

HB

57

<TARGET><BILL>HB 57</BILL><SUBJECT>HB
57</SUBJECT><COMM>SJUD28</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/11/13

FURTHER:

DATE TURNED
IN TO OFFICE: 4/12/2013

Judiciary Committee considered CS FOR HOUSE BILL NO. 57(JUD)

HB 57 ENTITY TRANSACTIONS ACT

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations, partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

- be replaced with SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	McGrath	✓			
	Wielechowska			✓	
	Dyrson			✓	
CHAIR:	Coghill	✓			

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 63(FIN)

BY SENATOR COGHILL

1 Page 1, line 1, following "Association;":

2 Insert "**making members of the Board of Governors of the Alaska Bar Association**
3 **chosen by the members of the Alaska Bar Association subject to confirmation;**"

4

5 Page 1, line 14, following "state.":

6 Insert "**The nine members chosen by the active members of the association are**
7 **subject to confirmation by the legislature in joint session.**"

8

9 Page 2, following line 7:

10 Insert a new bill section to read:

11 "*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. AS 08.08.050(a), as amended by sec. 2 of this Act, applies to a
14 person elected to the Board of Governors of the Alaska Bar Association by the active
15 members of the Alaska Bar on or after the effective date of this Act."

16

17 Renumber the following bill section accordingly.

AMENDMENT

OFFERED IN THE SENATE
TO: CSHB 63(FIN)

BY SENATOR COGHILL

- 1 Page 1, line 1, following "**Association;**"
2 Insert "**classifying the receipts of the Alaska Bar Association as non-general fund**
3 **program receipts; relating to the powers of the Board of Governors of the Alaska Bar**
4 **Association;**"
5
6 Page 2, following line 7:
7 Insert new bill sections to read:
8 "*** Sec. 4.** AS 37.05.146(c) is amended by adding a new paragraph to read:
9 (87) receipts of the Alaska Bar Association under AS 08.08.080.
10 "*** Sec. 5.** AS 08.08.080(c)(2) is repealed."
11
12 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 63(FIN)

BY SENATOR COGHILL

1 Page 1, line 2, following "**Association**";:

2 Insert "**relating to the membership of the Board of Governors**";

3

4 Page 1, line 7, through page 2, line 2:

5 Delete all material and insert:

6 *** Sec. 2.** AS 08.08.050(a) is repealed and reenacted to read:

7 (a) The board consists of 12 members appointed by the governor and subject
8 to confirmation of the legislature sitting in joint session. The members shall be
9 appointed as follows:

10 (1) two members of the association residing in the first judicial district;

11 (2) four members of the association residing in the third judicial
12 district;

13 (3) two member of the association residing in the combined area of the
14 second and fourth judicial districts;

15 (4) one member of the association at large residing in the state; and

16 (5) three public members.

17 *** Sec. 3.** AS 08.08.050(c) is amended to read:

18 (c) Four board members shall be selected on the following triennial rotation:

19 (1) in the first year, one member from the first judicial district, one
20 member from the combined area of the second and fourth judicial districts, one
21 member from the third judicial district, and one **public** [APPOINTED] member;

22 (2) in the second year, one member at large, two members from the
23 third judicial district, and one **public** [APPOINTED] member; and

1 (3) in the third year, one member from the combined area of the
2 second and fourth judicial districts, one member from the third judicial district, one
3 member from the first judicial district, and one public [APPOINTED] member."
4

5 Renumber the following bill sections accordingly.
6

7 Page 2, following line 7:

8 Insert a new bill section to read:

9 "* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **APPLICABILITY.** AS 08.08.050(a), as amended by sec. 2 of this Act, applies to a
12 person appointed to the Board of Governors of the Alaska Bar Association on or after the
13 effective date of this Act."
14

15 Renumber the following bill section accordingly.



Representative Lindsey Holmes

Sponsor Statement

HB 57 – Entity Transactions Act

House Bill 57 conforms to the Uniform Law Commissioners' Model Entity Transaction Act (META). If implemented in the State of Alaska, this legislation will help facilitate transactions between more than one form of entity, improve the existing business climate in Alaska, and help reduce unnecessary administrative and legal burdens currently imposed on Alaska companies.

