
Senate Committee on Commerce and Economic Opportunities

BUSINESS FORMATIONS

SB 704 — Business Entities

by Senator Klein

Business Entity Mergers

The bill provides for publicly-held Florida corporations to reorganize themselves as a holding company with one or more operating subsidiaries through a merger with a wholly-owned subsidiary in which the securities to be issued to the corporation's shareholders in the merger are identical in terms of value and governing provisions to the shares of the public company which are exchanged in the merger.

The bill amends chs. 607, 608, and 620, F.S., to specifically allow corporations, not-for-profit corporations, limited liability companies, and limited partnerships to merge with each other and with other business entities, both domestic and foreign, to form a "surviving entity" that can be either a corporation, limited liability company, limited partnership, or other business entity. Generally, the process set forth in the bill should streamline the merger process and enhance the flexibility of business structures.

The bill allows mergers of domestic corporations, not-for-profit corporations, limited liability companies, and limited partnerships with each other or other business entities, in accordance with procedures that are generally consistent with those currently provided for the merger of two or more corporations in ch. 607, F.S. The merger may occur upon the adoption of a plan of merger, which must include, among other things: the names of all business entities that are a party to the merger; the name of the surviving entity, all general partners if the surviving entity is a partnership, and all managers if the surviving entity is a limited liability company with management vested in one or more managers; the terms and conditions of the merger; and the manner and basis of converting shares, partnership interests, and the like of business entities into similar interests in the surviving entity.

The bill establishes the voting rights of members and managers of limited liability companies and general and limited partners in limited partnerships. The voting rights of shareholders are set forth in s. 607.1103, F.S. If the surviving entity is to be a partnership, all shareholders, general partners,

and the members of a limited liability company must consent in writing to becoming a general partner, with the resulting exposure to joint and several liability. If a shareholder, general partner, or member refuses to consent to becoming a general partner, the merger does not take place. All business entities involved must approve the plan for merger.

The bill references current procedures in s. 607.1103, F.S., as applicable to a corporation merging with other business entities. The bill provides for notice of a meeting to consider a merger plan to all limited liability company members and managers and all limited partnership general and limited partners. Information that must appear in the notice includes an explanation of dissenters' rights and a mechanism for establishing the "fair value" of a dissenting member's or partner's interest. Additionally, the bill provides the ability for limited liability companies and limited partnerships to amend or abandon a merger plan after approval, similar to that provided for corporations.

The bill requires a surviving entity to file articles of merger with the Secretary of State. The merger is effective on the date indicated in the articles or on the date of filing if no effective date is specified.

The bill provides that, on the effective date of the merger: only the surviving entity exists and all other entities cease to exist; title to all real estate and other property owned by a domestic party to the merger is vested in the surviving entity; the surviving entity is liable for all liabilities of all business entities which are a party to the merger; all claims, actions, or proceedings against a party to the merger may be continued against the surviving entity; creditors' rights are not affected by the merger; and shares, partnership interests, and the like are converted into a similar interest in the surviving entity.

The bill recognizes dissenters' rights for shareholders as provided in ss. 607.1301, 607.1302, and 607.1320, F.S., and establishes such rights for members and managers of limited liability companies and partners of limited partnerships. It also provides a procedure to establish the fair value of a member's or partner's interest in a business entity, similar to the procedure provided for shareholders, except for certain differences which reflect the types of entities involved.

Limited Liability Companies -- Taxation and Formation

This bill provides that a limited liability company (LLC) classified as a partnership for federal income tax purposes and formed under ch. 608, F.S., or qualified to do business in this state as a foreign LLC is not subject to Florida's corporate income tax. In particular, the bill:

- Amends s. 220.02(1), F.S., relating to the legislative intent for the Florida corporate income tax code, to specify the intent that such LLCs not be subject to the tax and to specify that the

code is not intended to tax any natural person who engages in business in this state as a member or manager of an LLC that is classified as a partnership for federal income tax purposes;

- Amends s. 220.03(1), F.S., relating to definitions under the corporate income tax code, to exclude LLCs that are taxable as partnerships for federal income tax purposes from the definition of the term “corporation”;
- Amends s. 220.13(2), F.S., relating to the definition of “taxable income” under the corporate income tax code, to exclude the income of specified LLCs from such definition; and
- Amends s. 608.471, F.S., relating to the tax on income of LLCs, to provide that an eligible LLC’s income is not subject to Florida’s corporate income tax. This section is further amended to provide that an eligible LLC shall be classified as a partnership for purposes of the state corporate income tax code or shall be classified identically to its classification for federal income tax purposes.

