

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595 CS Business Entities
SPONSOR(S): Goodlette and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>14 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Civil Justice Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Kruse</u>	<u>Billmeier</u>
3) <u>Transportation & Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill creates the Florida Revised Uniform Limited Partnership Act – 2005 (FRULPA), substantially updating and changing the law based on a model act released by the National Conference of Commissioners on Uniform State Laws.

The bill also harmonizes the merger and conversion provisions of the corporation, not-for-profit corporation, limited liability company, limited partnership and general partnership laws to allow the conversion of business entities from one form to another in a one-step process.

The bill makes conforming changes to the laws governing corporations and other business entities to bring them into line with the changes in the new limited partnership act.

The bill repeals the existing provisions of Chapter 620, Part I, relating to the Florida Revised Uniform Limited Partnership Act (1986).

This bill does not appear to have a significant fiscal impact.

It has a general effective date of January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulation of Business Entities in Florida

Chapter 607, F.S., the Florida Business Corporation Act, regulates the formation, operation, merger and dissolution of domestic corporations.

Chapter 608, F.S., the Florida Limited Liability Company Act, regulates the formation, operation, merger, conversion and dissolution of domestic limited liability companies.

Chapter 617, F.S., the Florida Not For Profit Corporation Act, regulates the formation, operation, merger and dissolution of domestic not-for-profit corporations.

Chapter 620, Part I, the Florida Revised Uniform Limited Partnership Act (1986) (FRULPA), regulates the formation, operation, merger and dissolution of domestic limited partnerships.

Chapter 620, Part II, the Revised Uniform Partnership Act of 1995 (RUPA), regulates the formation, operation, merger, conversion and dissolution of domestic partnerships.

Conversion of Business Entities

Current law allows for the merger of Florida corporations¹, limited partnerships², general partnerships³, and limited liability companies⁴ and the conversion of limited or general partnerships⁵ and limited liability companies.⁶ However, the laws governing these types of transactions are not consistent and often require more than a one-step transaction (such as with respect to the conversion of a corporation into a limited liability company or into a limited partnership). The law has not been harmonized to integrate the conversion and merger rules of the five primary business entities: corporations, not-for-profit corporations, limited liability companies, general partnerships and limited partnerships.

The Florida Revised Uniform Limited Partnership Act – History

Florida adopted the Uniform Limited Partnership Act in 1943 and adopted the Florida Revised Uniform Limited Partnership Act (FRULPA) in 1986. The 1986 Act is modeled on an amended uniform act released by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1985. Since 1997 NCCUSL has been revising the Act, resulting in a “RE-RULPA” released in 2001. It has been adopted in four states and has been endorsed by the American Bar Association. In 2002, the Tax Section of the Florida Bar organized a “RE-FRULPA” drafting committee to review and analyze the 2001 RE-RULPA. During its review process, the committee also considered collateral issues including

¹ See ss. 607.1101 and 617.1101, F.S.

² See s. 620.201, F.S.

³ See s. 620.8905, F.S.

⁴ See s. 608.438, F.S.

⁵ See ss. 620.8902 and 620.8903, F.S.

⁶ See s. 608.439, F.S.

the harmonization of a new FRULPA with other business organization statutes. The committee presented its recommendation to the governing bodies of the Florida Bar sections and they approved the adoption of the RE-RULPA, known as the FRULPA-2005, as modified by the committee.

Effect of Proposed Changes

The bill accomplishes two major substantive changes in Florida business entity law: (1) It provides for a one-step process for the conversion or merger of business entities; and (2) it creates a new “de-linked” FRULPA.

Conversion of a Domestic Corporation into another Business Entity (Section 1)

The bill provides for the conversion of a domestic corporation into another business entity such as a limited liability company; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, but the corporation may not convert into another corporation or an entity that has not been organized for profit. This would preclude a corporation from converting into another corporation.

The bill requires the converting corporation to convert pursuant to a plan of conversion and to meet the requirements of new s. 607.1112, F.S. The plan of conversion must set forth basic information relating to the converting corporation and the business entity into which it is converting, the terms and conditions of the conversion, all statements required by the laws governing the other business entity and appropriate documents. The plan must be adopted by the board of directors and shareholders of the domestic converting corporation. The bill limits the conversion of a shareholder of the corporation into a general partner of a succeeding general or limited partnership unless the shareholder consents to such conversion. The bill requires the converting corporation to deliver to the Department of State a certificate of conversion setting forth detailed information about the conversion, including the effective date of the conversion, the address of the principal office of the other business entity, a statement that the business entity appoints the department as its agent for service of process if the entity is a foreign entity not authorized to transact business in Florida and a statement that the other business entity has agreed to pay any shareholders having appraisal rights the amount to which they are entitled.

The bill provides that the domestic corporation that has been converted into another business entity in compliance with the law is for all purposes the same entity that existed before the conversion and that title to real and other property or any interest therein is vested with the converted entity and that all liabilities and obligations of the converting corporation transfer to the successor entity, including claims existing or actions pending by or against the converting corporation. If the converted entity is a foreign entity, it is deemed to have consented to the jurisdiction of Florida courts and must appoint the Department of State as its agent for service of process. The bill also provides that creditors’ rights and liens against the converting corporation are not impaired by the conversion. The bill provides that the shares, obligations and other securities, or rights to acquire them, of the converting corporation shall be converted into appropriate interests, obligations or securities of the converted entity and that shareholders of the converting corporation shall have those rights specified in the plan of conversion and shall have appraisal rights as provided by law.

Conversion of a Business Entity into a Corporation (Section 1)

The bill authorizes the conversion into a domestic corporation of a limited liability company; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, but excludes a corporation or an entity that has not been organized for profit. This would preclude a corporation from converting into another corporation.

