

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: Commerce Committee

BILL: SB 698

INTRODUCER: Senator Deutch

SUBJECT: Corporations

DATE: March 11, 2008

REVISED: 03/11/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>FT</u>	<u></u>
4.	<u></u>	<u></u>	<u>TA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input checked="" type="checkbox"/> | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill amends statutory provisions relating to Florida business organizations to eliminate duplicative filing requirements and provide that the conversion or merger of two or more business entities will occur under the statute that governs the resulting or surviving entity.

This bill amends the following sections of the Florida Statutes: 607.1109, 607.1113, 607.1115, 608.4382, 608.439, 608.4403, 617.1108, 620.1406, 620.2104, 620.2204, 620.8101, 620.8105, 620.81055, 620.8911, 620.8914, and 620.8918.

**II. Present Situation:**

Florida businesses are organized into general categories:

- Corporations (governed by ch. 607, F.S., which is the Florida Business Corporation Act);
- Limited Liability Companies (governed by ch. 608, F.S., which is the Florida Limited Liability Company Act);
- Not-For-Profit Corporations (governed by ch. 617, F.S., which is the Florida Not For Profit Corporation);

- Limited Partnerships (governed by Part 1, ch. 620, F.S., which is the Florida Revised Uniform Limited Partnership Act of 2005); and
- Partnerships (governed by Part II, ch. 620, F.S., which is the Revised Uniform Partnership Act of 1995).

These chapters regulate the formation, operation, merger, conversion, and dissolution of these types of Florida businesses.

Currently, Florida law requires multiple filings of certificates or articles of merger and certificates of conversions with the Department of State (DOS) by business entities when they convert into another type of business organization. For example, if a Florida Limited Liability Company (LLC) converts into a Florida limited partnership, the statute requires a filing of a certificate of conversion under ch. 608, F.S., (governing LLCs) and ch. 620, F.S., (governing partnerships).

According to DOS, its actual practice and policy does not require multiple or double filings when only Florida business entities are involved in the transaction.

### III. Effect of Proposed Changes:

**Section 1** amends s. 607.1109, F.S., which relates to articles of merger for corporations, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 2** amends s. 607.1113, F.S., which relates to certificates of conversion for corporations, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 3** amends s. 607.1115, F.S., which relates to conversion of another business entity to a corporation, to require the “other business entity” in the conversion to also execute the certificate of conversion.

**Section 4** amends s. 608.4382, F.S., which relates to certificates of merger for LLCs, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 5** amends s. 608.439, F.S., which relates to conversion of entities to a LLC, to require the “other business entity” must also execute the certificate of conversion.

This section also adds “a corporation” to the definition of “other business entity” or “another business entity” that may be converted into a limited liability company. This proposed change is necessary because the term was inadvertently left off the definition when changes were made to this section in 2005.

**Section 6** amends s. 608.4403, F.S., which relates to certificates of conversion for LLCs, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 7** amends s. 617.1108, F.S., which relates to merger of a corporation and other business entities, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section also provides that the articles or certificate of merger that was filed to comply with the Florida merger requirements may be filed by the not for profit corporation involved in the merger with the recording officer of each county where real property that does not belong to the surviving entity is located.

**Section 8** amends s. 620.1406, F.S., which relates to management rights of general partners, to require that the expulsion of a limited partner have the consent of all other limited partners.

**Section 9** amends s. 620.2104, F.S., which relates to filings required for conversions for limited partnerships, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section also requires that each general partner in a limited partnership must sign the certificate of conversion as well as the converting organization.

**Section 10** amends s. 620.8918, F.S., which relates to filings required for mergers with limited partnerships, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 11** amends s. 620.2204, F.S., which relates to application to existing limited partnership relationships, to provide that limited partners that dissociate from a limited partnership before January 1, 2006, have the same rights that existed before January 1, 2006. This proposed change is necessary because when this section was last amended, the incorrect date was referenced. To address this, statutory revision included the following as a footnote in this section of law:

Section 1206 of RE-RULPA (2001), as adopted by the National Conference of Commissioners on Uniform State Laws, provides for a date of “the effective date of this act.” The Florida Bar drafting committee that prepared the bill containing this act has reported that the “July 1, 2005” date (instead of the effective date of the act referenced in the uniform law per the National Conference of Commissioners on Uniform State Laws) was the result of a clerical oversight and that it will attempt to correct this reference in future legislation.

**Section 12** amends s. 620.8101, F.S., which relates to definitions for use in partnerships, to delete a statement of merger from the definition of a “statement.” This is a technical change to reflect the accurate title of a merger document.

**Section 13** amends s. 620.8105, F.S., which relates to execution, filing and recording of partnership registration and other statements, to allow partnerships to file a certificate of conversion or merger with DOS only if the partnerships have filed a registration statement.

**Section 14** amends s. 620.81055, F.S., which relates to fees for filing documents and issuing certificates for partnerships, to replace the word “Statement” of merger with “Certificate” of merger. This is a technical change to accurately reflect the title of the document.

**Section 15** amends s. 620.8911, F.S., which relates to definitions used in partnerships, to make a technical change to the definition of “organization” relating to conversions and mergers. This proposed change is made for stylistic reasons.

**Section 16** amends s. 620.8914, F.S., which relates to filings required for conversion for partnerships, to eliminate duplicative filing requirements and to provide that the conversion will occur under the statute that governs the resulting entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

This section requires a general partner in a limited partnership to sign the certificate of conversion as well as the converting organization.

This section also provides that a certificate of conversion acts as a cancellation of a registration statement for a converting partnership.

**Section 17** amends s. 620.8918, F.S., which relates to filings required for mergers for partnerships, to eliminate duplicative filing requirements and to provide that the merger of two or more entities will occur under the statute that governs the surviving entity. This proposed change would remove unnecessary filing requirements when the transaction involves only Florida entities.

**Section 18** provides an effective date of July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill would eliminate duplicative filings for business entities.

**C. Government Sector Impact:**

The number of filings with the Department of State may decrease.

**VI. Technical Deficiencies:**

Section 10 and Section 17 of this bill both amend s. 620.8918, F.S., which relates to filings required for mergers for partnerships. Although, these two sections essentially proposed the same changes, the actual language and technical changes are not consistent.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**

None.

**B. Amendments:****Barcode 301142 by Commerce on March 11, 2008:**

This amendment deletes section 10 of the bill. Section 10 and section 17 of this bill both amend s. 620.8918, F.S., which relates to filings required for mergers for partnerships. These two sections essentially propose the same changes, with section 17 also proposing additional changes.