

Tab 1	SB 838 by Simmons; (Similar to CS/H 00495) Business Organizations					
761118	A	S	RCS	CM, Simmons	Delete L.242 - 321.	01/15 09:31 AM
281600	A	S	RCS	CM, Simmons	btw L.648 - 649:	01/15 09:31 AM
621802	A	S	RCS	CM, Simmons	Delete L.1900 - 2004:	01/15 09:31 AM
506566	A	S	RCS	CM, Simmons	btw L.2086 - 2087:	01/15 09:31 AM

Tab 2	SB 848 by Montford (CO-INTRODUCERS) Perry, Baxley; (Similar to H 00891) Rural Communities					
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Tab 3	SB 886 by Powell; (Similar to H 00567) Errors in Deeds					
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Tab 4	SB 1192 by Gruters; (Compare to H 06061) Tax on Aviation Fuel					
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 838

INTRODUCER: Commerce and Tourism Committee and Senator Simmons

SUBJECT: Business Organizations

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 838 amends several sections of the Florida Business Corporation Act, ch. 607, F.S., and its related statutes to:

- Make clarifying and conforming changes to, and fix minor errors in, the 2019 Florida Business Corporation Act legislation;¹
- Modify the laws that govern the makeup of not-for-profit corporations' board committees to allow persons other than board directors to serve on those committees; and
- Re-instate the Florida Department of State's ability to direct interrogatories to a corporation to determine the corporation's compliance with ch. 607, F.S.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA),² to better reflect recent changes to the Model Business Corporation Act³ and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). These changes were made with the input of the Florida Bar's Business Law Section (Business Law Section). Since

¹ Chapter 2019-90, L.O.F. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

² *Id.*

³ American Bar Association, *Model Business Corporation Act* (2016),

https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf (last visited Jan. 14, 2020).

final passage of the 2019 legislation, the Business Law Section has identified errors and inconsistencies to the 2019 legislation. This bill, in part, attempts to resolve the issues identified.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Interrogatories issued by the Department of State

The 2019 FBCA revision inadvertently deleted language from s. 607.0130, F.S., that permitted the Department of State (Department) to direct interrogatories⁴ to a corporation that was regulated under the FBCA, or to any of its officers or directors.⁵ The Department used these interrogatories to determine a corporation's compliance with the FBCA and could institute civil proceedings against a corporation found to be in violation.⁶

Section 67 creates s. 607.1703, F.S., to restore the Department's authority to issue interrogatories to corporations that operate pursuant to the FBCA, and to their officers or directors. Like the deleted FBCA provision, the bill:

- Gives the corporation 30 days to respond, or longer if the Department permits;
- Requires that interrogatories directed to an individual be answered by that individual;
- Provides timeframes for filing a court record relating to the interrogatories; and
- Grants powers and duties to the Department to administer the FBCA, including authority to:
 - Institute a civil action in a circuit court to collect a penalty, fee, or tax that is owed to the state by the corporation, and to compel any legally required finding, qualification, or registration;
 - File a *lis pendens*⁷ against any property owned by the corporation;
 - Refer its findings to the Department of Legal Affairs for the purpose of initiating further action; and
 - Adopt rules necessary to carry out the FBCA.

The bill slightly modifies the FBCA's prior language to specify that the Department may serve interrogatories on a *domestic or foreign* corporation, and to change references from a corporation's "president, vice president, secretary, or assistant secretary" to a corporation's "officer or director" [or] "shareholder... or fiduciary," when specified.

⁴ "Interrogatories" are a list of questions posed by one party to its opposing party in a civil action as part of the discovery process. The recipient must answer the questions under oath. *Interrogatory* Legal Information Institute, available at <https://www.law.cornell.edu/wex/interrogatory> (last visited Jan. 14, 2020).

⁵ See Ch. 2019-90, Laws of Fla.; see also The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607* (Jan. 24, 2019)(on file with the Senate Committee on Commerce and Tourism).

⁶ Section 607.0130 (2007).

⁷ A "lis pendens," is filed with the clerk of the court to provide written notice that a lawsuit has been filed that involves either title to or a claimed ownership interest in real property. See Legal Information Institute, *Lis Pendens*, https://www.law.cornell.edu/wex/lis_pendens (last visited Jan. 14, 2020).

Not-for-Profit Corporation Board Committees

A not-for-profit corporation's board of directors is vested with the corporation's powers⁸ and must fulfill the corporation's obligations to its members, beneficiaries, donors, and community.⁹ The board of directors may also appoint board directors to serve as members of a corporate committee, which acts with the board's full authority, except that the committee cannot:¹⁰

- Approve or recommend for approval actions or proposals that members must approve;
- Fill board or board committee vacancies; or
- Adopt, amend, or repeal the bylaws.

Florida law does not allow a not-for-profit corporation's board to appoint non-directors to its board committees. Despite a lack of authority, it is believed that many not-for-profit corporations include non-director members on the board committees.¹¹

The Model Not-For-Profit Corporation Act permits a not-for-profit corporation's board to create an advisory committee made up of non-director appointees. The Model Not-For-Profit Corporation Act also dictates that an advisory committee may not have board authority, and may only make recommendations to the board or the not-for-profit corporation's officers or members.¹²

Section 77 authorizes a not-for-profit corporation's board of directors to create board committees and appoint as members thereto any person, whether or not they serve as a director for the not-for-profit corporation's board, subject to the following requirements:

- If an executive committee is created by a resolution of the board of directors, the board may appoint non-board members, but the majority of the executive committee's membership must consist of board directors; and
- If the committee is created by the board or is otherwise authorized by the articles of incorporation or bylaws, and its scope of authority relates to director elections, nominations, or credentials, or is otherwise involved in the director election process, the committee's membership may be made up of entirely non-board members; and
- If an advisory committee is created by the corporation, its membership may consist of any number of non-directors, but the advisory committee may not act on behalf of the board, exercise any board power or authority, or bind the not-for-profit corporation to any action. The advisory committee may make recommendations to the board or corporate officers or members, however.

⁸ See s. 617.01401(2), F.S. (defining a "board of directors" as the "group of persons vested with the management of the affairs of the corporation..."), and s. 607.0302, F.S., which outlines corporate duties as the powers to: sue and be sued; purchase, lease or acquire, and own, hold, improve, use and deal with, real or personal property; sell, convey, mortgage, or otherwise dispose of all or part of its property; lend or borrow money; and make contracts and incur liabilities.

⁹ Jeffrey A. Baskies and Cara Freedman, *To Protect and to Serve: The Duties and Responsibilities of Directors of Florida Not-For-Profit Corporations*, Florida Bar Journal Vol. 89, No. 9 (Nov. 2015), available at <https://www.floridabar.org/the-florida-bar-journal/to-protect-and-to-serve-the-duties-and-responsibilities-of-directors-of-florida-not-for-profit-corporations/> (last visited Jan. 14, 2020).

