

HOUSE No. 379

By Mr. Scaccia of Boston, petition of William F. Galvin relative to the conversion of certain limited partnerships. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO CONVERSION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 109 of the General Laws as appearing in
2 the 2002 Official Edition is hereby amended by adding after Section
3 43 the following new section:—

4 43A. Conversions.

5 (a) As used in this section, an “other entity” means a corporation
6 organized under Chapter 156D, a corporation organized under
7 Chapter 180, a foreign business corporation, a foreign nonprofit cor-
8 poration and any association or entity other than a governmental or
9 quasi-governmental organization. The term includes, without limita-
10 tion, limited liability companies, general partnerships, limited lia-
11 bility partnerships, joint venture, joint stock companies, business
12 trusts and profit and not-for-profit unincorporated associations.

13 (b) A limited partnership may convert into an other entity and an
14 other entity may convert into a limited partnership, provided in each
15 case that if an other entity exists pursuant to the authority of a
16 chapter of the General Laws, that chapter permits the conversion,
17 and if an other entity is organized under the laws of a foreign juris-
18 diction, the laws of that jurisdiction permit the conversion.

19 (c) A limited partnership converting into an other entity shall
20 comply with the terms of this section and of its certificate of limited
21 partnership and its partnership agreement, to the extent they are
22 applicable. An other entity converting into a limited partnership
23 shall comply with the terms of any laws applicable to it and of its
24 organic documents, to the extent they are applicable.

25 (d) A limited partnership or an other entity converting pursuant to
26 the authority of this section (herein the “converting entity”) shall
27 adopt a plan of entity conversion that contains substantially the
28 information required by Section 9.51 of Chapter 156D to be con-
29 tained in a plan of entity conversion of a business corporation, modi-
30 fied to account for the nature of the converting entity, as well as any
31 information required by any laws applicable to the converting entity.
32 The plan shall be approved by the converting entity in the manner an
33 amendment of its organic documents must be approved.

34 (e) The converting entity shall file with the state secretary, and
35 with any other governmental agency with which the converting
36 entity or the surviving entity is required to make public filings, arti-
37 cles of entity conversion that contain substantially the information
38 required by Section 9.53 of Chapter 156D to be contained in articles
39 of entity conversion of a business corporation or a domestic or for-
40 eign other entity, modified to account for the nature of the con-
41 verting entity and the surviving entity.

42 (f) The effect of a conversion authorized by this section shall be
43 the same as is provided in Section 9.55 of Chapter 156D.

1 SECTION 2. Chapter 156C as appearing in the 2002 Official Edi-
2 tion is hereby amended by striking Section 69 and inserting in place
3 thereof:—

4 69. Conversions.

5 (a) As used in this Section, an “other entity” means a corporation
6 organized under Chapter 156D, a corporation organized under
7 Chapter 180, a foreign business corporation, a foreign nonprofit cor-
8 poration and any association or entity other than a governmental or
9 quasi-governmental organization. The term includes, without limita-
10 tion, limited partnerships, general partnerships, limited liability part-
11 nerships, joint ventures, joint stock companies, business trusts and
12 profit and not-for-profit unincorporated associations.

13 (b) A limited liability company may convert into an other entity
14 and an other entity may convert into a limited liability company, pro-
15 vided in each case that if an other entity exists pursuant to the
16 authority of a chapter of the General Laws, that chapter permits the
17 conversion, and if an other entity is organized under the laws of a
18 foreign jurisdiction, the laws of that jurisdiction permit the conver-
19 sion.

20 (c) A limited liability company converting into an other entity
21 shall comply with the terms of this Section and of its certificate of
22 organization and its operating agreement, to the extent they are
23 applicable. An other entity converting into a limited liability com-
24 pany shall comply with the terms of any laws applicable to it and of
25 its organic documents, to the extent they are applicable.

26 (d) A limited liability company or an other entity converting pur-
27 suant to the authority of this section (herein the “converting entity”)
28 shall adopt a plan of entity conversion that contains substantially the
29 information required by Section 9.51 of Chapter 156D to be con-
30 tained in a plan of entity conversion of a business corporation, modi-
31 fied to account for the nature of the converting entity, as well as any
32 information required by any laws applicable to the converting entity.
33 The plan shall be approved by the converting entity in the manner an
34 amendment of its organic documents must be approved.

35 (e) the converting entity shall file with the secretary of state, and
36 with any other governmental agency with which the converting
37 entity or the surviving entity is required to make public filings, arti-
38 cles of entity conversion that contain substantially the information
39 required by Section 9.53 of Chapter 156D to be contained in articles
40 of entity conversion of a business corporation or a domestic or for-
41 eign other entity, modified to account for the nature of the con-
42 verting entity and the surviving entity.

43 (f) The effect of a conversion authorized by this section shall be
44 the same as is provided in Section 9.55 of Chapter 156D.

1 SECTION 3. Section 9.50 of Chapter 156D as appearing in
2 Section 17 of Chapter 127 of the Acts of 2003, is hereby amended
3 by striking clause (a) and inserting in place thereof:—

4 (a) A domestic business corporation may become a domestic
5 other entity, provided that in the case of an other entity that exists
6 pursuant to the authority of a chapter of the General Laws, that
7 chapter permits. The conversion shall be effected pursuant to a plan
8 of entity conversion. Section 9.55 governs the effect of converting to
9 that form of a domestic other entity.

1 SECTION 4. Section 9.50 of Chapter 156D as so appearing is fur-
2 ther amended by striking clause (c) and inserting in place thereof:—

3 (c) A domestic other entity may become a domestic business cor-
4 poration, provided that in the case of a domestic other entity that
5 exists pursuant to the authority of a chapter of the General Laws,
6 that chapter permits. Section 9.55 governs the effect of converting to
7 a domestic business corporation. If the organic law of a domestic
8 other entity, including the chapter of the General Laws pursuant to
9 which the other entity exists, does not provide procedures for the
10 approval of an entity conversion, the conversion shall be adopted
11 and approved, and the entity conversion effectuated, in the same
12 manner as a merger of the other entity and its interest holders shall
13 be entitled to appraisal rights if appraisal rights are available upon
14 any type of merger under the organic law of the other entity. If the
15 organic law of a domestic other entity does not provide procedures
16 for the approval of either an entity conversion or a merger, a plan of
17 entity conversion shall be adopted and approved, the entity conver-
18 sion effectuated, and appraisal rights exercised, in accordance with
19 the procedures in this subdivision and PART 13. Without limiting
20 the provisions of this subsection, a domestic other entity whose
21 organic law does not provide procedures for the approval of an
22 entity conversion shall be subject to subsection (e) of this section
23 and clause (7) of Section 9.52. For purposes of applying this subdi-
24 vision and PART 13:—

25 (1) the other entity, its interest holders, interests and organic docu-
26 ments taken together, shall be deemed to be a domestic business cor-
27 poration, shareholders, shares and articles of organization,
28 respectively, and vice versa, as the context may require; and

28 (2) if the business affairs of the other entity are managed by a
30 group of persons that is not identical to the interest holders, that
31 group shall be deemed to be the board of directors.

1 SECTION 5. The Act shall be effective as of July 1, 2004.