The bill also amends s. 608.406, F.S., relating to an LLC’s name, to provide that the words “limited liability company,” or the abbreviation “L.L.C.,” may be used at the end of an LLC’s name as an alternative to the words “limited company” or the abbreviation “L.C.”

This bill also amends ss. 608.405 and 608.407, F.S., to reduce the number of members necessary to form a limited liability company from two to one.

Miscellaneous Provisions

The bill amends s. 607.0730, F.S., to remove the 10-year limit on voting trusts.

The legislative intent section of Florida’s corporate income tax code, s. 220.02, F.S., is amended to specify the intent that, except as otherwise provided under the Internal Revenue Code (I.R.C.), a qualified subchapter “S” subsidiary shall not be treated, for the purposes of state income taxes, as a separate corporation or entity from the “S” corporation parent to which the subsidiary’s assets, liabilities, income, deductions, and credits are attributed under the I.R.C. The bill, however, does require a qualified subchapter “S” subsidiary to file an informational return to the Department of Revenue for the year in which the election is made to organize under such status.

The bill repeals multiple provisions from chs. 607, 617, and 620, F.S., relating to the reservation of business entity names, which is an inactive function of the Department of State.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 39-0; House 108-0

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

CS/SB 1626 — Occupational Safety and Health

by Commerce & Economic Opportunities Committee and Senator Harris

This bill eliminates various duties and powers prescribed to the Department of Labor and Employment Security's Division of Safety (division), including: mandated employee health and safety programs for employers with a high frequency or severity of work related injuries and penalties for failure to implement such programs; division authority to enter and inspect private employers; and private sector employer penalties for refusal to admit for inspection.

This bill additionally authorizes the division to provide safety consultations to employers who are insured pursuant to the joint underwriting plan approved by the Department of Insurance.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 35-1; House 67-47

SB 1724 — Unemployment Compensation

by Senators Holzendorf and Clary

This bill revises the definition of employment to exclude from unemployment compensation coverage certain election workers and inmates of penal institutions and revises the definition of wages to exclude employer-provided educational assistance payments. This bill further conforms benefit eligibility conditions to federal law and specifies limited use of Reed Act distributions in certain years.

If approved by the Governor, these provisions take effect October 1, 1998.

Vote: Senate 33-0; House 116-0

ECONOMIC DEVELOPMENT

CS/CS/HB 3351 — Corporate Income Tax/Sponsored Research Contracts

by Finance & Taxation Committee; Colleges & Universities Committee; Rep. Fasano and others (CS/CS/SB 742 by Education Committee; Commerce & Economic Opportunities Committee; and Senators Clary and Diaz-Balart)

This bill amends s. 220.15, F.S., relating to the adjusted federal income that must be apportioned to Florida under the state's corporate income tax code by a taxpayer doing business within and without the state. The bill provides that a taxpayer's real or tangible property in Florida that is certified to be dedicated exclusively to research and development activities under a sponsored research contract conducted in conjunction with and through an eligible university shall not be counted in the formula to determine how much of that taxpayer's federal income will be apportioned to Florida. In addition, compensation that is certified as paid to employees in Florida dedicated exclusively to such research and development activities shall not be counted in the apportionment formula. The bill defines the term "sponsored research contract" so that it must be an agreement between the university and the taxpayer, with funding provided from public or private sources.

Eligible universities include the 10 members of the State University System and non-public universities that are chartered in Florida and conduct professional programs or graduate programs at the doctoral level. According to the State Board of Independent Colleges and Universities, only three non-public universities currently fall into this category: the University of Miami, Nova Southeastern University, and the Florida Institute of Technology.