¹⁰ Section 617.0825(1) and (3), F.S.

¹¹ The Florida Bar Business Law Section, *White Paper for S.B. [838] & H.B. [495]*, (Oct. 21, 2019)(on file with the Senate Committee on Commerce and Tourism).

¹² American Bar Association Committee on Nonprofit Organizations, *Model Nonprofit Corporation Act* §8.25 (3d ed. 2008).

Additionally, the bill defines a non-director committee member's responsibility, fiduciary duty,¹³ and liability protections¹⁴ as equal to those provided to a director committee member.

This section does not apply to a condominium, cooperative, or homeowners' association board's fining or architectural review committees acting pursuant to ss. 718.303(3), 719.303(3), and 720.303(2) or 720.3035(1), respectively.

Conforming Changes

The bill amends ss. 607.0120, 607.0125, 607.0141, 607.0620, 607.0720, 607.1002, 607.11921, 607.1202, 607.1302, 607.1333, 607.1422, 607.1431, 607.14401, 607.1502, 607.1504, 607.15091, 607.1602, and 605.0116 to provide for consistent terminology throughout ch. 607, F.S., by amending the following terms from:

- "act" to "chapter;"
- "action" to "proceeding;"
- "representative" to "authorized representative;"
- "corporation" to "domestic corporation or foreign corporation;"
- "his or her" to "his, her, or its;"
- "business entity" to "eligible entity;"¹⁵
- "successor" to "successor or assignee;"
- "rights of action" to "proceedings and actions;" and
- "do business" to "transact business."

The bill also amends ss. 607.1103, 607.1106, 607.11920, 607.11921, 607.11923, 607.11924, 607.11935, 607.1432, 607.1520, and 607.504 to:

- Add references to obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property in connection with organic transactions;
- Ensure consistent use of the term "separate voting group;"
- Change "the receiver" to "any receiver" to reflect that a court may appoint and order compensation for one or more receivers;
- Tailor a reference regarding the process for the withdrawal and cancellation of certificate of authority for a foreign corporation to refer to a foreign corporation, rather than to "it;" and
- Clarify that an entity may elect to become a social purpose corporation by domestication.

Clarifying Changes

The bill makes clarifying changes to ss. 607.0601, 607.0602, 607.0705, 607.0808, 607.0850, 607.0901, 607.1102, 607.1103, 607.11921, 607.11932, 607.1501, 607.1509, and 607.1602. The changes include:

¹³ A director must discharge his or her duties to the corporation in good faith, with the care of an ordinarily prudent person in a similar position, and in a manner he or she reasonably believes to be in the not-for-profit corporation's best interest. *See* s. 617.0830(1)(a)-(c), F.S.

¹⁴ A director is not liable for monetary damages for any statement, vote, decision to act or not act, or failure to act, unless the director breached his or her duties. *See* ss. 607.0831 and 617.0830, F.S.

¹⁵ An "eligible entity" is a domestic corporation, foreign corporation, nonprofit corporation, general partnership, limited partnership, limited liability company, real estate investment trust, or any other foreign or domestic entity that is organized under an organic law. Section 607.01401(28)(a), F.S.

- Specifying that a series of shares that has voting rights is authorized to receive the corporation's net assets upon its dissolution;
- Replacing language to clarify that a series of shares may exist only within one class of shares rather than in one or more classes;
- Changing the term "checks in payment" to "payment" to permit forms of payment to shareholders other than by check;
- Permitting a corporate board to meet on the issue of removal of a board director *and* any additional purpose, if all of the purposes are stated on a properly distributed meeting notice;
- Expanding the definition of "expenses" to include reasonable attorney fees *and expenses*;
- Replacing, in the context of affiliated transactions governed by s. 607.0901, F.S., the term "shares" with "interests" to accommodate those entities that do not have shares;
- Clarifying that a domestic corporation may acquire all of, or one or more classes or series of, both another corporation's shares *and* its rights to acquire shares;
- Ensuring that laws that govern organic transactions contemplate the transaction of all of the following: obligations, other securities, eligible interests, and rights to acquire any combination of shares, securities, cash, or property;
- Specifying that s. 607.1103(6)(a), F.S., details the voting procedures on a plan of merger only;
- Permitting a corporation's articles of incorporation to limit or eliminate specific voting rights, or any combination thereof, as applies to a plan of merger or plan for share exchange;
- Clarifying that ch. 607, F.S., in addition to a foreign corporation's articles of incorporation or board action, may require a vote greater than a quorum to approve the foreign corporation's plan of domestication or plan of conversion;
- Clarifying that a foreign corporation that maintains an account (not just a bank account) in a financial institution is not transacting business, and is therefore not subject to the Department's regulatory authority in virtue thereof;
- Replacing an incorrect word to clarify that a statement of change or similar document is effective when it has been filed *with* the department, not *by* it; and
- Specifying that a shareholder may only inspect the records of actions taken without a meeting by a board committee *of the corporation*.

Cross-Reference Corrections

The bill corrects missing or incorrect cross references in ss. 607.1406, 607.1422, 607.1430, 607.1504, 607.1604, and 607.1622, F.S.

The bill also modifies the sections, subsections, or paragraphs to which provisions apply in ss. 607.0721 and 607.605.0702, F.S.

Grammar, Punctuation, and Duplicative Language Corrections

The bill corrects non-substantive grammar and punctuation errors in ss. 607.0127, 607.01401, 607.0501, 607.0623, 607.0630, 607.0704, 607.0732, 607.0750, 607.0832, 607.0855, 607.0858, 607.1003, 607.11 03, 607.11035, 607.11045, 607.11932, 607.11935, 607.1303, 607.1320, 607.1340, 607.1403, 607.1430, 607.1503, 607.1505, 607.1507, 607.15101, 605.0702, 605.0716, and 617.0501.

The bill also deletes unnecessary and duplicative language in ss. 605.1104, 607.0630, 607.0707, and 607.1301.

Effective Date

Section 78 provides that the act takes effect upon becoming law.