During the past twenty years many new types of business entities—including limited liability companies, limited liability partnerships, and limited liability limited partnerships—have been recognized under state law. As a result of the proliferation of new entity forms, many businesses now utilize various types of entities in their organizational structures. The relaxation of federal tax rules governing entity classification has led to an increase in the volume of restructuring and acquisition transactions by and among the various types of entity forms.

Because of the lack of clear statutory authority allowing transactions between more than one form of entity, these transactions have often required the use of multiple indirect steps, as opposed to a single transaction. House Bill 57 will offer new statutory authority to permit cross-entity transactions in order to remain responsive to the needs of Alaskan companies and should be enacted in order to allow Alaska businesses the opportunity to engage in cross-entity transactions.

Adopting HB 57 will be an important step towards bringing Alaska more into the mainstream of statutory business law.

I urge your support of this legislation.



Representative Lindsey Holmes

Sectional Summary

HB 57 – Entity Transactions Act

Here a sectional summary of HB 57, the Entity Transactions Act prepared by my office. Please keep in mind that this summary is for informational purposes and the bill itself is the most authoritative interpretation of its contents.

In this sectional summary, "new chapter" or "chapter" means the Alaska Entity Transactions Act to be numbered AS 10.55, and "department" means the Department of Commerce, Community, and Economic Development. Please be aware that many terms in the new chapter are defined at the end of the new chapter.

Section 1. Conforming change (AS 06.26.670 repealed).

Section 2. Adds two sections to the article on organic change in AS 10.06, the for-profit corporations chapter. Sec. 10.06.595 allows, with exceptions, corporations to enter into mergers, interest exchanges, conversions, or domestications under the new chapter (the Alaska Entity Transactions Act). States that specific provisions do not apply to certain transactions covered by the new chapter. Sec. 10.06.600 defines terms for the article to conform to the application of the new chapter.

Section 3. Conforming and editorial change (AS 10.15.450 repealed).

Section 4. Adds AS 10.20.285 as a new section in the nonprofit corporations chapter to state that a corporation may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the nonprofit corporations chapter.

Section 5. Adds AS 10.30.058 as a new section in the chapter on cemetery organizations to state that cemetery associations and nonprofit cemetery corporations may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

Section 6. Adds a new section to the chapter on religious corporations (AS 10.40) to state that a corporation formed under AS 10.40 may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

Section 7. Amends AS 10.45.240, a section of the professional corporations chapter, to state that the provision in the state's for-profit corporations code relating to entering into mergers, interest exchanges, conversions, and domestications under the new chapter applies to professional corporations.

Section 8. Adds a new section to the limited liability company chapter to state that a limited liability company may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the limited liability company chapter.

Section 9. Conforming change (AS 10.50.570 has been repealed).

Section 10. Adds definitions to AS 10.50, the chapter on limited liability companies, conforming to the application of the new chapter.

Section 11. Adds the new chapter containing the Alaska Entity Transactions Act.

Sec. 10.55.103. Indicates how the new chapter relates to other laws, including principles of law and equity.

Sec. 10.55.104. Requires entities to satisfy certain governmental notice or approval requirements for mergers when involved in an interest exchange, conversion, or domestication. Addresses the diversion of property held for charitable purposes.

Sec. 10.55.105. Includes a filing under the chapter in an entity's public record.

Sec. 10.55.106. Provides that achieving a result under the new chapter does not prevent achieving the same result under another law.

Sec. 10.55.107. Allows a transaction plan (under certain conditions) to refer to facts that can be found outside the plan, even if the facts are not within the control of a party to the transaction.

Sec. 10.55.108. States that approval of a transaction by the unanimous vote or consent of an entity's interest holders satisfies the chapter's transaction approval requirements, unless, for a domestic entity, the organic law or organic rules state otherwise.

Sec. 10.55.109. Addresses when dissenters' rights are available to an interest holder. As a default provision, states that the interest holder may use the procedures under AS 10.06.576.

