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S 704 : Business Entities

S 704 GENERAL BILL/1ST ENG by Klein (Similar CS/H 1657, CS/S 0518, Compare 1ST ENG/H 1049, CS/1ST ENG/H 4413, CS/S 0608)

Business Entities; removes 10-year limit on voting trusts; creates holding company formation by merger by certain corporations; provides for mergers of domestic corporations & other business entities, limited liability companies & domestic limited partnerships under certain circumstances; provides legislative intent re taxation of "qualified subchapter S subsidiary"; exempts certain limited liability companies from corporate income tax, etc. Amends FS. EFFECTIVE DATE: 07/01/1998.

01/20/98 SENATE Prefiled

01/28/98 SENATE Referred to Commerce and Economic Opportunities; Ways and Means

03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities; Ways and Means -SJ 00048; On Committee agenda-- Commerce and Economic Opportunities, 03/04/98, 9:00 am, Room-EL

03/04/98 SENATE Comm. Action: Favorable by Commerce and Economic Opportunities -SJ 00119; Now in Ways and Means -SJ 00119

03/23/98 SENATE On Committee agenda-- Ways and Means, 03/26/98, 2:30 pm, Room-EL --Not considered

03/27/98 SENATE On Committee agenda-- Ways and Means, 04/01/98, 12:30 pm, Room-EL

04/01/98 SENATE Comm. Action:-Favorable by Ways and Means -SJ 00374

04/02/98 SENATE Placed on Calendar -SJ 00374

04/28/98 SENATE Placed on Special Order Calendar -SJ 01092

04/29/98 SENATE Placed on Special Order Calendar -SJ 01092; Read second time -SJ 01123; Amendment(s) adopted -SJ 01124; Read third time -SJ 01134; Passed as amended; YEAS 39 NAYS 0 -SJ 01134

04/29/98 HOUSE In Messages

04/30/98 HOUSE Received -HJ 01749; Read second and third times -HJ 01750; Passed; YEAS 108 NAYS 0 -HJ 01750

04/30/98 SENATE Ordered enrolled -SJ 01526

05/06/98 Signed by Officers and presented to Governor

05/22/98 Became Law without Governor's Signature; Chapter No. 98-101; See also CS/HB 4413 (Ch. 98-342), CS/SB 608 (Ch. 98-100)

BILL TEXT: (Top)

sb0704 (View As: [HTML, As Printed](#)) (11/20/98)

sb0704e1 (View As: [HTML, As Printed](#)) (9/29/98)

sb0704er (View As: [HTML, As Printed](#)) (4/30/98)

AMENDMENTS: (Top)

Amendment 154866: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Klein 4/27

Amendment 325480: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Klein 4/22

Amendment 330760: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Klein 4/29

Amendment 485752: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Klein 4/29

Amendment 562918: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Grant & Harris 4/28

Amendment 605766: An Amendment to sb0704 (View As: [HTML, As Printed](#)) Grant & Harris 4/29
A. to A. 562918

A to A, 5/29/98

- Amendment 691742: An Amendment to sb0704 (View As: HTML, As Printed) *Grant + ... 5/29*
- Amendment 711750: An Amendment to sb0704 (View As: HTML, As Printed) *Klein 7/28 - (reverted)*
- Amendment 920776: An Amendment to sb0704 (View As: HTML, As Printed) *Klein 4/24*

STAFF ANALYSIS/BILL RESEARCH: (Top)

- SB0704 by cm (View As: As Printed) *3/3/98*
- SB0704 by wm (View As: As Printed) *3/21/98 WRS + ...*
- SB0704z by sz (View As: As Printed) *3/20/98 F. Fin ...*

VOTE HISTORY: (Top)

04/30/98
HOUSE:
SB0704 Rollcall:0015

04/29/98
SENATE:
SB0704 Rollcall:0015

STATUTE CITATIONS: (Top)

- 0220.02
- 0220.03
- 0220.13
- 0220.22
- 0607.0122
- 0607.0402
- 0607.0730
- 0607.1108
- 0607.1109
- 0607.11101
- 0607.1506
- 0608.405
- 0608.406
- 0608.4061
- 0608.407
- 0608.438
- 0608.4381
- 0608.4382
- 0608.4383
- 0608.4384
- 0608.471
- 0617.0122
- 0617.0402
- 0617.1506
- 0620.104
- 0620.182
- 0620.201
- 0620.202
- 0620.203
- 0620.204
- 0620.205
- 0620.784

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H 1657: Mergers/Businesses or Corporations

H 1657 GENERAL BILL/CS by Financial Services (EIC); Kosmas (Similar CS/S 0518, 1ST ENG/S 0704)

Mergers/Businesses or Corporations; removes time limitation on voting trusts; provides for mergers of domestic corporations & other business entities, for mergers of limited liability companies, & mergers of domestic limited partnerships under certain circumstances; requires plan of merger, criteria, action on plan of merger, procedures, articles of merger, & effects of merger, etc. Amends Chs. 607, 608, 620. EFFECTIVE DATE: Upon becoming law.

03/21/97 HOUSE Filed; Introduced -HJ 00303

04/01/97 HOUSE Referred to Financial Services (EIC); Civil Justice & Claims (JC); Governmental Rules & Regulations (GRC); Finance & Taxation (FRC); General Government Appropriations -HJ 00371

05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Financial Services (EIC), Iden./Sim./Compare Bill(s) passed refer to HB 1245 (Ch. 97-230)

02/26/98 HOUSE On Committee agenda-- Financial Services (EIC), 03/04/98, 1:00 pm, Morris Hall

03/03/98 HOUSE CARRIED OVER; Referred to Financial Services (EIC); Civil Justice & Claims (JC); Governmental Rules & Regulations (GRC); Finance & Taxation (FRC); General Government Appropriations; On Committee agenda-- Financial Services (EIC), 03/04/98, 1:00 pm, Morris Hall --Temporarily deferred

03/04/98 HOUSE On Committee agenda-- Financial Services (EIC), 03/10/98, 9:00 am, Morris Hall --Meeting Cancelled

03/05/98 HOUSE On Committee agenda-- Financial Services (EIC), 03/11/98, 1:30 pm, 413C

03/11/98 HOUSE Comm. Action: Unanimously CS by Financial Services (EIC) -HJ 00307

03/20/98 HOUSE CS read first time on 03/20/98 -HJ 00302; Now in Civil Justice & Claims (JC) -HJ 00307

03/24/98 HOUSE Withdrawn from Civil Justice & Claims (JC) -HJ 00314; Now in Governmental Rules & Regulations (GRC); On Committee agenda-- Governmental Rules & Regulations (GRC), 03/30/98, 3:45 pm, 314-HOB

03/30/98 HOUSE Comm. Action: Unanimously Favorable by Governmental Rules & Regulations (GRC) -HJ 00436

04/01/98 HOUSE Now in Finance & Taxation (FRC) -HJ 00436

04/02/98 HOUSE On Committee agenda-- Finance & Taxation (FRC), 04/08/98, 1:00 pm, Morris Hall --Meeting cancelled

04/08/98 HOUSE On Committee agenda-- Finance & Taxation (FRC), 04/14/98, 3:45 pm, Morris Hall

04/15/98 HOUSE Comm. Action: Unanimously Favorable with 2 amendment(s) by Finance & Taxation (FRC) -HJ 00690

04/16/98 HOUSE Now in General Government Appropriations -HJ 00690

04/22/98 HOUSE On Committee agenda-- General Government Appropriations, 04/23/98, 4:30 pm, 214C

04/23/98 HOUSE Comm. Action:--Unanimously Favorable by General Government Appropriations -HJ 01367

04/24/98 HOUSE Pending Consent Calendar -HJ 01367

05/01/98 HOUSE Died pending Consent Calendar, Iden./Sim./Compare bill passed refer to SB 704 (Ch. 98-101)

BILL TEXT: [\(Top\)](#)

hb1657 (View As: [HTML](#), [As Printed](#))
hb1657c1 (View [As: HTML](#), [As Printed](#))

AMENDMENTS: [\(Top\)](#)

Amendment 072109: An Amendment to hb1657 (View As: [HTML](#), [As Printed](#))
Amendment 980091: An Amendment to hb1657 (View As: [HTML](#), [As Printed](#))

STAFF ANALYSIS/BILL RESEARCH: [\(Top\)](#)

HB1657 by FS (View As: [As Printed](#))
HB1657 by GRR (View As: [As Printed](#))
HB1657A by GRR (View As: [As Printed](#))
HB1657S1 by FS (View As: [As Printed](#))
HB1657S1 by FT (View As: [As Printed](#))
HB1657S1 by GG (View As: [As Printed](#))
HB1657S1A by FT (View As: [As Printed](#))
HB1657S1A by GG (View As: [As Printed](#))

VOTE HISTORY: [\(Top\)](#)

NO VOTE DATA AVAILABLE

STATUTE CITATIONS: [\(Top\)](#)

[0607.0730](#)
[0607.1108](#)
[0607.1109](#)
[0607.11101](#)
[0607.11102](#)
[0608.407](#)
[0608.438](#)
[0608.4381](#)
[0608.4382](#)
[0608.4383](#)
[0608.4384](#)
[0620.201](#)
[0620.202](#)
[0620.203](#)
[0620.204](#)
[0620.205](#)

CONSTITUTION CITATIONS:

NO CONSTITUTION CITATIONS FOUND FOR REQUESTED BILL.

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Hundreds](#)

[Bill Text](#) [Amendments](#)

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Research](#)

[Vote History](#)

[Citations](#)

S 518 : Mergers/Businesses or Corporations

S 518 GENERAL BILL/CS by Commerce and Economic Opportunities; Grant (Similar CS/H 1657, 1ST ENG/S 0704)

Mergers/Businesses or Corporations; creates holding company formation by merger by certain corporations; provides for mergers of domestic corporations & other business entities under certain circumstances; requires plan of merger; provides criteria; provides for articles of merger & for effect of merger; provides for mergers of limited liability companies under certain circumstances, etc. Amends Chs. 607, 608, 620.

EFFECTIVE DATE: Upon becoming law.

12/18/97 SENATE Prefiled

01/09/98 SENATE Referred to Commerce and Economic Opportunities; Judiciary; Ways and Means

03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities; Judiciary; Ways and Means -SJ 00038; On Committee agenda-- Commerce and Economic Opportunities, 03/04/98, 9:00 am, Room-EL

03/04/98 SENATE Comm. Action: CS by Commerce and Economic Opportunities -SJ 00136; CS read first time on 03/09/98 -SJ 00140

03/06/98 SENATE Now in Judiciary -SJ 00136

04/21/98 SENATE Withdrawn from Judiciary -SJ 00538; Now in Ways and Means

05/01/98 SENATE Died in Committee on Ways and Means, Iden./Sim./Compare Bill(s) passed, refer to SB 704 (Ch. 98-101)

BILL TEXT: ([Top](#))

sb0518 (View As: [HTML, As Printed](#))

sb0518c1 (View As: [HTML, As Printed](#))

AMENDMENTS: ([Top](#))

NO AMENDMENTS AVAILABLE

STAFF ANALYSIS/BILL RESEARCH: ([Top](#))

SB0518 by cm (View As: [As Printed](#))

VOTE HISTORY: ([Top](#))

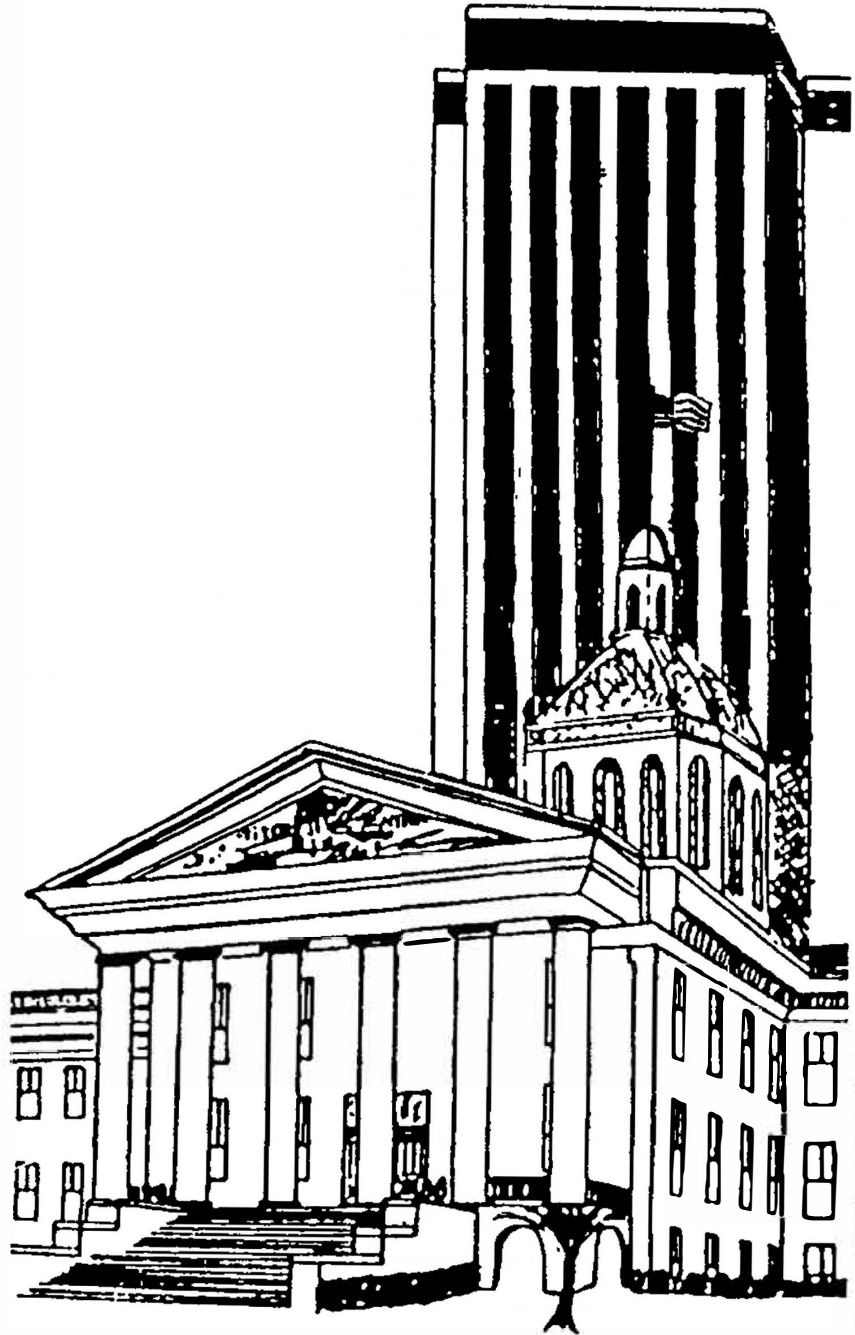
NO VOTE DATA AVAILABLE

STATUTE CITATIONS: ([Top](#))

FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

*1998 Regular Session
1997 Special Session A*



prepared by:

**LEGISLATIVE INFORMATION SERVICES DIVISION
OFFICE OF LEGISLATIVE SERVICES
Claude Pepper Building, Room 704
111 West Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-4371**