The converting entity must file with the Department of State a certificate of conversion, properly executed and articles of incorporation that comply with law. The certificate of conversion shall state detailed information relating to the conversion, such as the date on which and the jurisdiction in which the business entity first organized, the name of the business entity prior to the filing of the certificate of conversion, the name of the corporation as set forth in its articles of incorporation and the date or delayed effective date of the conversion. Upon the filing of the certificate of conversion, the other business entity shall be converted into a domestic corporation and be subject to chapter 607. The existence of the corporation shall be deemed to be the date the other business entity commenced its existence.

The bill provides for the vesting of all rights, privileges and powers of the other business entity, and all property, real, personal and mixed as well as debts due and all causes of action belonging to the other business entity in the new corporation. The bill likewise provides that title to real property or any interest therein vested in the other business entity shall remain with the converted entity and that all rights of creditors and liens are unimpaired and that all debts, liabilities and duties of the business entity attach to the domestic corporation. The conversion of the other business entity does not require the winding up of the affairs of the other entity nor does it constitute a dissolution of the entity.

The bill requires the converting entity to approve the conversion in the manner provided by its governing document.

Shareholder Appraisal Rights (Section 2)

The bill provides that the shareholder appraisal right attaches to shareholders of a domestic corporation when the consummation of a conversion of such corporation occurs and shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion.

Articles of Organization of a Limited Liability Company (Section 3)

The bill provides that articles of organization containing statements that the company is to be managed by managers or that identify managers or managing members are deemed notice of that information; provided that if such information has been added or changed by an amendment or restatement of the articles, they shall not be deemed notice of such fact until 90 days after the effective date of such amendment or restatement. The bill also provides that the articles may identify one or more persons authorized to serve as a manager or managing member and may describe limitations on their authority except for limitations on the authority of a manager or managing member to transfer real property with respect to a person who is not a member or manager unless the limitation is recorded in the office for recording transfers of such real property.

General Standards for Managers and Managing Members of a Limited Liability Company (Section 4)

The bill provides that subject to the conflict of interest provisions of s. 608.4226, the duty of loyalty is limited to accounting to the company and holding as trustee any property, profit or benefit derived by such member or managing member in the conduct or winding-up of the company or derived from a use by the member of company property; refraining from dealing with the company in the conduct of the winding up of the company as or on behalf of an adverse party; and refraining from competing with the company in the conduct of company business before the dissolution of the company.

Appraisal Rights of Members of a Limited Liability Company (Section 5)

The bill confers on members of a limited liability company an entitlement to appraisal rights and to obtain payment of the fair value of that member's membership interest upon the consummation of a merger of the company if the member has the right to vote on the merger or the consummation of a conversion of such company (the "appraisal event"). Appraisal rights are not available for membership

interests that are listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers or is not listed or designated but is issued by a company that has at least 500 members and all membership interests have a market value of at least \$10 million.

The bill provides appraisal rights, notwithstanding the previous limitation, if the members are required by an appraisal event to accept for their membership interests anything other than cash or a proprietary interest of an entity or if the members' interests in the company or the company's assets are being acquired or converted pursuant to an appraisal event by a person who was, or at any time in the one year period immediately preceding approval of the appraisal event was the beneficial owner of 20 percent or more of those interests in the company entitled to vote on the appraisal event or directly or indirectly has, or at any time in the one year period immediately preceding approval of the appraisal event had the power to cause appointment or election of the senior executives; or any of the members' interests in the company or the company's assets are being acquired or converted pursuant to an appraisal event by a person who is, or at any time in the one year period immediately preceding approval of the appraisal event, was a senior executive of the company or of an affiliate of the company and will receive a financial benefit not generally available to members with certain exceptions.

The bill provides for the assertion of appraisal rights and for the challenge of a completed appraisal event if the event was not effectuated according to law or was procured as a result of fraud or misrepresentation. The bill requires the company to notify members whether they are entitled to appraisal rights if a proposed appraisal event is to be submitted to a vote at a members' meeting. If the company concludes that such rights are or may be available to members, it must provide a copy of the applicable law along with the meeting notice to those members who are entitled to appraisal.

The bill requires and provides a process for a member to provide notice of his or her intent to demand payment if an appraisal event occurs. The company must notify a member who has provided notice of intent to demand payment of the date the appraisal event became effective and provide the member a form to fill out appropriate information and to state whether he or she accepts the company's offer of the fair value of the member's interest. The notice must be sent to the member no later than 10 days after the date the appraisal event became effective and must give the member notice of when he or she must return the form, not fewer than 40 nor more than 60 days after the appraisal notice and form are sent. Once a member returns the form, he or she loses all rights of membership unless he or she withdraws from the appraisal process by notifying the company in writing by a date set forth in the appraisal notice. A member who fails to execute and return the form is not entitled to payment.

If a member accepts the company's offer to pay the fair value of their interest, the company shall make payment to the member within 90 days of the receipt of the form or certificates in the case of certificated interests. Upon payment, the member shall cease to have any interest in the membership interest. A member who is dissatisfied with the company's offer must notify the company of the member's estimate of the fair value of the interest and demand payment of that amount plus interest. If the member fails to provide such notice in the timeframe required for their response, the member waives the right to demand payment and is entitled only to payment offered by the company.

The bill requires the company to commence a proceeding within 60 days of the date it receives a payment demand from a member when the demand remains unsettled. The company must ask a court to determine the fair value of the membership interest and accrued interest. If the company fails to initiate the proceeding, the member may. The bill provides for venue and requires the joinder of all members whose demands remain unsettled as parties to the proceeding. The bill requires the company to pay each member the fair value of his or her interest within ten days after final determination of the proceedings. Upon payment, the member shall cease to have any interest in the membership interests. The court may assess costs against the company, including the costs of any appraisers appointed by the court, and may assess costs against members if the court finds that such members acted arbitrarily, vexatiously or not in good faith. The court may also grant attorneys' fees against the company if it finds that the company did not comply with law or against the company or a

member, if the court finds that the party against whom the fees shall be assessed acted arbitrarily, vexatiously or not in good faith. If the company fails to make a required payment, a member may sue outright and can recover attorneys' fees and costs of suit.