- Sec. 10.55.110. Lists the entities that may not take part in a transaction under the chapter. Includes, among others, financial institutions and insurers.
- Sec. 10.55.120. Requires that the name that a domestic entity takes under this chapter comply with certain requirements.
- Sec. 10.55.201. Provides the general authorization for mergers. Lists certain excluded transactions.
- Sec. 10.55.202. States that a domestic entity may become a party to a merger by approving a plan of merger. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.203. States that a plan of merger is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.204. Describes how a plan merger for a domestic merging entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of merger has become effective or been filed.
- Sec. 10.55.205. Requires a statement of merger to be signed and filed with the department. Identifies what the statement of merger must contain and allows it to contain any other provision not prohibited by law. Requires, if a domestic entity is the surviving entity, that the surviving entity's public organic document satisfy this state's requirements, with certain exceptions. Allows a signed plan of merger with the required contents to be filed with the department instead of a statement of merger and to have the same effect as a statement of merger. States when the statement of merger becomes effective.
- Sec. 10.55.206. Lists the effects of a merger on the entities involved. States, with exceptions, that a merger does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability when a merger becomes effective. For foreign entities that are the surviving entities, allows for service of process on the entity regarding liabilities and provides for appointment of the department as the entity's agent for the service of process. When a merger becomes effective, cancels the foreign qualification of a foreign merging entity that is not the surviving entity.

- Sec. 10.55.301. Provides the general authorization for a domestic or foreign entity to acquire the interests of other entities or for its interests to be acquired by other entities. Conditions the foreign entity's authorization on the authorization of the foreign entity's jurisdiction or organization. Provides a special interest exchange rule for certain protected agreements that have domestic entity merger provisions but no interest exchange provisions. Excludes certain share exchanges under AS 10.06 (the for-profit corporations code).
- Sec. 10.55.302. States that a domestic entity may be an acquired entity in an interest exchange by approving an interest exchange plan. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.303. States that a plan of interest exchange is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.304. Describes how an interest exchange plan for a domestic acquired entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of interest exchange has become effective or been filed.
- Sec. 10.55.305. Requires a statement of interest exchange to be signed and filed with the department. Identifies what the statement of interest exchange must contain and allows it to contain any other provision not prohibited by law. Allows, for a domestic acquired entity, a signed plan of interest exchange with the required contents to be filed with the department instead of a statement of interest exchange and to have the same effect as a statement of interest exchange. States when the statement of interest exchange becomes effective.
- Sec. 10.55.306. Lists the effects of an interest exchange on the entities involved. States, with exceptions, that an interest exchange does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability.
- Sec. 10.55.401. Provides the general authorization for conversion of domestic and foreign entities. Conditions the conversion authorization of foreign entities to the law of the foreign jurisdiction. Provides a special rule for certain protected agreements that have domestic entity merger provisions but no conversion provisions.

- Sec. 10.55.402. States that a domestic entity may convert to a different type of entity by approving a plan of conversion. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.403. States that a plan of conversion is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.404. Describes how a plan of conversion may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain when done after a statement of conversion is filed but the filing is not yet effective.
- Sec. 10.55.405. Requires a statement of conversion to be signed and filed with the department. Identifies what the statement of conversion must contain and allows it to contain any other provision not prohibited by law. Requires, if the converted entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic converting entity, a signed plan of conversion with the required contents to be filed with the department instead of a statement of conversion and to have the same effect as a statement of conversion. States when a statement of conversion becomes effective.
- Sec. 10.55.406. Lists the effects of a conversion on the entities involved. States, with exceptions, that a conversion does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the converted entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive the process. Provides that the foreign qualification of a converting entity that is a qualified foreign entity is cancelled when the conversion becomes effective. Provides that a conversion does not require an entity to wind up its affairs and does not constitute or cause a dissolution of the entity.
- Sec. 10.55.501. Provides the general authorization for a domestic entity to become a foreign entity of the same type, if the law of the foreign jurisdiction authorizes the domestication. Provides the general authorization for a foreign entity to become a domestic entity of the same type in this state, if the law of the foreign jurisdiction authorizes the domestication. Provides a special rule for certain protected agreements that have merger provisions relating to domestic entities but no domestication provisions.