HISTORY OF SENATE BILLS

- S 686 GENERAL BILL by Williams (Similar 1ST ENG/H 4151)**
Homestead Property, provides that statement declaring property to be homestead for purposes of exemption from forced sale must be filed in person with clerk of circuit court Amends 222 01 Effective Date 07/01/1998
 01/16/98 SENATE Prefiled
 01/28/98 SENATE Referred to Community Affairs, Judiciary
 03/03/98 SENATE Introduced, referred to Community Affairs, Judiciary -SJ 00047
 03/18/98 SENATE On Committee agenda—Community Affairs, 03/23/98, 3 00 pm, Room—309C—Not considered
 03/26/98 SENATE On Committee agenda—Community Affairs, 03/31/98, 1 30 pm, Room—309C
 03/31/98 SENATE Comm Action Favorable with 1 amendment(s) by Community Affairs -SJ 00374
 04/02/98 SENATE Now in Judiciary -SJ 00374
 04/28/98 SENATE Withdrawn from Judiciary -SJ 00984, Placed on Calendar
 05/01/98 SENATE Died on Calendar
- S 688 GENERAL BILL by Gutman (Similar H 3293)**
Tax Exemption/Seaport Duty free Zone, provides definitions, authorizes designation of seaport duty-free zones by counties that contain certain deep-water ports, provides exemption from sales & use tax for certain items purchased within seaport duty-free zone by passengers on sea cruise ship who reside outside state, provides procedures, provides penalties for making fraudulent statement for purpose of tax evasion, requires records to be kept, etc Amends 212 06 Effective Date 07/01/1998
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities
 03/03/98 SENATE Introduced, referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities -SJ 00047
 04/02/98 SENATE On Subcommittee agenda—Ways and Means Subcommittee E (Finance and Tax), 04/07/98, 12 15 pm, Room—B(LL-42)
 04/07/98 SENATE Subcommittee Recommendation CS by Ways and Means Subcommittee E (Finance and Tax) -SJ 00408, Now in Ways and Means -SJ 00408
 05/01/98 SENATE Died in Committee on Ways and Means
- S 690 GENERAL BILL by Williams (Identical H 3401)**
Interstate Highway/Level-of-Service, directs DOT to lower level-of-service standard on certain segments of system within jurisdiction of local government under certain circumstances Amends 163 3180 Effective Date Upon becoming law
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Transportation
 03/03/98 SENATE Introduced, referred to Transportation -SJ 00047
 05/01/98 SENATE Died in Committee on Transportation
- S 692 GENERAL BILL by Grant, (CO-SPONSORS) Rossin; Sullivan; Casas (Compare H 3757)**
DUI & Controlled Substances, provides that person is guilty of driving under influence when any amount of certain chemical or controlled substances is present in blood or urine regardless of presence of alcohol, provides defense Amends 316 193 Effective Date 07/01/1998
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Criminal Justice, Transportation, Ways and Means
 03/03/98 SENATE Introduced, referred to Criminal Justice, Transportation, Ways and Means -SJ 00047
 05/01/98 SENATE Died in Committee on Criminal Justice
- S 694 GENERAL BILL by Grant (Similar H 4001)**
Racketeering Activity, redefines term "racketeering activity" to include certain acts of lewdness or assignation, provides penalty Amends 895 02 Effective Date 10/01/1998
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Criminal Justice, Ways and Means
 03/03/98 SENATE Introduced, referred to Criminal Justice, Ways and Means -SJ 00047, On Committee agenda—Criminal Justice, 03/03/98, 2 30 pm, Room—A(LL-37)—Temporarily postponed
 05/01/98 SENATE Died in Committee on Criminal Justice
- S 696 GENERAL BILL by Grant; (CO-SPONSORS) Latvala (Identical H 3341)**
Violent Video Game/Public Exhibition, provides definitions, prohibits public showing, display, or other exhibition in specified places of video games containing graphic violence, prohibits person who operates place of business where video games containing graphic violence are shown, displayed, or exhibited from knowingly permitting or allowing any person under 18 years of age to patronize, visit, or loiter in such place of business, provides penalties, provides applicability, etc Effective Date Contingent
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Criminal Justice, Ways and Means
 03/03/98 SENATE Introduced, referred to Criminal Justice, Ways and Means -SJ 00048
 05/01/98 SENATE Died in Committee on Criminal Justice
- S 698 GENERAL BILL by Ostalkiewicz**
Antique Vessel Registration, deletes requirement for registration of antique vessel Amends 327 25 Effective Date Upon becoming law
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Transportation, Ways and Means
 03/03/98 SENATE Introduced, referred to Transportation, Ways and Means -SJ 00048
 05/01/98 SENATE Died in Committee on Transportation
- S 700 GENERAL BILL by Grant (Identical H 3361)**
School Year Extension/Funding, provides funding for extension of school year Amends 236 081 Effective Date Contingent
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Education, Ways and Means
 03/03/98 SENATE Introduced, referred to Education, Ways and Means -SJ 00048
 05/01/98 SENATE Died in Committee on Education
- S 702 GENERAL BILL/CS by Criminal Justice; Grant; (CO-SPONSORS) Casas, Latvala; Lee (Similar 3RD ENG/H 0651)**
Truth in Campaigning Act, provides statement of legislative intent re Truth in Campaigning Act, expands applicability of prohibition against making false or malicious charges against, or false statements about, candidates, eliminates requirement of actual malice in prohibition against making false statements about candidates & provides for personal liability with respect thereto, clarifies & provides penalties Amends 104 271 Effective Date 01/01/1999
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Executive Business, Ethics and Elections, Criminal Justice, Ways and Means
 03/03/98 SENATE Introduced, referred to Executive Business, Ethics and Elections, Criminal Justice, Ways and Means -SJ 00048
 04/01/98 SENATE On Committee agenda—Executive Business, Ethics and Elections, 04/06/98, 10 15 am, Room—309C
 04/06/98 SENATE Comm Action Favorable with 1 amendment(s) by Executive Business, Ethics and Elections -SJ 00407
 04/07/98 SENATE Now in Criminal Justice -SJ 00407
 04/15/98 SENATE On Committee agenda—Criminal Justice, 04/20/98, 9 00 am, Room—A(LL-37)
 04/20/98 SENATE Comm Action CS by Criminal Justice -SJ 00813, CS read first time on 04/22/98 -SJ 00815
 04/22/98 SENATE Now in Ways and Means -SJ 00813
 05/01/98 SENATE Died in Committee on Ways and Means
- S 704 GENERAL BILL/1ST ENG by Klein (Similar CS/H 1657, CS/S 0518, Compare 1ST ENG/H 1049, CS/1ST ENG/H 4413, CS/S 0608)**
Business Entities, removes 10-year limit on voting trusts, creates holding company formation by merger by certain corporations, provides for mergers of domestic corporations & other business entities, limited liability companies & domestic limited partnerships under certain circumstances, provides legislative intent re taxation of "qualified subchapter S subsidiary", exempts certain limited liability companies from corporate income tax, etc Amends FS Effective Date 07/01/1998
 01/20/98 SENATE Prefiled
 01/28/98 SENATE Referred to Commerce and Economic Opportunities, Ways and Means
 03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities, Ways and Means -SJ 00048, On Committee agenda—Commerce and Economic Opportunities, 03/04/98, 9 00 am, Room—EL
 03/04/98 SENATE Comm Action Favorable by Commerce and Economic Opportunities -SJ 00119, Now in Ways and Means -SJ 00119
 03/23/98 SENATE On Committee agenda—Ways and Means, 03/26/98, 2 30 pm, Room—EL—Not considered
 03/27/98 SENATE On Committee agenda—Ways and Means, 04/01/98, 12 30 pm, Room—EL
 04/01/98 SENATE Comm Action -Favorable by Ways and Means -SJ 00374
 04/02/98 SENATE Placed on Calendar -SJ 00374
 04/28/98 SENATE Placed on Special Order Calendar -SJ 01092
 04/29/98 SENATE Placed on Special Order Calendar -SJ 01092, Read second time -SJ 01123, Amendment(s) adopted -SJ 01124, Read third time -SJ 01134, Passed as amended, YEAS 39 NAYS 0 -SJ 01134
 04/29/98 HOUSE In Messages

(CONTINUED ON NEXT PAGE)

HISTORY OF SENATE BILLS

S 704 (CONTINUED)

04/30/98 HOUSE Received—HJ 01749, Read second and third times—HJ 01750, Passed, YEAS 108 NAYS 0—HJ 01750

04/30/98 SENATE Ordered enrolled—SJ 01526

05/06/98 Signed by Officers and presented to Governor

05/22/98 Became Law without Governor's Signature, Chapter No 98-101, See also CS/HB 4413 (Ch 98-342), CS/SB 608 (Ch 98-100)

S 706 GENERAL BILL/CS/1ST ENG by Education; Sullivan (Similar CS/H 1797, Compare CS/H 4101, 2ND ENG/H 4259, CS/S 1840)

HS Graduation Credit Requirements, revises provisions re high school graduation credit requirements, provides for early graduation, provides for calculation of full-time equivalent student membership for students who graduate early Amends 232 246, 236 081 Effective Date Contingent

01/20/98 SENATE Prefiled

01/28/98 SENATE Referred to Education, Ways and Means

03/03/98 SENATE Introduced, referred to Education, Ways and Means—SJ 00048, On Committee agenda—Education, 03/04/98, 1 00 pm, Room—A(LL-37)

03/04/98 SENATE Comm Action CS by Education—SJ 00136, CS read first time on 03/09/98—SJ 00140

03/06/98 SENATE Now in Ways and Means—SJ 00136

03/23/98 SENATE On Committee agenda—Ways and Means, 03/26/98, 2 30 pm, Room—EL

03/26/98 SENATE Comm Action—Favorable by Ways and Means—SJ 00344

03/27/98 SENATE Placed on Calendar—SJ 00344

04/01/98 SENATE Placed on Special Order Calendar—SJ 00343, Read second time—SJ 00343, Amendment(s) adopted—SJ 00343, Ordered engrossed—SJ 00343

04/02/98 SENATE Read third time—SJ 00359, CS passed as amended, YEAS 37 NAYS 0—SJ 00359, Immediately certified—SJ 00359

04/02/98 HOUSE In Messages

04/09/98 HOUSE Received—HJ 00518, In Academic Excellence Council, pending ranking—HJ 00518

04/14/98 HOUSE Placed on Academic Excellence Council Calendar, Substituted for CS/HB 1797—HJ 00591, Read second time—HJ 00591, Amendment(s) adopted—HJ 00592

04/15/98 HOUSE Read third time—HJ 00604, Amendment(s) reconsidered, adopted—HJ 00604, CS passed as amended, YEAS 105 NAYS 6—HJ 00604

04/16/98 SENATE In returning messages

05/01/98 SENATE Refused to concur, requested House to recede—SJ 01574

05/01/98 HOUSE In returning messages, Receded—HJ 02201, CS passed; YEAS 87 NAYS 28—HJ 02201

05/01/98 SENATE Ordered enrolled—SJ 01818

05/08/98 Signed by Officers and presented to Governor

05/22/98 Vetoed by Governor, Iden./Sim./Compare Bill(s) passed, refer to HB 4259 (Ch 98-421)

S 708 GENERAL BILL by Grant (Similar CS/H 3007)

Juvenile Substance Abuse Testing, provides that court may order delinquent child placed in community control or aftercare program to submit to random testing for alcohol or controlled substances, provides that order may be made at disposition, or pursuant to filing of petition alleging violation of conditions or child's community control or aftercare supervision, amends provision re serious or habitual offenders, etc Amends 985 231, 31, 311 Effective Date Contingent

01/20/98 SENATE Prefiled

01/28/98 SENATE Referred to Criminal Justice

03/03/98 SENATE Introduced, referred to Criminal Justice—SJ 00048, On Committee agenda—Criminal Justice, 03/03/98, 2 30 pm, Room—A(LL-37); Comm Action—Favorable by Criminal Justice—SJ 00119

03/04/98 SENATE Placed on Calendar—SJ 00119

04/01/98 SENATE Placed on Special Order Calendar—SJ 00343

04/02/98 SENATE Placed on Special Order Calendar—SJ 00343

04/08/98 SENATE Placed on Special Order Calendar—SJ 00406

04/09/98 SENATE Placed on Special Order Calendar—SJ 00406

04/13/98 SENATE Placed on Special Order Calendar—SJ 00424

04/15/98 SENATE Placed on Special Order Calendar—SJ 00478, House Bill substituted—SJ 00473, Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 3007 (Ch 98-55)

S 710 GENERAL BILL/CS by Transportation; Silver; (CO-SPONSORS) Lee; Forman (Similar H 1665, CS/1ST ENG/H 3345)

Wrecker Operator/Immobilizing Autos defines term "wrecker operator", provides for law enforcement officer to place hold order on motor vehicle in wrecker operator's storage facility, prescribes conditions on such acts, authorizes county & municipal wrecker operator systems, prohibits certain acts in contravention of such systems, provides penalties, revises provisions authorizing Florida Highway Patrol to establish wrecker operator system, etc

S 710 (CONTINUED)

Amends FS Effective Date 10/01/1998

01/21/98 SENATE Prefiled

01/28/98 SENATE Referred to Transportation, Community Affairs

03/03/98 SENATE Introduced, referred to Transportation, Community Affairs—SJ 00048

04/02/98 SENATE On Committee agenda—Transportation, 04/07/98 10 00 am, Room—301C

04/07/98 SENATE Comm Action CS by Transportation—SJ 00424, CS read first time on 04/09/98—SJ 00425

04/09/98 SENATE Now in Community Affairs—SJ 00424

04/21/98 SENATE Withdrawn from Community Affairs—SJ 00538, Placed on Calendar

04/28/98 SENATE Placed on Special Order Calendar—SJ 01092

04/29/98 SENATE Placed on Special Order Calendar—SJ 01092

04/30/98 SENATE Placed on Special Order Calendar—SJ 01222, —SJ 01522

05/01/98 SENATE Placed on Special Order Calendar—SJ 01522, —SJ 01808, House Bill substituted—SJ 01737, Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to CS/HB 3345 (Ch 98-324)

S 712 GENERAL BILL/1ST ENG by Bronson (Identical H 3497)

Municipalities/Business Enterprises, provides legislative findings, authorizes municipal governing bodies to expend public funds to attract & retain business enterprises, specifies that such use of public funds constitutes public purpose & defines economic development activities that qualify as such public purpose Amends 166 021 Effective Date 04/30/1998

01/21/98 SENATE Prefiled

01/28/98 SENATE Referred to Commerce and Economic Opportunities, Community Affairs, Ways and Means

03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities, Community Affairs, Ways and Means—SJ 00048

03/06/98 SENATE On Committee agenda—Commerce and Economic Opportunities, 03/12/98, 9 00 am, Room—EL

03/12/98 SENATE Comm Action Favorable with 1 amendment(s) by Commerce and Economic Opportunities—SJ 00181

03/13/98 SENATE Now in Community Affairs—SJ 00181

03/18/98 SENATE On Committee agenda—Community Affairs, 03/23/98, 3 00 pm, Room—309C

03/23/98 SENATE Comm Action Favorable by Community Affairs—SJ 00303

03/24/98 SENATE Now in Ways and Means—SJ 00303

04/01/98 SENATE Withdrawn from Ways and Means—SJ 00324, Placed on Calendar

04/08/98 SENATE Placed on Special Order Calendar—SJ 00406, Read second time—SJ 00401, Amendment(s) adopted—SJ 00401, Ordered engrossed—SJ 00401

04/09/98 SENATE Read third time—SJ 00421, Passed as amended, YEAS 35 NAYS 0—SJ 00421, Immediately certified—SJ 00421

04/09/98 HOUSE In Messages

04/15/98 HOUSE Received—HJ 00613, Placed on Consent Calendar—HJ 00613

04/16/98 HOUSE Substituted for HB 3497—HJ 00647, Read second and third times—HJ 00648, Passed, YEAS 113 NAYS 1—HJ 00648, Immediately certified—HJ 00677

04/16/98 SENATE Ordered enrolled—SJ 00505

04/22/98 Signed by Officers and presented to Governor—SJ 00827

04/30/98 Became Law without Governor's Signature, Chapter No 98-37—SJ 01522

S 714 GENERAL BILL/CS/CS/1ST ENG by Ways and Means; Health Care; Forman; (CO-SPONSORS) Klein (Similar CS/H 3585, Compare CS/1ST ENG/H 3667, CS/H 3715, CS/2ND ENG/H 4035, H 4807, CS/S 1872, CS/1ST ENG/S 1960, CS/S 2262)

Health Care requires certain information re HIV testing & counseling to be included in HIV educational courses, requires background screening for applicants for licensure of certain laboratories, clinics, facilities, & professions, amends provisions re regulation of birth centers & community alcohol, drug abuse, & mental health services, provides for applicability of background screening requirements, etc Amends FS Appropriation \$166,430 Effective Date 07/01/1998

01/21/98 SENATE Prefiled

01/28/98 SENATE Referred to Health Care, Ways and Means

02/09/98 SENATE On Committee agenda—Health Care, 02/18/98, 2 30 pm, Room—EL—No meeting, lack of quorum

03/03/98 SENATE Introduced, referred to Health Care, Ways and Means—SJ 00048, On Committee agenda—Health Care, 02/18/98, 2 30 pm, Room—EL—No meeting, lack of quorum, On Committee agenda—Health Care, 03/04/98, 1 00 pm, Room—EL—Temporarily postponed

03/09/98 SENATE On Committee agenda—Health Care, 03/12/98, 3 15 pm, Room—EL

HISTORY OF SENATE BILLS

S 516 (CONTINUED)

- 01/09/98 SENATE Referred to Transportation, Natural Resources, Judiciary
- 01/26/98 SENATE On Committee agenda—Transportation, 02/03/98, 9 00 am, Room-301C
- 02/03/98 SENATE Comm Action Favorable by Transportation
- 02/04/98 SENATE Now in Natural Resources
- 02/09/98 SENATE On Committee agenda—Natural Resources, 02/18/98, 9 00 am, Room-A(LL-37)—Not considered
- 03/03/98 SENATE Introduced, referred to Transportation, Natural Resources, Judiciary—SJ 00038, On Committee agenda—Transportation, 02/03/98, 9 00 am, Room-301C, Comm Action Favorable by Transportation—SJ 00007, Now in Natural Resources—SJ 00007, On Committee agenda—Natural Resources, 02/18/98, 9 00 am, Room-A(LL-37)—Not considered, On Committee agenda—Natural Resources, 03/05/98, 9 00 am, Room-A(LL-37)
- 03/05/98 SENATE Comm Action Favorable with 1 amendment(s) by Natural Resources—SJ 00136
- 03/06/98 SENATE Now in Judiciary—SJ 00136
- 04/16/98 SENATE On Committee agenda—Judiciary, 04/21/98, 8 30 am, Room-309C
- 04/21/98 SENATE Comm Action—CS by Judiciary—SJ 00868, CS read first time on 04/23/98—SJ 00868
- 04/23/98 SENATE Placed on Calendar—SJ 00868
- 05/01/98 SENATE Died on Calendar

S 518 GENERAL BILL/CS by Commerce and Economic Opportunities; Grant (Similar CS/H 1657, 1ST ENG/S 0704)

- Merger/Businesses or Corporations, creates holding company formation by merger by certain corporations, provides for mergers of domestic corporations & other business entities under certain circumstances, requires plan of merger, provides criteria, provides for articles of merger & for effect of merger, provides for mergers of limited liability companies under certain circumstances, etc Amends Chs 607, 608, 620 Effective Date Upon becoming law
- 12/18/97 SENATE Prefiled
- 01/09/98 SENATE Referred to Commerce and Economic Opportunities, Judiciary, Ways and Means
- 03/03/98 SENATE Introduced, referred to Commerce and Economic Opportunities, Judiciary, Ways and Means—SJ 00038, On Committee agenda—Commerce and Economic Opportunities, 03/04/98, 9 00 am, Room-EL
- 03/04/98 SENATE Comm Action CS by Commerce and Economic Opportunities—SJ 00136, CS read first time on 03/09/98—SJ 00140
- 03/06/98 SENATE Now in Judiciary—SJ 00136
- 04/21/98 SENATE Withdrawn from Judiciary—SJ 00538, Now in Ways and Means
- 05/01/98 SENATE Died in Committee on Ways and Means, Iden./Sim./Compare Bill(s) passed, refer to SB 704 (Ch 98-101)

S 520 GENERAL BILL by Ostalkiewicz (Compare H 3169, H 3425, S 0320)

- Intangible Personal Property/Taxes, creates exemptions from taxation of intangible personal property for taxpayers who are not natural persons Amends 199 185 Effective Date 01/01/1999
- 12/18/97 SENATE Prefiled
- 01/09/98 SENATE Referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities
- 01/26/98 SENATE On Subcommittee agenda—Ways and Means Subcommittee E (Finance and Tax), 02/02/98, Upon adjournment of full committee, Room-B(LL-42)—Temporarily postponed
- 03/03/98 SENATE Introduced, referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities—SJ 00038
- 05/01/98 SENATE Died in Committee on Ways and Means Subcommittee E (Finance and Tax)

S 522 GENERAL BILL by Ostalkiewicz

- Sales Tax Exemption/Nonprofit Orgs, provides exemption from sales tax for certain nonprofit organizations Amends 212 08 Effective Date 07/01/1998
- 12/18/97 SENATE Prefiled
- 01/09/98 SENATE Referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities
- 02/23/98 SENATE On Committee agenda—Ways and Means Subcommittee E (Finance and Tax), 03/02/98, 12 30 pm, Room-B(LL-42)
- 03/02/98 SENATE Subcommittee Recommendation CS by Ways and Means Subcommittee E (Finance and Tax)

