

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1140
 Economic Matters

(Delegate Feldman)

Judicial Proceedings

Corporations and Associations - Conversions

This bill authorizes the conversion of specified entities to an “other entity,” as defined by the bill.

“Other entity” may mean a foreign corporation, a domestic limited liability company (LLC), a foreign LLC, a partnership, a limited partnership, a foreign limited partnership, a business trust, or another form of unincorporated business formed under state or federal law or the laws of a foreign country. The term may also include other types of entities, as specified in the bill, depending on the type of conversion authorized.

Fiscal Summary

State Effect: General fund revenues for the State Department of Assessments and Taxation (SDAT) decrease minimally in FY 2014 and subsequent years due to fewer collections of processing fees for articles of incorporation and articles of merger. General fund expenditures for SDAT increase by \$25,000 in FY 2014 due to contractual information technology (IT) costs associated with establishing a footnote system that would provide an indication of the conversion date and the original entity’s formation date.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$25,000	\$0	\$0	\$0	\$0
Net Effect	(\$25,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local expenditures increase by \$25,000 in FY 2014 due to SDAT IT costs to establish a new footnote system. County revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The summary below focuses on the conversion from a Maryland corporation to an other entity and the conversion of an other entity to a Maryland corporation. However, the bill also authorizes similar conversions involving LLCs, real estate investment trusts, partnerships, limited partnerships, and statutory trusts.

Conversion Requirements: The bill authorizes a Maryland corporation to convert to an “other entity” as defined by the bill, by approving the conversion in a specified manner and filing for record with SDAT properly executed articles of conversion. The bill also authorizes an other entity to convert to a Maryland corporation having capital stock by (1) approving the conversion in the manner required by its governing document and the laws of the place of incorporation or organization and (2) filing for record with SDAT properly executed articles of conversion and articles of incorporation.

Approval of Conversion: To approve a conversion, a Maryland corporation that proposes to convert to an other entity must adopt a specified declaratory resolution and direct that the proposed conversion be submitted for consideration at an annual or a special meeting of the stockholders. The corporation must give appropriate notice to both the stockholders entitled to vote and the stockholders not entitled to vote on the proposed transaction. The bill requires that the proposed conversion be approved by the stockholders with an affirmative two-thirds vote of all the votes entitled to be cast.

Execution of Articles: The bill establishes a specified method to execute articles of conversion. The method to execute articles of conversion is the same as the method for articles of amendment, restatement, amendment and restatement, consolidation, merger, share exchange, transfer, extension, and, generally, dissolution. The bill also amends this method by repealing the requirement that the articles be signed and acknowledged for each other entity party to the articles by a majority of the entire board of trustees or other governing body or by a person acting in a similar capacity to an officer. Instead, the bill requires that the articles be signed by a person authorized to act for the entity.

Articles of Conversion: The bill requires that the articles of conversion be filed for record with SDAT and subjects the filing to a \$100 nonrefundable processing fee. If a Maryland corporation is converting to an other entity, the bill requires that the articles include (1) the corporation’s name and date of filing of original articles of incorporation; (2) the other entity’s name and the place of incorporation or organization of the other entity; (3) a statement that the conversion has been lawfully approved; (4) the manner and basis of converting or exchanging outstanding shares of stock into the other entity’s

ownership interests and the treatment of any issued shares of stock not to be converted or exchanged, any of which may be made dependent on facts ascertainable outside the articles of conversion; (5) the future effective time, which must be a definite time, if the articles of conversion are not to be effective on the acceptance for record of the articles of conversion; and (6) any other provision necessary to effect the conversion. If the other entity is not organized under State laws, the articles of conversion must include the location of the principal office and the name and address of the resident agent in this State.

If an other entity is converting to a Maryland corporation, the bill requires that the articles of conversion contain substantially similar information. However, the articles of conversion may contain a future effective time for the articles of conversion that is not later than 30 days after the articles are accepted for record.

Effects of a Conversion: A conversion of a Maryland corporation to an other entity has the following effects:

- the Maryland corporation ceases to exist as a corporation and continues to exist as the other entity, and the other entity is deemed to be the same entity as the converting Maryland corporation;
- all the Maryland corporation's assets vest in and devolve on the other entity without further act or deed and are the property of the other entity;
- the title to any real property vested by deed or otherwise in the corporation does not revert or is not in any way impaired by reason of the conversion;
- any licenses, permits, or registrations granted to the corporation prior to the conversion are not affected, invalidated, terminated, suspended, or otherwise nullified;
- confirmatory deeds, assignments, or similar instruments to evidence the conversion may be executed and delivered at any time in the name of the corporation by its last acting officers or by specified appropriately authorized persons;
- the other entity is liable for all the corporation's debts and obligations;
- any existing claim, action, or proceeding pending by or against the corporation may be prosecuted to judgment as if the conversion had not taken place, or, on motion of the other entity or any party, the other entity may be substituted as a party and a judgment against the corporation constitutes a lien on the other entity's property;
- the rights of creditors or any liens on the property of the corporation are not impaired;
- subject to the treatment of the corporation's ownership interest under the articles of conversion and the rights of an objecting stockholder, the ownership interests of

the corporation's stockholders cease to exist as stock in the converted corporation and continue to exist as ownership interests in the other entity;

- any debts, obligations, or liabilities of the corporation or the personal liability of any person incurred before the conversion are not affected;
- unless otherwise provided in the articles of conversion, the converting corporation is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute dissolution or a transfer of assets or liabilities of the corporation; and
- a person becomes liable for any obligation incurred by the corporation before the completion of the conversion only to the extent provided for by the laws applicable to the other entity.