Bill Section Directory

Section 1	Section 607.0120, F.S.
Section 2	Section 607.0123, F.S.
Section 3	Section 607.0125, F.S.
Section 4	Section 607.0127, F.S.
Section 5	Section 607.01401, F.S.
Section 6	Section 607.0141, F.S.
Section 7	Section 607.0501, F.S.
Section 8	Section 607.0601, F.S.
Section 9	Section 607.0602, F.S.
Section 10	Section 607.0620, F.S.
Section 11	Section 607.0623, F.S.
Section 12	Section 607.0630, F.S.
Section 13	Section 607.0704, F.S.
Section 14	Section 607.0705, F.S.
Section 15	Section 607.0707, F.S.
Section 16	Section 607.0720, F.S.
Section 17	Section 607.0721, F.S.
Section 18	Section 607.0732, F.S.
Section 19	Section 607.0750, F.S.
Section 20	Section 607.0808, F.S.
Section 21	Section 607.0832, F.S.
Section 22	Section 607.0850, F.S.
Section 23	Section 607.0855, F.S.
Section 24	Section 607.0858, F.S.
Section 25	Section 607.0901, F.S.
Section 26	Section 607.1002, F.S.
Section 27	Section 607.1003, F.S.
Section 28	Section 607.1102, F.S.
Section 29	Section 607.1103, F.S.
Section 30	Section 607.11035, F.S.
Section 31	Section 607.11045, F.S.
Section 32	Section 607.1106, F.S.
Section 33	Section 607.11920, F.S.
Section 34	Section 607.11921, F.S.
Section 35	Section 607.11923, F.S.
Section 36	Section 607.11924, F.S.
Section 37	Section 607.11932, F.S.
Section 38	Section 607.11933, F.S.
Section 39	Section 607.11935, F.S.
Section 40	Section 607.1202, F.S.
Section 41	Section 607.1301, F.S.
Section 42	Section 607.1302, F.S.
Section 43	Section 607.1303, F.S.

Section 44	Section 607.1320, F.S.
Section 45	Section 607.1333, F.S.
Section 46	Section 607.1340, F.S.
Section 47	Section 607.1403, F.S.
Section 48	Section 607.1406, F.S.
Section 49	Section 607.1422, F.S.
Section 50	Section 607.1430, F.S.
Section 51	Section 607.1431, F.S.
Section 52	Section 607.1432, F.S.
Section 53	Section 607.14401, F.S.
Section 54	Section 607.1501, F.S.
Section 55	Section 607.1502, F.S.
Section 56	Section 607.1503, F.S.
Section 57	Section 607.1504, F.S.
Section 58	Section 607.1505, F.S.
Section 59	Section 607.1507, F.S.
Section 60	Section 607.1509, F.S.
Section 61	Section 607.15091, F.S.
Section 62	Section 607.15101, F.S.
Section 63	Section 607.1520, F.S.
Section 64	Section 607.1602, F.S.
Section 65	Section 607.1504, F.S.
Section 66	Section 607.1622, F.S.
Section 67	Section 607.1703, F.S.
Section 68	Section 607.1907, F.S.
Section 69	Section 607.504, F.S.
Section 70	Section 605.0116, F.S.
Section 71	Section 605.0207, F.S.
Section 72	Section 605.0215, F.S.
Section 73	Section 605.0702, F.S.
Section 74	Section 605.0716, F.S.
Section 75	Section 605.1104, F.S.
Section 76	Section 617.0501, F.S.
Section 77	Section 617.0825, F.S.
Section 78	Effective Date

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 607.1703 of the Florida Statutes and substantially amends the following sections of the Florida Statutes: 607.0120, 607.0123, 607.0125, 607.0127, 607.01401, 607.0141, 607.0501, 607.0601, 607.0602, 607.0620, 607.0623, 607.0630, 607.0704, 607.0705, 607.0707, 607.0720, 607.0721, 607.0732, 607.0750, 607.0808, 607.0832, 607.0850, 607.0855, 607.0858,

607.0901, 607.1002, 607.1003, 607.1102, 607.1103, 607.11035, 607.11045, 607.1106, 607.11920, 607.11921, 607.11923, 607.11924, 607.11932, 607.11933, 607.11935, 607.1202, 607.1301, 607.1302, 607.1303, 607.1320, 607.1333, 607.1340, 607.1403, 607.1406, 607.1422, 607.1430, 607.1431, 607.1432, 607.14401, 607.1501, 607.1502, 607.1503, 607.1504, 607.1505, 607.1507, 607.1509, 607.15091, 607.15101, 607.1520, 607.1602, 607.1604, 607.1622, 607.1907, 607.504, 605.0116, 605.0207, 605.0215, 605.0702, 605.0716, 605.1104, 617.0501, 617.0825.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 14, 2020:

- Deletes unnecessary language that implies that a corporation could obtain a life insurance policy for a shareholder that is not a natural person;
- Clarifies that a favorable vote of a majority of all shares entitled to vote on an amendment are required to amend a corporation's articles of incorporation;
- Provides that changes made to board committee membership requirements do not apply to condominium, cooperative, or homeowner's association committees that perform specific duties; and
- Deletes duplicative rulemaking authority in chs. 605 and 607, F.S.

- B. **Amendments:**

None.



761118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
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	.	
	.	

The Committee on Commerce and Tourism (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 242 - 321.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 8

and insert:

607.0125, 607.0127, 607.01401, 607.0141,



281600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Simmons) recommended the following:

Senate Amendment (with directory amendment)

Between lines 648 and 649
insert:

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3), requires a greater vote or a greater quorum, the approval of the amendment requires the approval of the shareholders at a meeting at which a quorum exists consisting of at least a majority of the shares entitled to be cast on the amendment ~~exists~~, and, if



281600

11 any class or series of shares is entitled to vote as a separate
12 group on the amendment, except as provided in s. 607.1004(3),
13 the approval of each such separate voting group at a meeting at
14 which a quorum of the voting group exists consisting of at least
15 a majority of the votes entitled to be cast on the amendment by
16 that voting group.

17

18 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

19 And the directory clause is amended as follows:

20 Delete lines 631 - 632

21 and insert:

22 Section 28. Paragraph (a) of subsection (2) and subsections
23 (4) and (5) of section 607.1003, Florida Statutes, are amended
24 to read:



621802

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1900 - 2004

and insert:

Section 69. Section 607.1907, Florida Statutes, is amended to read:

607.1907 Saving provision.—

(1) Except as to procedural provisions, chapter 2019-90, Laws of Florida, ~~this act~~ does not affect a pending action or proceeding or a right accrued before January 1, 2020, and a



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11 pending civil action or proceeding may be completed, and a right
12 accrued may be enforced, as if chapter 2019-90, Laws of Florida,
13 ~~this act~~ had not become effective.

14 (2) If a penalty or punishment for violation of a statute
15 or rule is reduced by chapter 2019-90, Laws of Florida, ~~this~~
16 ~~act,~~ the penalty or punishment, if not already imposed, shall be
17 imposed in accordance with chapter 2019-90, Laws of Florida ~~this~~
18 ~~act.~~

19 Section 70. Subsection (3) of section 607.504, Florida
20 Statutes, is amended to read:

21 607.504 Election of social purpose corporation status.-

22 (3) If an entity elects to become a social purpose
23 corporation by amendment of the articles of incorporation or by
24 a merger, domestication, conversion, or share exchange, the
25 shareholders of the entity are entitled to appraisal rights
26 under and pursuant to ss. 607.1301-607.1340.