The bill limits payments by the company to a member seeking appraisal if the payment would render the company insolvent or if the payment would violate the law. In such a case, the member may withdraw his or her notice of intent to demand payment or retain status as a claimant and be subordinated to the rights of creditors if the company is liquidated. The bill provides a process for written notice by the member.

Merger of a Limited Liability Company (Sections 6-9)

The bill conforms current ss. 608.438, 608.4381, 608.4382 and 608.4383, F.S., relating to the merger of a limited liability company to the new conversion provisions created in new ss. 607.1112, 607.1113, 607.1114 and 608.4351-608.43595. The conforming changes relate to definitions, actions on the plan of merger, certificates of merger, and the effects of merger and appraisal rights.

Limited Liability Company Conversion (Sections 10 and 11)

The bill provides for the conversion of certain entities to a limited liability company and for the conversion of a domestic limited liability company into another business entity.

The bill conforms current s. 608.439, F.S., to the conversion provisions of new s. 607.1112. The conforming changes relate to definitions, the law authorizing another entity to convert into a domestic limited liability company, and the plan of conversion.

The bill provides for the conversion of a domestic limited liability company to another business entity, creating new ss. 608.4401, 608.4402, 608.4403 and 608.4404, F.S. A domestic limited liability company may convert into a corporation; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability limited partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided that a domestic limited liability company may not convert into another domestic limited liability company.

The bill requires the conversion to comply with Florida law and the law governing the jurisdiction governing the other business entity, and for a plan of conversion to set forth the names of the domestic limited liability company and the jurisdiction of the other business entity, the terms and conditions of the conversion and all statements required by the laws governing the other business entity. The bill limits how a plan of conversion may be amended and prohibits: amendments that would change the amount of kind of partnership interests, shares, obligations, securities, cash, rights or any other consideration to be received by members of the company in the conversion; changes to the articles of incorporation or organization, bylaws, partnership or operating agreement or comparable governing document of the surviving entity; or changes to the terms or conditions of the plan of conversion that would materially and adversely affect the members.

The bill requires that the plan of conversion be adopted in writing by a majority of the limited liability company managers if the company is not managed by its members unless the company's articles of organization require otherwise. If no manager is a member, the plan must be approved in writing by a majority-in-interest of the members unless the articles of organization dictate otherwise. If the other entity is a partnership or limited partnership, no member shall become a general partner unless the member specifically consents in writing. Without such consent, the conversion shall not be effective. Members of the company must be provided written notice of any meeting or other action regarding the approval of a plan of conversion not fewer than 30 or more than 60 days before the date of the meeting; or if the members are to act without a meeting, such notice must be provided not fewer than 30 or more than 60 days before the date of the conversion. The bill provides for the specific contents

of the notice and provides that it is deemed to be given: at the earliest date of the date it is received; five days after the notice is mailed; the date shown on a return receipt; or the date the notice is given in accordance with the articles of organization.

The bill requires the company to deliver to the Department of State a certificate of conversion once the plan of conversion is adopted and requires the certificate to show that the company has been converted according to law; that the plan of conversion was adopted; the effective date of the conversion; the address of the new entity's principal office; a statement by the entity if it is a foreign entity not authorized to transact business in this state that it appoints the Secretary of State as its agent for service of process; and a statement that the other business entity has agreed to pay to any members having appraisal rights the amount they may be entitled pursuant to new ss. 608.4351-608.43595.

A domestic limited liability company that has been converted into another entity is for all purposes the same entity that existed before the conversion, and title to real and other property or interests therein remain vested in the converted entity. The other entity into which the company converted remains liable for all liabilities and obligations of the company, and all claims or actions that exist are continued as if the conversion did not occur. If the converted entity is a foreign entity, it is deemed to have consented to the jurisdiction of Florida courts. Creditors' rights and liens upon the property of the company are not impaired by the conversion. Finally, member interests, obligations, and other securities or rights to acquire such interests, obligations or securities shall be converted into shares, partnership interests, interests, obligations or other securities of the other business entity.

Certificate of Conversion Filing Fee (Section 12)

The bill authorizes the Department of State to impose a fee of \$25 for the filing of a certificate of conversion of a limited liability company.

Merger of a Not-For-Profit Corporation (Sections 13 and 14)

The bill authorizes a not-for-profit corporation to merge with other business entities, for-profit or not-for-profit, domestic and foreign, if the surviving corporation is not-for-profit or the other business entity has been organized as a not-for-profit entity under the governing statute authorizing the merger. The bill also provides that the merger of a not-for-profit corporation is subject to existing ss. 607.1108, 607.1109 and 607.11101, relating to mergers of domestic corporations and other entities; the articles of merger and the effect of merger.

Florida Revised Uniform Limited Partnership Act – 2005 (Section 15)

The bill creates the Florida Revised Uniform Limited Partnership Act - 2005 (FRULPA - 2005) in ss. 620.1101 – 620.2205. It includes 120 new sections of law establishing the FRULPA – 2005. For ease of reading, the major substantive provisions and differences between the new act and the existing act are summarized below (references to chapter 620 are to newly created sections within section 15 of the bill).

Relationship between FRULPA and FRUPA –

- Current law has FRULPA linked to and “piggy-backed” on the Florida Revised Uniform Partnership Act (FRUPA). Because of the linked nature of the two laws, many legal requirements that are imposed on limited partnerships are contained in the general partnership law.
- The bill will de-link FRULPA and create a self-contained statute that still has many of the same provisions of FRUPA.