S 522 (CONTINUED)

- 03/03/98 SENATE Introduced, referred to Ways and Means Subcommittee E (Finance and Tax), Ways and Means, Commerce and Economic Opportunities—SJ 00038, On Committee agenda—Ways and Means Subcommittee E (Finance and Tax), 03/02/98, 12 30 pm, Room-B(LL-42), Subcommittee Recommendation CS by Ways and Means Subcommittee E (Finance and Tax)—SJ 00009, Now in Ways and Means—SJ 00009
- 05/01/98 SENATE Died in Committee on Ways and Means
- S 524 GENERAL BILL/CS by Criminal Justice, Campbell (Compare 3RD ENG/H 4233)
- Offense of Murder/Redefined, redefines offense of capital murder in first degree to include act of unlawfully killing human being while perpetrating, or attempting to perpetrate, murder of another human being, redefines offense of second-degree felony murder to include act of unlawfully killing human being while perpetrating or attempting to perpetrate murder of another human being, etc Amends 782 04, reenacts ss of FS Effective Date 10/01/1998
- 12/18/97 SENATE Prefiled
- 01/09/98 SENATE Referred to Criminal Justice, Ways and Means
- 01/26/98 SENATE On Committee agenda—Criminal Justice, 02/03/98, 9 00 am, Room-A(LL-37)
- 02/03/98 SENATE Comm Action CS by Criminal Justice
- 02/05/98 SENATE Now in Ways and Means
- 03/03/98 SENATE Introduced, referred to Criminal Justice, Ways and Means—SJ 00038, On Committee agenda—Criminal Justice, 02/03/98, 9 00 am, Room-A(LL-37), Comm Action CS by Criminal Justice—SJ 00008, CS read first time on 03/03/98—SJ 00101, Now in Ways and Means—SJ 00008, Withdrawn from Ways and Means—SJ 00003, Placed on Calendar
- 04/28/98 SENATE Placed on Special Order Calendar—SJ 01092
- 04/29/98 SENATE Placed on Special Order Calendar—SJ 01092
- 04/30/98 SENATE Placed on Special Order Calendar—SJ 01222, —SJ 01522
- 05/01/98 SENATE Placed on Special Order Calendar—SJ 01522, —SJ 01808, Read second time—SJ 01710, House Bill substituted—SJ 01719, Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to HB 4233 (Ch 98-417)

S 526 GENERAL BILL by Campbell (Similar H 3359)

- Victim & Witness/Protective Services, redefines term "serious felony offense" to include attempt, solicitation, or conspiracy to commit certain offenses for purposes of provisions that authorize law enforcement agencies to protect victims & witnesses who are at risk of harm Amends 914 25 Effective Date 05/22/1998
- 12/18/97 SENATE Prefiled
- 01/09/98 SENATE Referred to Criminal Justice, Ways and Means
- 02/09/98 SENATE On Committee agenda—Criminal Justice, 02/17/98, 9 00 am, Room-A(LL-37)
- 02/17/98 SENATE Comm Action Favorable by Criminal Justice
- 02/18/98 SENATE Now in Ways and Means
- 03/03/98 SENATE Introduced, referred to Criminal Justice, Ways and Means—SJ 00038, On Committee agenda—Criminal Justice, 02/17/98, 9 00 am, Room-A(LL-37), Comm Action Favorable by Criminal Justice—SJ 00007, Now in Ways and Means—SJ 00007, Withdrawn from Ways and Means—SJ 00003, Placed on Calendar
- 03/25/98 SENATE Placed on Special Order Calendar—SJ 00303, Read second time—SJ 00295
- 04/01/98 SENATE Read third time—SJ 00337, Passed, YEAS 40 NAYS 0—SJ 00337, Immediately certified—SJ 00337
- 04/01/98 HOUSE In Messages
- 04/21/98 HOUSE Received—HJ 00746, Placed on Consent Calendar—HJ 00746
- 04/24/98 HOUSE Substituted for HB 3359—HJ 01302, Read second time—HJ 01302
- 04/28/98 HOUSE Read third time—HJ 01462, Passed, YEAS 120 NAYS 0—HJ 01462
- 04/28/98 SENATE Ordered enrolled—SJ 01097
- 05/06/98 Signed by Officers and presented to Governor
- 05/22/98 Became Law without Governor's Signature, Chapter No 98-96

S 528 JOINT RESOLUTION/CS by Natural Resources; Latvain (Identical 1ST ENG/S 1008, Compare CS/1ST ENG/H 4563, CS/S 1338, CS/CS/1ST ENG/S 2024, S 2650)

- Conservation & Recreation/Bonds, constitutional amendment to allow bonds to be issued pledging all or part of dedicated state tax revenue as provided by general law to finance acquisition & improvement of land, water areas, & related property interests for purpose of conservation, outdoor recreation, water resource development, restoration of natural systems, & historic preservation Amends Art 7, s 11

HISTORY OF HOUSE BILLS

H 1649 (CONTINUED)

03/18/98 HOUSE Placed on Governmental Responsibility Council Calendar -HJ 00258
 04/01/98 HOUSE Read second time -HJ 00401, Amendment(s) adopted -HJ 00401, Read third time -HJ 00401, Passed as amended, YEAS 116 NAYS 0 -HJ 00401, Immediately certified -HJ 00401
 04/01/98 SENATE In Messages
 04/02/98 SENATE Received, referred to Community Affairs, Ways and Means -SJ 00384, Withdrawn from Community Affairs, Ways and Means -SJ 00371, Substituted for SB 594 -SJ 00371, Read second time -SJ 00371
 04/08/98 SENATE Read third time -SJ 00392, Passed, YEAS 37 NAYS 0 -SJ 00392, Immediately certified -SJ 00392
 04/08/98 HOUSE Ordered enrolled -HJ 00493
 04/14/98 HOUSE Signed by Officers and presented to Governor -HJ 00596
 04/22/98 Became Law without Governor's Signature, Chapter No 98-16 -HJ 00964

H 1651 GENERAL BILL

Govt. Procurement/Contracts.

09/10/97 HOUSE Withdrawn from further cons./Iden/Sim/Compare Bill(s) passed, refer to CS/SB 1860 (Ch 97-296)

H 1653 GENERAL BILL

Ad Valorem Tax Administration.

05/02/97 HOUSE Withdrawn from further consideration -HJ 02000

H 1655 LOCAL BILL

Broward Co./School Board Elections.

06/12/97 HOUSE Withdrawn from further consideration

H 1657 GENERAL BILL/CS by Financial Services (EIC); Kosmas (Similar CS/S 0518, 1ST ENG/S 0704)

Mergers/Businesses or Corporations. removes time limitation on voting trusts, provides for mergers of domestic corporations & other business entities, for mergers of limited liability companies, & mergers of domestic limited partnerships under certain circumstances, requires plan of merger, criteria, action on plan of merger, procedures, articles of merger, & effects of merger, etc Amends Chs 607, 608, 620 Effective Date Upon becoming law
 03/21/97 HOUSE Filed, Introduced -HJ 00303
 04/01/97 HOUSE Referred to Financial Services (EIC), Civil Justice & Claims (JC), Governmental Rules & Regulations (GRC), Finance & Taxation (FRC), General Government Appropriations -HJ 00371
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Financial Services (EIC), Iden/Sim/Compare Bill(s) passed refer to HB 1245 (Ch 97-230)
 02/26/98 HOUSE On Committee agenda—Financial Services (EIC), 03/04/98, 1 00 pm, Morris Hall
 03/03/98 HOUSE CARRIED OVER, Referred to Financial Services (EIC), Civil Justice & Claims (JC), Governmental Rules & Regulations (GRC), Finance & Taxation (FRC), General Government Appropriations, On Committee agenda—Financial Services (EIC), 03/04/98, 1 00 pm, Morris Hall—Temporarily deferred
 03/04/98 HOUSE On Committee agenda—Financial Services (EIC), 03/10/98, 9 00 am, Morris Hall—Meeting Cancelled
 03/05/98 HOUSE On Committee agenda—Financial Services (EIC), 03/11/98, 1 30 pm, #13C
 03/11/98 HOUSE Comm Action Unanimously CS by Financial Services (EIC) -HJ 00307
 03/20/98 HOUSE CS read first time on 03/20/98 -HJ 00302, Now in Civil Justice & Claims (JC) -HJ 00307
 03/24/98 HOUSE Withdrawn from Civil Justice & Claims (JC) -HJ 00314, Now in Governmental Rules & Regulations (GRC), On Committee agenda—Governmental Rules & Regulations (GRC), 03/30/98, 3 45 pm, 314-HOB
 03/30/98 HOUSE Comm Action Unanimously Favorable by Governmental Rules & Regulations (GRC) -HJ 00436
 04/01/98 HOUSE Now in Finance & Taxation (FRC) -HJ 00436
 04/02/98 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/08/98, 1 00 pm, Morris Hall—Meeting cancelled
 04/08/98 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/14/98, 3 45 pm, Morris Hall
 04/15/98 HOUSE Comm Action Unanimously Favorable with 2 amendment(s) by Finance & Taxation (FRC) -HJ 00690
 04/16/98 HOUSE Now in General Government Appropriations -HJ 00690
 04/22/98 HOUSE On Committee agenda—General Government Appropriations, 04/23/98, 4 30 pm, 214C
 04/23/98 HOUSE Comm Action—Unanimously Favorable by General Government Appropriations -HJ 01367
 04/24/98 HOUSE Pending Consent Calendar -HJ 01367
 05/01/98 HOUSE Died pending Consent Calendar, Iden/Sim/Compare bill passed refer to SB 704 (Ch 98-101)

H 1659 LOCAL BILL

Coconut Creek/Corporate Limits.

05/30/97 Became Law without Governor's Signature, Chapter No 97-365

H 1661 GENERAL BILL

Indigent Persons/Court Costs Waiver.

02/26/98 HOUSE Withdrawn from further cons./Iden/Sim/Compare Bill(s) passed, refer to SB 1906 (Ch 97-107)

H 1663 GENERAL BILL

Home Education Students/Activities.

05/30/97 Became Law without Governor's Signature, Chapter No 97-254

H 1665 GENERAL BILL by Dawson-White (Similar CS/1ST ENG/H 3345, CS/S 0710)

Wrecker Operator/Immobilizing Autos. provides for law enforcement officer to place hold order on motor vehicle in wrecker operator's storage facility, provides for payment of charges when vehicle is impounded or immobilized as result of charge of DUI, revises provisions authorizing FHP to establish wrecker operator system, provides that law allowing lien for recovering, towing, or storing vehicle does not authorize lien for immobilizing vehicle, etc Amends FS Effective Date 10/01/1997
 03/21/97 HOUSE Filed, Introduced -HJ 00303
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, Introduced, not referred
 03/03/98 HOUSE CARRIED OVER, Introduced
 03/17/98 HOUSE Withdrawn from further cons./Iden/Sim/Compare Bill(s) passed, refer to CS/SB 1002 (Ch 97-300), CS/HB 3345 (Ch 98-324) -HJ 00182

H 1667 GENERAL BILL/CS/1ST ENG by General Government Appropriations; Villalobos (Similar CS/S 1988, Compare CS/3RD ENG/H 4071)

Lake Belt Mitigation Trust Fund. creates Lake Belt Mitigation TF within South Fla Water Management District, provides for sources of money & purposes, provides exemption from termination, takes effect July 1 of year in which enacted, if CS/H4071 or similar legislation is adopted in same legislative session or extension thereof Effective Date 07/01/1998
 03/24/97 HOUSE Filed
 03/26/97 HOUSE Introduced -HJ 00319
 04/08/97 HOUSE Referred to Environmental Protection (GRC), Finance & Taxation (FRC), General Government Appropriations -HJ 00485
 04/09/97 HOUSE On Committee agenda—Environmental Protection (GRC), 04/15/97, 8 00 am, 214C
 04/15/97 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Environmental Protection (GRC) -HJ 00597
 04/16/97 HOUSE Now in Finance & Taxation (FRC) -HJ 00597
 04/17/97 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/18/97, 9 00 am, Morris Hall
 04/18/97 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Finance & Taxation (FRC) -HJ 00700
 04/23/97 HOUSE Now in General Government Appropriations -HJ 00700
 05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on General Government Appropriations, Iden/Sim/Compare Bill(s) passed refer to HB 1073 (Ch 97-222)
 03/03/98 HOUSE CARRIED OVER, Referred to General Government Appropriations
 03/20/98 HOUSE On Committee agenda—General Government Appropriations, 03/26/98, 10 30 am, 214C
 03/28/98 HOUSE Comm Action -CS by General Government Appropriations -HJ 00436
 04/01/98 HOUSE CS read first time on 04/01/98 -HJ 00433, In Governmental Responsibility Council, pending ranking -HJ 00436
 04/08/98 HOUSE Placed on Governmental Responsibility Council Calendar -HJ 00500
 04/13/98 HOUSE Read second time -HJ 00546, Amendment(s) adopted -HJ 00546
 04/14/98 HOUSE Read third time -HJ 00576, CS passed as amended, YEAS 112 NAYS 3 -HJ 00576
 04/15/98 SENATE In Messages
 04/17/98 SENATE Received, referred to Natural Resources, Ways and Means -SJ 00535
 05/01/98 SENATE Withdrawn from Natural Resources, Ways and Means -SJ 01735, Placed on Calendar, Read second and third times -SJ 01735, CS passed, YEAS 39 NAYS 0 -SJ 01735
 05/01/98 HOUSE Ordered enrolled -HJ 02400
 05/12/98 Signed by Officers and presented to Governor
 05/24/98 Became Law without Governor's Signature, Chapter No 98-260

H 1669 GENERAL BILL

Postsecondary Student Fees.

By Senator Klein

28-309-98

1 A bill to be entitled
2 An act relating to limited liability companies;
3 amending s. 220.02, F.S.; revising legislative
4 intent; providing application; amending s.
5 220.03, F.S.; revising a definition; amending
6 s. 220.13, F.S.; redefining the term "taxable
7 income" as applied to limited liability
8 companies to exclude income of certain limited
9 liability companies; amending s. 608.406, F.S.;
10 revising criteria for limited liability company
11 names; amending s. 608.471, F.S.; exempting
12 certain limited liability companies from the
13 corporate income tax; providing for classifying
14 certain limited liability companies or members
15 or assignees of a member of a limited liability
16 company for certain taxation purposes;
17 providing an effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

21 Section 1. Subsection (1) of section 220.02, Florida
22 Statutes, is amended to read:

23 220.02 Legislative intent.--

24 (1) It is the intent of the Legislature in enacting
25 this code to impose a tax upon all corporations,
26 organizations, associations, and other artificial entities
27 which derive from this state or from any other jurisdiction
28 permanent and inherent attributes not inherent in or available
29 to natural persons, such as perpetual life, transferable
30 ownership represented by shares or certificates, and limited
31 liability for all owners. It is intended that any limited

1 liability company that is classified as a partnership for
2 federal income tax purposes and formed under chapter 608 or
3 qualified to do business in this state as a foreign limited
4 liability company not ~~companies~~ be subject to the tax imposed
5 by this code. It is the intent of the Legislature to subject
6 such corporations and other entities to taxation hereunder for
7 the privilege of conducting business, deriving income, or
8 existing within this state. This code is not intended to tax,
9 and shall not be construed so as to tax, any natural person
10 who engages in a trade, business, or profession in this state
11 under his or her own or any fictitious name, whether
12 individually as a proprietorship or in partnership with
13 others, or as a member or a manager of a limited liability
14 company classified as a partnership for federal income tax
15 purposes; any estate of a decedent or incompetent; or any
16 testamentary trust. However, a corporation or other taxable
17 entity which is or which becomes partners with one or more
18 natural persons shall not, merely by reason of being a
19 partner, exclude from its net income subject to tax its
20 respective share of partnership net income. This statement of
21 intent shall be given preeminent consideration in any
22 construction or interpretation of this code in order to avoid
23 any conflict between this code and the mandate in s. 5, Art.
24 VII of the State Constitution that no income tax be levied
25 upon natural persons who are residents and citizens of this
26 state.

27 Section 2. Paragraph (e) of subsection (1) of section
28 220.03, Florida Statutes, is amended to read:

29 220.03 Definitions.--

30 (1) SPECIFIC TERMS.--When used in this code, and when
31 not otherwise distinctly expressed or manifestly incompatible

1 with the intent thereof, the following terms shall have the
2 following meanings:

3 (e) "Corporation" includes all domestic corporations;
4 foreign corporations qualified to do business in this state or
5 actually doing business in this state; joint-stock companies;
6 limited liability companies, under chapter 608; common-law
7 declarations of trust, under chapter 609; corporations not for
8 profit, under chapter 617; agricultural cooperative marketing
9 associations, under chapter 618; professional service
10 corporations, under chapter 621; foreign unincorporated
11 associations, under chapter 622; private school corporations,
12 under chapter 623; foreign corporations not for profit which
13 are carrying on their activities in this state; and all other
14 organizations, associations, legal entities, and artificial
15 persons which are created by or pursuant to the statutes of
16 this state, the United States, or any other state, territory,
17 possession, or jurisdiction. The term "corporation" does not
18 include proprietorships, even if using a fictitious name;
19 partnerships of any type, as such; limited liability companies
20 that are taxable as partnerships for federal income tax
21 purposes;state or public fairs or expositions, under chapter
22 616; estates of decedents or incompetents; testamentary
23 trusts; or private trusts.