27 Section 71. Subsection (1) of section 605.0116, Florida
28 Statutes, is amended to read:

29 605.0116 Change of name or address by registered agent.-

30 (1) If a registered agent changes his, ~~or~~ her, or its name
31 or address, the agent may deliver to the department for filing a
32 statement of change that provides the following:

33 (a) The name of the limited liability company or foreign
34 limited liability company represented by the registered agent.

35 (b) The name of the registered agent as currently shown in
36 the records of the department for the limited liability company
37 or foreign limited liability company.

38 (c) If the name of the registered agent has changed, his,
39 her, or its new name.



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40 (d) If the address of the registered agent has changed, the
41 new address.

42 (e) A statement that the registered agent has given the
43 notice required under subsection (2).

44 Section 72. Subsections (2) and (7) of section 605.0207,
45 Florida Statutes, are amended to read:

46 605.0207 Effective date and time.—Except as otherwise
47 provided in s. 605.0208, and subject to s. 605.0209(3), any
48 document delivered to the department for filing under this
49 chapter may specify an effective time and a delayed effective
50 date. In the case of initial articles of organization, a prior
51 effective date may be specified in the articles of organization
52 if such date is within 5 business days before the date of
53 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
54 605.0209, a record filed by the department is effective:

55 (2) If the record filed specifies an effective time, but
56 not a prior or delayed effective date, on the date the record is
57 accepted, as evidenced by the department's endorsement, and
58 ~~filed~~ at the time specified in the filing.

59 (7) If the record filed ~~a filed document~~ does not specify
60 the time zone or place at which the date or time, or both, is to
61 be determined, the date or time, or both, at which it becomes
62 effective shall be those prevailing at the place of filing in
63 this state.

64 Section 73. Section 605.0215, Florida Statutes, is amended
65 to read:

66 605.0215 Certificates to be received in evidence and
67 evidentiary effect of certified copy of filed document.—All
68 certificates issued by the department in accordance with this



621802

69 chapter shall be taken and received in all courts, public
70 offices, and official bodies as prima facie evidence of the
71 facts stated. A certificate from the department delivered with a
72 copy of a document filed by the department bearing the signature
73 of the secretary of state, which may be in facsimile, and the
74 seal of this state, is conclusive evidence that the original
75 document is on file with the department.

76 Section 74. Paragraph (b) of subsection (2) of section
77 605.0702, Florida Statutes, is amended to read:

78 605.0702 Grounds for judicial dissolution.—

79 (2)

80 (b) For purposes of ~~As used in~~ this section, the term
81 “deadlock sale provision” means a provision in an operating
82 agreement which is or may be applicable in the event of a
83 deadlock among the managers or the members of the limited
84 liability company which the members of the company are unable to
85 break and which provides for a deadlock breaking mechanism,
86 including, but not limited to:

- 87 1. A redemption or a purchase and sale of interests;
- 88 2. A governance change, among or between members;
- 89 3. The sale of the company or all or substantially all of
90 the assets of the company; or
- 91 4. A similar provision that, if initiated and effectuated,
92 breaks the deadlock by causing the transfer of interests, a
93 governance change, or the sale of all or substantially all of
94 the company's assets.

95 Section 75. Subsection (2) of section 605.0716, Florida
96 Statutes, is amended to read:

97 605.0716 Judicial review of denial of reinstatement.—



621802

98 (2) Within 30 days after service of a notice of denial of
99 reinstatement, a limited liability company may appeal the denial
100 by petitioning the Circuit Court of Leon County to set aside the
101 dissolution. The petition must be served on the department and
102 must contain a copy of the department's notice of administrative
103 dissolution, the company's application for reinstatement, and
104 the department's notice of denial.

105 Section 76. Subsection (4) of section 605.1104, Florida
106 Statutes, is amended to read:

107 605.1104 Interrogatories by department; other powers of
108 department.-

109 ~~(4) The department has the power and authority reasonably~~
110 ~~necessary to administer this chapter efficiently, to perform the~~
111 ~~duties herein imposed upon it, and to adopt reasonable rules~~
112 ~~necessary to carry out its duties and functions under this~~
113 ~~chapter.~~

114
115 ===== T I T L E A M E N D M E N T =====

116 And the title is amended as follows:

117 Delete lines 51 - 59

118 and insert:

119 findings to the Department of Legal Affairs; amending
120 ss. 607.1907, 607.504, and 605.0116, F.S.; making
121 technical changes; amending s. 605.0207, F.S.;

122 specifying that certain documents accepted by the
123 department for filing are effective on the date the
124 records are accepted by the department; making a
125 technical change; amending ss. 605.0215, 605.0702,
126 605.0716, 605.1104, and 617.0501, F.S.; making



621802

127

technical



506566

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/15/2020	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Simmons) recommended the following:

Senate Amendment (with title amendment)

Between lines 2086 and 2087

insert:

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.303(2), or s. 720.3035(1), respectively.

===== T I T L E A M E N D M E N T =====



11 And the title is amended as follows:
12 Delete line 70
13 and insert:
14 authorizations for advisory committees; providing
15 applicability; providing an

By Senator Simmons

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1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 607.0120, F.S.; making technical changes; amending s.
 4 607.0123, F.S.; specifying that certain documents
 5 accepted by the Department of State for filing are
 6 effective on the date the documents are accepted by
 7 the department; making technical changes; amending ss.
 8 607.0125, 607.0127, 607.01401, 607.0141, 607.0302,
 9 607.0501, and 607.0601, F.S.; making technical
 10 changes; amending s. 607.0602, F.S.; revising the
 11 authority of a board of directors to reclassify
 12 certain unissued shares; amending ss. 607.0620,
 13 607.0623, 607.0630, 607.0704, 607.0705, 607.0707,
 14 607.0720, 607.0721, 607.0732, and 607.0750, F.S.;
 15 making technical changes; amending s. 607.0808, F.S.;
 16 revising the required contents of a meeting notice
 17 relating to the removal of a director by shareholders;
 18 amending s. 607.0832, F.S.; making a technical change;
 19 amending s. 607.0850, F.S.; revising the definition of
 20 the term "expenses"; amending ss. 607.0855 and
 21 607.0858, F.S.; making technical changes; amending s.
 22 607.0901, F.S.; revising definitions; amending ss.
 23 607.1002 and 607.1003, F.S.; making technical changes;
 24 amending s. 607.1102, F.S.; authorizing a domestic
 25 corporation to acquire one or more classes or series
 26 of shares under certain circumstances; amending ss.
 27 607.1103, 607.11035, 607.11045, 607.1106, and
 28 607.11920, F.S.; making technical changes; amending s.
 29 607.11921, F.S.; revising an exception for the