A conversion of an other entity to a Maryland corporation has substantially similar effects.

Conversion of Ownership Interests: In a conversion from a Maryland corporation to an other entity, the bill authorizes that the corporation's ownership interest may be exchanged for or converted into any one or more of the following: (1) an ownership interest of the other entity or any other corporation or entity, whether or not party to the conversion; (2) other tangible or intangible property; (3) money; and (4) any other consideration.

The bill authorizes a similar exchange in a conversion from an other entity to a Maryland corporation.

Completion of the Conversion: The conversion of a Maryland corporation to an other entity is completed on the effectiveness of articles of conversion filed for record with SDAT. Once the conversion is completed, the aforementioned effects of the conversion commence.

The conversion of an other entity to a Maryland corporation is completed on the later of the proper incorporation of the Maryland corporation or the effectiveness of articles of conversion filed for record with SDAT. Once the conversion is complete, the other entity is converted to a Maryland corporation, the aforementioned effects of the conversion commence, and the corporation is subject to the Maryland General Corporation Law.

In both types of conversions, articles of conversion are effective on the later of the time SDAT accepts the articles for record or the future effective time of the articles as set forth in the articles accepted by SDAT.

Abandonment of Conversion: The bill authorizes, unless the charter of the Maryland corporation or articles of conversion provide otherwise, a proposed conversion of a

Maryland corporation to an other entity to be abandoned before the effective date of the articles of conversion by a majority vote of the corporation's entire board of directors. The bill also establishes a method by which the conversion of an other entity to a Maryland corporation may be abandoned.

The bill requires that notice of abandonment be promptly given to SDAT if the articles of conversion have already been filed. In the case of abandonment, no legal liability arises under the articles of conversion and the rights of any person who has contracted with a Maryland corporation in connection with the proposed conversion are not prejudiced.

Current Law/Background: Conversions from one entity to another are not authorized by State statute. However, an entity may cause the same effects by creating another entity and then merging with it. For example, for an LLC to "convert" to a corporation, the LLC must sign and acknowledge articles of incorporation and file them for record with SDAT. The articles of incorporation must include specified information, such as the name and address of each incorporator and the name of the corporation. The LLC must then approve the merger by obtaining the consent of the members holding at least two-thirds of the interests in the profit of the LLC. The LLC's operating agreement may establish a different method of approval.

The board of directors of the corporation must then adopt a resolution which declares that the proposed transaction is advisable on substantially the terms and conditions set forth or referred in the resolution. The board must also direct that the proposed transaction be submitted for consideration at either an annual or a special meeting of the stockholders. Each of the stockholders should receive notice that the purpose of the meeting is to vote on a proposed merger. The merger is approved if two-thirds of all the votes entitled to be cast on the matter are affirmative. Finally, articles of merger must then be filed with SDAT.

The nonrefundable processing fee for filing articles of incorporation and articles of merger is \$100 each.

State Fiscal Effect: General fund revenues for SDAT decrease minimally in fiscal 2014 and subsequent years due to fewer receipts of processing fees for articles of incorporation and articles of merger. Currently, to "convert" to another business entity, an entity must create the other entity then file to merge with it. To perform these tasks, the first entity must file articles of incorporation and articles of merger. SDAT charges a nonrefundable processing fee of \$100 for each article filed. Under the bill, an entity may simply file articles of conversion and pay a \$100 nonrefundable processing fee. Thus, general fund revenues decrease by \$100 for each entity that previously would have had to file two documents but, under the bill, is only required to file one document.

SDAT reports that general fund expenditures associated with implementing the bill increase by \$25,000 in fiscal 2014. This estimate reflects 50% of the total contractual IT costs associated with establishing a footnote system (\$50,000). The system will allow an individual to see the date of the conversion to a new type of entity as well as the original entity's formation date. The majority of SDAT's IT needs are contracted to Towson University's Center for Applied Technology.

Chapter 397 of 2011 (HB 72) requires the counties and Baltimore City to reimburse SDAT for (1) 90% of the costs of real property valuation; (2) 90% of the costs of business personal property valuation; and (3) 90% of costs incurred by SDAT with regards to information technology in fiscal 2012 and 2013. Beginning in fiscal 2014, the counties and Baltimore City are required to reimburse SDAT for 50% of these costs. Local expenditures are calculated on the basis of each county's share of real property accounts and business personal property as a percentage of the total.

Local Fiscal Effect: As noted, county governments are required to reimburse SDAT for 50% of the department's IT costs beginning in fiscal 2014. Based on the expenditures associated with implementing the bill, county expenditures increase by \$25,000 in fiscal 2014. **Exhibit 1** shows the estimated expenditures for each county, based on total real property accounts for fiscal 2013.

Exhibit 1
County Expenditure Increases
Fiscal 2014

County	FY 2014
Allegany	\$453
Anne Arundel	2,272
Baltimore City	2,586
Baltimore	3,248
Calvert	464
Caroline	183
Carroll	727
Cecil	514
Charles	688
Dorchester	253
Frederick	1,022
Garrett	321
Harford	1,070
Howard	1,118
Kent	147
Montgomery	3,645
Prince George's	3,182
Queen Anne's	281
St. Mary's	526
Somerset	188
Talbot	231
Washington	645
Wicomico	509
Worcester	727
Total	\$25,000

Source: State Department of Assessments and Taxation, Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: SB 697 (Senator Raskin) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation,
www.nolo.com, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2013
ncs/kdm Revised - Updated Information - March 25, 2013

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