

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 1504 (Delegate Taylor)  
Economic Matters

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Corporations - Limited Liability Companies - Entity Conversion

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This bill authorizes: (1) conversion from a Maryland corporation to a domestic (Maryland) limited liability company (LLC) under a plan of entity conversion; and (2) conversion from a domestic (Maryland) LLC to a Maryland corporation under a plan of entity conversion.

The bill takes effect July 1, 2004.

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Fiscal Summary

**State Effect:** General fund revenues from filing fees would increase to the extent the bill encourages businesses to convert from one type of entity to the other. Special fund revenues would increase to the extent the filers of these documents requested expedited processing by the State Department of Assessments and Taxation (SDAT).

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:**

*Conversion from a Corporation to an LLC*

A converting corporation's board of directors must prepare and submit for approval to its stockholders a plan of entity conversion before converting to an LLC. Unless otherwise provided, a plan of entity conversion must receive more than two-thirds of the votes cast

by each voting group entitled to vote on the plan. After approval of the plan, the converting corporation must file articles of entity conversion, containing specified information, with SDAT.

After an entity conversion becomes effective, the real estate and other property of the converting corporation become the property of the surviving LLC, without reservation or impairment. Corporate liabilities become those of the LLC, and any litigation pending against the corporation may continue against the LLC as though the entity conversion did not occur. Shares in the corporation become interests in the surviving LLC, and shareholders are entitled only to the rights provided in the plan of entity conversion or any rights granted to shareholders under the provisions governing corporate formation.

Unless the plan prohibits it, at any time before conversion is effective, after it is authorized, the conversion may be abandoned without further shareholder action in accordance with the plan of entity conversion, or if there is no applicable provision in the plan, in the manner determined by the board of directors.

#### *Conversion from an LLC to a Corporation*

A plan of entity conversion must be approved by the converting LLC's members in the manner provided in its operating agreement or, if no provision exists in the operating agreement, by the unanimous vote of the converting LLC's members. After approval of the plan, the converting LLC must file articles of entity conversion, containing specified information, with SDAT.

After an entity conversion becomes effective, the real estate and other property of the converting LLC become the property of the surviving corporation, without reservation or impairment. LLC liabilities become those of the corporation, and any litigation pending against the LLC may continue against the corporation as though the entity conversion did not occur. Interests in the LLC become shares in the surviving corporation, and shareholders are entitled only to the rights provided in the plan of entity conversion.

Unless the plan prohibits it, at any time before conversion is effective, after it is authorized, the conversion may be abandoned without further shareholder action in accordance with the plan of entity conversion, or if there is no applicable provision in the plan, in the manner determined by the board of directors.

#### **Current Law:**

##### *Merger of a Corporation into an LLC*

A Maryland corporation having capital stock may merge into a domestic or foreign LLC or have one or more domestic or foreign LLCs merge into it. The conversion must be

approved by the stockholders and must receive the affirmative vote of at least two-thirds of the votes entitled to be cast. After the merger becomes effective, the corporation's separate existence ends, and only the successor LLC continues. The property and liabilities of the merging corporation become those of its successor. Any litigation pending against the corporation may continue against the successor as though the merger did not occur. A proposed merger may be abandoned before its effective date: (1) if the articles provide, by majority vote of a merging board; or (2) unless the articles provide otherwise, by majority vote of the entire board of directors of each Maryland corporation party to the articles.

### *Merger of an LLC into a Corporation*

Unless the operating agreement provides otherwise, a domestic LLC may merge into one or more stock corporations. The LLC's separate existence ends, and its assets become the assets of the successor without further act or deed. The debts and liabilities of the LLC also become those of the successor corporation, and claims pending against the LLC may be prosecuted against the successor as though the merger had not taken place.

Unless the articles of merger preclude abandonment, a proposed merger may be abandoned before the effective date by unanimous consent of the LLC's members.

**State Revenues:** The number of entities that convert their business form because of the bill cannot be accurately estimated but is expected to be minimal. Corporations converting to LLCs would be required to record articles of entity conversion, articles of organization, and articles of cancellation with SDAT. LLCs converting to corporations would be required to record articles of entity conversion, articles of incorporation, any articles of amendment that might be required, and articles of dissolution. Each of these items would be subject to a \$100 recordation fee. LLCs converting to corporations would also be subject to a capitalization fee, which varies depending on the value of the stock shares issued. The fee is \$20 for any amount up to \$100,000, and an additional \$1 for each \$5,000 or fraction thereof that exceeds \$100,000. These are all general fund revenues.

In addition, any document for which an entity requested expedited processing would be subject to the \$50 expedited processing fee, which is deposited in a special fund to help pay the expenses of SDAT's charter division. The bill is not expected to appreciably affect Transportation Trust Fund revenues from the corporate income tax.

**Small Business Effect:** The bill would make it easier for small businesses to change their entity structure.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Department of Assessments and Taxation, Comptroller's Office, Department of Legislative Services

**Fiscal Note History:** First Reader - March 19, 2004  
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