The Board of Regents and the president of the non-public university must make the respective certifications to the Department of Revenue. The bill specifies that certified research and development activities shall not cause a corporation to become subject to Florida corporate income taxes if the corporation would not otherwise be subject to such taxes. The property and payroll eliminated from the apportionment formula may be eliminated only for the duration of the contractual period for the sponsored research. In addition, the tax reduction caused by the elimination of eligible property and payroll from the apportionment formula may not exceed the amount paid to the university for the conduct of the sponsored research. Further, the provisions of the bill do not apply to sponsored research contracts in existence prior to July 1, 1998.

The bill authorizes the department to adopt rules, pursuant to the Administrative Procedure Act, to implement the provisions of the measure. The Board of Regents and the president of each participating non-public university must monitor the contracts and report to the Legislature by

February 1, 2000, on the effect of these provisions in attracting additional sponsored research contracts.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 40-0; House 119-0

SB 1262 — Small Business Technology Growth Program

by Senator Harris

This bill creates s. 288.95155, F. S., to create the Florida Small Business Technology Growth Program to be administered by the Technology Development Board of Enterprise Florida, Inc. The program is established to provide financial assistance to businesses having high job growth and emerging technology potential and fewer than 100 employees. A separate small business technology growth account is established by the board within the Florida Technology Research Investment Fund for the purpose of funding the provisions of this bill. This bill also specifies the sources and the use of funds in the account and provides criteria for awards of assistance from the program. The criteria includes giving priority to moderate risk and high risk ventures that offer the greatest opportunity for economic development.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 117-0

ECONOMIC DEVELOPMENT FINANCE AND TAX

HB 3113 — Community Contribution Tax Credits

by Reps. Fuller, Murman and others (CS/SB 192 by Ways & Means Committee and Senator Horne)

This bill raises the annual cap to \$5 million from \$2 million on the combined total amount of credits that may be claimed against corporate income tax, franchise tax, and insurance premium tax under the Community Contribution Tax Credit Program. The program was created to encourage businesses to make donations toward revitalization projects undertaken by redevelopment organizations (ch. 80-249, L.O.F). Eligible projects include those designed to construct or rehabilitate housing and commercial facilities or to promote entrepreneurial or job-development opportunities for low-income persons (s. 220.03(1)(t), F.S.). All projects, except for those related to housing for low-income persons, must be located in an enterprise zone (ss. 220.183(4)(d) and 624.5105(4)(d), F.S.).

The program authorizes corporations that make donations to approved redevelopment organizations to claim a credit equal to 50 percent of the donation against corporate income tax, franchise tax, or insurance premium tax. Under ss. 220.183 and 624.5105, F.S., an individual business may receive no more than \$200,000 in tax credits per year (ss. 220.183(3)(b) and 624.5105(3)(b), F.S.).

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 40-0; House 120-0

CS/SB 280 — Motor Vehicle and Truck Repair Parts

by Judiciary Committee and Senator Williams

This bill creates s. 686.30, F. S. to prohibit a manufacturer of repair parts for motor vehicles or trucks from terminating, canceling, or failing to renew a contract between the manufacturer and a distributor of such parts where the distributor agrees to maintain a stock of parts unless the manufacturer has good cause, as defined by the bill. The bill provides for liability when there is no good cause. The bill prohibits manufacturers of motor vehicle and truck repair parts from engaging in specified acts.

If approved by the Governor, these provisions take effect October 1, 1998.

Vote: Senate 33-0; House 118-0

SB 712 — Municipalities

by Senator Bronson

This bill (Chapter 98-37) amends s. 166.021, F. S., to authorize municipal governing bodies to expend public funds to attract and retain business enterprises.

The bill specifies that such use of public funds constitutes a public purpose, and the bill defines economic development activities as including but not limited to the following:

- Developing or improving local infrastructure;
- Issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants;
- Leasing or conveying real property; and
- Making grants to private enterprises for the expansion of businesses to the community.

