

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill eliminates duplicative filing requirements on business entities either merging or converting to other forms of business entities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law establishes several forms of business organization including corporations (ch. 607, F.S.), limited liability companies (ch. 608, F.S.), not-for-profit corporations (ch. 617, F.S.), partnerships (Part II, ch. 620, F.S), and limited partnerships (Part I, ch. 620, F.S.). These various forms of organization are governed in terms of their formation, operation, merger, conversion, and dissolution.

Currently, the merger and conversion provisions applicable to each form of business organization require multiple filings of certificates or articles of merger and certificates of conversions with the Department of State (DOS) when only Florida businesses are involved in the transaction. For example, when a limited liability company (LLC) converts into a partnership, the law requires that a certificate of conversion be filed both under the statutory provisions governing LLCs and the provisions governing partnerships. Notwithstanding these provisions, DOS does not require multiple filings in these circumstances.

Effect of Proposed Changes

Section 1 amends s. 607.1109, F.S., related to articles of merger for corporations, to add a subsection specifying that a domestic corporation is not required to file articles of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing LLCs, not-for-profit corporations, partnerships, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same merger and would conform the law to existing DOS practice.

Section 2 amends s. 607.1113, F.S., related to certificates of conversion for corporations, to add a subsection specifying that a domestic corporation is not required to file a certificate of conversion if it files such a certificate in compliance with the relevant statutory provisions governing LLCs, partnerships, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same conversion and would conform the law to existing DOS practice.

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

Section 4 amends s. 608.4382, F.S., related to certificates of merger for LLCs, to add a subsection specifying that a domestic LLC is not required to file a certificate of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing corporations, not-for-profit corporations,

partnerships, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same merger and would conform the law to existing DOS practice.

Section 5 amends s. 608.439, F.S., related to conversion of entities to an LLC, to require that the converting business entity also execute the certificate of conversion filed with DOS.

This section also adds “a corporation” to the list of specified business entities that may be converted into an LLC. DOS indicates that this term was inadvertently left off the list when changes were made to s. 608.439, F.S., in 2005. In practice, DOS has recognized a corporation as a “domestic or foreign entity that is organized under a governing law or other applicable law,” which is included in the list of business entities that may be converted into an LLC. Moreover, the provisions of ch. 607, F.S., permit a Florida corporation to convert to an LLC. Thus, this proposed change would conform s. 608.439, F.S., with existing law and practice.

Section 6 amends s. 608.4403, F.S., related to certificates of conversion for LLCs, to add a subsection specifying that a domestic LLC is not required to file a certificate of conversion if it files such a certificate in compliance with the relevant statutory provisions governing corporations, partnerships, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same conversion and would conform the law to existing DOS practice.

Section 7 amends s. 617.1108, F.S., related to mergers of not-for-profit corporations with other business entities, to add a subsection specifying that a not-for-profit corporation is not required to file articles of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing corporations, LLCs, partnerships, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same merger and would conform the law to existing DOS practice.

Section 7 adds another subsection to s. 617.1108, F.S., providing that a not-for-profit corporation may file certified articles of merger or a certified certificate of merger with the recording officer of each county where real property of a party to the merger, other than the surviving entity, is located.

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

Section 9 amends s. 620.2104, F.S., related to filings required for conversions of limited partnerships, to add a subsection specifying that a limited partnership is not required to file a certificate of conversion if it files such a certificate in compliance with the relevant statutory provisions governing corporations, LLCs, or partnerships. This proposed change would eliminate the requirement of multiple filings for the same conversion and would conform the law to existing DOS practice.

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

Section 10 amends s. 620.8918, F.S., related to filings required for mergers of partnerships with other business entities, to specify that each constituent partnership is not required to file a certificate of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing corporations, LLCs, or partnerships. This proposed change would eliminate the requirement of multiple filings for the same merger and would conform the law to existing DOS practice.

Section 11 amends s. 620.2204, F.S., related to existing limited partnership relationships, to provide that limited partners that dissociate from a limited partnership before January 1, 2006, have the same rights that existed before January 1, 2006. In a footnote to this section of law, statutory revision noted that “[t]he Florida Bar drafting committee that prepared the bill containing this act has reported that the “July 1, 2005” date (instead of the effective date of the act referenced in the uniform law per the National Conference of Commissioners on Uniform State Laws) was the result of a clerical oversight and that it will attempt to correct this reference in future legislation.” Thus, this proposed change would correct an incorrect date reference that was created when s. 620.2204 was last amended.

