



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**PARTNERSHIPS AND LPs: MERGERS  
WITH OTHER BUSINESS ENTITIES**

**House Bill 6181 (Substitute H-1)  
House Bill 6182 as introduced  
First Analysis (11-19-96)**

**Sponsor: Rep. Gary L.Randall  
Committee: Commerce**

***THE APPARENT PROBLEM:***

Partnerships and limited partnerships are governed under the provisions of the Uniform Partnership Act and the Michigan Revised Uniform Limited Partnership Act, respectively. The former act was created in 1917 and has governed partnerships relatively well over the decades, while the latter was totally recodified nearly 15 years ago by Public Act 213 of 1982. Since that time, however, business organizational structures have evolved to meet changing statutory requirements, tax laws, and needs of the marketplace. In Michigan, for instance, Public Act 23 of 1993 created a new type of business entity, known as a limited liability company, that combined the best features of partnerships with those of other types of business entities such as so-called S-corporations. Among other things, this act permits two or more persons to form an LLC, which operates in a manner similar to other business entities but with, for instance, special tax advantages that other entities do not qualify for. In 1994, after it was discovered that the Michigan Limited Liability Company Act failed to include provisions allowing an LLC to merge with other business entities, legislation was drafted to permit this to occur, which eventually was enacted as Public Act 410 of 1994. However, for such mergers to occur with partnerships or limited partnerships, the acts governing these entities must also be amended to explicitly authorize them to merge with LLCs. Some people have also recommended that additional language be added to the act governing limited partnerships to authorize them to merge or consolidate with, or become members of, other business entities including LLCs.

***THE CONTENT OF THE BILLS:***

The bills would amend the acts governing limited partnerships and partnerships to add provisions that would permit these business entities to merge, become a member of, or consolidate with certain other business entities.

House Bill 6181 would amend the Michigan Revised Uniform Limited Partnership Act (MCL 449.1210) to

authorize a domestic limited partnership (LP) to merge or consolidate with one or more other business entities under a plan of merger or consolidation as allowed by the bill.

Merger, consolidation of domestic LPS with other domestic LPS. One or more general partners of each domestic LP that wanted to merge or consolidate with one or more other domestic LPS would have to propose a plan of merger or consolidation which would have to include various information pertaining to the LPS involved and the resulting LP created, including their names, the terms and conditions of the merger or consolidation, a copy of a restated certificate of limited partnership (if any amendments were needed to the certificate of the surviving LP due to the merger), and certain other provisions.

The plan of merger or consolidation would have to be submitted to the partners of each constituent LP for approval, and approval would require unanimous consent of the partners of each LP unless the partnership agreement of one of the merging LPS provided otherwise-in which case approval by the partners of that LP would have to be as provided in the partnership agreement.

After a plan of merger or consolidation was approved by all partners, a certificate of merger or consolidation for each LP would have to be filed by one or more general partners with the "administrator" (the Corporations and Securities Bureau, within the Department of Consumer and Industry Services). The certificate would have to contain the names of each merging LP and of the resulting LP, the original signed copy of the restated certificate of limited partnership or certificate of limited partnership, a statement that the plan of merger/consolidation had been approved by each LP's partners, and the effective date of the certificate of merger or consolidation. The merger or consolidation would be effective on the certificate's effective date

All of the following would apply to a merged or consolidated domestic LP:

House Bills 6181 and 6182 (11-19-96)

\* The constituent LPS would become a single LP that, in the case of a merger, would be the LP designated in the plan of merger as the surviving LP and, when a consolidation, would be the new LP provided for in the plan of consolidation.

\* Title to all real, personal and other property would be vested in the surviving or new LP, without further act or deed and without reversion or impairment.

\* Upon complying with provisions requiring the filing of a certificate showing the LP's name and other information, the LP could use the name and assumed names of any other constituent LP.

\* The surviving or new LP would assume all liabilities of each constituent LP.

\* A proceeding pending against any constituent LP could be continued as if the merger or consolidation had not occurred or the surviving or new LP could be substituted in the proceeding for any constituent LP.