Permitted Business Purposes –

- Current law allows a limited partnership to carry on any business that a general partnership may carry on. This may be construed to be limited only to “for-profit” activities.
- The bill allows a limited partnership to carry on any lawful purpose, including any not-for-profit activities. (s. 620.1104)

Constructive Notice By Publicly Filed Document –

- Current law provides that a certificate of limited partnership is only notice that the limited partnership exists and that designated general partners are in fact general partners.
- The bill contains current law but provides that constructive notice is deemed to occur 90 days after appropriate filing of general partner dissociation and of limited partnership dissolution, termination, merger and conversion, and certain restrictions on a general partner. (s. 620.1103)

Duration or Term of Limited Partnership

- Current law provides for duration to be specified in the partnership agreement.
- The bill makes duration perpetual unless the partnership agreement provides otherwise. (s. 620.1104)

Affidavit Describing Amount of Capital Contributions

- Current law requires an affidavit to be attached to the certificate of limited partnership and to be updated when changes occur.
- The bill will remove the affidavit requirement (a similar requirement for limited liability companies was removed in 1999).

Use of Limited Partner’s Name in Partnership

- Current law prohibits the use of a limited partner’s name except in special circumstances.
- The bill will allow the use of a limited partner’s name and that use will not affect the liability of the limited partner. (s. 620.1108)

Limited Partner Liability to Third Parties for Entity Debts.

- Under current law, liability may exist if the limited partner participates in the control of the business and the third party reasonably believes that the limited partner is a general partner and provides a list of “safe harbor” activities that do not constitute participating in the control of the business.
- The bill will shield a limited partner from liability, even if the limited partner participates in the management and control of the partnership. (s. 620.1303)

Limited Partners Duties

- Current law does not specify any duties of a limited partner.
- Under the bill, a limited partner will have no fiduciary duty solely by reason of being a limited partner, but limited partners must discharge their duties and exercise their rights under the partnership agreement and act consistently with obligations of good faith and fair dealing. These obligations are nonwaivable by partnership agreement. If a limited partner takes part in management, his or her fiduciary duties will be limited to the same duties of care and loyalty that would apply to a general partner under the same circumstances. (s. 620.1305)

Partner Access to Required Partnership Information

- Current law gives all partners right of access, with no requirement of showing good cause or proper purpose.
- The bill expands the list of required information and provides that a partner does not have to show good cause. However, the partnership agreement may set reasonable restrictions on access and general partners may impose reasonable restrictions on the use of such information. (ss 620.1304 and 620.1407)

Partner Access to Other Information and Records

- Under current law, limited partners have the right to obtain other relevant information upon reasonable demand and general partner rights to the same information are linked to FRUPA.
- Under the bill, limited partners will have the same rights as provided in current law, with the addition of procedures and standards for making a demand for information set out in greater detail and with a requirement added that the limited partnership supply without request known material information whenever limited partner votes or other consents are required. General partners access rights are made explicit following FRUPA, including the obligation of the limited partnership and general partners to volunteer certain information. The bill also provides access rights to former partners for certain purposes relating to the time when they were partners. (ss. 620.1304 and 620.1407)

General Partner Liability for Entity Debts

- Unless the partnership elects limited liability limited partnership status, all general partners are jointly and severally liable for all partnership obligations.
- The bill provides for a simple check box for a partnership to elect limited liability limited partnership status in its certificate of limited partnership. LLLP status provides a full liability shield to all general partners. If the limited partnership is not an LLLP, general partners will continue to be jointly and severally liable just as under current law. (s. 620.1404).

General Partner Duties

- Current law links general partner duties to duties of partners in general partnership.
- The bill provides for duties that are essentially the same as under FRUPA but clarifies that non-compete duties continue while winding-up the limited partnership's activities. (s. 620.1408)

Capital Contribution Obligations/Allocations of Profits, Losses and Distributions

- Current law provides that capital contributions may be in the form of cash, property, services or obligations to provide the same in the future; that the obligation of each partner must be in a signed writing, may not be compromised without all partner consent and that the partnership agreement may impose severe penalties for breach of the obligation. Current law contains separate provisions for sharing of profits and losses and for sharing of distributions, and in each case they are allocated according to the value of contributions made and not returned.
- The bill is substantially the same except that it provides that the default rule for allocation of profits, losses and distributions will be in proportion to the total value of contributions actually made by partners (regardless of whether all or part has been returned). (s. 620.1502 and 620.1503)

Partner Liability for Distributions

- Current law provides for a limitations period of six years in cases where a partner received a wrongful distribution and defines wrongful distributions to be those made where partnership liabilities exceed the fair value of assets of the partnership.
- The bill will provide a "balance sheet" test for determining whether a distribution is wrongful (looking at liabilities versus assets) as well as an "equity" test, which looks at whether the partnership would be unable to pay debts if the distribution was made. The bill also reduces the limitations period from six to two years. (ss. 620.1508 and 620.1509)

Limited Partner Voluntary Dissociation (Right of Withdrawal)

- Under current law, a limited partner may withdraw only if permitted by partnership agreement or certificate, with the limited exception for certain grandfathered partnerships created before 1996.
- The bill will prohibit the right of withdrawal before the termination of the limited partnership, unless the partnership agreement permits or requires withdrawal. (s. 620.1601)

Limited Partner Involuntary Dissociation

- Current law does not address this issue.

