NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 835 Revised Law Governing Mergers

SHORT TITLE: Revised Law Governing Mergers

SPONSOR(S): Sen. Dan Clodfelter

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

		FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES			No Estimate Available			
EXPENDITURES	R	$48,665	$68,886	$68,886	$68,886	$68,886
	NR	$31,000				
POSITIONS:		2*	2*	2*	2*	2*

* The Fiscal Research Division believes that 2 positions at a total cost of $42,665 effective October 1, 1999 ($56,886 annually) may be needed during the first year the bill is effective. However, we believe that the true impact this bill will have on the workload and additional staffing cannot be determined until there has been some experience with the bill.

PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED: Secretary of State and the Department of Insurance

EFFECTIVE DATE: The bill becomes effective January 1, 2000 and applies to mergers, consolidations and conversions effective on or after the effective date.

BILL SUMMARY: ***(Adopted from the April 22, 1999 summary prepared by the Senate Judiciary I Committee Co-Counsel.)***

Senate Bill 835 would clarify and conform laws governing the mergers, consolidations and conversions among business corporations, nonprofit corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies and foreign entities. It would also provide for a method for conversion of mutual insurance companies to stock insurance companies, and would permit homeowner associations to refund excess dues and fees collected from association members. Current law provides procedures for some mergers, consolidations and conversions of business corporations, nonprofit corporations, and limited liability companies. There are no conversion/merger provisions for partnerships or limited partnerships.

Parts I through V of Senate Bill 835 provide for a common, standardized form of mergers, consolidations and conversions for business corporations (Part I), nonprofit corporations (Part II), limited liability companies (Part III), partnerships and limited liability partnerships (Part IV), permitting different forms of entities to merge and convert into other entity forms. The standard provisions require a plan of merger or conversion adopted by the merging or converting entities, articles of merger or conversion filed with the Secretary of State. They also define the legal effects of the merger/conversion on title to real property, liabilities, pending actions, and the rights to succeed in interest. Provisions are also made for merger/conversions with foreign corporations, foreign nonprofits, foreign partnerships, foreign limited liability companies and other foreign entities.

Part VI sets out the procedure for the conversion of a mutual insurance company to a stock insurance company. This type of conversion must be approved by the Commissioner of Insurance and must provide that the policyholder in a mutual insurance company will own the same proportionate share of a stock insurance company as the policyholder owned in the mutual insurance company. This Part also insures that the officers, directors and employees of a mutual insurance company will not receive any separate compensation as a result of a conversion other than the compensation paid in the ordinary course of business.

Part VII amends the Nonprofit Corporation statute to permit homeowners associations that accumulate excess funds from its members, to distribute those excess funds to the members of the association in proportion to the fees collected from the members.

ASSUMPTIONS AND METHODOLOGY:

Department of the Secretary of State

This bill allows business and nonprofit corporations, limited liability companies, partnerships, limited partnerships and limited liability partnerships and foreign entities to merge with one another and in some instances to convert from one form of entity to another. These changes will have a cost impact on the Department of the Secretary of State. They are also likely to have an impact on the Department's revenue. The fiscal impact is noted below.

The Secretary of State anticipates that substantial programming changes to its computer database will be necessary to implement this bill. Specifically, they must create a new category for including partnerships as parties to mergers along with mechanisms to track subsequent filings made by partnerships. (Current law does not contain merger or conversion procedures for partnerships. Further, general partnerships are not required to register with the Secretary of State.) Also, they must create new code to document conversions of various sorts of entities into another entity; to provide for a foreign entity's withdrawal from the state by reason of conversion to or consolidation with another entity. In addition to the programming the Department anticipates that the examiners and information specialists in the Corporations Division will need training on the programming changes including learning new computer screens and new codes as well as training on operating the revised system.

The Department estimates the nonrecurring cost to be $31,000. This includes one-time programming cost of $28,000, and training cost of $3,000. The Department also estimates that it will incur $12,000 annually in ITS charges for maintenance and increased data usage and storage. The Fiscal Research Division believes the Department's estimate of the programming cost and training is reasonable. However, we estimate the first year cost for the ITS charges will be $6,000 since the bill would only be effective for one-half of the fiscal year.

The Department anticipates that the new types of mergers, conversions and consolidations permitted by this bill will increase the workload for the Corporations Division. The Department cannot estimate the number of additional mergers, conversions and consolidations that will occur as a result of this bill. However, they anticipate at a minimum that they will need 2 additional document examiners at a total cost of $56,886 annually. The Fiscal Research Division believes the addition of these two positions is not unreasonable. However, since the bill would not become effective until January 1, 2000 and the required system modifications would not be completed until the fall of the year 1999, we believe the effective date of these positions should be October 1, 1999 at the earliest. Consequently, we have reduced the Department's estimate of the first year cost to $42,665 (($28,443 * 2) / 12 * 9). We further believe that **at least** one-year of experience is needed to determine the true impact that this bill will have on the division's current workload and any additional staffing needs.

Existing law requires the Secretary of State to collect filing, service and copying fees when documents are delivered to it for filing. The fee schedule is established in G.S. 55-1-22. The fees include a $10.00 fee for filing articles of correction and a $50 fee for filing articles of merger or conversion. Optional fees include a $100 -$200 fee for expedited filings and a $200 fee for an advisory review. These fees will be applicable to any new mergers, consolidations, or conversions that occur as a result of this bill. Though the Secretary of State anticipates that there will be additional filings as a result of this bill, they cannot estimate the number of new filings or the impact the new filings will have on revenue collections.

Department of Insurance:

This bill allows mutual insurance companies to convert to stock insurance companies. The Commissioner of Insurance must approve the plan of conversion in advance. The bill specifies the conditions that must exist before the Commissioner can approve a plan. The Department of Insurance estimates that implementing the requirements of this bill will have no fiscal impact on the Department.

FISCAL RESEARCH DIVISION 733-4910
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