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30 procedure to approve a plan of domestication; making a
 31 technical change; amending ss. 607.11923 and
 32 607.11924, F.S.; making technical changes; amending s.
 33 607.11932, F.S.; revising an exception for the
 34 procedure to approve a plan of conversion; making a
 35 technical change; amending ss. 607.11933, 607.11935,
 36 607.1202, 607.1301, 607.1302, 607.1303, 607.1320,
 37 607.1333, 607.1340, 607.1403, 607.1406, 607.1422,
 38 607.1430, 607.1431, 607.1432, 607.14401, 607.1501,
 39 607.1502, 607.1503, 607.1504, 607.1505, 607.1507,
 40 607.1509, 607.15091, 607.15101, 607.1520, 607.1602,
 41 607.1604, and 607.1622, F.S.; making technical
 42 changes; creating s. 607.1703, F.S.; authorizing the
 43 department to direct certain interrogatories to
 44 certain corporations and to officers or directors of
 45 certain corporations; providing requirements for
 46 answering the interrogatories; providing requirements
 47 for the department relating to interrogatories;
 48 authorizing the department to bring certain actions;
 49 authorizing the department to file a lis pendens
 50 against certain property and to certify certain
 51 findings to the Department of Legal Affairs; providing
 52 for powers and duties of the Department of State;
 53 amending ss. 607.1907, 607.504, and 605.0116, F.S.;
 54 making technical changes; amending s. 605.0207, F.S.;
 55 specifying that certain documents accepted by the
 56 department for filing are effective on the date the
 57 records are accepted by the department; making a
 58 technical change; amending ss. 605.0215, 605.0702,

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59 605.0716, and 617.0501, F.S.; making technical
 60 changes; amending s. 617.0825, F.S.; authorizing a
 61 board of directors to appoint persons to serve on
 62 certain committees; requiring that a majority of the
 63 persons on such committees be directors; providing
 64 exceptions; making technical changes; providing
 65 responsibilities and duties for non-director committee
 66 members; authorizing a corporation to create or
 67 authorize the creation of advisory committees;
 68 specifying an advisory committee is not a committee of
 69 the board of directors; providing prohibitions and
 70 authorizations for advisory committees; providing an
 71 effective date.

72
 73 Be It Enacted by the Legislature of the State of Florida:

74
 75 Section 1. Subsection (10) of section 607.0120, Florida
 76 Statutes, is amended to read:

77 607.0120 Filing requirements.—

78 (10) When the document is delivered to the department for
 79 filing, the correct filing fee, and any other tax, license fee,
 80 or penalty required to be paid by this chapter ~~act~~ or other law
 81 shall be paid or provision for payment made in a manner
 82 permitted by the department.

83 Section 2. Subsections (1) and (2) of section 607.0123,
 84 Florida Statutes, are amended to read:

85 607.0123 Effective time and date of document.—Except as
 86 otherwise provided in s. 607.0124(5), and subject to s.

87 607.0124(4), any document delivered to the department for filing

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88 under this chapter may specify an effective time and a delayed
 89 effective date. In the case of initial articles of
 90 incorporation, a prior effective date may be specified in the
 91 articles of incorporation if such date is within 5 business days
 92 before the date of filing.

93 (1) Subject to s. 607.0124, a document accepted for filing
 94 is effective:

95 (a) If the record filed ~~filing~~ does not specify an
 96 effective time and does not specify a prior or a delayed
 97 effective date, on the date and at the time the record ~~filing~~ is
 98 accepted, as evidenced by the department's endorsement of the
 99 date and time on the filing.

100 (b) If the record filed ~~filing~~ specifies an effective time,
 101 but not a prior or delayed effective date, on the date the
 102 record ~~filing~~ is accepted, as evidenced by the department's
 103 endorsement, and filed at the time specified in the filing.

104 (c) If the record filed ~~filing~~ specifies a delayed
 105 effective date, but not an effective time, at 12:01 a.m. on the
 106 earlier of:

107 1. The specified date; or

108 2. The 90th day after the date the record is filed ~~of the~~
 109 ~~filing~~.

110 (d) If the record filed ~~filing~~ specifies a delayed
 111 effective date and an effective time, at the specified time on
 112 the earlier of:

113 1. The specified date; or

114 2. The 90th day after the date the record is filed ~~of the~~
 115 ~~filing~~.

116 (e) If the record filed ~~filing~~ is of initial articles of

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117 incorporation and specifies an effective date before the date of
118 the filing, but no effective time, at 12:01 a.m. on the later
119 of:

- 120 1. The specified date; or
- 121 2. The 5th business day before the date ~~of~~ the record is
122 filed filing.

123 (f) If the record filed filing is of initial articles of
124 incorporation and specifies an effective time and an effective
125 date before the date of the filing, at the specified time on the
126 later of:

- 127 1. The specified date; or
- 128 2. The 5th business day before the date the record is filed
129 of the filing.

130 (2) If the record filed ~~a filed document~~ does not specify
131 the time zone or place at which the date or time, or both, is to
132 be determined, the date or time, or both, at which it becomes
133 effective shall be those prevailing at the place of filing in
134 this state.

135 Section 3. Subsection (3) of section 607.0125, Florida
136 Statutes, is amended to read:

137 607.0125 Filing duties of the department.—

138 (3) If the department refuses to file a document, the
139 department shall return the document to the domestic or foreign
140 corporation or its authorized representative within 15 days
141 after the document was received for filing, together with a
142 brief, written explanation of the reason for refusal.

143 Section 4. Section 607.0127, Florida Statutes, is amended
144 to read:

145 607.0127 Certificates to be received in evidence;

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146 evidentiary effect of certified copy of filed document.—All
147 certificates issued by the department pursuant to this chapter
148 must be taken and received in all courts, public offices, and
149 official bodies as prima facie evidence of the facts stated. A
150 certificate the department delivered with a copy of a document
151 filed by the department, bearing the signature of the secretary
152 of state, which may be in facsimile, and the seal of this the
153 state, is conclusive evidence that the original document is on
154 file with the department.

155 Section 5. Subsections (1), (2), (22), (51), (61), and (63)
156 of section 607.01401, Florida Statutes, are amended to read:

157 607.01401 Definitions.—As used in this chapter, unless the
158 context otherwise requires, the term:

159 (1) "Acquired eligible entity" means the a domestic or
160 foreign eligible entity that will have all of one or more
161 classes or series of its shares or eligible interests acquired
162 in a share exchange.