- The bill sets forth a list of causes of involuntary dissociation, based on those that apply to a general partner under FRUPA. A limited partner may be dissociated by expulsion as provided for in the agreement; by expulsion by judicial determination on application by the partnership for wrongful conduct, breach of the agreement or by conduct making it unreasonable to carry on the partnership; by corporate dissolution; or death, among other reasons. (s. 620.1601)

Limited Partner Dissociation – Payout

- Current law gives a limited partner the right to receive fair value at the time of dissociation based on the right to receive partnership distributions.
- The bill eliminates the right to receive payout on dissociation. The partner instead becomes a transferee of its own “transferable interest” (the economic rights or right to receive a future distribution). (s. 620.1602)

General Partner Voluntary Dissociation

- Under current law, a general partner has the right and power to withdraw from the partnership at any time subject to damages provided by the partnership agreement for withdrawal in breach of the agreement and for set-off of damages against any right to distribution.
- The bill is essentially the same as current law, but specifies that wrongful dissociations include those in breach of an express provision of the partnership agreement and those that occur before termination of the agreement under certain circumstances. (ss. 620.1603 and 620.1604)

General Partner Involuntary Dissociation

- Current law provides for involuntary dissociation of a general partner under a variety of causes, including by removal pursuant to the partnership agreement, when the partner makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudged bankrupt or insolvent, files a petition for reorganization or similar relief, is dissolved, if it is another partnership or if the partner dies, if the partner is a natural person.
- The bill maintains and clarifies existing law, slightly expanding the list of events causing dissociation but staying within the framework set by FRUPA. (s. 620.1603)

General Partner Dissociation – Payout

- Current law provides for a right to receive fair value at the time of dissociation based on the general partner’s right to share in distributions.
- The bill will eliminate the right to payout at time of dissociation, instead making the partner the transferee of its own “transferable interest” (right to receive future distributions). (s. 620.1605)

Transfer of Partner Interest

- Current law provides that economic rights are fully transferable, but management rights and partner status are not transferable. A partner who transfers all of his/her interest loses partnership status.
- The bill follows current law but allows for limitations on the transfer of a transferable interest and reverses current law by allowing a partner who transfers a transferable interest to remain a partner subject to all partner duties and obligations. The bill also allows the partnership to place a legend on certificates representing transferable interests that will identify any restrictions on the interests. (s. 620.1702)

Rights of Creditor of Partner

- Current law limits the rights of a creditor of a partner to charging the partnership interest of the partner and gives the creditor rights of an assignee.
- The bill will provide that the only remedy for a judgment creditor to satisfy a judgment out of the judgment debtor’s interest in the partnership is a judgment lien. (s. 620.1703)

Dissolution by Partner Consent

- Current law requires dissolution by unanimous written consent of all general and limited partners.

- The bill does not change current law. (s. 620.1801)

Dissolution Following Dissociation of a General Partner

- Current law makes dissolution automatic upon dissociation of a general partner unless all partners agree to continue the business and, if there is no remaining general partner, they all agree to appoint a replacement general partner.
- The bill provides that if at least one general partner remains, no dissolution occurs unless within 90 days after the dissociation all partners consent to dissolve the limited partnership. If no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation unless the partners consent to continue the business and admit at least one new general partner and that new partner is admitted. (s. 620.1801)

Filings Related to Dissolution and Winding-Up

- Current law requires a certificate of cancellation of the limited partnership to be filed when the limited partnership dissolves and winding-up activities are completed.
- The bill requires a limited partnership to file a certificate of dissolution when it voluntarily dissolves and allows the partnership to file a statement of termination indicating that winding-up has been completed and that all partnership activities have terminated. (ss. 620.1801 and 620.1803)

Procedures for Barring Claims against a Dissolved Limited Partnership

- Current law does not address this issue.
- The bill adopts similar provisions of chapter 607, the corporation law and provides for giving notice, responding to, paying and making provisions for claims and allows partnerships using these provisions to bar known claims after three years and unknown claims after four years. (ss. 620.1806 and 620.1807)

Conversions and Mergers

- Current law permits mergers of a limited partnership with other business organizations and the conversion of a limited partnership into a general partnership and the conversion of a general partnership into a limited partnership. Appraisal rights are available to dissenting partners in a merger transaction.
- The bill provides comprehensive and liberal provisions for conversion of another business organization to a limited partnership, the conversion of a limited partnership into another organization and the merger of a limited partnership with another organization. The term organization is broadly defined to include: a corporation; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability limited partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; or any other domestic or foreign entity that is organized under a governing law or other applicable law except for a not-for-profit organization unless it is the surviving entity. The conversion provisions mirror those provided for corporations and limited liability companies in sections 1, 6-9, 10 and 11 of the bill.

Modifications to the Florida Revised Uniform Partnership Act (FRUPA)(Sections 16-19 and 21)

The bill amends provisions of FRUPA with respect to nonwaivable provisions of a partnership agreement to remove references prohibiting the changing of notice requirements for conversion or merger of a partnership (those provisions are repealed). The bill also provides for filing of a certificate of merger, certificate of conversion or registration statement and allows the documents to specify a delayed effective date. The bill provides for a certificate of conversion filing fee of \$25. The bill removes a "without limitation" clause in describing a partner's duty of loyalty to the partnership and partners, making the listed duties the only duties. The bill also amends the definition of "activities not constituting transacting business" for a foreign limited liability partnership to include, without limitation, maintaining bank accounts in financial institutions; owning and controlling a subsidiary corporation incorporated in or transacting business within Florida or voting the stock of any corporation it has

lawfully acquired; or owning a limited partnership interest in a limited partnership that is doing business in Florida unless such limited partner manages or controls the partnership or exercise the powers and duties of a general partner.

Conversion and Merger of a Partnership – FRUPA (Section 20)

The bill authorizes the conversion of another organization into a partnership and a partnership into another organization if the other organization's governing law authorizes such conversion; the conversion is permitted by the law of the jurisdiction that enacted the governing law and the other organization complies with its governing law in effecting the conversion. The entities must prepare a plan of conversion that includes the name and form of the organization before the conversion, the name and form after conversion, the terms and conditions of the conversion and the organizational documents of the converted organization.

