Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Judiciary Committee

SB 5999

Title: An act relating to corporate entity conversions.

Brief Description: Concerning corporate entity conversions.

Sponsors: Senators Pedersen, O'Ban, Kline and Fain; by request of Washington State Bar Association.

Brief Summary of Bill

- Creates a process and requirements for entity conversions under the Washington Business Corporations Act and the Limited Liability Company Act.

Hearing Date: 2/20/14

Staff: Edie Adams (786-7180).

Background:

A business entity has a variety of organizational forms to choose from, including corporate, limited liability company, and limited partnership. Corporations are separate legal entities that are owned by shareholders and generally managed by a board of directors and officers. A limited liability company is an entity that is owned by its members and that has a flexible management structure. A limited liability company may be managed by its members, or by one or more managers appointed by the members. A limited partnership is a form of business organization that consists of one or more general partners and one or more limited partners. General partners manage the business and are personally liable for the debts and obligations of the limited partnership, while limited partners are liable only to the extent of their contributions to the partnership.

Many other states' business entity statutes and model business entity laws allow for entity conversions. An entity conversion is a process that allows an entity to change its form of organization, its governing jurisdiction, or both, without having to form a new entity and engage

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in a merger or asset transfer. A conversion involves only one entity; the converting and converted entity are the same entity.

In 2009, the Legislature authorized conversions under the Uniform Limited Partnership Act (ULPA). The ULPA authorizes a limited partnership to convert to another organization, or another organization to convert to a limited partnership. However, this authority to convert to or from another organization applies only if the governing statute of the other organization allows for conversion. Currently, none of the other Washington business entity statutes authorize entity conversions.

Summary of Bill:

The Washington Business Corporation Act (WBCA) and the Limited Liability Company Act are amended to create a process and requirements for entity conversions. The conversion provisions generally allow for a limited liability company or corporation to convert to another organization or entity, and other organizations or entities to convert to a limited liability company or corporation, if the conversion is permitted by the other organization's or entity's governing statute and certain procedural requirements are met.

A converting limited liability company or domestic corporation must adopt a plan of conversion that includes the name of the limited liability company or domestic corporation before conversion, the name and form of the converted organization or surviving entity after conversion, the terms and conditions of the conversion, and the organic documents of the converted organization or surviving entity. The terms and conditions of the conversion must include the manner and basis for converting the interests in the converting limited liability company or domestic corporation into the interests, shares, obligations, or other securities of the converted organization or surviving entity, or into cash or other property.

A converting organization or entity must deliver articles of conversion containing specified information to the Secretary of State for filing.

<u>Limited Liability Companies</u>.
A plan of conversion for a converting limited liability company must be approved by all the members of the limited liability company. If a member of a converting limited liability company will have personal liability with respect to the converted entity, then the plan of conversion must also require a separate written consent by the member to become subject to the personal liability.

A converted organization is for all purposes the same entity that existed before the conversion, with the same rights, privileges, immunities, powers, and purposes of the converting organization. Title to all property remains vested in the converted organization. All debts, liabilities, and obligations of the converting organization continue as obligations of the converted organization, and any pending action by or against the converting organization may continue as if the conversion had not occurred.

<u>Corporations</u>.
In the case of a domestic corporation converting to another entity, the plan of conversion must be adopted by the board of directors and approved by the shareholders entitled to vote. If a shareholder will become subject to owner liability as a result of the conversion, the plan of

conversion also must require each such shareholder to execute a separate record consenting to become subject to owner liability.

Conversion of a domestic corporation to another entity that is not a foreign corporation must be approved by all shareholders of the domestic corporation, whether or not those shareholders have voting rights under the articles of incorporation or the WBCA.

Conversion of a domestic corporation to a foreign corporation requires the same shareholder approval that would be required for approval of a plan of merger. A shareholder is entitled to dissenter's rights if the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

A surviving entity is for all purposes deemed to be the same entity that existed before the conversion. Unless otherwise required by the law of another jurisdiction, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not a dissolution of the converting entity.

Title to all property remains vested in the surviving entity. All creditor's rights and liens upon the converting entity's property are unimpaired, and all debts, liabilities, and obligations of the converting entity continue as obligations of the surviving entity. Any pending action by or against the converting entity may continue as if the conversion had not occurred. Except as prohibited by other law, the same rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity.

The conversion provisions under the WBCA exclude nonprofit corporations, mutual corporations or miscellaneous corporations, or governmental or quasi-governmental organizations.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.