24 Section 3. Subsection (2) of section 220.13, Florida
25 Statutes, is amended to read:

26 220.13 "Adjusted federal income" defined.--

27 (2) For purposes of this section, a taxpayer's taxable
28 income for the taxable year means taxable income as defined in
29 s. 63 of the Internal Revenue Code and properly reportable for
30 federal income tax purposes for the taxable year, but subject
31 to the limitations set forth in paragraph (1)(b) with respect

1 to the deductions provided by ss. 172 (relating to net
2 operating losses), 170(d)(2) (relating to excess charitable
3 contributions), 404(a)(1)(D) (relating to excess pension trust
4 contributions), 404(a)(3)(A) and (B) (to the extent relating
5 to excess stock bonus and profit-sharing trust contributions),
6 and 1212 (relating to capital losses) of the Internal Revenue
7 Code, except that, subject to the same limitations, the term:
8 (a) "Taxable income," in the case of a life insurance
9 company subject to the tax imposed by s. 801 of the Internal
10 Revenue Code, means life insurance company taxable income;
11 however, for purposes of this code, the total of any amounts
12 subject to tax under s. 815(a)(2) of the Internal Revenue Code
13 pursuant to s. 801(c) of the Internal Revenue Code shall not
14 exceed, cumulatively, the total of any amounts determined
15 under s. 815(c)(2) of the Internal Revenue Code of 1954, as
16 amended, from January 1, 1972, to December 31, 1983;
17 (b) "Taxable income," in the case of an insurance
18 company subject to the tax imposed by s. 831(b) of the
19 Internal Revenue Code, means taxable investment income;
20 (c) "Taxable income," in the case of an insurance
21 company subject to the tax imposed by s. 831(a) of the
22 Internal Revenue Code, means insurance company taxable income;
23 (d) "Taxable income," in the case of a regulated
24 investment company subject to the tax imposed by s. 852 of the
25 Internal Revenue Code, means investment company taxable
26 income;
27 (e) "Taxable income," in the case of a real estate
28 investment trust subject to the tax imposed by s. 857 of the
29 Internal Revenue Code, means the income subject to tax,
30 computed as provided in s. 857 of the Internal Revenue Code;
31

1 (f) "Taxable income," in the case of a corporation
2 which is a member of an affiliated group of corporations
3 filing a consolidated income tax return for the taxable year
4 for federal income tax purposes, means taxable income of such
5 corporation for federal income tax purposes as if such
6 corporation had filed a separate federal income tax return for
7 the taxable year and each preceding taxable year for which it
8 was a member of an affiliated group, unless a consolidated
9 return for the taxpayer and others is required or elected
10 under s. 220.131;

11 (g) "Taxable income," in the case of a cooperative
12 corporation or association, means the taxable income of such
13 organization determined in accordance with the provisions of
14 ss. 1381 through 1388 of the Internal Revenue Code;

15 (h) "Taxable income," in the case of an organization
16 which is exempt from the federal income tax by reason of s.
17 501(a) of the Internal Revenue Code, means its unrelated
18 business taxable income as determined under s. 512 of the
19 Internal Revenue Code;

20 (i) "Taxable income," in the case of a corporation for
21 which there is in effect for the taxable year an election
22 under s. 1362(a) of the Internal Revenue Code, means the
23 amounts subject to tax under s. 1374 or s. 1375 of the
24 Internal Revenue Code for each taxable year;

25 (j) "Taxable income," in the case of a limited
26 liability company, other than a limited liability company
27 classified as a partnership for federal income tax purposes,
28 as defined in and organized pursuant to chapter 608 or
29 qualified to do business in this state as a foreign limited
30 liability company or other than a similar limited liability
31 company classified as a partnership for federal income tax

1 purposes and created as an artificial entity pursuant to the
2 statutes of the United States or any other state, territory,
3 possession, or jurisdiction, if such limited liability company
4 or similar entity is taxable as a corporation for federal
5 income tax purposes ~~absent a federal report and determination~~
6 ~~of taxable income as a corporation under the Internal Revenue~~
7 ~~Code~~, means taxable income determined as if such limited
8 liability company were required to file or had filed a federal
9 corporate income tax return under the Internal Revenue Code;
10 (k) "Taxable income," in the case of a taxpayer liable
11 for the alternative minimum tax as defined in s. 55 of the
12 Internal Revenue Code, means the alternative minimum taxable
13 income as defined in s. 55(b)(2) of the Internal Revenue Code,
14 less the exemption amount computed under s. 55(d) of the
15 Internal Revenue Code. A taxpayer is not liable for the
16 alternative minimum tax unless the taxpayer's federal tax
17 return, or related federal consolidated tax return, if
18 included in a consolidated return for federal tax purposes,
19 reflect a liability on the return filed for the alternative
20 minimum tax as defined in s. 55(b)(2) of the Internal Revenue
21 Code;
22 (l) "Taxable income," in the case of a taxpayer whose
23 taxable income is not otherwise defined in this subsection,
24 means the sum of amounts to which a tax rate specified in s.
25 11 of the Internal Revenue Code plus the amount to which a tax
26 rate specified in s. 1201(a)(2) of the Internal Revenue Code
27 are applied for federal income tax purposes.
28 Section 4. Section 608.406, Florida Statutes, is
29 amended to read:
30 608.406 Limited liability company name.--
31

1 (1) The words "limited liability company" or "limited
2 company," or their abbreviation "L.L.C." or "L.C.," shall be
3 the last words of the name of every limited liability company
4 formed under the provisions of this chapter.

5 (2) The limited liability name may not contain
6 language stating or implying that the limited liability
7 company is organized for a purpose other than that permitted
8 in this act and its articles of organization.

9 (3) The limited liability name may not contain
10 language stating or implying that the limited liability
11 company is connected with a state or federal government agency
12 or a corporation chartered under the laws of the United
13 States.

14 (4) The limited liability name must be distinguishable
15 upon the records of the Division of Corporations of the
16 Department of State from all other entities or filings, except
17 fictitious name registrations pursuant to s. 865.09, organized
18 or registered under the laws of this state that are on file
19 with the division.

20 (5) Omission of the words "limited liability company"
21 or "limited company," or their abbreviation "L.L.C. or "L.C.,"
22 in the use of the name of the limited liability company shall
23 render any person who participates in the omission, or
24 knowingly acquiesces in it, liable for any indebtedness,
25 damage, or liability occasioned by the omission.

26 Section 5. Section 608.471, Florida Statutes, is
27 amended to read:

28 608.471 Tax exemption on income of certain limited
29 liability companies ~~company~~.--

30 (1) A limited liability company classified as a
31 partnership for federal income tax purposes and organized

1 pursuant to this chapter or qualified to do business in this
2 state as a foreign limited liability company is not an
3 "artificial entity" within the purview of s. 220.02 and is not
4 subject to the tax imposed under chapter 220.

5 (2) The income of a limited liability company that is
6 classified as a partnership for federal income tax purposes
7 and that is organized pursuant to this chapter or is qualified
8 to do business in this state as a foreign limited liability
9 company shall not be subject to the Florida Income Tax Code
10 and the tax levied pursuant to chapter 220.

11 (3) For purposes of taxation under chapter 220, a
12 limited liability company formed in this state or authorized
13 to transact business in this state as a foreign limited
14 liability company shall be classified as a partnership unless
15 classified otherwise for federal income tax purposes, in which
16 case the limited liability company shall be classified
17 identically to its classification for federal income tax
18 purposes. For purposes of taxation under chapter 220, a
19 member or an assignee of a member of a limited liability
20 company formed in this state or qualified to do business in
21 this state as a foreign limited liability company shall be
22 treated as a resident or nonresident partner unless classified
23 otherwise for federal income tax purposes, in which case the
24 member or assignee of a member shall have the same status as
25 such member or assignee of a member has for federal income tax
26 purposes. ~~A distribution shall be deemed a "dividend" under s.~~
27 ~~316 of the Internal Revenue Code as such code is defined in s.~~
28 ~~220.03.~~

29 Section 6. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Specifies that certain limited liability companies classified as partnerships for federal income tax purposes and organized under chapter 608, Florida Statutes, or qualified to do business in this state as foreign limited liability companies are not subject to the corporate income tax imposed under the Florida Income Tax Code. Modifies definitions and terms. Revises criteria for limited liability company names.

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 3, 1998 Revised _____

Subject Limited Liability Companies

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable</u>
2	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides that a limited liability company (LLC) formed under chapter 608 of the Florida Statutes or qualified to do business in Florida as a foreign LLC will not be subject to Florida's corporate income tax if the LLC is classified as a partnership for federal income tax purposes.

This bill amends the following sections of the Florida Statutes 220 02, 220 03, 220 13, 608.406, and 608.471

II. Present Situation:

A limited liability company (LLC) is an entity with characteristics reflective of both a corporation and a partnership For legal purposes, an LLC is treated like a corporation and therefore affords its members certain protections from liability. For federal income tax purposes, however, an LLC may be classified as a partnership, under which the earnings or losses of the LLC are passed through to the members, rather than treating the LLC as a separate taxable entity

The Florida Limited Liability Company Act, ss. 608 401-608 514, F.S , governs the creation and operation of LLCs in this state Two or more persons may form an LLC by executing and filing articles of organization with the Department of State (ss. 608 405 and 608 407, F.S.) Among other elements, the act provides that, generally, neither the members nor the managers of an LLC are liable for a debt of the LLC (s. 608 436, F S). A foreign LLC may register its name with the department by filing an application that includes a certificate or similar document illustrating that the LLC is in good standing under the laws of the jurisdiction where it is organized (s 608.4062, F.S)

Section 608.406, F.S., requires that the words "limited company," or the abbreviation "L.C.," must be the last words in the name of any LLC formed under ch. 608, F.S. Omission of the words or the abbreviation in using an LLC name renders a person who participates in the omission, or who knowingly acquiesces in it, responsible for liability caused by the omission (s. 608.406(5), F.S.).

Under its corporate income tax code, ch. 220, F.S., Florida levies a tax of 5.5 percent on the taxpayer's net income for the taxable year (s. 220.11, F.S.). The stated intent of the code is to impose a tax on all corporations and other artificial entities that derive from the state attributes not inherent in natural persons, such as perpetual life, transferable ownership, and limited liability for all owners (s. 220.02(1), F.S.). LLCs are specifically subject to this tax (*id.* and s. 608.471, F.S.). For federal income tax purposes, however, LLCs may be treated as partnerships, which are not subject to federal income tax. 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).

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. (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.) 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 s. 608.452, F.S., the fees relating to the creation and operation of LLCs are as follows:

- \$52.50, for furnishing a certified copy,
- \$250.00, for filing original articles of organization or articles of revocation of dissolution,
- \$250.00, for filing a supplemental affidavit declaring the amount of capital contributions of the members when there is an increase in capital contribution beyond the anticipated amount;
- \$100.00, for filing an annual report,

- \$500.00, for filing an application for reinstatement after an administrative or judicial dissolution;
- \$35.00, for filing a certificate designating a registered agent or changing a registered agent;
- \$87.50, for filing a registered agent's statement of registration from an active limited liability company,
- \$35.00, for filing a registered agent's statement of resignation from a dissolved LLC,
- \$52.50, for filing any other LLC document; and
- \$88.75, as a supplemental corporate fee under s. 607.193, F.S.

There are currently 5,867 active LLCs registered with the Florida Department of State, including both domestic LLCs and foreign LLCs authorized to conduct business in Florida.

III. Effect of Proposed Changes:

This bill provides that a limited liability company (LLC) classified as a partnership for federal income tax purposes and formed under ch. 608, F.S., or qualified to do business in this state as a foreign LLC is not subject to Florida's corporate income tax. In particular, the bill.

- Amends s. 220.02(1), F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that such 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;
- 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";
- Amends s. 220.13(2), F.S., relating to the definition of "taxable income" under the corporate income tax code, to exclude the income of specified LLCs from such definition, and
- Amends s. 608.471, F.S., relating to the tax on income of LLCs, to provide 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.

The bill also amends s. 608.406, F.S., relating to an LLC's name, to provide 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."

The bill does not revise the filing fees applicable to LLCs.

The bill provides that the act shall take effect July 1, 1998.

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:**

This bill has not been reviewed by the Revenue Impact Conference. However, the conference reviewed the provisions of a similar bill filed in the House of Representatives during the 1997 session and estimated that relieving eligible limited liability companies (LLCs) from state corporate income tax would result in a fiscal year 1997-98 general revenue loss of \$5.7 million and a recurring general revenue loss of \$4.1 million.

B Private Sector Impact

LLCs that are classified as partnerships for federal income tax purposes would not be subject to Florida's corporate income tax. The LLC may become a more financially attractive form of business organization.

C. Government Sector Impact:

To the extent removing LLCs from corporate tax liability increases the popularity of this form of business organization, the Department of State may experience a change in the current mix of business filings it receives and processes. However, the department does not anticipate that the bill will have a fiscal impact on its operations.

The Department of Revenue's workload, as it currently relates to administration of corporate income tax for LLCs, may ultimately be reduced as a result of eligible LLCs becoming exempt from such tax under this measure.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate

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 20, 1998 Revised _____

Subject: Limited Liability Companies

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides that a limited liability company (LLC) formed under chapter 608 of the Florida Statutes or qualified to do business in Florida as a foreign LLC will not be subject to Florida's corporate income tax if the LLC is classified as a partnership for federal income tax purposes

This bill amends the following sections of the Florida Statutes: 220 02, 220 03, 220 13, 608 406, and 608 471

II. Present Situation:

A limited liability company (LLC) is an entity with characteristics reflective of both a corporation and a partnership For legal purposes, an LLC is treated like a corporation and therefore affords its members certain protections from liability For federal income tax purposes, however, an LLC may be classified as a partnership, under which the earnings or losses of the LLC are passed through to the members, rather than treating the LLC as a separate taxable entity.

The Florida Limited Liability Company Act, ss 608 401-608 514, F.S., governs the creation and operation of LLCs in this state Two or more persons may form an LLC by executing and filing articles of organization with the Department of State (ss 608 405 and 608 407, F S) Among other elements, the act provides that, generally, neither the members nor the managers of an LLC are liable for a debt of the LLC (s 608 436, F S) A foreign LLC may register its name with the department by filing an application that includes a certificate or similar document illustrating that the LLC is in good standing under the laws of the jurisdiction where it is organized (s. 608 4062, F S)

Section 608.406, F S , requires that the words “limited company,” or the abbreviation “L C ,” must be the last words in the name of any LLC formed under ch. 608, F S Omission of the words or the abbreviation in using an LLC name renders a person who participates in the omission, or who knowingly acquiesces in it, responsible for liability caused by the omission (s. 608 406(5), F S.)

Under its corporate income tax code, ch 220, F S , Florida levies a tax of 5 5 percent on the taxpayer’s net income for the taxable year (s 220.11, F.S.) The stated intent of the code is to impose a tax on all corporations and other artificial entities that derive from the state attributes not inherent in natural persons, such as perpetual life, transferable ownership, and limited liability for all owners (s 220 02(1), F.S.). LLCs are specifically subject to this tax (*id.* and s 608 471, F.S) For federal income tax purposes, however, LLCs may be treated as partnerships, which are not subject to federal income tax. 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)

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. (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) 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 s 608 452, F S , the fees relating to the creation and operation of LLCs are as follows

- \$52 50, for furnishing a certified copy,
- \$250.00, for filing original articles of organization or articles of revocation of dissolution;
- \$250 00, for filing a supplemental affidavit declaring the amount of capital contributions of the members when there is an increase in capital contribution beyond the anticipated amount;
- \$100 00, for filing an annual report,

- \$500.00, for filing an application for reinstatement after an administrative or judicial dissolution,
- \$35.00, for filing a certificate designating a registered agent or changing a registered agent,
- \$87.50, for filing a registered agent's statement of registration from an active limited liability company,
- \$35.00, for filing a registered agent's statement of resignation from a dissolved LLC;
- \$52.50, for filing any other LLC document, and
- \$88.75, as a supplemental corporate fee under s. 607.193, F.S.

There are currently 5,867 active LLCs registered with the Florida Department of State, including both domestic LLCs and foreign LLCs authorized to conduct business in Florida. This number has grown dramatically in recent years, in 1990 there were 78 such entities and by 1994 they had grown to 992. In 1995 there were 1,998, in 1996 there were 3,893, and in 1997 there were 5,392.

III. Effect of Proposed Changes:

This bill provides that a limited liability company (LLC) classified as a partnership for federal income tax purposes and formed under ch. 608, F.S., or qualified to do business in this state as a foreign LLC is not subject to Florida's corporate income tax. In particular, the bill.

- Amends s. 220.02(1), F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that such 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;
- 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";
- Amends s. 220.13(2), F.S., relating to the definition of "taxable income" under the corporate income tax code, to exclude the income of specified LLCs from such definition, and
- Amends s. 608.471, F.S., relating to the tax on income of LLCs, to provide 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.

The bill also amends s. 608.406, F.S., relating to an LLC's name, to provide 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."

The bill does not revise the filing fees applicable to LLCs.

The bill provides that the act shall take effect July 1, 1998.

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.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Limited Liability Companies Exemption	(\$8 2)	(\$6 5)	0	0	0	0	(\$8 2)	(\$6 5)

- * Insignificant
- ** Indeterminate

B. Private Sector Impact:

LLCs that are classified as partnerships for federal income tax purposes would not be subject to Florida's corporate income tax. The LLC may become a more financially attractive form of business organization

C Government Sector Impact

To the extent removing LLCs from corporate tax liability increases the popularity of this form of business organization, the Department of State may experience a change in the current mix of business filings it receives and processes. However, the department does not anticipate that the bill will have a fiscal impact on its operations.