These provisions were approved by the Governor, without his signature, and take effect April 30, 1998.

Vote: Senate 35-0; House 113-1

CS/HB 3681 — Capital Investment Tax Credits

by Finance & Taxation Committee, Rep. Ball and others (CS/CS/SB 1314 by Ways & Means Committee; Commerce & Economic Opportunities Committee; and Senators Bronson and Grant)

This bill creates a capital investment tax credit program, codified in s. 220.191, F.S., under which a qualified business may claim an annual credit against corporate income taxes equal to 5 percent of the eligible capital costs generated by a new or expanding facility in Florida that creates 100 new jobs in the state and is in one of the high-impact sectors identified by Enterprise Florida, Inc. (EFI). The bill prescribes the following additional conditions and requirements:

- The credit may be claimed for no more than 20 years, beginning with the commencement of operations of the qualifying project.
- The credit is granted only against the corporate income tax liability generated by or arising from the project itself.
- The sum of all credits may not exceed 100 percent of the eligible capital costs of the project.
- The annual credit may not exceed a specified percentage of the annual corporate income tax liability generated by the project. Those percentages are:
 - 100 percent, for a project with a cumulative capital investment of \$100 million or more;
 - 75 percent, for a project with a cumulative capital investment of at least \$50 million but less than \$100 million; and
 - 50 percent, for a project with a cumulative capital investment of at least \$25 million but less than \$50 million.

A project that results in a cumulative capital investment of less than \$25 million is not eligible for the program.

- The high-impact sectors to which a facility must belong are those identified by EFI as part of the high-impact grant program under s. 288.108(6), F.S., and include, but are not limited to: aviation, aerospace, automotive, and silicon technology industries.
- Prior to receiving the credits, a business must achieve and maintain the minimum employment goals beginning with commencement of operations at the qualifying project and continuing each year thereafter during which the credits are available.
- The credit may not be carried forward or backward.

The measure provides that the Office of Tourism, Trade, and Economic Development (OTTED), based upon a recommendation from EFI, shall certify a business as eligible to receive the credits, prior to the commencement of project operations, and shall forward the certification to the Department of Revenue. The department is required to enter into a written agreement with the business that, at a minimum, sets out the method by which income generated by or arising out of the qualifying project will be determined.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 40-0; House 115-0

WAGES

CS/SB 1114 — WAGES Program

by Ways & Means Committee and Senators McKay and Latvala

This bill makes various revisions to the Work and Gain Economic Self-sufficiency (WAGES) Program, provides for WAGES Program Employment Projects, enhances certain economic development incentive programs, and provides appropriations for programs.

WAGES Program State Board of Directors

This bill requires the WAGES Program State Board of Directors to approve the WAGES State Plan, operating budget, amendments thereto, as well as any WAGES related proposed rules. In addition, the Workforce Development Board of Enterprise Florida, Inc., or a state agency charged by law to implement the WAGES Program must collaborate with the staff of the WAGES Program State Board of Directors on any WAGES related policies, requests for proposals, and related directives. Furthermore, the Secretary of the Department of Transportation, or the Secretary's designee, is added to the WAGES Program State Board of Directors.

This bill further extends the life of the WAGES Program State Board of Directors to the year 2002.

Local WAGES Coalitions

This bill allows a person to be a member of a local WAGES coalition or a combined WAGES coalition/regional workforce development board regardless of whether the member, or an organization represented by a member, could benefit financially from transactions of the coalition. However, if the coalition enters into a contract with an organization or individual represented on

the coalition, the contract must be approved by a two-thirds vote of the entire board, and the board member who could benefit financially from the transaction must abstain from voting.

This bill adds to the membership of local WAGES coalitions a representative of a county health department or a representative of a healthy start coalition to serve as an ex officio, nonvoting member of the coalition.

