

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 419 Corporations

SPONSOR(S): Simmons and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>10 Y, 0 N</u>	<u>Keating/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Keating/Topp</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

CS/HB 419 amends several statutory provisions relating to Florida business organizations. In particular, the bill:

- Eliminates duplicative filing requirements for business entities either merging or converting to other forms of business entities;
- Corrects terms related to mergers and conversions to make them consistent throughout the relevant statutes;
- Clarifies requirements for execution of certain certificates of conversion;
- Modifies the management rights of general partners in limited partnerships to require that all limited partners consent to the expulsion of a limited partner;
- Clarifies that a statement of cancellation is not required to be filed when a certificate of conversion has been filed for that partnership;
- Provides that any residue moneys after payment of creditors in the assignments process shall be returned to the assignor debtor; and
- Enables mergers between Florida professional corporations or limited liability companies and out-of-state professional corporations or limited liability companies.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

- The bill eliminates duplicative filing requirements on business entities either merging or converting to other forms of business entities.
- The bill eliminates the current prohibition on mergers between Florida professional corporations or limited liability companies and out-of-state professional corporations or limited liability companies.

Safeguard Individual Liberty

- The bill eliminates the current prohibition on mergers between Florida professional corporations or limited liability companies and out-of-state professional corporations or limited liability companies.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Mergers and Conversions

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.), limited partnerships (Part I, ch. 620, F.S.), and professional corporations and limited liability companies (ch. 621, F.S.). These various forms of organization are governed in terms of their formation, operation, merger, conversion, and dissolution.

In 2005, the Legislature amended the law governing mergers of different types of business organizations and conversions from one type of organization into another.¹ When the law was amended, some references to certain defined terms were apparently overlooked and do not conform to the changes made in the law.

Further, 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.

Section 621.113, F.S., currently prohibits any merger or consolidation of a professional corporation or limited liability company organized under Chapter 621, F.S. with an out-of-state professional corporation or limited liability company. The organizations governed by this chapter offer professional services that require the organizations' shareholders or members to obtain a license or legal authorization, such as certified public accountants, attorneys, doctors, and dentists.

¹ Ch. 2005-267, L.O.F.

Expulsion of Limited Partners

Section 620.1406, F.S., governs the management rights of general partners, and approval rights of other partners, in a limited partnership. Under this section, the expulsion of a limited partner must be approved by all general partners in the organization.

Payment of Creditors through Assignments Process

Chapter 727 establishes a procedure for the administration of insolvent estates. Section 727.114, F.S., prioritizes distributions from the estate for claims and expenses.

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 limited partnerships with other business entities, 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, 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.

Section 18 amends s. 621.06, F.S., related to limitations on the rendition of professional services, to remove the requirement that only persons licensed or legally authorized to render professional services *within Florida* may render such services on behalf of professional corporations and limited liability companies.

Section 19 amends s. 621.10, F.S., related to disqualification to render professional services, to provide that any person rendering professional services to the public on behalf of a professional corporation or limited liability company must sever employment with, and financial interests in, the organization if the person has become legally disqualified to render such professional services. The currently requires severance only if the person has become legally disqualified to render such professional services in Florida.

Section 20 amends s. 621.13, F.S., to eliminate the current prohibition on the merger or consolidation of a Florida professional corporation or limited liability company with an out-of-state professional corporation or limited liability company.

Section 21 amends s. 727.114, F.S., related to the prioritization of claims on an insolvent estate under the assignments process, to provide that any assets remaining after all claims have been paid in full shall be paid to the assignor (i.e., the person or entity who assigned its assets for distribution).

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 Amends s. 621.06, F.S., related to limitations on the rendition of professional services.

- Section 19 Amends s. 621.10, F.S., related to disqualification to render professional services.
- Section 20 Amends s. 621.13, F.S., related to applicability of chapters 607 and 608.
- Section 21 Amends s. 727.114, F.S., related to priority of claims.
- Section 22 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:

None.

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.

On March 27, 2008, the Jobs & Entrepreneurship Council adopted three amendments to this bill. These amendments:

- Amend the "relating to" clause to clarify that the act relates to business entities.
- Clarify that certain provisions apply to partnerships established within the state.
- Remove the prohibition on the merger or consolidation of a Florida professional corporation or limited liability company and an out-of-state professional corporation or limited liability company.

The Jobs & Entrepreneurship Council engrossed the amendments adopted in the committee and in the council into a Council Substitute.