Section 12 amends s. 620.8101, F.S., related to definitions used in the law governing partnerships, to delete the term “statement of merger” from the definition of a “statement.” This proposed change would reflect that “statement of merger” is no longer an accurate title for a merger document.

Section 13 amends s. 620.8105, F.S., related to execution, filing, and recording of partnership registration and other statements, to allow a partnership to file certificates of conversion or merger with DOS if the partnership has filed a registration statement. Currently, this section of law allows a partnership to file only a “statement.” The addition of “a certificate of conversion or certificate of merger” would more accurately reflect the titles of merger and conversion documents.

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

Section 15 amends s. 620.8911, F.S., related to definitions used in partnerships, to make a technical change to the definition of “organization.” This proposed change would provide more concise wording in the definition.

Section 16 amends s. 620.8914, F.S., related to filings required for conversion of partnerships, to specify that a partnership is not required to file a certificate of conversion if it files such a certificate in compliance with the relevant statutory provisions governing corporations, LLCs, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same conversion and would conform the law to existing DOS practice.

This section also requires that when an organization converts to a partnership, a general partner of the partnership and the converting organization must sign the certificate of conversion.

This section replaces the phrases “certificate of registration” and “statement of registration” with “registration statement” to more accurately reflect the proper document title. This section also replaces the phrase “statement of conversion” with “certificate of conversion” to more accurately reflect the proper document title.

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

Section 17 amends s. 620.8918, related to filings required for merger of partnerships with other business entities, to specify that each constituent partnership is not required to file a certificate of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing corporations, LLCs, not-for-profit corporations, or limited partnerships. This proposed change would eliminate the requirement of multiple filings for the same merger and would conform the law to existing DOS practice.

This section also makes conforming changes in terminology.

C. SECTION DIRECTORY:

- Section 1 Amends s. 607.1109, F.S., related to articles of merger for corporations.
- Section 2 Amends s. 607.1113, F.S., related to certificates of conversion for corporations.
- Section 3 Amends s. 607.1115, F.S., related to conversion of another business entity to a corporation.
- Section 4 Amends s. 608.4382, F.S., related to certificates of merger for LLCs.
- Section 5 Amends s. 608.439, F.S., related to conversion of entities to an LLC.
- Section 6 Amends s. 608.4403, F.S., related to certificates of conversion for LLCs.
- Section 7 Amends s. 617.1108, F.S., related to mergers of not-for-profit corporations with other business entities.
- Section 8 Amends s. 620.1406, F.S., related to management rights of general partners and approval rights of other partners.
- Section 9 Amends s. 620.2104, F.S., related to filings required for conversions of limited partnerships.
- Section 10 Amends s. 620.8918, F.S., related to filings required for mergers of partnerships with other business entities.
- Section 11 Amends s. 620.2204, F.S., related to existing limited partnership relationships.
- Section 12 Amends s. 620.8101, F.S., related to definitions used in the law governing partnerships.
- Section 13 Amends s. 620.8105, F.S., related to execution, filing, and recording of partnership registration and other statements.
- Section 14 Amends s. 620.81055, F.S., related to fees for filing documents and issuing certificates for partnerships.
- Section 15 Amends s. 620.8911, F.S., related to definitions used in partnerships.
- Section 16 Amends s. 620.8914, F.S., related to filings required for conversion of partnerships.
- Section 17 Amends s. 620.8918, related to filings required for merger of partnerships with other business entities.
- Section 18 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State does not anticipate any fiscal impact to the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of sales tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2008, the Committee on Business Regulation adopted three amendments to this bill. These amendments:

- Correct a drafting error in Section 10 of the bill to amend s. 620.2108, F.S., related to filings required for mergers involving limited partnerships, to specify that each constituent limited partnership is not required to file a certificate of merger if it is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger pursuant to the relevant statutory provisions governing corporations, LLCs, not-for-profit corporations, or partnerships.
- Correct cross-references throughout the bill to reflect the correction made to Section 10.
- Amend s. 727.114, F.S., to provide that any residue monies after payment of creditors in the assignments process are paid to the assignor debtor in the case of insolvent estates.