective January 1, 1997, s. 1361 of the Internal Revenue Code was amended to permit an S corporation to own more than 80 percent of another corporation, which is known as a qualified subchapter S subsidiary.[2] The S corporation could then make an election under s. 1361(a)(3), and the qualified subchapter S subsidiary would not be treated as a separate corporation for federal tax purposes.

In Florida, subchapter S corporations are not subject to the Florida corporate income tax. Wholly-owned subsidiaries of qualified subchapter S corporations, however, are generally subject to Florida corporate income tax liability.

Business Entity Name Reservation

Prior to July, 1997, an individual could reserve a business name for either a for-profit or not-for-profit corporation, a limited liability company, or a partnership, by submitting the proper form and paying a $35 fee to the Department of State. The program, however, was de-funded in the 1997-1998 General Appropriations Act at the request by the Department of State.

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[1]See, e.g., Rev. Rul. 93-53, 1993-2 C.B. 312, holding that a Florida LLC which had associates, an objective to carry on business and divide the gains from such business, centralized management, and limited liability could still be classified as a partnership because it did not possess other characteristics of a corporation, such as continuity of life and free transferability of interests.

[2]An S corporation is a corporation that has a limited number of shareholders and is not generally subject to federal or Florida corporate income tax liability. The shareholders, however, are subject to personal income tax liability.

B. EFFECT OF PROPOSED CHANGES:

Cross-entity mergers

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.

A corporation, an LLC, or a limited partnership, would be permitted to merge with another business entity as provided in the bill. For instance, a for-profit corporation would be permitted to merge with a not-for-profit corporation, an LLC, or a limited partnership. An LLC would be permitted to merge with a for-profit corporation or a limited partnership. A limited partnership would be permitted to merge with a for-profit corporation or an LLC.

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

Only one person is needed to form an LLC.

Income Tax and Limited Liability Companies

LLCs would no longer have to pay the Florida corporate income tax.

Tax Treatment for S Corporations and Subsidiaries

As is provided under federal law, qualified subchapter S subsidiaries would not be treated as separate entities from their parent corporations for purposes of payment of the Florida corporate income tax, and this provision would be made effective with respect to tax years beginning on or after January 1, 1997.

Business Entity Name Reservation

The bill specifically repeals sections of Florida Statutes to conform 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. See Part III. E., SECTION-BY-SECTION RESEARCH for specific repealed statute sections.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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. According to the Department of Revenue, the fact that LLCs would no longer have to pay corporate income tax would have a de minimis impact on their current workload.

(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?

None.

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

None.

(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?

Yes. LLCs would no longer be subject to the payment of corporate income taxes.

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?

No.

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?

No.

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:

The bill amends sections 607.0730, 608.405, 608.406, 608.407, 608.471, and 220.02, 220.03, 220.13, 220.22, Florida Statutes, creates sections 607.1108, 607.1109, 607.11101, 608.438, 608.4381, 608.4382, 608.4383, 608.4384, 620.201, 620.202, 620.203, 620.204, 620.205, Florida Statutes, and repeals ss. 607.0122(2) and (3), 607.0402, 607.1506(2)(b), 608.4061, 617.0122(2) and (3), 617.0402, 617.1506(2)(a), 620.104, 620.182(7), and 620.784(2), Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends 607.0703, F.S., removing the ten year limitation on voting trusts.

Section 2: This currently un-numbered section authorizes 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: Amends s. 608.407, F.S., reducing the number of members needed to form a limited liability company from two to one.

Section 4. [3] 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.

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[3]NOTE: Section 4 the bill pertains to statutory provisions that apply when a corporation is a party to a merger. Section 5 pertains to provisions that apply when a limited liability company is a party to a merger. Section 6 pertains to provisions that apply when a partnership is a party to a merger. Sections 4, 5, and 6 of the bill are nearly identical in terms of procedure and content.

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 5. 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.