- Sec. 10.55.502. States that a domestic entity may become a foreign entity in a domestication by approving a plan of domestication. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.503. States that a plan of domestication is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.504. Describes how a plan of domestication of a domestic entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain after the statement of conversion has been filed.
- Sec. 10.55.505. Requires a statement of domestication to be signed and filed with the department. Identifies what the statement of domestication must contain and allows it to contain any other provision not prohibited by law. Requires, if the domesticated entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic domesticating entity, a signed plan of domestication with the required contents to be filed with the department instead of a statement of domestication and to have the same effect as a statement of domestication. States when a statement of domestication becomes effective.
- Sec. 10.55.506. Lists the effects of a domestication for the entities involved. States, with exceptions, that a domestication does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the domesticated entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive process. Provides that the foreign qualification of a domesticating entity that is a qualified foreign entity is cancelled upon domestication. Provides that a domestication does not require an entity to wind up its affairs and does not constitute or cause a dissolution.
- Sec. 10.55.601. States the requirements for a document to meet in order to be entitled to be filed by the department under this chapter. Requires payment, or arrangement for payment, of the filing fee and any other required tax, license fee, or penalty.

- Sec. 10.55.602. Allows the department to establish and furnish non-mandatory forms for the documents filed under this chapter.
- Sec. 10.55.603. Directs the department to collect fees for being served with process, for copying documents, for certifying documents, and for filing documents under this chapter. Directs the department to establish the amount of the fees by regulation.
- Sec. 10.55.604. Establishes when a document accepted for filing becomes effective.
- Sec. 10.55.605. Allows an entity to correct a filed document under certain circumstances. Indicates how to make the correction. States when the correction is effective.
- Sec. 10.55.606. Directs the department to file eligible documents. Indicates how the department is to file a document. Addresses the situation when the department refuses to file a document. Describes the department filing duty as ministerial and as not affecting the validity of the document or the correctness of the information in the document, and as not creating a presumption of validity, invalidity, or information correctness or incorrectness.
- Sec. 10.55.607. Allows an appeal if the department refuses to file a document. Allows the court's decision to be appealed as in other civil proceedings.
- Sec. 10.55.608. Provides that a department certificate (delivered with a copy of the filed document) conclusively establishes that the original is on file.
- Sec. 10.55.609. Establishes a criminal penalty for signing a document knowing it is false for delivery to the department.
- Sec. 10.55.610. Allows the department to submit interrogatories (formal questions) to an entity that is a party to a transaction to determine if the entity has complied with the chapter. Indicates when the answers are due and establishes certain criteria for the answers, including who is to answer the questions. Allows a court petition to be filed about the due date, modification, or setting aside of the questions.
- Sec. 10.55.615. Establishes that the questions requested by the department and the answers are confidential. Establishes when the department may disclose information from them.

Sec. 10.55.620. Establishes a criminal penalty for failing to answer interrogatories from the department. Allows the department to delay or base its filing of a document on receiving proper answers and on the information in the answers.

Sec. 10.55.625. Gives the department the necessary power to implement the chapter.

Sec. 10.55.701. Requires that, when applying and construing this chapter, consideration must be given to promoting consistency among enacting states.

Sec. 10.55.702. Indicates how the chapter relates to the Electronic Signatures in Global and National Commerce Act.

Sec. 10.55.901. Defines terms for the new chapter.

Sec. 10.55.902. Gives the new chapter a short title: Alaska Entity Transactions Act.

Section 12. Amends a section in the partnership chapter to create an exception for the new chapter relating to the consent required to become a partner.

Section 13. Amends a section in the partnership chapter to create an exception for the new chapter that relates to a partner's transferable interest. States that a partner's interest is personal property, whether or not transferable.

Section 14. Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).

Section 15. Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).

Section 16. Amends the partnership chapter to remove the ability of a partnership to merge with a limited partnership under that chapter.

Section 17. Amends the partnership chapter to conform merger plans to the change in bill section 16.

Section 18. Amends the partnership chapter to conform the merger approval requirements to the change in bill section 16.

Section 19. Amends the partnership chapter to provide that a merger between a partnership and another form of entity is covered by the new chapter.

Section 20. Amends the partnership chapter to conform the provisions about the effect of a merger to the change in bill section 16.

