

SUBJECT: Revising limited liability companies and partnership procedures

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Elkins, Martinez, Bohac, Solomons, Taylor, Vo, Zedler

0 nays

2 absent — Giddings, Bailey

WITNESSES: For — Leon J. Lebowitz, Texas Business Law Foundation

Against — None

On — Robert M. Sumners, Secretary of State's Office

BACKGROUND: The 78th Legislature in 2003 enacted HB 1156 by Giddings, which adopted a new Business Organizations Code (BOC), effective January 1, 2006. The BOC will govern limited liability companies (LLCs) and partnerships formed on or after that date, but LLCs and partnerships formed before January 1, 2006, will continue to be governed by existing LLC and partnership statutes until January 1, 2010, unless such an entity elects to be governed by the BOC on an earlier date. As a result, the Texas Limited Liability Company Act (TLLCA), the Texas Revised Limited Partnership Act (TRLPA), and the Texas Revised Partnership Act (TRPA) will continue to govern many entities for the next four years.

DIGEST: CSHB 1154 would amend current statutes (the TLLCA, the TRLP, and the TRPA) to the BOC to revise procedures for certain transactions that culminate in filings with the Secretary of State's Office.

The bill would revise the TRLP to provide that the Secretary of State's Office would regard a limited partnership as continuing in existence until a certificate of cancellation was filed. It also would specify filing requirements for a conversion under the TRLP and would subject conversions of general partnerships to limited partnership, and of limited partnerships to general partnerships, to the general conversion provisions in the TRPA and the TRLP.

CSHB 1154 would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 1154 would help smooth the transition to the Texas BOC, which will take effect next January 1 and apply to new LLCs and partnerships, by conforming part of current law, which affects existing LLCs and partnerships, to its provisions. It would affect mergers, conversions, and dissolutions, all of which are procedures that involve filings with the Secretary of State, and would eliminate confusion that might arise from inconsistencies in filing procedures due to differing entity formation dates.

This bill would amend partnership merger provisions in the TRPA to provide for an alternative to filing the entire plan of merger with the articles of merger. This would simplify filing procedures and conform the partnership merger provisions to the BOC. It would add a definition of "merger" that was omitted from the TRPA to conform to the merger provisions in other business entity statutes and the BOC.

HB 1154 also would conform various dissolution-related provisions of the limited partnership and LLC statutes more closely to the BOC by establishing a procedure for voluntary revocation of termination of a limited partnership, clarifying and simplifying procedures for dissolution of an LLC before commencement of its business, and specifying who could conclude the affairs of an LLC after the termination of membership of its last remaining member.

The bill would repeal outmoded conversion provisions in the TRPA that apply to conversions of general partnerships to limited partnerships, and vice versa, so that such conversions would be subject to the more recently enacted BOC conversion provisions that apply to all other types of conversions. The older partnership conversion provisions are a source of confusion under current law and were not carried forward in the BOC. Eliminating these provisions in the source law would help reduce confusion.

Finally, the bill simply would provide clarifications and corrections in procedures related to filings with the Secretary of State involving conversions and mergers.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

The committee substitute differs from the introduced bill by making conforming changes to TRPA, sec. 9.05(e) and to sec. 9.05(g) to correct a reference to "merger" and replace it with the correct term "conversion."

A companion bill, SB 1702 by Averitt, was filed in the Senate on March 11 and has not yet been referred to committee.