The plan of conversion must be consented to by all of the partners of the converting partnership and must be in or evidenced by a record. Once the plan of conversion is approved, the converting partnership must file a registration statement with the Department of State that includes a statement that the partnership has been converted into another organization; the name and form of the organization and the jurisdiction of its governing law; the date the conversion is effective; a statement that the conversion was approved; and a statement that the conversion was approved as required by the governing law of the converted organization. An organization converting into a partnership regulated under FRUPA must also file certificates of registration and conversion.

Once the organization has converted, it is considered the same entity that existed before conversion. When the conversion takes effect, title to all real estate and other property or any interest therein owned by the converting organization at the time of the conversion remains vested in the converted organization; all debts, liabilities and obligations of the converted organization continue; all actions or proceedings pending by or against the converting entity continue as though the conversion never occurred and all the rights, privileges, powers, immunities and purposes of the converting organization remain vested in the converting organization. If the converted organization is a foreign organization, it consents to the jurisdiction of Florida courts. If it is also not authorized to transact business in Florida, it shall appoint the department as its agent for service of process.

The bill also permits the merger of a partnership with one or more other organizations pursuant to a plan of merger if the governing law of each of the other organizations authorizes the merger; the merger is permitted by the law of each jurisdiction that enacted those governing laws; and each of the other organizations complies with its governing law. The plan of merger must include the name and form of each organization, the name and form of the surviving organization and the terms and conditions of the merger.

The plan of merger must be consented to by all of the partners and must be evidenced in a record. After the plan is approved, a certificate of merger must be signed by all partners of each preexisting partnership and a representative of each other preexisting organization. The plan must include the name and form of each organization and the jurisdiction of its governing law; the name and form of the surviving organization, the jurisdiction of its governing law, and if the surviving organization is created by the merger, a statement to that effect; the date the merger is effective; any amendments to the organizational document that created the organization; a statement that the merger was approved by each organization according to its governing law; and a street and mailing address if the surviving organization is a foreign organization not authorized to transact business in Florida. The bill provides for the effective date of the merger depending on the nature of the organization.

Once the merger is effective, the surviving organization continues and the organizations merged into the surviving organization cease to exist as separate entities. After the merger, title to all real estate and other property or any interest therein owned by the merging organizations vests in the surviving organization; all debts, liabilities and obligations of the merging organizations continue; all actions or

proceedings pending by or against the merging organizations continue as though the merger never occurred and all the rights, privileges, powers, immunities and purposes of the merging organizations remain vested in the surviving organization. If the surviving organization is a foreign organization, it consents to the jurisdiction of Florida courts. If it is also not authorized to transact business in Florida, it shall appoint the Department of State as its agent for service of process.

The bill limits the approval of a conversion or merger if a partner of a converting or partnership in merger will have personal liability with respect to the converted or surviving organization. In such cases, the partner must consent to the conversion or merger unless the partnership agreement provides for approval with consent of fewer than all partners and the partner has consented to that provision in the partnership agreement. If an amendment to a statement of qualification for a limited liability partnership revokes its status as a limited liability partnership, each general partner must consent or the amendment is ineffective unless the partnership agreement provided for amendment with the consent of fewer than all partners and each partner that does not consent to the amendment has consented to the provision in the partnership agreement.

The bill provides that a person who was a partner in or dissociated as a partner from a converting or merging partnership is not released from their partner liability by virtue of a conversion or merger. The bill sets forth the applicable contribution rights for a partner from other persons arising out of pre-conversion and pre-merger acts. The bill also makes partners in preexisting entities prior to conversion or merger personally liable to third parties for transactions entered into by the converted or surviving entity and the third party when the third party had no notice of a conversion or merger and reasonably believed that the converted or surviving business was a partnership that is not a limited liability limited partnership and that the partner is a partner in the converted or surviving partnership. The bill provides similar provisions for liability of a dissociated partner, except for a requirement that less than two years have elapsed since the dissociation at the time the third party enters into the transaction.

An act by a person who immediately before a conversion or merger became effective was a partner in a converting or merging partnership binds the converted or surviving organization after the conversion or merger if before the conversion or merger the act would have bound the limited partnership; at the time of the transaction the third party does not have notice of the conversion or merger and reasonably believes that that converted or surviving business is the converting or merging partnership and that the person is a partner of the partnership. The bill provides similar provisions for dissociated partners, except for a requirement that less than two years have elapsed since the dissociation at the time the third party enters the transaction.

The bill also provides definitions relating to conversion and merger of partnerships.

Repeal of Laws (Section 22)

The bill repeals, effective January 1, 2006, the following sections of law:

- Section 608.4384, relating to rights of dissenting members of a limited liability company;
- Part I of Chapter 620, F.S., the "Florida Revised Uniform Partnership Act (1986)," ss. 620.101 – 620.205.
- Sections 620.8901 – 620.8908, relating to the conversion of a partnership to a limited partnership and of a limited partnership to a partnership.

C. SECTION DIRECTORY:

(Note: all references are to Florida Statutes.)

Section 1. Creates ss. 607.1112, relating to the conversion of a domestic corporation into another business entity; 607.1113, relating to certificates of conversion; 607.1114, relating to the effect of conversion of a domestic corporation into another business entity; and 607.1115, relating to the conversion of another business entity to a domestic corporation.

Section 2. Amends s. 607.1302, relating to shareholder appraisal rights.

Section 3. Amends s. 608.407, relating to articles of organization.

Section 4. Amends s. 608.4225, relating to general standards for managers and managing members.

Section 5. Creates ss. 608.4351, relating to appraisal rights and definitions; s. 608.4352, relating to the rights of members to appraisal; 608.4353, relating to the assertion of rights by nominees and beneficial owners; 608.4354, relating to notice of appraisal rights; 608.4355, relating to the notice of intent to demand payment; 608.4356, relating to the form and notice of appraisal; 608.4357, relating to the perfection of rights and the right to withdraw; 608.43575, relating to a member's acceptance of a limited liability company's offer; 608.4358, relating to the procedure if a member is dissatisfied with the offer; 608.43585, relating to court action; 608.4359, relating to court costs and counsel fees; and 608.43595, relating to the limitation on limited liability company payment.