Section 21. Amends the partnership chapter to conform the statement of merger to the change in bill section 16.

- Section 22.** Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed). Deletes reference to AS 32.06.908. States that partnerships or limited partnerships may enter into mergers, interest exchanges, conversions, and domestications under the new chapter or in any other manner provided by law.
- Section 23.** Adds a definition of "domestic limited liability partnership."
- Section 24.** Adds definitions to the partnership chapter.
- Section 25.** Adds a provision allowing for amending a limited partnership certificate by filing a plan of merger, interest exchange, conversion, or domestication under the new chapter.
- Section 26.** Amends the limited partnership chapter to state that a partner's interest is personal property, whether or not the interest is transferable.
- Section 27.** Amends the limited partnership chapter to require that a limited partnership keep at its office a copy of any statement of merger, interest exchange, conversion, or domestication filed under the new chapter.
- Section 28.** Amends the limited partnership chapter to remove conversions from the application of the partnership chapter (AS 32.06) and to make the application of AS 32.06 to cases not covered by the limited partnership chapter subject to the new chapter.
- Section 29.** Amends the limited partnership chapter to change the definition of "limited partnership" to exclude certain entities and to limit the term to entities under the chapter.
- Section 30.** Repeals certain statutes.
- Section 31.** Describes how certain changes in the bill make indirect court rule amendments.
- Section 32.** Allows the department to get started on regulations for the Act.
- Section 33.** Provides a saving clause for actions and proceedings that are begun, or rights that have accrued, before the bill's effective date.
- Section 34.** Makes bill section 32 go into effect immediately.
- Section 35.** Gives the bill, except as provided in sec. 34, an effective date of July 1, 2013.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 57
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB057-DCCED-CBPL-03-01-13
Title: ENTITY TRANSACTIONS ACT
Sponsor: HOLMES, OLSON
Requester: House Judiciary

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No

If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Don Habeger, Director</u>	Phone: <u>(907)465-2536</u>
Division: <u>Corporations, Business and Professional Licensing</u>	Date: <u>03/01/2013 08:15 AM</u>
Approved By: <u>JoEllen Hanrahan, Director</u>	Date: <u>03/08/13</u>
<u>Administrative Services Division</u>	

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB 57

Analysis

HB57 will allow different entity types to enter into a merger, interest exchange, conversion, or domestication. This will allow certain entities to more easily change their entity structure.

The Division of Corporations, Business and Professional Licensing does not anticipate a fiscal impact from this legislation.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Entity Transactions Act Summary

The Uniform Law Commissioners have provided unincorporated organization law to the states since the first Uniform Partnership Act in 1914. The current portfolio of uniform acts on unincorporated organizations includes the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) and the Uniform Unincorporated Nonprofit Organization Act (1996). Corporate law has been the focus of the American Bar Association for at least 50 years. It is responsible for the Model Business Corporation Act and the Model Not-for-Profit Corporation Act. It also prepared a Prototype Limited Liability Company Act. Partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies and corporations are the basic entities under American law (business trusts and cooperatives are also growing in importance) that provide the means to aggregate capital, and limit liability where applicable, along with the structure to organize an enterprise, whether it is for profit or nonprofit.

All of this uniform and model act work has made American law particularly efficient for entrepreneurs. Anyone who establishes and develops a business has choices available for the entity that may be chosen to do business. As a business grows, these options also allow for some changes in form and location of the entity chosen. For example, a small enterprise that chooses to be a partnership initially has the opportunity to reorganize as a corporation when the business is big enough to want the advantage of the corporate form. Not-for-profit activities also have a greater array of organizational forms, now including the limited liability company and the limited partnership along with the not-for-profit corporation. American law is particularly flexible and responsive to the needs of both the for-profit and the not-for-profit sectors. American business organization law is the envy of the rest of the world for this reason.

However, more can be done. There is no comprehensive statutory framework for changing entity form, whether for merger of entities, conversion of one entity to another, exchanging interests to merge businesses without merging the entities (called an interest exchange), or for changing the location of the entity (called a domestication). The newest uniform acts on limited liability companies and limited partnerships have limited provisions. The Model Business Corporation Act has been modified to do some of these kinds of transactions. The comprehensive effort had not been done until the Model Entity Transactions Act (META), promulgated by the Uniform Law Commissioners and the American Bar Association in 2004.