This bill requires local WAGES coalitions to deliver the full continuum of services provided under the WAGES Program, including services that are provided at the point of application, by October 1, 1998. However, a local WAGES coalition may not determine an individual's eligibility for temporary cash assistance and all education and training must be provided through agreements with regional workforce development boards. Local WAGES coalitions must develop a transition plan to be approved by the WAGES Program State Board of Directors. This plan must provide for the utilization of space leased by the Department of Labor and Employment Security for WAGES service functions. By October 1, 1998, local WAGES coalitions may have negotiated and entered into new lease agreements or subleased for said space from the department. In the event a local WAGES coalition does not utilize the department's space, the department is not obligated to pay under any lease agreement for WAGES services entered into by the department since July 1, 1996. Career service employees of the Department of Labor and Employment Security who are subject to layoff due to the transfer of services, must be given priority consideration for employment by the local WAGES coalitions.

Domestic Violence and WAGES

This bill requires that local WAGES coalitions, in conjunction with their planning, coordination, and oversight functions specified in the statewide implementation plan, include in the local plan provisions for providing services to victims of domestic violence. This bill further contains the following provisions relating to domestic violence:

- Certain persons at risk of domestic violence will receive an exception from work requirement noncompliance penalties and an exception will be available for noncompliance related to treatment or remediation of the past effects of domestic violence;
- Provides that a victim of domestic violence may be granted a hardship exemption from time limitations if the effects of such domestic violence delay, interrupt, or otherwise adversely affect the individual's participation in WAGES;
- A person who has been battered or subject to extreme cruelty in the United States by a spouse or parent is a "qualified noncitizen" under specific circumstances;

- Program applicants or participants will receive information regarding services available from domestic violence centers or organizations;
- The risk of domestic violence will constitute good cause for a parent or caretaker relative's failure to cooperate with the establishment of paternity or the establishment, modification, or enforcement of certain child support orders; and
- Victims of domestic violence are excepted from the limitation on cash assistance for children born to families receiving temporary cash assistance.

WAGES Program Employment Projects

This bill creates a process to identify and develop WAGES Program Employment Projects. Every year, each local city and county economic development organization in consultation with the local WAGES coalitions, must identify economic development projects that can have the greatest impact on employing WAGES participants in their areas. These projects will be reviewed and prioritized by Enterprise Florida, Inc., in consultation with the WAGES Program State Board of Directors for approval by the Governor. The Governor is authorized to issue an executive order directing certain agencies to use identified resources for project completion. Local WAGES coalitions are required to enter into contracts with the appropriate state and local entities to implement such projects.

Employer Incentives

This bill removes repayment provisions for WAGES Program subsidizes including work supplementation, on-the-job-training, and incentive payments, however, these incentives may not be continued with any employer who exhibits a pattern of failing to provide participants with continued employment after the incentive payment period ends.

This bill creates the WAGES training bonus whereby an employer who hires a WAGES participant who has less than 6 months of eligibility for temporary cash assistance remaining and who pays the participant a wage that precludes the participant's eligibility for temporary cash assistance can receive \$240 for each full month of employment for a period that may not exceed 3 months. An employer who receives a WAGES training bonus for an employee may not receive a work supplementation subsidy for the same employee. Employment is defined as 35 hours per week at a wage of no less than minimum wage.

This bill prohibits the displacement of current employees with WAGES participants.

This bill expands the enterprise zone sales tax and corporate tax credit to JTPA or WAGES Program participants not residing in an enterprise zone.

This bill creates a Quick-response Training Program for WAGES participants. Enterprise Florida Inc., is given the authority to, at the discretion of the State WAGES Emergency Response Team, to award quick-response training grants and develop applicable guidelines for the training of participants in the WAGES Program.

WAGES Transportation

This bill expands the number of options available to local WAGES coalitions to assist WAGES participants in obtaining cost-effective and sustainable transportation. The Department of Transportation is required to assist transit operators in the planning, development, and coordination of transit services for WAGES participants. Transit providers receiving public transit block grant funds administered by the department are required to coordinate their planning and development activities with local WAGES coalitions. WAGES support services funds and funds appropriated to assist persons eligible under the Job Training Partnership Act are exempt from the definition of transportation disadvantaged funds. Entities responsible for the planning and delivery of transportation disadvantaged services are required to assist local WAGES coalitions in the development of innovative transportation services for local WAGES coalitions.