The Department of Revenue's workload, as it currently relates to administration of corporate income tax for LLCs, may ultimately be reduced as a result of eligible LLCs becoming exempt from such tax under this measure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None

VIII. Amendments:

None

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

1 A bill to be entitled
 2 An act relating to business entities; amending
 3 s. 607.0730, F.S.; removing 10-year limit on
 4 voting trusts; creating holding company
 5 formation by merger by certain corporations;
 6 amending s. 608.407, F.S.; reducing minimum
 7 number of members necessary to form a limited
 8 liability company; creating ss. 607.1108,
 9 607.1109, 607.11101, F.S.; providing for
 10 mergers of domestic corporations and other
 11 business entities under certain circumstances;
 12 requiring a plan of merger; providing criteria;
 13 providing for articles of merger; providing for
 14 effect of merger; creating ss. 608.438,
 15 608.4381, 608.4382, 608.4383, 608.4384, F.S.;
 16 providing for mergers of limited liability
 17 companies under certain circumstances;
 18 requiring a plan of merger; providing criteria;
 19 providing for action on a plan of merger;
 20 providing procedures; providing for articles of
 21 merger; providing for effect of merger;
 22 providing for rights of dissenting members;
 23 providing procedures; creating ss. 620.201,
 24 620.202, 620.203, 620.204, 620.205, F.S.;
 25 providing for mergers of domestic limited
 26 partnerships under certain circumstances;
 27 requiring a plan of merger; providing criteria;
 28 providing for action on a plan of merger;
 29 providing procedures; providing for articles of
 30 merger; providing for effect of merger;
 31 providing for rights of dissenting partners;

1 providing procedures; amending s. 220.02, F.S.;
2 revising legislative intent; providing
3 application; amending s. 220.02, F.S.;
4 providing legislative intent regarding taxation
5 of a "qualified subchapter S subsidiary";
6 amending s. 220.22, F.S.; requiring certain
7 returns by such subsidiaries; providing
8 retroactive application; amending s. 220.03,
9 F.S.; revising a definition; amending s.
10 ~~220.13~~, F.S.; redefining the term "taxable
11 income" as applied to limited liability
12 companies to exclude income of certain limited
13 liability companies; amending s. 608.406, F.S.;
14 revising criteria for limited liability company
15 names; amending ss. 608.405 and 608.407, F.S.;
16 reducing minimum number of members necessary to
17 form a limited liability company; amending s.
18 608.471, F.S.; exempting certain limited
19 liability companies from the corporate income
20 tax; providing for classifying certain limited
21 liability companies or members or assignees of
22 a member of a limited liability company for
23 certain taxation purposes; repealing ss.
24 607.0122(2) and (3), 607.0402, 607.1506(2)(b),
25 608.4061, 617.0122(2) and (3), 617.0402,
26 617.1506(2)(a), 620.104, 620.182(7), and
27 620.784(2), F.S., relating to corporation and
28 partnership name reservation; conforming
29 statutory provisions to the elimination of the
30 name reservation program provided in the
31

1 Section 9. Paragraph (e) of subsection (1) of section
2 220.03, Florida Statutes, is amended to read:

3 220.03 Definitions.--

4 (1) SPECIFIC TERMS.--When used in this code, and when
5 not otherwise distinctly expressed or manifestly incompatible
6 with the intent thereof, the following terms shall have the
7 following meanings:

8 (e) "Corporation" includes all domestic corporations;
9 foreign corporations qualified to do business in this state or
10 actually doing business in this state; joint-stock companies;
11 limited liability companies, under chapter 608; common-law
12 declarations of trust, under chapter 609; corporations not for
13 profit, under chapter 617; agricultural cooperative marketing
14 associations, under chapter 618; professional service
15 corporations, under chapter 621; foreign unincorporated
16 associations, under chapter 622; private school corporations,
17 under chapter 623; foreign corporations not for profit which
18 are carrying on their activities in this state; and all other
19 organizations, associations, legal entities, and artificial
20 persons which are created by or pursuant to the statutes of
21 this state, the United States, or any other state, territory,
22 possession, or jurisdiction. The term "corporation" does not
23 include proprietorships, even if using a fictitious name;
24 partnerships of any type, as such; limited liability companies
25 that are taxable as partnerships for federal income tax
26 purposes;state or public fairs or expositions, under chapter
27 616; estates of decedents or incompetents; testamentary
28 trusts; or private trusts.

29 Section 10. Subsection (2) of section 220.13, Florida
30 Statutes, is amended to read:

31 220.13 "Adjusted federal income" defined.--

1 liability company shall be classified as a partnership unless
 2 classified otherwise for federal income tax purposes, in which
 3 case the limited liability company shall be classified
 4 identically to its classification for federal income tax
 5 purposes. For purposes of taxation under chapter 220, a
 6 member or an assignee of a member of a limited liability
 7 company formed in this state or qualified to do business in
 8 this state as a foreign limited liability company shall be
 9 treated as a resident or nonresident partner unless classified
 10 otherwise for federal income tax purposes, in which case the
 11 member or assignee of a member shall have the same status as
 12 such member or assignee of a member has for federal income tax
 13 purposes. ~~A distribution shall be deemed a "dividend" under s.~~
 14 ~~316 of the Internal Revenue Code as such code is defined in s.~~
 15 ~~220.03.~~

16 Section 15. Subsections (2) and (3) of section
 17 607.0122, section 607.0402, paragraph (b) of subsection (2) of
 18 section 607.1506, section 608.4061, subsections (2) and (3) of
 19 section 617.0122, section 617.0402, paragraph (a) of
 20 subsection (2) of section 617.1506, section 620.104,
 21 subsection (7) of section 620.182, and subsection (2) of
 22 section 620.784, Florida Statutes, are repealed.

23 Section 16. This act shall take effect July 1, 1998.
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STORAGE NAME. s0704z.fs

DATE: May 27, 1998

****FINAL ACTION****

****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 defunded 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	<p>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</p> <p>Shareholders (for profit) are shielded from liability for acts committed by the corporation.</p>	<p>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</p>	<p>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.</p>

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 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.

¹See, 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.

²An 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.

³NOTE: 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.

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DATE: May 27, 1998

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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:	<u>FY 1997-98</u>	<u>FY 1998-99</u>
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:

Michael A. Kliner

Stephen T. Hogge

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 48.101, F.S.;
4 specifying service of process on certain
5 dissolved corporations; amending s. 607.0732,
6 F.S.; providing an additional criterion of
7 shareholder agreements; providing limitations;
8 creating ss. 607.1108, 607.1109, 607.11101,
9 F.S.; providing for mergers of domestic
10 corporations and other business entities under
11 certain circumstances; requiring a plan of
12 merger; providing criteria; providing for
13 articles of merger; providing for effect of
14 merger; creating ss. 608.438, 608.4381,
15 608.4382, 608.4383, 608.4384, F.S.; providing
16 for mergers of limited liability companies
17 under certain circumstances; requiring a plan
18 of merger; providing criteria; providing for
19 action on a plan of merger; providing
20 procedures; providing for articles of merger;
21 providing for effect of merger; providing for
22 rights of dissenting members; providing
23 procedures; creating ss. 620.201, 620.202,
24 620.203, 620.204, 620.205, F.S.; providing for
25 mergers of domestic limited partnerships under
26 certain circumstances; requiring a plan of
27 merger; providing criteria; providing for
28 action on a plan of merger; providing
29 procedures; providing for articles of merger;
30 providing for effect of merger; providing for
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1 distributions are deemed contrary to public policy for
2 purposes of this paragraph.

3 Section 3. Sections 607.1108, 607.1109, and 607.11101,
4 Florida Statutes, are created to read:

5 607.1108 Merger of domestic corporation and other
6 business entity.--

7 (1) As used in this section and ss. 607.1109 and
8 607.11101, "other business entity" means a limited liability
9 company, a foreign corporation, a business trust or
10 association, a real estate investment trust, a common law
11 trust, an unincorporated business, a general partnership, a
12 limited partnership, or any other entity that is formed
13 pursuant to the requirements of applicable law.

14 (2) Pursuant to a plan of merger complying and
15 approved in accordance with this section, one or more domestic
16 corporations may merge with or into one or more other business
17 entities formed, organized, or incorporated under the laws of
18 this state or any other state, the United States, foreign
19 country, or other foreign jurisdiction, if:

20 (a) Each domestic corporation which is a party to the
21 merger complies with the applicable provisions of this
22 chapter.

23 (b) Each domestic partnership that is a party to the
24 merger complies with the applicable provisions of chapter 620.

25 (c) Each domestic limited liability company that is a
26 party to the merger complies with the applicable provisions of
27 chapter 608.

28 (d) The merger is permitted by the laws of the state,
29 country, or jurisdiction under which each other business
30 entity that is a party to the merger is formed, organized, or
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1 incorporated and each such other business entity complies with
2 such laws in effecting the merger.
3 (3) The plan of merger shall set forth:
4 (a) The name of each domestic corporation and the name
5 and jurisdiction of formation, organization, or incorporation
6 of each other business entity planning to merge, and the name
7 of the surviving or resulting domestic corporation or other
8 business entity into which each other domestic corporation or
9 other business entity plans to merge, which is hereinafter and
10 in ss. 607.1109 and 607.11101 designated as the surviving
11 entity.
12 (b) The terms and conditions of the merger.
13 (c) The manner and basis of converting the shares of
14 each domestic corporation that is a party to the merger and
15 the partnership interests, interests, shares, obligations or
16 other securities of each other business entity that is a party
17 to the merger into partnership interests, interests, shares,
18 obligations or other securities of the surviving entity or any
19 other domestic corporation or other business entity or, in
20 whole or in part, into cash or other property, and the manner
21 and basis of converting rights to acquire the shares of each
22 domestic corporation that is a party to the merger and rights
23 to acquire partnership interests, interests, shares,
24 obligations or other securities of each other business entity
25 that is a party to the merger into rights to acquire
26 partnership interests, interests, shares, obligations or other
27 securities of the surviving entity or any other domestic
28 corporation or other business entity or, in whole or in part,
29 into cash or other property.
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1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.
4 (e) If a limited liability company is to be the
5 surviving entity and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.
8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to the merger is formed, organized, or
11 incorporated.
12 (4) The plan of merger may set forth:
13 (a) If a domestic corporation is to be the surviving
14 entity, any amendments to, or a restatement of, the articles
15 of incorporation of the surviving entity, and such amendments
16 or restatement shall be effective at the effective date of the
17 merger.
18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.
20 (c) Any other provisions relating to the merger.
21 (5) The plan of merger required by subsection (3)
22 shall be adopted and approved by each domestic corporation
23 that is a party to the merger in the same manner as is
24 provided in s. 607.1103. Notwithstanding the foregoing, if the
25 surviving entity is a partnership, no shareholder of a
26 domestic corporation that is a party to the merger shall, as a
27 result of the merger, become a general partner of the
28 surviving entity, unless such shareholder specifically
29 consents in writing to becoming a general partner of the
30 surviving entity, and unless such written consent is obtained
31 from each such shareholder who, as a result of the merger,

1 would become a general partner of the surviving entity, such
2 merger shall not become effective under s. 607.11101. Any
3 shareholder providing such consent in writing shall be deemed
4 to have voted in favor of the plan of merger for purposes of
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,
7 insofar as they are applicable, apply to mergers of one or
8 more domestic corporations with or into one or more other
9 business entities.

10 (7) Notwithstanding any provision of this section or
11 ss. 607.1109 and 607.11101, any merger consisting solely of
12 the merger of one or more domestic corporations with or into
13 one or more foreign corporations shall be consummated solely
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger.--

16 (1) After a plan of merger is approved by each
17 domestic corporation and other business entity that is a party
18 to the merger, the surviving entity shall deliver to the
19 Department of State for filing articles of merger, which shall
20 be executed by each domestic corporation as required by s.
21 607.0120 and by each other business entity as required by
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved
25 by each domestic corporation that is a party to the merger in
26 accordance with the applicable provisions of this chapter,
27 and, if applicable, a statement that the written consent of
28 each shareholder of such domestic corporation who, as a result
29 of the merger, becomes a general partner of the surviving
30 entity has been obtained pursuant to s. 607.1108(5).

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- 1 (c) A statement that the plan of merger was approved
2 by each domestic partnership that is a party to the merger in
3 accordance with the applicable provisions of chapter 620.
- 4 (d) A statement that the plan of merger was approved
5 by each domestic limited liability company that is a party to
6 the merger in accordance with the applicable provisions of
7 chapter 608.
- 8 (e) A statement that the plan of merger was approved
9 by each other business entity that is a party to the merger,
10 other than corporations, limited liability companies, and
11 partnerships formed, organized, or incorporated under the laws
12 of this state, in accordance with the applicable laws of the
13 state, country, or jurisdiction under which such other
14 business entity is formed, organized, or incorporated.
- 15 (f) The effective date of the merger, which may be on
16 or after the date of filing the articles of merger, provided,
17 if the articles of merger do not provide for an effective date
18 of the merger, the effective date shall be the date on which
19 the articles of merger are filed.
- 20 (g) If the surviving entity is another business entity
21 formed, organized, or incorporated under the laws of any
22 state, country, or jurisdiction other than this state:
- 23 1. The address, including street and number, if any,
24 of its principal office under the laws of the state, country,
25 or jurisdiction in which it was formed, organized, or
26 incorporated.
- 27 2. A statement that the surviving entity is deemed to
28 have appointed the Secretary of State as its agent for service
29 of process in a proceeding to enforce any obligation or the
30 rights of dissenting shareholders of each domestic corporation
31 that is a party to the merger.

1 3. A statement that the surviving entity has agreed to
2 promptly pay to the dissenting shareholders of each domestic
3 corporation that is a party to the merger the amount, if any,
4 to which they are entitled under s. 607.1302.

5 (2) A copy of the articles of merger, certified by the
6 Department of State, may be filed in the office of the
7 official who is the recording officer of each county in this
8 state in which real property of a party to the merger other
9 than the surviving entity is situated.

10 607.11101 Effect of merger of domestic corporation and
11 other business entity.--

12 (1) When a merger becomes effective:

13 (a) Every domestic corporation and other business
14 entity that is a party to the merger merges into the surviving
15 entity and the separate existence of every domestic
16 corporation and other business entity that is a party to the
17 merger except the surviving entity ceases.

18 (b) The title to all real estate and other property,
19 or any interest therein, owned by each domestic corporation
20 and other business entity that is a party to the merger is
21 vested in the surviving entity without reversion or impairment
22 and without any requirement to record any deed or other
23 conveyance.

24 (c) The surviving entity shall thereafter be
25 responsible and liable for all the liabilities and obligations
26 of each domestic corporation and other business entity that is
27 a party to the merger, including liabilities arising out of
28 the rights of dissenters with respect to such merger under
29 applicable law.

30 (d) Any claim existing or action or proceeding pending
31 by or against any domestic corporation or other business

1 entity that is a party to the merger may be continued as if
2 the merger did not occur or the surviving entity may be
3 substituted in the proceeding for the domestic corporation or
4 other business entity which ceased existence.

5 (e) Neither the rights of creditors nor any liens upon
6 the property of any domestic corporation or other business
7 entity shall be impaired by such merger.

8 (f) If a domestic corporation is the surviving entity,
9 the articles of incorporation of such corporation in effect
10 immediately prior to the time the merger becomes effective
11 shall be the articles of incorporation of the surviving
12 entity, except as amended or restated to the extent provided
13 in the plan of merger.

14 (g) The shares, partnership interests, interests,
15 obligations, or other securities, and the rights to acquire
16 shares, partnership interests, interests, obligations, or
17 other securities, of each domestic corporation and other
18 business entity that is a party to the merger shall be
19 converted into shares, partnership interests, interests,
20 obligations, or other securities, or rights to such
21 securities, of the surviving entity or any other domestic
22 corporation or other business entity or, in whole or in part,
23 into cash or other property as provided in the plan of merger,
24 and the former holders of shares, partnership interests,
25 interests, obligations, or other securities, or rights to such
26 securities, shall be entitled only to the rights provided in
27 the plan of merger and to their rights as dissenters, if any,
28 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
29 applicable law.

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1 (a) The partnership interests of the limited
2 partnership were held of record by not fewer than 500
3 partners; or
4 (b) The partnership interests were registered on a
5 national securities exchange or quoted on the National
6 Association of Securities Dealers Automated Quotation System.
7 Section 6. This act shall take effect upon becoming a
8 law.

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SENATE SUMMARY

Provides procedures and criteria for mergers of corporations and other business entities, limited liability companies, and domestic limited partnerships. Requires plans of merger and specifies actions on such plans. Provides for articles of merger. Provides for rights of dissenting members or partners. (See bill for details.)

By Representative Kosmas

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 48.101, F.S.;
4 specifying service of process on certain
5 dissolved corporations; amending s. 607.0732,
6 F.S.; providing an additional criterion of
7 shareholder agreements; providing limitations;
8 creating ss. 607.1108, 607.1109, 607.11101,
9 F.S.; providing for mergers of domestic
10 corporations and other business entities under
11 certain circumstances; requiring a plan of
12 merger; providing criteria; providing for
13 articles of merger; providing for effect of
14 merger; creating ss. 608.438, 608.4381,
15 608.4382, 608.4383, 608.4384, F.S.; providing
16 for mergers of limited liability companies
17 under certain circumstances; requiring a plan
18 of merger; providing criteria; providing for
19 action on a plan of merger; providing
20 procedures; providing for articles of merger;
21 providing for effect of merger; providing for
22 rights of dissenting members; providing
23 procedures; creating ss. 620.201, 620.202,
24 620.203, 620.204, 620.205, F.S.; providing for
25 mergers of domestic limited partnerships under
26 certain circumstances; requiring a plan of
27 merger; providing criteria; providing for
28 action on a plan of merger; providing
29 procedures; providing for articles of merger;
30 providing for effect of merger; providing for
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1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.

4 (e) If a limited liability company is to be the
5 surviving entity and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.

8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to the merger is formed, organized, or
11 incorporated.

12 (4) The plan of merger may set forth:

13 (a) If a domestic corporation is to be the surviving
14 entity, any amendments to, or a restatement of, the articles
15 of incorporation of the surviving entity, and such amendments
16 or restatement shall be effective at the effective date of the
17 merger.

18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.

20 (c) Any other provisions relating to the merger.

21 (5) The plan of merger required by subsection (3)
22 shall be adopted and approved by each domestic corporation
23 that is a party to the merger in the same manner as is
24 provided in s. 607.1103. Notwithstanding the foregoing, if the
25 surviving entity is a partnership, no shareholder of a
26 domestic corporation that is a party to the merger shall, as a
27 result of the merger, become a general partner of the
28 surviving entity, unless such shareholder specifically
29 consents in writing to becoming a general partner of the
30 surviving entity, and unless such written consent is obtained
31 from each such shareholder who, as a result of the merger,

1 would become a general partner of the surviving entity, such
2 merger shall not become effective under s. 607.11101. Any
3 shareholder providing such consent in writing shall be deemed
4 to have voted in favor of the plan of merger for purposes of
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,
7 insofar as they are applicable, apply to mergers of one or
8 more domestic corporations with or into one or more other
9 business entities.

10 (7) Notwithstanding any provision of this section or
11 ss. 607.1109 and 607.11101, any merger consisting solely of
12 the merger of one or more domestic corporations with or into
13 one or more foreign corporations shall be consummated solely
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger.--

16 (1) After a plan of merger is approved by each
17 domestic corporation and other business entity that is a party
18 to the merger, the surviving entity shall deliver to the
19 Department of State for filing articles of merger, which shall
20 be executed by each domestic corporation as required by s.
21 607.0120 and by each other business entity as required by
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved
25 by each domestic corporation that is a party to the merger in
26 accordance with the applicable provisions of this chapter,
27 and, if applicable, a statement that the written consent of
28 each shareholder of such domestic corporation who, as a result
29 of the merger, becomes a general partner of the surviving
30 entity has been obtained pursuant to s. 607.1108(5).