Section 6. Amends s. 608.438, relating to the merger of a limited liability company.

Section 7. Amends s. 608.4381, relating to the action on a plan of merger of a limited liability company.

Section 8. Amends s. 608.4382, relating to the certificate of merger.

Section 9. Amends s. 608.4383, relating to the effect of a merger.

Section 10. Amends s. 608.439, relating to the conversion of certain entities into a limited liability company.

Section 11. Creates ss. 608.4401, relating to the conversion of a domestic limited liability company into another business entity; 608.4402, relating to the action on a plan of conversion; 608.4403, relating to the certificate of conversion; and 608.4404, relating to the effect of conversion.

Section 12. Amends s. 608.452, relating to Department of State fees.

Section 13. Amends s. 617.0302, relating to corporate powers of not-for-profit corporations.

Section 14. Creates s. 617.1108, relating to the merger of domestic and other business entities.

Section 15. Creates the Florida Revised Uniform Limited Partnership Act – 2005. Creates the following sections of law:

s. 620.1101, providing a popular name;

s. 620.1102, providing definitions;

s. 620.1103, relating to knowledge and notice;

s. 620.1104, relating to the nature, purpose and duration of the entity;

s. 620.1105, relating to the powers of the entity;

s. 620.1106, relating to governing law;

s. 620.1107, relating to supplemental principles of law and rates of interest;

s. 620.1108, relating to limited partnership names;

s. 620.1109, relating to Department of State fees;

s. 620.1110, relating to the effect of partnership agreement and nonwaivable provisions;

s. 620.1111, relating to required information to be maintained by a limited partnership;

s. 620.1112, relating to business transactions of a partner with the partnership;

s. 620.1113, relating to dual capacity;

s. 620.1114, relating to the designated office, registered office and registered agent of a limited partnership;

s. 620.1115, relating to the change of a registered agent or office;

- s. 620.1116, relating to the resignation of a registered agent;
- s. 620.1117, relating to service of process;
- s. 620.1118, relating to the consent of proxies and partners;
- s. 620.1201, relating to the formation of a limited partnership and certificates of limited partnership;
- s. 620.1202, relating to the amendment or restatement of a certificate;
- s. 620.1203, relating to certificates of dissolution and statements of termination;
- s. 620.1204, relating to signing of records;
- s. 620.1205, relating to signing and filing of documents pursuant to judicial order;
- s. 620.1206, relating to delivery to and filing of records by the Department of State;
- s. 620.1207, relating to correcting a filed record;
- s. 620.1208, relating to liability for false information in a filed record;
- s. 620.1209, relating to certificates of status;
- s. 620.1210, relating to annual reports;
- s. 620.1301, relating to becoming a limited partner;
- s. 620.1302, relating to the lack of rights or powers of a limited partner to bind the limited partnership;
- s. 620.1303, relating to the lack of liability of a limited partner for limited partnership obligations;
- s. 620.1304, relating to the right of a limited partner and former limited partner to information;
- s. 620.1305, relating to the limited duties of limited partners;
- s. 620.1306, relating to persons erroneously believing themselves to be limited partners;
- s. 620.1401, relating to becoming a general partner;
- s. 620.1402, relating to general partners as agents of limited partnerships;
- s. 620.1403, relating to limited partnership liability for a general partner's actionable conduct;
- s. 620.1404, relating to general partner liability;
- s. 620.1405, relating to actions by and against partnership and partners;
- s. 620.1406, relating to management rights of general partner and approval rights of other partners;
- s. 620.1407, relating to the right of a general partner and former general partner to information;
- s. 620.1408, relating to general standards of conduct for a general partner;
- s. 620.1501, relating to the form of contribution;
- s. 620.1502, relating to liability for contributions;
- s. 620.1503, relating to sharing of profits, losses, and distributions;
- s. 620.1504, relating to interim distributions;
- s. 620.1505, relating to the lack of distribution rights on account of dissociation;
- s. 620.1506, relating to distributions in kind;
- s. 620.1507, relating to rights to distributions;
- s. 620.1508, relating to limitations on distributions;
- s. 620.1509, relating to liability for improper distributions;
- s. 620.1601, relating to dissociation as a limited partner;
- s. 620.1602, relating to the effect of dissociation as a limited partner;
- s. 620.1603, relating to dissociation as a general partner;
- s. 620.1604, relating to a person's power to dissociate as a general partner and wrongful dissociation;
- s. 620.1605, relating to effects of dissociation as a general partner;
- s. 620.1606, relating to the power to bind and liability to limited partnership before dissolution of partnership of a person dissociated as general partner;
- s. 620.1607, relating to the liability to other people of persons dissociated as general partners;
- s. 620.1701, relating to a partner's transferable interest;
- s. 620.1702, relating to the transfer of a partner's transferable interest;
- s. 620.1703, relating to the rights of a creditor of a partner or transferee;
- s. 620.1704, relating to powers of the estate of a deceased partner;
- s. 620.1801, relating to nonjudicial dissolution;
- s. 620.1802, relating to judicial dissolution;
- s. 620.1803, relating to winding-up;
- s. 620.1804, relating to the power of a general partner and a person dissociated as a general partner to bind the partnership after dissolution;