\* In the case of a merger, the certificate of limited partnership of the surviving LP would be amended by any restated certificate of limited partnership attached to the merger certificate and, when a consolidation occurred, the certificate of the new LP would have to be attached to the certificate of consolidation and a separate additional filing of a restated certificate would not be required.

\* The partnership interests in each constituent LP would be converted into partnership interests in the surviving or new LP, into cash, other consideration, or a combination of these as provided in the merger/consolidation plan.

\* A general partner of the surviving or new LP would not be liable as a general partner for any other constituent LP unless the general partner was also a general partner of one of those, he or she had been liable for the obligations, and these had been outstanding on the effective date of the merger/consolidation or arose after it on account of acts or omissions before its effective date.

\* A general partner of a constituent LP in a merger/consolidation would continue to be liable as a general partner for all obligations of the constituent LP outstanding on the merger or consolidation's effective date or which arose after this date due to acts or omissions before this date, to the extent that the general partner would have been liable for the obligations had the merger/consolidation not occurred.

Before a certificate of merger/consolidation took effect, the merger or consolidation could be abandoned as provided in the merger/consolidation plan or, if no

provisions is made for this, by the unanimous consent of the partners of each constituent LP, and the bill includes abandonment procedure provisions.

Mergers, consolidations of domestic LPS with foreign LPS. One or more domestic LPS could merge or consolidate with one or more foreign LPS if all of the following requirements were satisfied:

\* The merger/consolidation was permitted by the laws of the jurisdiction in which each constituent foreign LP was organized, each foreign LP complied with those laws, each foreign LP complied with Michigan's laws, and each foreign LP complied with the provisions of the bill. The bill provides exceptions to this provisions, and would require changes in the certification documents of merged or consolidated entities resulting from this process containing any laws from the jurisdiction in which the foreign LP was organized that would be applicable to the newly formed entity.

\* Each domestic LP had complied with various provisions pertaining to mergers or consolidations of domestic LPS. The merger/consolidation would take effect on the effective date of the certificate of merger or consolidation.

If the surviving or new LP was a domestic LP, all of the provisions applicable to a newly formed domestic LP relative to its name, assumed liabilities, partnership interests, and liabilities of general partners would apply to the domestic LP created from the merged or consolidated foreign LPS. If the resulting new LP was a foreign LP, all of these provisions would apply except the one pertaining to amendments to a certificate by a restated certificate of limited partnership attached to the merger/consolidation certificate. The bill includes several provisions pertaining to amending a certificate of limited partnership under certain circumstances, as well as provisions pertaining to abandonment of the merger or consolidation before it actually had occurred. The bill also specifies that if a surviving or new LP was a foreign LP, it would be subject to the act's existing provisions pertaining to foreign LPS (under Article 9) if it transacted business in Michigan and would be subject to service of process in any proceeding in the state for the enforcement of any obligation of any constituent domestic LP or any obligation of the surviving or new LP that arose from the merger/consolidation. The administrator would be the agent for service of process in any proceeding.

Mergers, consolidations of domestic LPS with other business organizations. One or more domestic LPS could merge or consolidate with one or more "business organizations" (i.e., domestic or foreign corporations, limited liability companies, general partnerships, registered limited liability partnerships, or any other type

of domestic or foreign business enterprises, incorporated or unincorporated, except domestic or foreign LPS) if all of the following criteria were satisfied:

\* The merger/consolidation was permitted by the laws of Michigan and those of the jurisdiction in which each constituent foreign business organization (BO) was organized, each constituent BO complied with those laws, each one transacting business in Michigan complied with its applicable laws, and each domestic LP complied with the bill's provisions.

\* One or more general partners of each domestic LP that participated in the merger or consolidation, and the appropriate person(s) under applicable law with respect to each BO that participated in the merger/consolidation, proposed a plan or merger or consolidation which included such things as the surviving or new entity's name, the names of each other constituent entity, the terms and conditions of the merger/consolidation, amendatory language to certification documents if necessary, copies of certain other official documents, and any other provisions considered necessary or desirable to the merger or consolidation.

\* The plan of merger/consolidation was approved by each constituent domestic LP as required under the bill and by each constituent business organization as required by the laws of the jurisdiction in which each was organized.