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1 (c) A statement that the plan of merger was approved
2 by each domestic partnership that is a party to the merger in
3 accordance with the applicable provisions of chapter 620.

4 (d) A statement that the plan of merger was approved
5 by each domestic limited liability company that is a party to
6 the merger in accordance with the applicable provisions of
7 chapter 608.

8 (e) A statement that the plan of merger was approved
9 by each other business entity that is a party to the merger,
10 other than corporations, limited liability companies, and
11 partnerships formed, organized, or incorporated under the laws
12 of this state, in accordance with the applicable laws of the
13 state, country, or jurisdiction under which such other
14 business entity is formed, organized, or incorporated.

15 (f) The effective date of the merger, which may be on
16 or after the date of filing the articles of merger, provided,
17 if the articles of merger do not provide for an effective date
18 of the merger, the effective date shall be the date on which
19 the articles of merger are filed.

20 (g) If the surviving entity is another business entity
21 formed, organized, or incorporated under the laws of any
22 state, country, or jurisdiction other than this state:

23 1. The address, including street and number, if any,
24 of its principal office under the laws of the state, country,
25 or jurisdiction in which it was formed, organized, or
26 incorporated.

27 2. A statement that the surviving entity is deemed to
28 have appointed the Secretary of State as its agent for service
29 of process in a proceeding to enforce any obligation or the
30 rights of dissenting shareholders of each domestic corporation
31 that is a party to the merger.

1 3. A statement that the surviving entity has agreed to
2 promptly pay to the dissenting shareholders of each domestic
3 corporation that is a party to the merger the amount, if any,
4 to which they are entitled under s. 607.1302.

5 (2) A copy of the articles of merger, certified by the
6 Department of State, may be filed in the office of the
7 official who is the recording officer of each county in this
8 state in which real property of a party to the merger other
9 than the surviving entity is situated.

10 607.11101 Effect of merger of domestic corporation and
11 other business entity.--

12 (1) When a merger becomes effective:

13 (a) Every domestic corporation and other business
14 entity that is a party to the merger merges into the surviving
15 entity and the separate existence of every domestic
16 corporation and other business entity that is a party to the
17 merger except the surviving entity ceases.

18 (b) The title to all real estate and other property,
19 or any interest therein, owned by each domestic corporation
20 and other business entity that is a party to the merger is
21 vested in the surviving entity without reversion or impairment
22 and without any requirement to record any deed or other
23 conveyance.

24 (c) The surviving entity shall thereafter be
25 responsible and liable for all the liabilities and obligations
26 of each domestic corporation and other business entity that is
27 a party to the merger, including liabilities arising out of
28 the rights of dissenters with respect to such merger under
29 applicable law.

30 (d) Any claim existing or action or proceeding pending
31 by or against any domestic corporation or other business

1 entity that is a party to the merger may be continued as if
2 the merger did not occur or the surviving entity may be
3 substituted in the proceeding for the domestic corporation or
4 other business entity which ceased existence.

5 (e) Neither the rights of creditors nor any liens upon
6 the property of any domestic corporation or other business
7 entity shall be impaired by such merger.

8 (f) If a domestic corporation is the surviving entity,
9 the articles of incorporation of such corporation in effect
10 immediately prior to the time the merger becomes effective
11 shall be the articles of incorporation of the surviving
12 entity, except as amended or restated to the extent provided
13 in the plan of merger.

14 (g) The shares, partnership interests, interests,
15 obligations, or other securities, and the rights to acquire
16 shares, partnership interests, interests, obligations, or
17 other securities, of each domestic corporation and other
18 business entity that is a party to the merger shall be
19 converted into shares, partnership interests, interests,
20 obligations, or other securities, or rights to such
21 securities, of the surviving entity or any other domestic
22 corporation or other business entity or, in whole or in part,
23 into cash or other property as provided in the plan of merger,
24 and the former holders of shares, partnership interests,
25 interests, obligations, or other securities, or rights to such
26 securities, shall be entitled only to the rights provided in
27 the plan of merger and to their rights as dissenters, if any,
28 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
29 applicable law.

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(a) The partnership interests of the limited
partnership were held of record by not fewer than 500
partners; or
(b) The partnership interests were registered on a
national securities exchange or quoted on the National
Association of Securities Dealers Automated Quotation System.
Section 6. This act shall take effect upon becoming a
law.

SENATE SUMMARY

Provides procedures and criteria for mergers of
corporations and other business entities, limited
liability companies, and domestic limited partnerships.
Requires plans of merger and specifies actions on such
plans. Provides for articles of merger. Provides for
rights of dissenting members or partners. (See bill for
details.)

STORAGE NAME: H1657.fs
DATE: February 26, 1998

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

BILL #: HB 1657
RELATING TO: Mergers of business entities or corporations
SPONSOR(S): Rep. Kosmas
COMPANION BILL(S): SB 518

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

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
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I. SUMMARY:

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

- The bill amends Chapters 607, 608, and 620, F.S. to permit mergers of Florida corporations, limited liability companies, and limited partnerships with or into each other and with or into other business entities both domestic or foreign.
- The bill corrects a drafting error in Chapter 48, F.S., dealing with service of process on dissolved corporations.
- The bill amends the shareholder agreement provisions contained in s. 607.0732, F.S., to add an additional criterion to the existing list of criteria which allow corporations with 100 or fewer shareholders to adopt shareholder agreements that include provisions inconsistent with statutes governing the exercise of corporate powers of management.

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

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

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Business entities

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

Corporations

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

Limited liability companies ("LLC")

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

Partnerships

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

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

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

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

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

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

TABLE 1 Comparison of the authority, duration of existence, ownership, management, tax liability and civil liability for corporations, limited liability companies and limited partnerships.			
BUSINESS ENTITY	CORPORATION	LIMITED LIABILITY COMPANY	LIMITED PARTNERSHIP
Authority	Chapter 607, Florida Statutes	Chapter 608, Florida Statutes	Chapter 620, Florida Statutes
Duration	Perpetual duration	Perpetual duration	The duration depends upon the certificate of limited partnership filed with the Department of State
Owners	Shareholders	Members	Partners, general or limited
Management	An elected board of directors oversee directors and officers who manage the company	Elected managers or members manage the company	General partners manage the company. Limited partners may not manage the company
Tax Liability	Entity is subject to state corporate income tax. Shareholders pay federal income taxes on dividends Merging corporations incur no documentary stamp tax liability	Entity is subject to state corporate income tax. Members pay federal income taxes on dividends Merging LLCs incur no documentary stamp tax liability.	Entity is not subject to state corporate income tax. Partners pay federal income taxes on profits Merging partnerships may incur documentary stamp tax liability
Liability	Officers and directors of corporations are shielded from personal liability for wrongful acts committed by the corporation, other directors or officers, or employees but are held accountable for their own misfeasance Shareholders are shielded from liability for acts committed by the corporation.	Managers of an LLC managed by a manger or managers are shielded from personal liability for wrongful acts committed by the LLC, other managers, other members, or employees but are held accountable for their own misfeasance	Limited partnership has two classes of partner: the general partner and the limited partner. General partners are jointly and severally liable for the liabilities of the partners, the partnership and the partnership employees. Limited partners are liable only to the extent of their capital contribution to the limited partnership

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

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

Service of process on dissolved corporations

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

"Closely-held" corporation shareholder agreements

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

Documentary stamp tax

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

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

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

B. EFFECT OF PROPOSED CHANGES:

Business entities

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

- (a) only the surviving entity would exist;
- (b) title to all real estate, other property, or any interest therein would be vested in the surviving entity without a requirement to file a new deed or other conveyance;
- (c) the surviving entity would be liable for all liabilities of all business entities which are a party to the merger, including dissenting shareholders' liabilities;
- (d) all claims, actions, or proceedings against a business entity which is a party to the merger could be continued as if the merger had not taken place;
- (e) creditors' rights or liens of a business entity which is a party to the merger would not be impaired by the merger;
- (f) the surviving entity's governing document (i.e., articles of incorporation, articles of organization, or partnership agreement) would be the governing documents of the surviving entity except as amended or restated in the plan of merger; and
- (g) the shares, partnership interests, and the like would be converted into the same of the surviving entity or cash or other property as provided by the plan of merger.

Service of process on dissolved corporations

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

"Closely-held" corporation shareholder agreements

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

- (a) modifying the directors' duties of loyalty or care;
- (b) adversely affecting the shareholders' rights to bring derivative actions;
- (c) abrogating dissenting shareholder rights,
- (d) abrogating shareholder rights to distributions.

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

Documentary stamp tax

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

C. APPLICATION OF PRINCIPLES:

1. 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.

(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:

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

E. SECTION-BY-SECTION RESEARCH:

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

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

provisions which govern the exercise of its powers or management even if inconsistent with Chapter 607, F.S. However, the shareholder agreement cannot be contrary to public policy. The following agreements would be deemed contrary to public policy:

- (a) modifying the directors' duties of loyalty or care;
- (b) adversely affecting the shareholders' rights to bring derivative actions;
- (c) abrogating dissenting shareholder rights; and
- (d) abrogating shareholder rights to distributions.

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

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

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

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

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

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

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

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

¹NOTE: 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.

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

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

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

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

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

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

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

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

The bill does not apply to a limited liability company:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

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

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

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

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

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

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

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

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

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

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

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

The bill would not apply to a limited partnership:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

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

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

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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

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

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

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

D. FISCAL COMMENTS:

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

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

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

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

1. Regarding Section 1 of the bill: Chapter 97-230, Laws of Florida, amended s. 48.101, F. S., so that service of process is made upon the directors of corporations which are dissolved prior to July 1, 1990, as trustees of the dissolved corporation. For corporations which were dissolved after July 1, 1990, service of process is to be made pursuant to s. 48.081, F.S. This amendment was necessary to correct an anomaly created when Chapter 607, F.S., the Florida Business Corporation Act was amended in 1990. The act eliminated the concept of a board of trustees for dissolved corporations and continued the authority of the officers, directors and registered agents upon dissolution. Chapter 97-230, Laws of Florida, conformed Section 48.101, Florida Statutes, to those changes. Consequently, this section of the bill has already been addressed.
2. Regarding Section 2 of the bill: Chapter 97-230, Laws of Florida, amended s. 607.0732, F. S., partially in the manner as proposed by this bill. Chapter 97-230 specified additional criterion for "closely-held" corporation shareholder agreements and referenced sections within Chapter 607, F. S. HB 1657 affects Chapters 607 (corporations) and 608 (limited liability companies), as well as those sections created by the bill (Chapter 620). This section of the bill does not now conform to the new s. 607.0732, F.S. (1997).

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

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen T. Hogge

By the Committee on Financial Services and Representative
 Kosmas

1 A bill to be entitled
 2 An act relating to mergers of business entities
 3 or corporations; amending s. 607.0730, F.S.;
 4 removing a time limitation on voting trusts;
 5 creating ss. 607.1108, 607.1109, 607.11101, and
 6 607.11102, F.S.; providing for mergers of
 7 domestic corporations and other business
 8 entities under certain circumstances; requiring
 9 a plan of merger; providing criteria; providing
 10 for articles of merger; providing for effect of
 11 merger; providing for holding company formation
 12 by merger of certain corporations; amending s.
 13 608.407, F.S.; reducing the minimum number of
 14 members necessary to form a limited liability
 15 company; creating ss. 608.438, 608.4381,
 16 608.4382, 608.4383, and 608.4384, F.S.;
 17 providing for mergers of limited liability
 18 companies under certain circumstances;
 19 requiring a plan of merger; providing criteria;
 20 providing for action on a plan of merger;
 21 providing procedures; providing for articles of
 22 merger; providing for effect of merger;
 23 providing for rights of dissenting members;
 24 providing procedures; creating ss. 620.201,
 25 620.202, 620.203, 620.204, and 620.205, F.S.;
 26 providing for mergers of domestic limited
 27 partnerships under certain circumstances;
 28 requiring a plan of merger; providing criteria;
 29 providing for action on a plan of merger;
 30 providing procedures; providing for articles of
 31 merger; providing for effect of merger;

1 providing for rights of dissenting partners;
2 providing procedures; providing an effective
3 date.

4
5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Subsections (2) and (3) of section
8 607.0730, Florida Statutes, are amended to read:
9 607.0730 Voting trusts.--

10 (2) A voting trust becomes effective on the date the
11 first shares subject to the trust are registered in the
12 trustee's name. ~~A voting trust is valid for not more than 10~~
13 ~~years after its effective date unless extended under~~
14 ~~subsection (3). The validity of any voting trust otherwise~~
15 ~~lawful shall not be affected during a period of 10 years from~~
16 ~~the date when it was created or last extended by the fact that~~
17 ~~under its terms it will or may last beyond the 10-year period.~~

18 ~~(3) All or some of the parties to a voting trust may~~
19 ~~extend it for additional terms of not more than 10 years each~~
20 ~~by signing an extension agreement and obtaining the voting~~
21 ~~trustee's written consent to the extension. An extension is~~
22 ~~valid for the period set forth therein, up to 10 years, from~~
23 ~~the date the first shareholder signs the extension agreement.~~
24 ~~The voting trustee must deliver copies of the extension~~
25 ~~agreement and list of beneficial owners to the corporation's~~
26 ~~principal office. An extension agreement binds only those~~
27 ~~parties signing it.~~

28 Section 2. Sections 607.1108, 607.1109, 607.11101, and
29 607.11102, Florida Statutes, are created to read:
30 607.1108 Merger of domestic corporation and other
31 business entity.--

1 (1) As used in this section and ss. 607.1109 and
2 607.11101, the term "other business entity" means a limited
3 liability company, foreign corporation, not-for-profit
4 corporation, business trust, common law trust, unincorporated
5 business, general partnership, limited partnership, or any
6 other entity that is formed pursuant to the requirements of
7 applicable law. Notwithstanding the provisions of chapter 617,
8 a domestic not-for-profit corporation acting under a plan for
9 merger approved pursuant to s. 617.1103 shall be governed by
10 the provisions of this section and ss. 607.1109 and 607.11101.
11 If a not-for-profit corporation chooses to avail itself of the
12 merger provisions, such a merger cannot be accomplished unless
13 the assets of such corporation are disposed of in a way that
14 would not be prohibited if the corporation were to be
15 dissolved.

16 (2) Pursuant to a plan of merger complying and
17 approved in accordance with this section, one or more domestic
18 corporations may merge with or into one or more other business
19 entities formed, organized, or incorporated under the laws of
20 this state or any other state, the United States, foreign
21 country, or other foreign jurisdiction, if:

22 (a) Each domestic corporation which is a party to the
23 merger complies with the applicable provisions of this
24 chapter.

25 (b) Each domestic partnership that is a party to the
26 merger complies with the applicable provisions of chapter 620.

27 (c) Each domestic limited liability company that is a
28 party to the merger complies with the applicable provisions of
29 chapter 608.

30 (d) The merger is permitted by the laws of the state,
31 country, or jurisdiction under which each other business

1 entity that is a party to the merger is formed, organized, or
2 incorporated and each such other business entity complies with
3 such laws in effecting the merger.
4 (3) The plan of merger shall set forth:
5 (a) The name of each domestic corporation and the name
6 and jurisdiction of formation, organization, or incorporation
7 of each other business entity planning to merge, and the name
8 of the surviving or resulting domestic corporation or other
9 business entity into which each other domestic corporation or
10 other business entity plans to merge, which is hereinafter and
11 in ss. 607.1109 and 607.11101 designated as the surviving
12 entity.
13 (b) The terms and conditions of the merger.
14 (c) The manner and basis of converting the shares of
15 each domestic corporation that is a party to the merger and
16 the partnership interests, interests, shares, obligations or
17 other securities of each other business entity that is a party
18 to the merger into partnership interests, interests, shares,
19 obligations or other securities of the surviving entity or any
20 other domestic corporation or other business entity or, in
21 whole or in part, into cash or other property, and the manner
22 and basis of converting rights to acquire the shares of each
23 domestic corporation that is a party to the merger and rights
24 to acquire partnership interests, interests, shares,
25 obligations or other securities of each other business entity
26 that is a party to the merger into rights to acquire
27 partnership interests, interests, shares, obligations or other
28 securities of the surviving entity or any other domestic
29 corporation or other business entity or, in whole or in part,
30 into cash or other property.
31

1 (d) If a partnership is to be the surviving entity,
2 the names and business addresses of the general partners of
3 the surviving entity.
4 (e) If a limited liability company is to be the
5 surviving entity and management thereof is vested in one or
6 more managers, the names and business addresses of such
7 managers.
8 (f) All statements required to be set forth in the
9 plan of merger by the laws under which each other business
10 entity that is a party to the merger is formed, organized, or
11 incorporated.
12 (4) The plan of merger may set forth:
13 (a) If a domestic corporation is to be the surviving
14 entity, any amendments to, or a restatement of, the articles
15 of incorporation of the surviving entity, and such amendments
16 or restatement shall be effective at the effective date of the
17 merger.
18 (b) The effective date of the merger, which may be on
19 or after the date of filing the certificate of merger.
20 (c) Any other provisions relating to the merger.
21 (5) The plan of merger required by subsection (3)
22 shall be adopted and approved by each domestic corporation
23 that is a party to the merger in the same manner as is
24 provided in s. 607.1103. Notwithstanding the foregoing, if the
25 surviving entity is a partnership, no shareholder of a
26 domestic corporation that is a party to the merger shall, as a
27 result of the merger, become a general partner of the
28 surviving entity, unless such shareholder specifically
29 consents in writing to becoming a general partner of the
30 surviving entity, and unless such written consent is obtained
31 from each such shareholder who, as a result of the merger,

1 would become a general partner of the surviving entity, such
2 merger shall not become effective under s. 607.11101. Any
3 shareholder providing such consent in writing shall be deemed
4 to have voted in favor of the plan of merger for purposes of
5 s. 607.1103.

6 (6) Sections 607.1103 and 607.1301-607.1320 shall,
7 insofar as they are applicable, apply to mergers of one or
8 more domestic corporations with or into one or more other
9 business entities.

10 (7) Notwithstanding any provision of this section or
11 ss. 607.1109 and 607.11101, any merger consisting solely of
12 the merger of one or more domestic corporations with or into
13 one or more foreign corporations shall be consummated solely
14 in accordance with the requirements of s. 607.1107.