- s. 620.1805, relating to the liability after dissolution of a general partner and person dissociated as a general partner to the limited partnership, other general partners and persons dissociated as general partners;
- s. 620.1806, relating to known claims against dissolved limited partnerships;
- s. 620.1807, relating to unknown claims against dissolved limited partnerships;
- s. 620.1808, relating to the liability of a general partner and person dissociated as a general partner when claims against a limited partnership are barred;
- s. 620.1809, relating to administrative dissolution;
- s. 620.1810, relating to reinstatement following administrative dissolution;
- s. 620.1811, relating to appeal from denial of reinstatement;
- s. 620.1812, relating to revocation of dissolution;
- s. 620.1813, relating to the disposition of assets; when contributions are required;
- s. 620.1901, relating to governing law regarding foreign limited partnerships;
- s. 620.1902, relating to applications for certificates of authority for foreign limited partnerships;
- s. 620.1903, relating to activities not constituting transacting business;
- s. 620.1904, relating to filing of certificates of authority;
- s. 620.1905, relating to noncomplying names of a foreign limited partnership;
- s. 620.1906, relating to revocations of certificates of authority;
- s. 620.1907, relating to the cancellation of a certificate of authority;
- s. 620.1908, relating to action by the Attorney General;
- s. 620.1909, relating to reinstatement following administrative revocation;
- s. 620.1910, relating to amending certificates of authority;
- s. 620.2001, relating to direct action by a partner;
- s. 620.2002, relating to derivative actions;
- s. 620.2003, relating to proper plaintiffs;
- s. 620.2004, relating to pleadings in a derivative action;
- s. 620.2004, relating to proceeds and expenses of a derivative action;
- s. 620.2101, providing definitions;
- s. 620.2102, relating to conversion of entities into limited partnerships and limited partnerships into other entities;
- s. 620.2103, relating to action on plan of conversion by a converting limited partnership;
- s. 620.2104, relating to filings required for conversion;
- s. 620.2105, relating to the effects of conversion;
- s. 620.2106, relating to merger;
- s. 620.2107, relating to action on a plan of merger by constituent limited partnerships;
- s. 620.2108, relating to filings required for merger;
- s. 620.2109, relating to the effect of merger;
- s. 620.2110, relating to restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status;
- s. 620.2111, relating to the liability of a general partner after conversion or merger;
- s. 620.2112, relating to the power of a general partner and persons dissociated as general partners to bind an organization after conversion or merger;
- s. 620.2113, relating to appraisal rights; providing definitions;
- s. 620.2114, relating to the right of limited partners to appraisal;
- s. 620.2115, relating to the assertion of rights by nominees and beneficial owners;
- s. 620.2116, relating to notice of appraisal rights;
- s. 620.2117, relating to the notice of intent to demand payment;
- s. 620.2118, relating to appraisal notice and form;
- s. 620.2119, relating to the perfection of rights and the right to withdraw;
- s. 620.2120, relating to a limited partner's acceptance of a limited partnership's offer;
- s. 620.2121, relating to the procedure if a limited partner is dissatisfied with an offer;
- s. 620.2122, relating to court action;
- s. 620.2123, relating to court costs and counsel fees;
- s. 620.2124, relating to limitations on limited partner payments;
- s. 620.2125, relating to the application of other laws to provisions governing conversions and mergers;

- s. 620.2201, relating to the uniformity of application and construction of the FRULPA;
- s. 620.2202, providing a severability clause;
- s. 620.2203, relating to the federal Electronic Signatures in Global and National Commerce Act;
- s. 620.2204, relating to the application of the FRULPA to existing relationships; and
- s. 620.2205, providing a savings clause.

Section 16. Amends s. 620.8103, relating to the effects of a partnership agreement.

Section 17. Amends s. 620.8105, relating to the execution, filing and recording of a partnership registration and other statements.

Section 18. Amends s. 620.81055, relating to fees for filing documents and issuing certificates by the Department of State.

Section 19. Amends s. 620.8404, relating to general standards of a partner's conduct.

Section 20. Creates ss. 620.8911, providing definitions; 620.8912, relating to conversion; 620.8913, relating to the action on a plan of conversion by a converting partnership; 620.8914, relating to filings required for conversion; 620.8915, relating to the effects of conversion; 620.8916, relating to merger of a partnership with another constituent organization; 620.8917, relating to action on a plan of merger by a constituent partnership; 620.8918, relating to filings required for merger; 620.8919, relating to the effects of merger; 620.8920, relating to restrictions on approval of conversions and mergers and on relinquishing limited liability partnership status; 620.8921, relating to the liability of a partner after conversion or merger; 620.8922, relating to the power of partners and persons dissociated as partners to bind an organization after conversion or merger; and 620.8923, relating to the application of other laws to provisions governing conversions and mergers.

Section 21. Amends s. 620.9104, relating to activities not constituting transacting business.

Section 22. Providing for repeal, effective on January 1, 2006, of the following sections of law:

- Section 608.4384, relating to rights of dissenting members of a limited liability company;
- Part I of Chapter 620, F.S., the "Florida Revised Uniform Partnership Act (1986)," ss. 620.101 – 620.205.
- Sections 620.8901 – 620.8908, relating to the conversion of a partnership to a limited partnership and of a limited partnership to a partnership.

Section 23. Provides an effective date of January 1, 2006, except as otherwise provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any fiscal impact on state government.

2. Expenditures:

The bill does not appear to have any fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any fiscal impact on local governments.

2. Expenditures:

The bill does not appear to have any fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill revises the filing fee provisions under FRULPA, eliminating a current fee structure based in part on the anticipated amount of capital contributions of the limited partners that is allocated for the purpose of transacting business, calculated at a rate of \$7 per \$1,000 of such contributions with a floor of at least \$52.50 and a cap of \$1,750, and replacing it with a flat fee for each type of filing required or permitted by law. According to the Department of State, the revision to the fee law will create an increase in fees for approximately 25% of partnership entities, a decrease for approximately 25% of partnership entities and a neutral impact on approximately 50% of partnership entities. The Department reports that the overall effect of the fee changes will be neutral and that the fee structure will be less complicated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Civil Justice Committee adopted one amendment to the bill. The amendment transferred a section regarding the merger of a domestic corporation and other business entities into a new section of law instead of adding it to an existing section of law. The bill passed favorably, as amended.