This bill authorizes transitional transportation assistance for a period of up to 1 year after a WAGES participant is no longer eligible to participate in the WAGES Program due to earnings. This bill stipulates that transitional transportation must be employment related and declares that this provision does not constitute an entitlement to transportation services.

WAGES Program Participants

This bill provides a work “credit” for WAGES participants. WAGES participants who are not exempt from work activity requirements can earn 1 month of eligibility for extended temporary cash assistance, up to a maximum of 12 additional months, for each month in which the participant is fully complying with work activity requirements of the WAGES Program through unsubsidized private sector employment. However, a participant may not receive temporary cash assistance under the work credit provision, in combination with other periods of temporary cash assistance, for longer than 48 months.

This bill provides an exemption from the ten percent reduction in benefits under a hardship exemption if recommended by the local WAGES coalition and provides an exemption to time limits for individuals who are totally responsible for the personal care of a disabled family member

when such care is verified and alternate care is not available. This exemption must be evaluated annually.

This bill establishes a voluntary relocation assistance program to assist WAGES participants in relocating within the state when there is a basis to believe that the relocation will contribute to the applicant's ability to achieve self-sufficiency. Provisions are made for restrictions upon future assistance unless the purpose of receipt of the relocation assistance involves domestic violence. Criteria must be developed by the WAGES State Board of Directors to determine if a community receiving a relocated family has the capacity to provide needed services and employment opportunities.

Department of Labor and Employment Security/Department of Children and Family Services

This bill exempts the Department of Labor and Employment Security and Department of Children and Family Services from the requirements of ss. 255.25(2)(b) and 255.25(3)(a), F.S., relating to the requirement of advertisement for and receipt of competitive bids for the procurement of leased real property until June 30, 1999.

Appropriations

This bill provides a \$32 million appropriation from TANF funds to support the activities of local WAGES coalitions in the preparing, placement, and supporting of WAGES Program participants in jobs or other approved work activities.

This bill provides a \$1.9 million appropriation to the National Guard to establish a life preparation program for children of WAGES participants and economically disadvantaged youths in concert with neighborhood revitalization efforts.

This bill provides for two specific appropriations for support of WAGES Program Employment Projects including:

- Up to \$25 million of funds designated for WAGES reserve; and
- Up to \$7.5 million from funds associated with the Welfare-to-Work grant in the Employment Security Administration Trust Fund. Of this \$7.5 million, \$2.5 million is to be provided to the Institute of Food and Agricultural Sciences of the University of Florida for WAGES job opportunities, and \$1 million is to be provided to the Department of Military Affairs to provide job readiness services for WAGES Program participants as approved by the WAGES Program State Board of Directors.

If approved by the Governor, these provisions take effect June 30, 1998.

Vote: Senate 38-0; House 112-0

STATE AIR CARRIERS

CS/HB 3393 — Air Carriers

by Business Development and International Trade Committee, Rep. Turnbull and others
(CS/CS/SB 1846 by Governmental Reform & Oversight Committee; Commerce & Economic Opportunities Committee; and Senator Williams)

This bill directs the Department of Management Services to evaluate the state contract for air carrier service for state employees to determine how to improve the quality, availability, and cost of air service to state employees and other citizens. The department is to then undertake a 3-year pilot program based on its analysis in lieu of the current state contracting provisions, and then evaluate the pilot program.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to review the effects and fiscal impact of the program and provide the legislature with a preliminary report prior to the 1999 Session. The report is to contain information on and analyses of additional costs incurred and savings realized by state agencies, including per diem, subsistence, productivity and time to the travelers, and cost of airfare.

Enterprise Florida, Inc., is directed, as well, to undertake and complete a review on the impact of regional airports on economic development in the State of Florida.

This bill does not increase the rulemaking authority of a state agency.

If approved by the Governor, these provisions take effect July 1, 1998.

Vote: Senate 39-0; House 115-0