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 6. 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 7. Amends s. 220.02(1), F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that LLCs not be subject to the tax and to specify that the code is not intended to tax any natural person who engages in business in this state as a member or manager of an LLC that is classified as a partnership for federal income tax purposes. This section of the bill creates subsection (11) of s. 220.021, F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that a qualified subchapter S subsidiary shall not be treated as a separate corporation or entity from the S corporation parent.

Section 8. Amends s. 220.22, F.S., requiring that for the year in which an election is made to file as a qualified subchapter S subsidiary under s. 1361 (b) (3) of the IRS Code, the qualified subchapter S subsidiary would be required to file an informational return with the Department of Revenue.

Section 9. Amends s. 220.03(1), F.S., relating to definitions under the corporate income tax code, to exclude LLCs that are taxable as partnerships for federal income tax purposes from the definition of the term "corporation."

Section 10. Amends s. 220.13(2), F.S., excluding the income of specified LLCs from the definition of "taxable income."

Section 11. Amends s. 608.406, F.S., providing that the words "limited liability company," or the abbreviation "L.L.C.," may be used at the end of an LLC's name as an alternative to the words "limited company" or the abbreviation "L.C."

Section 12. Amends s. 608.405, F.S., reducing the number of members required to form an LLC from two to one.

Section 13. Amends s. 608.407, F.S., conforming the LLC chapter regarding the articles of organization by reducing the number of members required to form an LLC from two to one.

Section 14. Amends s. 608.471, F.S., providing that an eligible LLC's income is not subject to Florida's corporate income tax. This section is further amended to provide that an eligible LLC shall be classified as a partnership for purposes of the state corporate income tax code or shall be classified identically to its classification for federal income tax purposes.

Section 15. Repeals ss. 607.0122(2) and (3), 607.0402, 607.1506(2)(b), 608.4061, 617.0122(2) and (3), 617.0402, 617.1506(2)(a), 620.104, 620.182(7), and 620.784(2), Florida Statutes, to conform 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.

Section 16. Provides the effective date of this act shall be July 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The bill would eliminate all tax revenues generated in Florida by LLCs and by qualified subchapter S corporation subsidiaries.

Revenue:	FY 1997-98	FY 1998-99
General Revenue Fund	($8.5 M)	($6.8 M)

3. Long Run Effects Other Than Normal Growth:

N/A.

4. Total Revenues and Expenditures:

See III.A.2., above

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

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:

Limited liability companies would not be subject to the state corporate income tax. Qualified subchapter S corporation subsidiaries would no longer be subject to Florida corporate income tax liability.

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

The attraction of forming as an LLC would increase.

D. FISCAL COMMENTS:

Of the total amount of the General Revenue impact identified above in Part IV. A. 2., FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT, the Department of Revenue estimates that $300,000 of that amount is due to the fact that qualified subchapter S subsidiaries would no longer be subject to Florida corporate income tax liability.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

VI. COMMENTS:

A corporation, an LLC, or a limited partnership, would be permitted to merge with another business entity as provided in the bill. For instance, a for-profit corporation would be permitted to merge with a not-for-profit corporation, an LLC, or a limited partnership. An LLC would be permitted to merge with a for-profit corporation or a limited partnership. A limited partnership would be permitted to merge with a for-profit corporation or an LLC.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The 1st engrossed version of SB 704 differs from the original bill in the following manner:

The Senate amended SB 704 with a revenue-neutral version of CS/HB 1657 (business entity mergers).

CS/HB 1657 had provided that transfers of real property as a result of a merger required no recordation and, subsequently, no need to pay documentary stamp taxes. Due to this provision, the Revenue Estimating Conference estimated that section of the bill represented a possible negative fiscal impact due to the amount of documentary stamp tax revenue that might have been generated as a result of recording title transfers of certain business mergers, but would not be generated because the bill did not require the recordation of property title transfers due to mergers.

VIII. SIGNATURES:

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
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