15 607.1109 Articles of merger.--

16 (1) After a plan of merger is approved by each
17 domestic corporation and other business entity that is a party
18 to the merger, the surviving entity shall deliver to the
19 Department of State for filing articles of merger, which shall
20 be executed by each domestic corporation as required by s.
21 607.0120 and by each other business entity as required by
22 applicable law, and which shall set forth:

23 (a) The plan of merger.

24 (b) A statement that the plan of merger was approved
25 by each domestic corporation that is a party to the merger in
26 accordance with the applicable provisions of this chapter,
27 and, if applicable, a statement that the written consent of
28 each shareholder of such domestic corporation who, as a result
29 of the merger, becomes a general partner of the surviving
30 entity has been obtained pursuant to s. 607.1108(5).

31

- 1 (c) A statement that the plan of merger was approved
2 by each domestic partnership that is a party to the merger in
3 accordance with the applicable provisions of chapter 620.
- 4 (d) A statement that the plan of merger was approved
5 by each domestic limited liability company that is a party to
6 the merger in accordance with the applicable provisions of
7 chapter 608.
- 8 (e) A statement that the plan of merger was approved
9 by each other business entity that is a party to the merger,
10 other than corporations, limited liability companies, and
11 partnerships formed, organized, or incorporated under the laws
12 of this state, in accordance with the applicable laws of the
13 state, country, or jurisdiction under which such other
14 business entity is formed, organized, or incorporated.
- 15 (f) The effective date of the merger, which may be on
16 or after the date of filing the articles of merger, provided,
17 if the articles of merger do not provide for an effective date
18 of the merger, the effective date shall be the date on which
19 the articles of merger are filed.
- 20 (g) If the surviving entity is another business entity
21 formed, organized, or incorporated under the laws of any
22 state, country, or jurisdiction other than this state:
- 23 1. The address, including street and number, if any,
24 of its principal office under the laws of the state, country,
25 or jurisdiction in which it was formed, organized, or
26 incorporated.
- 27 2. A statement that the surviving entity is deemed to
28 have appointed the Secretary of State as its agent for service
29 of process in a proceeding to enforce any obligation or the
30 rights of dissenting shareholders of each domestic corporation
31 that is a party to the merger.

1 or if the merger is unlawful or fraudulent with respect to
2 such partner.
3 (11) Unless otherwise provided in the partnership
4 agreement of the domestic limited partnership in which the
5 dissenter was a partner, this section does not apply with
6 respect to a plan of merger if, as of the date fixed for the
7 determination of partners entitled to notice of a plan of
8 merger:
9 (a) The partnership interests of the limited
10 partnership were held of record by not fewer than 500
11 partners; or
12 (b) The partnership interests were registered on a
13 national securities exchange or quoted on the National
14 Association of Securities Dealers Automated Quotation System.
15 Section 6. This act shall take effect upon becoming a
16 law.
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STORAGE NAME: h1657s1.fs
DATE: March 19, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
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
 - (3) GOVERNMENTAL RULES & REGULATIONS
 - (4) FINANCE & TAXATION
 - (5) GENERAL GOVERNMENT APPROPRIATION
-

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); and
- 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 negative fiscal impact of (\$3.0 million) for FY 1998-99, and (\$3.5 million) for FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Business entities

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

Corporations

The traditional corporate entity is a separate legal entity, apart from the owners of the corporation. The corporation may own, buy, and sell property in its own name; make contracts; sue and be sued in its own name; and may continue its existence independent and apart from the turnover of its originators, pursuant to its charter. This separate existence serves to "shield" the owners from liability for actions "committed" by the corporate entity. Stockholders in corporations enjoy the advantage of limited liability, which generally extends no further 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	<p>Entity is subject to state corporate income tax.</p> <p>Shareholders (for profit) pay federal income taxes on dividends</p> <p>Merging corporations incur no documentary stamp tax liability</p>	<p>Entity is subject to state corporate income tax</p> <p>Members pay federal income taxes on dividends</p> <p>Merging LLCs incur no documentary stamp tax liability.</p>	<p>Entity is not subject to state corporate income tax</p> <p>Partners pay federal income taxes on profits</p> <p>Merging partnerships may incur documentary stamp tax liability.</p>

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	<p>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</p> <p>Shareholders (for profit) are shielded from liability for acts committed by the corporation.</p>	<p>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</p>	<p>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.</p>

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 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 which 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. 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.

(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:

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.

¹NOTE: 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.

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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.

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

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writing. Should any general partner refuse to continue as a general partner, the merger does not become effective.

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

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

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

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

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

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

The bill would not apply to a limited partnership:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

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

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

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

1. 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."
2. In section 3 of the bill, relating to merger of a domestic corporation and other business entity, the sentence which reads "notwithstanding the provisions of Chapter 617" should be replaced with "notwithstanding section 617.0302 (16)." This section of law provides that a not-for-profit may merge with another business entity so long that the surviving entity is a not-for-profit corporation. This amendment would narrow the focus of the exclusion from the restrictive merger language of chapter 617 while preserving the applicability of other provisions of chapter 617 (e.g., distribution of assets in a dissolution) to not-for-profits which take advantage of the merger provisions of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The differences between the original bill and the committee substitute 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.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen T. Hogge

STORAGE NAME: h1657.grr
DATE: March 27, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
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
 - (4) FINANCE & TAXATION
 - (5) GENERAL GOVERNMENT APPROPRIATION
-

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); and
- 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 negative fiscal impact of (\$3.0 million) for FY 1998-99, and (\$3.5 million) for FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Business entities

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

Corporations

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

BUSINESS ENTITY	CORPORATION	LIMITED LIABILITY COMPANY	LIMITED PARTNERSHIP
<p>Authority</p> <p>Duration</p> <p>Owners</p> <p>Management</p>	<p>Chapter 607, Florida Statutes (for profit); Chapter 617, FS (not-for-profit)</p> <p>Perpetual duration</p> <p>Shareholders</p> <p>An elected board of directors oversee directors and officers who manage the company</p>	<p>Chapter 608, Florida Statutes</p> <p>Perpetual duration</p> <p>Members</p> <p>Elected managers or members manage the company</p>	<p>Chapter 620, Florida Statutes</p> <p>The duration depends upon the certificate of limited partnership filed with the Department of State</p> <p>Partners, general or limited</p> <p>General partners manage the company. Limited partners may not manage the company</p>
<p>Tax Liability</p>	<p>Entity is subject to state corporate income tax.</p> <p>Shareholders (for profit) pay federal income taxes on dividends</p> <p>Merging corporations incur no documentary stamp tax liability</p>	<p>Entity is subject to state corporate income tax.</p> <p>Members pay federal income taxes on dividends</p> <p>Merging LLCs incur no documentary stamp tax liability.</p>	<p>Entity is not subject to state corporate income tax.</p> <p>Partners pay federal income taxes on profits</p> <p>Merging partnerships may incur documentary stamp tax liability.</p>

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	<p>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</p> <p>Shareholders (for profit) are shielded from liability for acts committed by the corporation.</p>	<p>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</p>	<p>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.</p>

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 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 which 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. 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.

(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:

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.

¹NOTE: 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.

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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.

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.

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

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

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

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

The bill does not apply to a limited liability company:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

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

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

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

The plan of merger must be approved in writing by all of the general partners and by those limited partners which own more than a majority of the current interests in the profits of the limited partnership, unless the partnership agreement states otherwise. If the surviving entity is a limited partnership or a general partnership, no general partner shall continue as a general partner unless that general partner specifically consents in

writing. Should any general partner refuse to continue as a general partner, the merger does not become effective.

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

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

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

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

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

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

The bill would not apply to a limited partnership:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

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

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

},500,000)

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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.

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

STORAGE NAME: h1657a.grr

DATE: March 31, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
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 & TAXATION
 - (5) GENERAL GOVERNMENT APPROPRIATION
-

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); and
- 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 negative fiscal impact of (\$3.0 million) for FY 1998-99, and (\$3.5 million) for FY 1999-00.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Business entities

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

Corporations

The traditional corporate entity is a separate legal entity, apart from the owners of the corporation. The corporation may own, buy, and sell property in its own name; make contracts; sue and be sued in its own name; and may continue its existence independent and apart from the turnover of its originators, pursuant to its charter. This separate existence serves to "shield" the owners from liability for actions "committed" by the corporate entity. Stockholders in corporations enjoy the advantage of limited liability, which generally extends no further 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	<p>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</p> <p>Shareholders (for profit) are shielded from liability for acts committed by the corporation.</p>	<p>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</p>	<p>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.</p>

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 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 which 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. 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.

(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:

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.

¹NOTE: 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.

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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.

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.

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

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

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

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

The bill does not apply to a limited liability company:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

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

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

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

The plan of merger must be approved in writing by all of the general partners and by those limited partners which own more than a majority of the current interests in the profits of the limited partnership, unless the partnership agreement states otherwise. If the surviving entity is a limited partnership or a general partnership, no general partner shall continue as a general partner unless that general partner specifically consents in

writing. Should any general partner refuse to continue as a general partner, the merger does not become effective.

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

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

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

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

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

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

The bill would not apply to a limited partnership:

- (a) with more than 500 members, or
- (b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

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

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

3,500,000)

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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.

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

STORAGE NAME: h1657s1.ft
DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
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
 - (5) GENERAL GOVERNMENT APPROPRIATION
-

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.

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	<p>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</p> <p>Shareholders (for profit) are shielded from liability for acts committed by the corporation.</p>	<p>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</p>	<p>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.</p>

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.

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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. 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.

(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.

¹NOTE: 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.

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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.

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

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

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

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

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

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

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

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

The bill would not apply to a limited partnership:

(a) with more than 500 members, or

(b) which is registered on a national exchange or quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

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

	<u>FY 1998-99</u>	<u>FY 1999-00</u>
<u>Revenues</u>		
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:

<u>Revenues</u>	
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)
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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.

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

STORAGE NAME: h1657s1.ft

DATE: April 6, 1998

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AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Carol L. Dickson-Carr

Keith G. Baker, Ph.D.

STORAGE NAME: h1657s1.gg

DATE: April 22, 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
-

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. 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.

(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.

¹NOTE: 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.

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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.

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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:

	<u>FY 1998-99</u>	<u>FY 1999-00</u>
<u>Revenues</u>		
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:

<u>Revenues</u>	
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)
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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.

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DATE: April 22, 1998

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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

STORAGE NAME: h1657s1z.fs
DATE: May 14, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL 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 (s); SB 704 (s)

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. FINAL ACTION STATUS:

The Legislature did not pass CS/HB 1657 but it did pass SB 704, which included the substance of CS/HB 1657. On April 29, 1998, the Senate amended SB 704 with the substance of CS/HB 1657 (which was rendered "revenue-neutral" by a Senate amendment) and passed SB 704 by a vote of 39-0. The House passed SB 704 by a vote of 108-0.

II. 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 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.

III. 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. 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.

(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.

¹NOTE: 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.

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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.

IV. 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:

	<u>FY 1998-99</u>	<u>FY 1999-00</u>
<u>Revenues</u>		
General Revenue Fund	(\$1,957,377)	(\$2,283,607)
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)

See, Part III. D. FISCAL COMMENTS.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenues</u>	
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)
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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.

V. 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.

VI 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."

VII 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 would 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.

VIII. 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

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Michael A. Kliner

Stephen T. Hogge

By Senator Grant

13-62-98

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 607.0732, F.S.;
4 providing an additional criterion of
5 shareholder agreements; providing limitations;
6 creating ss. 607.1108, 607.1109, 607.11101,
7 F.S.; providing for mergers of domestic
8 corporations and other business entities under
9 certain circumstances; requiring a plan of
10 merger; providing criteria; providing for
11 articles of merger; providing for effect of
12 merger; creating ss. 608.438, 608.4381,
13 608.4382, 608.4383, 608.4384, F.S.; providing
14 for mergers of limited liability companies
15 under certain circumstances; requiring a plan
16 of merger; providing criteria; providing for
17 action on a plan of merger; providing
18 procedures; providing for articles of merger;
19 providing for effect of merger; providing for
20 rights of dissenting members; providing
21 procedures; creating ss. 620.201, 620.202,
22 620.203, 620.204, 620.205, F.S.; providing for
23 mergers of domestic limited partnerships under
24 certain circumstances; requiring a plan of
25 merger; providing criteria; providing for
26 action on a plan of merger; providing
27 procedures; providing for articles of merger;
28 providing for effect of merger; providing for
29 rights of dissenting partners; providing
30 procedures; providing an effective date.
31

1 resolution of any issue about which there exists a deadlock
2 among directors or shareholders; ~~or~~

3 (g) Requires dissolution of the corporation at the
4 request of one or more of the shareholders or upon the
5 occurrence of a specified event or contingency; ~~or~~

6 (h) Otherwise governs the exercise of the corporate
7 powers, or the management of the business and affairs, of the
8 corporation or the relationship among ~~between~~ the
9 shareholders, the directors, or the corporation, and is not
10 contrary to public policy. Any agreement that modifies ~~For~~
11 ~~purposes of this paragraph, agreements contrary to public~~
12 ~~policy include, but are not limited to, agreements that reduce~~
13 ~~the duties of care~~ or and ~~loyalty to the corporation as~~
14 ~~required by ss. 607.0030 and 607.0032, exculpates~~ exculpate
15 directors from liability more broadly than permitted by ss.
16 607.1108-607.11101, ss. 608.438-608.4383, or ss.
17 620.201-620.205 that may be imposed under s. 607.0031,
18 adversely affects ~~affect~~ shareholders' rights to bring
19 derivative actions under s. 607.07401, abrogates ~~or abrogate~~
20 dissenters' rights provided in s. 608.4384 or s. 620.205, or
21 abrogates provisions of s. 607.06401 relating to shareholder
22 distributions are deemed contrary to public policy for
23 purposes of this paragraph under ss. 607.1301-607.1320.

24 Section 2. Sections 607.1108, 607.1109, and 607.11101,
25 Florida Statutes, are created to read:

26 607.1108 Merger of domestic corporation and other
27 business entity.--

28 (1) As used in this section and ss. 607.1109 and
29 607.11101, the term "other business entity" means a limited
30 liability company, a foreign corporation, a business trust or
31 association, a real estate investment trust, a common law

1 trust, an unincorporated business, a general partnership, a
2 limited partnership, or any other entity that is formed
3 pursuant to the requirements of applicable law.

4 (2) Pursuant to a plan of merger complying and
5 approved in accordance with this section, one or more domestic
6 corporations may merge with or into one or more other business
7 entities formed, organized, or incorporated under the laws of
8 this state or any other state, the United States, foreign
9 country, or other foreign jurisdiction, if:

10 (a) Each domestic corporation which is a party to the
11 merger complies with the applicable provisions of this
12 chapter.

13 (b) Each domestic partnership that is a party to the
14 merger complies with the applicable provisions of chapter 620.

15 (c) Each domestic limited liability company that is a
16 party to the merger complies with the applicable provisions of
17 chapter 608.

18 (d) The merger is permitted by the laws of the state,
19 country, or jurisdiction under which each other business
20 entity that is a party to the merger is formed, organized, or
21 incorporated and each such other business entity complies with
22 such laws in effecting the merger.

23 (3) The plan of merger shall set forth:

24 (a) The name of each domestic corporation and the name
25 and jurisdiction of formation, organization, or incorporation
26 of each other business entity planning to merge, and the name
27 of the surviving or resulting domestic corporation or other
28 business entity into which each other domestic corporation or
29 other business entity plans to merge, which is hereinafter and
30 in ss. 607.1109 and 607.11101 designated as the surviving
31 entity.

- 1 (b) The terms and conditions of the merger.
2 (c) The manner and basis of converting the shares of
3 each domestic corporation that is a party to the merger and
4 the partnership interests, interests, shares, obligations or
5 other securities of each other business entity that is a party
6 to the merger into partnership interests, interests, shares,
7 obligations or other securities of the surviving entity or any
8 other domestic corporation or other business entity or, in
9 whole or in part, into cash or other property, and the manner
10 and basis of converting rights to acquire the shares of each
11 domestic corporation that is a party to the merger and rights
12 to acquire partnership interests, interests, shares,
13 obligations or other securities of each other business entity
14 that is a party to the merger into rights to acquire
15 partnership interests, interests, shares, obligations or other
16 securities of the surviving entity or any other domestic
17 corporation or other business entity or, in whole or in part,
18 into cash or other property.
19 (d) If a partnership is to be the surviving entity,
20 the names and business addresses of the general partners of
21 the surviving entity.
22 (e) If a limited liability company is to be the
23 surviving entity and management thereof is vested in one or
24 more managers, the names and business addresses of such
25 managers.
26 (f) All statements required to be set forth in the
27 plan of merger by the laws under which each other business
28 entity that is a party to the merger is formed, organized, or
29 incorporated.
30 (4) The plan of merger may set forth:
31

1 (a) If a domestic corporation is to be the surviving
2 entity, any amendments to, or a restatement of, the articles
3 of incorporation of the surviving entity, and such amendments
4 or restatement shall be effective at the effective date of the
5 merger.

6 (b) The effective date of the merger, which may be on
7 or after the date of filing the certificate of merger.

8 (c) Any other provisions relating to the merger.

9 (5) The plan of merger required by subsection (3)
10 shall be adopted and approved by each domestic corporation
11 that is a party to the merger in the same manner as is
12 provided in s. 607.1103. Notwithstanding the foregoing, if the
13 surviving entity is a partnership, no shareholder of a
14 domestic corporation that is a party to the merger shall, as a
15 result of the merger, become a general partner of the
16 surviving entity, unless such shareholder specifically
17 consents in writing to becoming a general partner of the
18 surviving entity, and unless such written consent is obtained
19 from each such shareholder who, as a result of the merger,
20 would become a general partner of the surviving entity, such
21 merger shall not become effective under s. 607.11101. Any
22 shareholder providing such consent in writing shall be deemed
23 to have voted in favor of the plan of merger for purposes of
24 s. 607.1103.

25 (6) Sections 607.1103 and 607.1301-607.1320 shall,
26 insofar as they are applicable, apply to mergers of one or
27 more domestic corporations with or into one or more other
28 business entities.