163 (2) "Acquiring eligible entity" means the a domestic or
164 foreign eligible entity that will acquire all of one or more
165 classes or series of shares or eligible interests of the
166 acquired eligible entity in a share exchange.

167 (22) "Domesticating corporation" means the a domestic
168 corporation that approves a plan of domestication pursuant to s.
169 607.11921, or the a foreign corporation that approves a
170 domestication pursuant to the organic law of the foreign
171 corporation.

172 (51) "New interest holder liability," in the context of a
173 merger or share exchange, means interest holder liability of a
174 person resulting from a merger or share exchange that is:

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175 (a) In respect of an eligible entity which is different
 176 from the eligible entity and not the same eligible entity in
 177 which the person held shares or eligible interests, immediately
 178 before the merger or share exchange became effective; or

179 (b) In respect of the same eligible entity as the one in
 180 which the person held shares or eligible interests, immediately
 181 before the merger or share exchange became effective if:

182 1. The person did not have interest holder liability
 183 immediately before the merger or share exchange became
 184 effective; or

185 2. The person had interest holder liability immediately
 186 before the merger or share exchange became effective, the terms
 187 and conditions of which were changed when the merger or share
 188 exchange became effective.

189 (61) "Public organic record" means a record, the filing of
 190 which by a governmental body is required to form an entity, and
 191 ~~or~~ an amendment to or restatement of such record. Where a public
 192 organic record has been amended or restated, the term means the
 193 public organic record as last amended or restated. The term
 194 includes the following:

195 (a) The articles of incorporation of a corporation for
 196 profit;

197 (b) The articles of incorporation of a nonprofit
 198 corporation;

199 (c) The certificate of limited partnership of a limited
 200 partnership;

201 (d) The articles of organization, certificate of
 202 organization, or certificate of formation of a limited liability
 203 company;

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204 (e) The articles of incorporation of a general cooperative
 205 association or a limited cooperative association;

206 (f) The certificate of trust of a statutory trust or
 207 similar record of a business trust; or

208 (g) The articles of incorporation of a real estate
 209 investment trust.

210 (63) "Record date" means the date fixed for determining the
 211 identity of the corporation's shareholders and their share
 212 holdings for purposes of this chapter. Unless another time is
 213 specified when the record date is fixed, the determination shall
 214 be made as of the close of ~~the~~ business at the principal office
 215 of the corporation on the date so fixed.

216 Section 6. Subsections (4) and (11) of section 607.0141,
 217 Florida Statutes, are amended to read:

218 607.0141 Notice.—

219 (4) Written notice to a domestic corporation or to a
 220 foreign corporation authorized to transact business in this
 221 state may be addressed:

222 (a) To its registered agent at the domestic corporation's
 223 or foreign corporation's registered office; or

224 (b) To the domestic corporation or foreign corporation or
 225 to the domestic corporation's or foreign corporation's secretary
 226 at the domestic corporation's or foreign corporation's principal
 227 office or electronic mail address as authorized and shown in its
 228 most recent annual report or, in the case of a domestic
 229 corporation or foreign corporation that has not yet delivered an
 230 annual report, in a domestic corporation's articles of
 231 incorporation or in a foreign corporation's application for
 232 certificate of authority.

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233 (11) If this chapter ~~act~~ prescribes requirements for
 234 notices or other communications in particular circumstances,
 235 those requirements govern. If articles of incorporation or
 236 bylaws prescribe requirements for notices or other
 237 communications not less stringent than the requirements of this
 238 section or other provisions of this chapter ~~act~~, those
 239 requirements govern. The articles of incorporation or bylaws may
 240 authorize or require delivery of notices of meetings of
 241 directors by electronic transmission.

242 Section 7. Section 607.0302, Florida Statutes, is amended
 243 to read:

244 607.0302 General powers.—Unless its articles of
 245 incorporation provide otherwise, every corporation has perpetual
 246 duration and succession in its corporate name and has the same
 247 powers as an individual to do all things necessary or convenient
 248 to carry out its business and affairs, including power:

249 (1) To sue and be sued, complain, and defend in its
 250 corporate name;

251 (2) To have a corporate seal, which may be altered at will
 252 and to use it or a facsimile of it, by impressing or affixing it
 253 or in any other manner reproducing it;

254 (3) To purchase, receive, lease, or otherwise acquire, and
 255 own, hold, improve, use, and otherwise deal with real or
 256 personal property or any legal or equitable interest in property
 257 wherever located;

258 (4) To sell, convey, mortgage, pledge, create a security
 259 interest in, lease, exchange, and otherwise dispose of all or
 260 any part of its property;

261 (5) To lend money to, and use its credit to assist, its

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262 officers and employees in accordance with s. 607.0833;

263 (6) To purchase, receive, subscribe for, or otherwise
 264 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or
 265 otherwise dispose of; and deal in and with shares or other
 266 interests in, or obligations of, any other entity;

267 (7) To make contracts and guarantees, incur liabilities,
 268 borrow money, issue its notes, bonds, and other securities and
 269 obligations (which may be convertible into or include the option
 270 to purchase other securities of the corporation), and secure any
 271 of its obligations by mortgage or pledge of any of its property,
 272 franchises, or income and make contracts of guaranty and
 273 suretyship which are necessary or convenient to the conduct,
 274 promotion, or attainment of the business of a corporation the
 275 majority of the outstanding shares of which is owned, directly
 276 or indirectly, by the contracting corporation; a corporation
 277 which owns, directly or indirectly, a majority of the
 278 outstanding shares of the contracting corporation; or a
 279 corporation the majority of the outstanding shares of which is
 280 owned, directly or indirectly, by a corporation which owns,
 281 directly or indirectly, the majority of the outstanding shares
 282 of the contracting corporation, which contracts of guaranty and
 283 suretyship shall be deemed to be necessary or convenient to the
 284 conduct, promotion, or attainment of the business of the
 285 contracting corporation, and make other contracts of guaranty
 286 and suretyship which are necessary or convenient to the conduct,
 287 promotion, or attainment of the business of the contracting
 288 corporation;

289 (8) To lend money, invest and reinvest its funds, and
 290 receive and hold real and personal property as security for

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291 repayment;

292 (9) To conduct its business, locate offices, and exercise

293 the powers granted by this chapter within or without this state;

294 (10) To elect directors and appoint officers, employees,

295 and agents of the corporation and define their duties, fix their

296 compensation, and lend them money and credit;

297 (11) To make and amend bylaws, not inconsistent with its

298 articles of incorporation or with the laws of this state, for

299 managing the business and regulating the affairs of the

300 corporation;

301 (12) To make donations for the public welfare or for

302 charitable, scientific, or educational purposes;

303 (13) To transact any lawful business that will aid

304 governmental policy;

305 (14) To make payments or donations or do any other act not

306 inconsistent with law that furthers the business and affairs of

307 the corporation;

308 (15) To pay pensions and establish pension plans, pension

309 trusts, profit-sharing plans, share bonus plans, share option

310 plans, and benefit or incentive plans for any or all of its

311 current or former directors, officers, employees, and agents and

312 for any or all of the current or former directors, officers,

313 employees, and agents of its subsidiaries;

314 (16) To provide insurance for its benefit on the life of

315 any of its directors, officers, or employees, or on the life of

316 any shareholder for the purpose of acquiring at his, ~~or~~ her, or

317 its death shares of its stock owned by the shareholder or by the

318 spouse or children of the shareholder; and

319 (17) To be a promoter, incorporator, partner, member,

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320 associate, or manager of any corporation, partnership, joint

321 venture, trust, or other entity.