The Uniform Law Commissioners and the American Bar Association have a long relationship going back to the founding of the Commissioners. Every drafting committee the Commissioners authorize to work on an act has advisors from the American Bar Association. However, in this instance the need to draw together corporate law with the law of unincorporated organizations, meant a more formal joint relationship was necessary. META is a product of this joint relationship.

The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the winding down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs. A general statute, not limited in scope to less than all of the kinds of entities commonly involved in these transactions, is highly desirable. Cross-entity transactions should be available. That statute should also be one that can be fit with the existing entity law in a state so that it is not necessary to repeal all the existing entity law to accomplish the objective. META is the general statute that is designed to fit in with a state's existing entity law to

accomplish the objective.

META governs the course of four kinds of transactions: merger of one entity with another, conversion of an entity to another kind of entity, an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities and the domestication of an entity originally organized in one state in another state. A merger occurs when one entity acquires another entity and the result is a single entity composed of both the original entities. A conversion occurs when one kind of entity converts to another kind, i.e., a limited liability company converts into a business corporation. An interest exchange occurs when interest holders transfer their interests in one entity to another for interests in the second entity. For example, the holders of all interests in a limited partnership transfer their interests to a corporation in return for shares of stock in the corporation. A domestication occurs when an entity formed under the laws of one state becomes an entity formed in another state, extinguishing its entity status in the first state. The articles of META essentially provide the procedures to accomplish each of these transactions.

META authorizes each of these kinds of transactions. It authorizes different entities to merge, i.e., a corporation may merge with a limited partnership. It authorizes a partnership to convert to a limited liability company. An interest swap may occur between a limited partnership and a limited liability company. A corporation may change its place of organization from one state to another. These are examples of the kinds of transactions authorized. They can occur between an entity in one state and a foreign entity formed originally in another state, providing that the law of the foreign state permits such a transaction.

In each kind of transaction, there must be a plan that is approved by the interest holders in the entities. The plan generally describes the transaction and its effect in detail. Approval of the plan proceeds according to the organic statute and rules that govern the pre-existing entities, or if none, by unanimous consent of all interest holders. If, for example, a partnership agreement governing a limited partnership provides for consent of partners to one of the kinds of transactions subject to META, the agreement would be the organic rules that would determine the approval of the plan. Otherwise all the partners would have to consent.

Once a plan is approved, a statement relevant to the transaction must be filed in the office in a state in which entity statements or charters are normally filed. The filing puts the transaction and the identity of the entity that survives in public records. That entity becomes the entity with the capacity to do business and it has the applicable liability shield from that time onward.

The objective in these procedures is to make sure that no interest is extinguished in the process of any of the transactions under META, whether a merger, conversion, interest exchange or domestication. This is true for an interest holder such as a shareholder in a corporation or holder of a partnership interest. It is also true for creditor interests that pre-existed the given transaction. The point of the procedures is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.

There are a few exclusions from META. If mergers in a state are already governed by the merger provisions in a state's enactment of a uniform or model act, META will not apply or displace those provisions. The same is true for interest exchanges when a state has the Model Business Corporation Act. Not all entities will necessarily be governed by META. There are special corporations, for example, that should not be included, depending upon their status in a state. META allows for them to be specifically excluded.

META is a model act, not a uniform act, although several of the acts affected are uniform acts. Although there is some uniformity in entity law, i.e., partnership law, it is not true across the full spectrum of entity law. This means that using META from state to state is likely to mean much adaptation of META provisions. The effect of utilizing META may have the impact of introducing more uniformity of law relating to entities from state to state, but use of its language in a uniform way cannot be expected.

Business organization law and the law relating to not-for-profit organizations has been much refurbished, updated and improved in the 30 years preceding 2004, the year of META. Development has been dynamic and good for economic function in the entire United States. META adds another element to

this dynamic progression of law relating to these entities. It is good for business and not-for-profit ventures alike. It should be studied, adapted and enacted in every state as soon as practicable.

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