29 (7) Notwithstanding any provision of this section or
30 ss. 607.1109 and 607.11101, any merger consisting solely of
31 the merger of one or more domestic corporations with or into

1 one or more foreign corporations shall be consummated solely
2 in accordance with the requirements of s. 607.1107.
3 607.1109 Articles of merger.--
4 (1) After a plan of merger is approved by each
5 domestic corporation and other business entity that is a party
6 to the merger, the surviving entity shall deliver to the
7 Department of State for filing articles of merger, which shall
8 be executed by each domestic corporation as required by s.
9 607.0120 and by each other business entity as required by
10 applicable law, and which shall set forth:
11 (a) The plan of merger.
12 (b) A statement that the plan of merger was approved
13 by each domestic corporation that is a party to the merger in
14 accordance with the applicable provisions of this chapter,
15 and, if applicable, a statement that the written consent of
16 each shareholder of such domestic corporation who, as a result
17 of the merger, becomes a general partner of the surviving
18 entity has been obtained pursuant to s. 607.1108(5).
19 (c) A statement that the plan of merger was approved
20 by each domestic partnership that is a party to the merger in
21 accordance with the applicable provisions of chapter 620.
22 (d) A statement that the plan of merger was approved
23 by each domestic limited liability company that is a party to
24 the merger in accordance with the applicable provisions of
25 chapter 608.
26 (e) A statement that the plan of merger was approved
27 by each other business entity that is a party to the merger,
28 other than corporations, limited liability companies, and
29 partnerships formed, organized, or incorporated under the laws
30 of this state, in accordance with the applicable laws of the
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1 state, country, or jurisdiction under which such other
2 business entity is formed, organized, or incorporated.

3 (f) The effective date of the merger, which may be on
4 or after the date of filing the articles of merger, provided,
5 if the articles of merger do not provide for an effective date
6 of the merger, the effective date shall be the date on which
7 the articles of merger are filed.

8 (g) If the surviving entity is another business entity
9 formed, organized, or incorporated under the laws of any
10 state, country, or jurisdiction other than this state:

11 1. The address, including street and number, if any,
12 of its principal office under the laws of the state, country,
13 or jurisdiction in which it was formed, organized, or
14 incorporated.

15 2. A statement that the surviving entity is deemed to
16 have appointed the Secretary of State as its agent for service
17 of process in a proceeding to enforce any obligation or the
18 rights of dissenting shareholders of each domestic corporation
19 that is a party to the merger.

20 3. A statement that the surviving entity has agreed to
21 promptly pay to the dissenting shareholders of each domestic
22 corporation that is a party to the merger the amount, if any,
23 to which they are entitled under s. 607.1302.

24 (2) A copy of the articles of merger, certified by the
25 Department of State, may be filed in the office of the
26 official who is the recording officer of each county in this
27 state in which real property of a party to the merger other
28 than the surviving entity is situated.

29 607.11101 Effect of merger of domestic corporation and
30 other business entity.--When a merger becomes effective:

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1 (1) Every domestic corporation and other business
2 entity that is a party to the merger merges into the surviving
3 entity and the separate existence of every domestic
4 corporation and other business entity that is a party to the
5 merger except the surviving entity ceases.

6 (2) The title to all real estate and other property,
7 or any interest therein, owned by each domestic corporation
8 and other business entity that is a party to the merger is
9 vested in the surviving entity without reversion or impairment
10 and without any requirement to record any deed or other
11 conveyance.

12 (3) The surviving entity shall thereafter be
13 responsible and liable for all the liabilities and obligations
14 of each domestic corporation and other business entity that is
15 a party to the merger, including liabilities arising out of
16 the rights of dissenters with respect to such merger under
17 applicable law.

18 (4) Any claim existing or action or proceeding pending
19 by or against any domestic corporation or other business
20 entity that is a party to the merger may be continued as if
21 the merger did not occur or the surviving entity may be
22 substituted in the proceeding for the domestic corporation or
23 other business entity which ceased existence.

24 (5) Neither the rights of creditors nor any liens upon
25 the property of any domestic corporation or other business
26 entity shall be impaired by such merger.

27 (6) If a domestic corporation is the surviving entity,
28 the articles of incorporation of such corporation in effect
29 immediately prior to the time the merger becomes effective
30 shall be the articles of incorporation of the surviving
31

1 entity, except as amended or restated to the extent provided
2 in the plan of merger.

3 (7) The shares, partnership interests, interests,
4 obligations, or other securities, and the rights to acquire
5 shares, partnership interests, interests, obligations, or
6 other securities, of each domestic corporation and other
7 business entity that is a party to the merger shall be
8 converted into shares, partnership interests, interests,
9 obligations, or other securities, or rights to such
10 securities, of the surviving entity or any other domestic
11 corporation or other business entity or, in whole or in part,
12 into cash or other property as provided in the plan of merger,
13 and the former holders of shares, partnership interests,
14 interests, obligations, or other securities, or rights to such
15 securities, shall be entitled only to the rights provided in
16 the plan of merger and to their rights as dissenters, if any,
17 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
18 applicable law.

19 Section 3. Sections 608.438, 608.4381, 608.4382,
20 608.4383, and 608.4384, Florida Statutes, are created to read:
21 608.438 Merger of limited liability company.--

22 (1) As used in this section and ss. 608.4381-608.4384,
23 the term "other business entity" includes a corporation, a
24 business trust or association, a real estate investment trust,
25 a common law trust, an unincorporated business, a general
26 partnership, a limited partnership, a limited liability
27 company other than a limited liability company organized under
28 the laws of this chapter, or any other entity that is formed
29 pursuant to the requirements of applicable law.

30 (2) Unless otherwise provided in the articles of
31 organization or the regulations of a limited liability

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SENATE SUMMARY

Provides procedures and criteria for mergers of corporations and other business entities, limited liability companies, and domestic limited partnerships. Requires plans of merger and specifies actions on such plans. Provides for articles of merger. Provides for rights of dissenting members or partners. (See bill for details.)

By the Committee on Commerce and Economic Opportunities and
Senator Grant

310-1692-98

1 A bill to be entitled
2 An act relating to mergers of business entities
3 or corporations; amending s. 607.0730, F.S.;
4 removing 10-year limit on voting trusts;
5 creating holding company formation by merger by
6 certain corporations; amending s. 608.407,
7 F.S.; reducing minimum number of members
8 necessary to form a limited liability company;
9 creating ss. 607.1108, 607.1109, 607.11101,
10 F.S.; providing for mergers of domestic
11 corporations and other business entities under
12 certain circumstances; requiring a plan of
13 merger; providing criteria; providing for
14 articles of merger; providing for effect of
15 merger; creating ss. 608.438, 608.4381,
16 608.4382, 608.4383, 608.4384, F.S.; providing
17 for mergers of limited liability companies
18 under certain circumstances; requiring a plan
19 of merger; providing criteria; providing for
20 action on a plan of merger; providing
21 procedures; providing for articles of merger;
22 providing for effect of merger; providing for
23 rights of dissenting members; providing
24 procedures; creating ss. 620.201, 620.202,
25 620.203, 620.204, 620.205, F.S.; providing for
26 mergers of domestic limited partnerships under
27 certain circumstances; requiring a plan of
28 merger; providing criteria; providing for
29 action on a plan of merger; providing
30 procedures; providing for articles of merger;
31 providing for effect of merger; providing for

1 (5) If a plan of merger is adopted by a constituent
2 corporation by selection of its board of directors without any
3 vote of shareholders pursuant to this section, the secretary
4 or assistant secretary of the constituent corporation shall
5 certify in the articles of merger that the plan of merger has
6 been adopted pursuant to this section and that the conditions
7 specified in the first sentence of this section have been
8 satisfied. The articles of merger so certified shall then be
9 filed and become effective in accordance with section
10 607.1106, Florida Statutes.

11 Section 3. Subsection (2) of section 608.407, Florida
12 Statutes, is amended to read:

13 608.407 Articles of organization.--

14 (2) An affidavit declaring that the limited liability
15 company has at least one member ~~two members~~ and setting forth
16 the amount of the cash and a description and agreed value of
17 property other than cash contributed by the members and the
18 amount anticipated to be contributed by the members shall
19 accompany the articles of organization of a limited liability
20 company.

21 Section 4. Sections 607.1108, 607.1109, and 607.11101,
22 Florida Statutes, are created to read:

23 607.1108 Merger of domestic corporation and other
24 business entity.--

25 (1) As used in this section and ss. 607.1109 and
26 607.11101, the term "other business entity" means a limited
27 liability company, a foreign corporation, a not-for-profit
28 corporation, a business trust or association, a real estate
29 investment trust, a common law trust, an unincorporated
30 business, a general partnership, a limited partnership, or any
31 other entity that is formed pursuant to the requirements of

1 applicable law. Notwithstanding the provisions of chapter 617,
2 a domestic not-for-profit corporation acting under a plan of
3 merger approved pursuant to s. 617.1103 shall be governed by
4 the provisions of ss. 607.1108, 607.1109, and 607.11101.

5 (2) Pursuant to a plan of merger complying and
6 approved in accordance with this section, one or more domestic
7 corporations may merge with or into one or more other business
8 entities formed, organized, or incorporated under the laws of
9 this state or any other state, the United States, foreign
10 country, or other foreign jurisdiction, if:

11 (a) Each domestic corporation which is a party to the
12 merger complies with the applicable provisions of this
13 chapter.

14 (b) Each domestic partnership that is a party to the
15 merger complies with the applicable provisions of chapter 620.

16 (c) Each domestic limited liability company that is a
17 party to the merger complies with the applicable provisions of
18 chapter 608.

19 (d) The merger is permitted by the laws of the state,
20 country, or jurisdiction under which each other business
21 entity that is a party to the merger is formed, organized, or
22 incorporated and each such other business entity complies with
23 such laws in effecting the merger.

24 (3) The plan of merger shall set forth:

25 (a) The name of each domestic corporation and the name
26 and jurisdiction of formation, organization, or incorporation
27 of each other business entity planning to merge, and the name
28 of the surviving or resulting domestic corporation or other
29 business entity into which each other domestic corporation or
30 other business entity plans to merge, which is hereinafter and
31

1 in ss. 607.1109 and 607.11101 designated as the surviving
2 entity.

3 (b) The terms and conditions of the merger.

4 (c) The manner and basis of converting the shares of
5 each domestic corporation that is a party to the merger and
6 the partnership interests, interests, shares, obligations or
7 other securities of each other business entity that is a party
8 to the merger into partnership interests, interests, shares,
9 obligations or other securities of the surviving entity or any
10 other domestic corporation or other business entity or, in
11 whole or in part, into cash or other property, and the manner
12 and basis of converting rights to acquire the shares of each
13 domestic corporation that is a party to the merger and rights
14 to acquire partnership interests, interests, shares,
15 obligations or other securities of each other business entity
16 that is a party to the merger into rights to acquire
17 partnership interests, interests, shares, obligations or other
18 securities of the surviving entity or any other domestic
19 corporation or other business entity or, in whole or in part,
20 into cash or other property.

21 (d) If a partnership is to be the surviving entity,
22 the names and business addresses of the general partners of
23 the surviving entity.

24 (e) If a limited liability company is to be the
25 surviving entity and management thereof is vested in one or
26 more managers, the names and business addresses of such
27 managers.

28 (f) All statements required to be set forth in the
29 plan of merger by the laws under which each other business
30 entity that is a party to the merger is formed, organized, or
31 incorporated.

- 1 (4) The plan of merger may set forth:
2 (a) If a domestic corporation is to be the surviving
3 entity, any amendments to, or a restatement of, the articles
4 of incorporation of the surviving entity, and such amendments
5 or restatement shall be effective at the effective date of the
6 merger.
7 (b) The effective date of the merger, which may be on
8 or after the date of filing the certificate of merger.
9 (c) Any other provisions relating to the merger.
10 (5) The plan of merger required by subsection (3)
11 shall be adopted and approved by each domestic corporation
12 that is a party to the merger in the same manner as is
13 provided in s. 607.1103. Notwithstanding the foregoing, if the
14 surviving entity is a partnership, no shareholder of a
15 domestic corporation that is a party to the merger shall, as a
16 result of the merger, become a general partner of the
17 surviving entity, unless such shareholder specifically
18 consents in writing to becoming a general partner of the
19 surviving entity, and unless such written consent is obtained
20 from each such shareholder who, as a result of the merger,
21 would become a general partner of the surviving entity, such
22 merger shall not become effective under s. 607.11101. Any
23 shareholder providing such consent in writing shall be deemed
24 to have voted in favor of the plan of merger for purposes of
25 s. 607.1103.
26 (6) Sections 607.1103 and 607.1301-607.1320 shall,
27 insofar as they are applicable, apply to mergers of one or
28 more domestic corporations with or into one or more other
29 business entities.
30 (7) Notwithstanding any provision of this section or
31 ss. 607.1109 and 607.11101, any merger consisting solely of

1 the merger of one or more domestic corporations with or into
2 one or more foreign corporations shall be consummated solely
3 in accordance with the requirements of s. 607.1107.
4 607.1109 Articles of merger.--
5 (1) After a plan of merger is approved by each
6 domestic corporation and other business entity that is a party
7 to the merger, the surviving entity shall deliver to the
8 Department of State for filing articles of merger, which shall
9 be executed by each domestic corporation as required by s.
10 607.0120 and by each other business entity as required by
11 applicable law, and which shall set forth:
12 (a) The plan of merger.
13 (b) A statement that the plan of merger was approved
14 by each domestic corporation that is a party to the merger in
15 accordance with the applicable provisions of this chapter,
16 and, if applicable, a statement that the written consent of
17 each shareholder of such domestic corporation who, as a result
18 of the merger, becomes a general partner of the surviving
19 entity has been obtained pursuant to s. 607.1108(5).
20 (c) A statement that the plan of merger was approved
21 by each domestic partnership that is a party to the merger in
22 accordance with the applicable provisions of chapter 620.
23 (d) A statement that the plan of merger was approved
24 by each domestic limited liability company that is a party to
25 the merger in accordance with the applicable provisions of
26 chapter 608.
27 (e) A statement that the plan of merger was approved
28 by each other business entity that is a party to the merger,
29 other than domestic corporations, limited liability companies,
30 and partnerships formed, organized, or incorporated under the
31 laws of this state, in accordance with the applicable laws of

1 the state, country, or jurisdiction under which such other
2 business entity is formed, organized, or incorporated.

3 (f) The effective date of the merger, which may be on
4 or after the date of filing the articles of merger, provided,
5 if the articles of merger do not provide for an effective date
6 of the merger, the effective date shall be the date on which
7 the articles of merger are filed.

8 (g) If the surviving entity is another business entity
9 formed, organized, or incorporated under the laws of any
10 state, country, or jurisdiction other than this state:

11 1. The address, including street and number, if any,
12 of its principal office under the laws of the state, country,
13 or jurisdiction in which it was formed, organized, or
14 incorporated.

15 2. A statement that the surviving entity is deemed to
16 have appointed the Secretary of State as its agent for service
17 of process in a proceeding to enforce any obligation or the
18 rights of dissenting shareholders of each domestic corporation
19 that is a party to the merger.

20 3. A statement that the surviving entity has agreed to
21 promptly pay to the dissenting shareholders of each domestic
22 corporation that is a party to the merger the amount, if any,
23 to which they are entitled under s. 607.1302.

24 (2) A copy of the articles of merger, certified by the
25 Department of State, may be filed in the office of the
26 official who is the recording officer of each county in this
27 state in which real property of a party to the merger other
28 than the surviving entity is situated.

29 607.11101 Effect of merger of domestic corporation and
30 other business entity.--When a merger becomes effective:

31

1 (1) Every domestic corporation and other business
2 entity that is a party to the merger merges into the surviving
3 entity and the separate existence of every domestic
4 corporation and other business entity that is a party to the
5 merger except the surviving entity ceases.

6 (2) The title to all real estate and other property,
7 or any interest therein, owned by each domestic corporation
8 and other business entity that is a party to the merger is
9 vested in the surviving entity without reversion or impairment
10 and without any requirement to record any deed or other
11 conveyance.

12 (3) The surviving entity shall thereafter be
13 responsible and liable for all the liabilities and obligations
14 of each domestic corporation and other business entity that is
15 a party to the merger, including liabilities arising out of
16 the rights of dissenters with respect to such merger under
17 applicable law.

18 (4) Any claim existing or action or proceeding pending
19 by or against any domestic corporation or other business
20 entity that is a party to the merger may be continued as if
21 the merger did not occur or the surviving entity may be
22 substituted in the proceeding for the domestic corporation or
23 other business entity which ceased existence.

24 (5) Neither the rights of creditors nor any liens upon
25 the property of any domestic corporation or other business
26 entity shall be impaired by such merger.

27 (6) If a domestic corporation is the surviving entity,
28 the articles of incorporation of such corporation in effect
29 immediately prior to the time the merger becomes effective
30 shall be the articles of incorporation of the surviving
31

1 entity, except as amended or restated to the extent provided
2 in the plan of merger.

3 (7) The shares, partnership interests, interests,
4 obligations, or other securities, and the rights to acquire
5 shares, partnership interests, interests, obligations, or
6 other securities, of each domestic corporation and other
7 business entity that is a party to the merger shall be
8 converted into shares, partnership interests, interests,
9 obligations, or other securities, or rights to such
10 securities, of the surviving entity or any other domestic
11 corporation or other business entity or, in whole or in part,
12 into cash or other property as provided in the plan of merger,
13 and the former holders of shares, partnership interests,
14 interests, obligations, or other securities, or rights to such
15 securities, shall be entitled only to the rights provided in
16 the plan of merger and to their rights as dissenters, if any,
17 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other
18 applicable law.

19 Section 5. Sections 608.438, 608.4381, 608.4382,
20 608.4383, and 608.4384, Florida Statutes, are created to read:
21 608.438 Merger of limited liability company.--

22 (1) As used in this section and ss. 608.4381-608.4384,
23 the term "other business entity" includes a corporation, a
24 business trust or association, a real estate investment trust,
25 a common law trust, an unincorporated business, a general
26 partnership, a limited partnership, a limited liability
27 company other than a limited liability company organized under
28 the laws of this chapter, or any other entity that is formed
29 pursuant to the requirements of applicable law.

30 (2) Unless otherwise provided in the articles of
31 organization or the regulations of a limited liability

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 518

This committee substitute removes the ten-year limitation on voting trusts, permits publicly-held Florida corporations to reorganize as holding companies under certain circumstances, reduces the minimum number of members necessary to form a limited liability company, and includes not-for-profit corporations in the merger provisions of this bill, allowing not-for-profit corporations to merge with for-profit corporations.

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>JU</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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.