322 Section 8. Subsections (1) and (5) of section 607.0501,

323 Florida Statutes, are amended to read:

324 607.0501 Registered office and registered agent.—

325 (1) Each corporation shall designate and continuously

326 maintain in this state:

327 (a) A registered office, which may be the same as its place

328 of business in this state; and

329 (b) A registered agent, which must be:

330 1. An individual who resides in this state whose business

331 address is identical to the address of the registered office;

332 2. Another domestic entity that is an authorized entity and

333 whose business address is identical to the address of the

334 registered office; or

335 3. A foreign entity authorized to transact business in this

336 state which is an authorized entity and whose business address

337 is identical to the address of the registered office.

338 (5) The department shall maintain an accurate record of the

339 registered agent ~~agents~~ and registered office for service of

340 process and shall promptly furnish any information disclosed

341 thereby upon request and payment of the required fee.

342 Section 9. Subsection (2) of section 607.0601, Florida

343 Statutes, is amended to read:

344 607.0601 Authorized shares.—

345 (2) The articles of incorporation must authorize:

346 (a) One or more classes or series of shares that together

347 have unlimited voting rights, and

348 (b) One or more classes or series of shares (which may be

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349 the same class or series or classes or series as those with
350 voting rights) that together are entitled to receive the net
351 assets of the corporation upon dissolution.

352 Section 10. Subsection (1) of section 607.0602, Florida
353 Statutes, is amended to read:

354 607.0602 Terms of class or series determined by board of
355 directors.-

356 (1) If the articles of incorporation so provide, the board
357 of directors is authorized, without shareholder approval, to:

358 (a) Classify any unissued shares into one or more classes
359 or into one or more series within a class;

360 (b) Reclassify any unissued shares of any class into one or
361 more classes or into one or more series within a class ~~one or~~
362 ~~more classes~~; or

363 (c) Reclassify any unissued shares of any series of any
364 class into one or more classes or into one or more series within
365 a class.

366 Section 11. Subsection (5) of section 607.0620, Florida
367 Statutes, is amended to read:

368 607.0620 Subscriptions for shares.-

369 (5) If a subscriber defaults in payment of money or
370 property under a subscription agreement entered into before
371 incorporation, the corporation may collect the amount owed as
372 any other debt. Alternatively, unless the subscription agreement
373 provides otherwise, the corporation may rescind the agreement
374 and may sell the shares if the debt remains unpaid more than 20
375 days after the corporation delivers written demand for payment
376 to the subscriber. If the subscription agreement is rescinded
377 and the shares sold, then, notwithstanding the rescission, the

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378 defaulting subscriber or his, ~~or~~ her, or its legal
379 representative shall be entitled to be paid the excess of the
380 sale proceeds over the sum of the amount due and unpaid on the
381 subscription and the reasonable expenses incurred in selling the
382 shares, but in no event shall the defaulting subscriber or his,
383 ~~or~~ her, or its legal representative be entitled to be paid an
384 amount greater than the amount paid by the subscriber on the
385 subscription.

386 Section 12. Subsection (1) of section 607.0623, Florida
387 Statutes, is amended to read:

388 607.0623 Share dividends.-

389 (1) Unless the articles of incorporation provide otherwise,
390 shares may be issued pro rata and without consideration to the
391 corporation's shareholders or to the shareholders of one or more
392 classes or series of ~~or~~ shares. An issuance of shares under this
393 subsection is a share dividend.

394 Section 13. Paragraphs (c) and (d) of subsection (2) of
395 section 607.0630, Florida Statutes, are amended to read:

396 607.0630 Shareholders' preemptive rights.-

397 (2) A statement included in the articles of incorporation
398 that "the corporation elects to have preemptive rights" (or
399 words of similar import) means that the following principles
400 apply except to the extent the articles of incorporation
401 expressly provide otherwise:

402 (c) There is no preemptive right with respect to:

403 1. Shares issued as compensation to directors, officers,
404 agents, or employees of the corporation, its subsidiaries, or
405 its affiliates;

406 2. Shares issued to satisfy conversion or option rights

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407 created to provide compensation to directors, officers, agents,
 408 or employees of the corporation, its subsidiaries, or its
 409 affiliates;

410 3. Shares authorized in the articles of incorporation that
 411 are issued within 6 months from the effective date of
 412 incorporation;

413 4. Shares issued pursuant to a plan of reorganization
 414 approved by a court of competent jurisdiction pursuant to a law
 415 of this state or of the United States; or

416 5. Shares issued for consideration other than money.

417 (d) Holders of shares of any class or series without
 418 general voting rights but with preferential rights ~~to~~
 419 ~~distributions~~ to receive the net assets upon dissolution have no
 420 preemptive rights with respect to shares of any class or series.

421 Section 14. Subsection (7) of section 607.0704, Florida
 422 Statutes, is amended to read:

423 607.0704 Action by shareholders without a meeting.—

424 (7) The notice requirements in subsection (3) do not delay
 425 the effectiveness of actions taken by written consent, and a
 426 failure to comply with such notice requirement does not
 427 invalidate actions taken by written consent. This subsection
 428 shall may not be deemed to limit judicial power to fashion any
 429 appropriate remedy in favor of a shareholder adversely affected
 430 by a failure to give such notice within the required time
 431 period.

432 Section 15. Subsection (5) of section 607.0705, Florida
 433 Statutes, is amended to read:

434 607.0705 Notice of meeting.—

435 (5) Notwithstanding the foregoing, whenever notice is

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436 required to be given to any shareholder under this chapter or
 437 the articles of incorporation or bylaws of any corporation to
 438 whom:

439 (a) Notice of two consecutive annual meetings, and all
 440 notices of meetings or the taking of action by written consent
 441 without a meeting to such person during the period between such
 442 two consecutive annual meetings; or

443 (b) All, and at least two payments ~~checks in payment~~ of
 444 dividends or interest on securities during a 12-month period,
 445

446 have been sent by first-class United States mail, addressed to
 447 the shareholder at such person's address as it appears in the
 448 record of shareholders of the corporation, maintained in
 449 accordance with s. 607.1601(4), and returned undeliverable, then
 450 the giving of such notice to such person shall not be required.
 451 Any action or meeting which is taken or held without notice to
 452 such person has the same force and effect as if such notice has
 453 been duly given. If any such person delivers to the corporation
 454 a written notice setting forth such person's then current
 455 address, the requirement that a notice be given to such person
 456 with respect to future notices shall be reinstated.