\* After the plan of merger/consolidation was approved, a certificate of merger or consolidation was executed on behalf of each constituent domestic LP by one or more general partners and on behalf of each constituent business organization by the appropriate person(s) under applicable law and filed with the administrator. This certificate would have to contain various information including the original signed copy of any restated certificate of limited partnership or certificate of limited partnership, a copy of any other official incorporating or organizing documents or changes to these, a statement that the merger/consolidation plan had been approved, and the effective date of the certificate of merger or consolidation.

A merger or consolidation would take effect on the effective date of the certificate of merger or consolidation.

All of the following would apply when a merger or consolidation of one or more domestic LPS and one or more business organizations took effect:

\* The constituent entities would become a single entity (a surviving entity, in the case of a merger, and a new entity in the case of a consolidation).

\* Title to all real, personal, and other property would be vested in the surviving or new entity, without further act or deed and without reversion or impairment.

\* Upon complying with applicable law, the surviving or new entity could use the name and the assumed names of any other constituent entity.

\* The surviving or new entity would assume all liabilities of each constituent entity.

\* A proceeding pending against any constituent entity could be continued as if the merger or consolidation had not occurred or the surviving or new entity could be substituted in the proceeding for any constituent entity.

\* If a surviving entity (in the case of a merger) were a domestic LP, its certificate of limited partnership would be amended by any restated certificate of limited partnership attached to the merger certificate, without need for an additional filing of a restated certificate. The bill includes similar provisions applicable to official documents when the surviving entity was a business organization, and includes similar provisions in the case of consolidations involving either surviving LPS or business organizations.

\* The partnership interest, shares, membership interests, or other ownership interests in each constituent entity would be converted into all of these as they would pertain to the surviving or new entity, or into cash, other consideration or a combination of these as allowed under the plan of merger/consolidation.

\* An "obligated person" (generally, one who would be liable for the obligations of an involved business enterprise in a merger/consolidation) with respect to the surviving or new entity would not be liable for any obligations of any other constituent entity, unless he or she was also an obligated person of that entity, he or she was liable for the obligations, and these were outstanding on the merger or consolidation's effective date or arose after this date due to acts or omissions that occurred before it. The bill also provides that an obligated person with respect to a constituent entity involved with a merger/consolidation would continue to be liable for all obligations of that entity that were outstanding on the effective date of the merger/consolidation if he or she would have been liable for those had the merger/consolidation not occurred.

The bill includes numerous provisions that would permit abandonment of the merger/consolidation before its effective date, and includes language specifying that if a surviving or new entity was a foreign BO, it would be subject to the laws of Michigan if it transacted business here and would be subject to service of process in any

proceeding in the state for the enforcement of any obligation of any constituent domestic LP or domestic BO or any obligation of the surviving or new BO arising from the merger or consolidation. The bill would designate the administrator as the agent for services of process in any such proceeding.

House Bill 6182 would amend the Uniform Partnership Act (MCL 449.7a) to permit a partnership formed under the act to merge with and become a member of a limited liability company formed under the Michigan Limited Liability Company Act.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that neither bill would affect state or local budget expenditures. (11-18-96)

### ***ARGUMENTS:***

#### ***For:***

The bills would add language to both the Uniform Partnership Act and the Revised Uniform Limited Partnership Act authorizing both partnerships and limited partnerships to merge with limited liability companies that were created under the provisions of Public Act 23 of 1993. This language is necessary to correspond with similar language added to the Limited Liability Company Act by Public Act 410 of 1994, which allows a domestic LLC to merge with any other business entity, provided certain conditions are met. Moreover, House Bill 6181, as substituted in the House Commerce Committee, also includes language applicable to domestic limited partnerships merging or consolidating with any number of other domestic or foreign business entities. These provisions would give Michigan-based partnerships and limited partnerships more flexibility in determining how they wish to be organized for business under state law.

#### ***Response:***

Some people feel House Bill 6182 also needs language similar to that contained in House Bill 6181 that would include other types of business entities that partnerships could merge or consolidate with and specify how this would have to occur.

### ***POSITIONS:***

There are no positions on the bill.

Analyst: T. Iversen

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.