457 Section 16. Subsections (2), (9), and (10) of section
 458 607.0707, Florida Statutes, are amended to read:

459 607.0707 Record date.—

460 ~~(2) If not otherwise provided by or pursuant to the bylaws,~~
 461 ~~the record date for determining shareholders entitled to demand~~
 462 ~~a special meeting is the date the first shareholder delivers his~~
 463 ~~or her demand to the corporation.~~

464 (9) Shares of a corporation's own stock acquired by the

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465 corporation between the record date for determining shareholders
466 entitled to notice of or to vote at a meeting of shareholders
467 and the time of the meeting may be voted ~~on~~ at the meeting by
468 the holder of record as of the record date and shall be counted
469 in determining the total number of outstanding shares entitled
470 to be voted at the meeting.

471 ~~(2)(10)~~ If not otherwise fixed under s. 607.0703 or
472 otherwise provided by or pursuant to the bylaws, the record date
473 for determining shareholders entitled to demand a special
474 meeting is the earliest date on which a signed shareholder
475 demand is delivered to the corporation. A written demand for a
476 special meeting is not effective unless, within 60 days of the
477 earliest date on which such a demand delivered to the
478 corporation as required by s. 607.0702 was signed, written
479 demands signed by shareholders holding at least the percentage
480 of votes specified in or fixed in accordance with s.
481 607.0702(1)(b) have been delivered to the corporation.

482 Section 17. Subsection (2) of section 607.0720, Florida
483 Statutes, is amended to read:

484 607.0720 Shareholders' list for meeting.—

485 (2) The shareholders' list for notice must be available for
486 inspection by any shareholder for a period of 10 days prior to
487 the meeting or such shorter time as exists between the record
488 date and the meeting and continuing through the meeting at the
489 corporation's principal office, at a place identified in the
490 meeting notice in the city where the meeting will be held, or at
491 the office of the corporation's transfer agent or registrar. Any
492 separate shareholders' list for voting, if different, must be
493 similarly available for inspection promptly after the record

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494 date for voting. A shareholder or the shareholder's agent or
495 attorney is entitled on written demand to inspect and, subject
496 to the requirements of s. 607.1602(3), copy a list during
497 regular business hours and at his, ~~or~~ her, or its expense,
498 during the period it is available for inspection.

499 Section 18. Subsection (3) of section 607.0721, Florida
500 Statutes, is amended to read:

501 607.0721 Voting entitlement of shares.—

502 (3) Shares held by the corporation in a fiduciary capacity
503 for the benefit of any person are entitled to vote unless they
504 are held for the benefit of, or otherwise belong to, the
505 corporation directly, or indirectly through an entity of which a
506 majority of the voting power is held directly or indirectly by
507 the corporation or which is otherwise controlled by the
508 corporation. For the purposes of this section subsection,
509 "voting power" means the current power to vote in the election
510 of directors of a corporation or to elect, select, or appoint
511 those persons who will govern another entity.

512 Section 19. Subsection (2) of section 607.0732, Florida
513 Statutes, is amended to read:

514 607.0732 Shareholder agreements.—

515 (2) An agreement authorized by this section shall be:

516 (a)1. Set forth or referenced in the articles of
517 incorporation or bylaws and approved by all persons who are
518 shareholders at the time of the agreement; or

519 2. Set forth in a written agreement that is signed by all
520 persons who are shareholders at the time of the agreement and
521 such written agreement is made known to the corporation; and

522 (b) Subject to termination or amendment only by all persons

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523 who are shareholders at the time of the termination or
 524 amendment, unless the agreement provides otherwise.

525 Section 20. Subsection (1) of section 607.0750, Florida
 526 Statutes, is amended to read:

527 607.0750 Direct action by shareholder.—

528 (1) Subject to subsection (2), a shareholder may maintain a
 529 direct action against another shareholder, an officer, a
 530 director, or the company, to enforce the shareholder's rights
 531 and otherwise protect the shareholder's interests, including
 532 rights and interests under the articles of incorporation, the
 533 bylaws or this chapter or arising independently of the
 534 shareholder relationship.

535 Section 21. Subsection (4) of section 607.0808, Florida
 536 Statutes, is amended to read:

537 607.0808 Removal of directors by shareholders.—

538 (4) A director may be removed by the shareholders only at a
 539 meeting of shareholders called for the purpose of removing the
 540 director, and the meeting notice must state that the removal of
 541 the director is the purpose, or one of the purposes, of the
 542 meeting.

543 Section 22. Subsection (7) of section 607.0832, Florida
 544 Statutes, is amended to read:

545 607.0832 Director conflicts of interest.—

546 (7) If ~~where~~ shareholders' action under this section does
 547 not satisfy a quorum or voting requirement applicable to the
 548 authorization of the transaction by shareholders as required by
 549 the articles of incorporation, the bylaws, this chapter, or any
 550 other law, an action to satisfy those authorization
 551 requirements, whether as part of the same action or by way of

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552 another action, must be taken by the shareholders in order to
 553 authorize the transaction. In such action, the vote or consent
 554 of shareholders who are not disinterested shareholders may be
 555 counted.

556 Section 23. Subsection (4) of section 607.0850, Florida
 557 Statutes, is amended to read:

558 607.0850 Definitions.—In ss. 607.0850-607.0859, the term:

559 (4) "Expenses" includes reasonable attorney fees and
 560 expenses, including those incurred in connection with any
 561 appeal.

562 Section 24. Subsection (2) of section 607.0855, Florida
 563 Statutes, is amended to read:

564 607.0855 Determination and authorization of
 565 indemnification.—

566 (2) The determination shall be made:

567 (a) If there are two or more qualified directors, by the
 568 board of directors by a majority vote of all of the qualified
 569 directors, a majority of whom shall for such purposes constitute
 570 a quorum, or by a majority of the members of a committee of two
 571 or more qualified directors appointed by such a vote; ~~or~~

572 (b) By independent special legal counsel:

573 1. Selected in the manner prescribed by paragraph (a); or

574 2. If there are fewer than two qualified directors,
 575 selected by the board of directors, in which selection directors
 576 who are not qualified directors may participate; or

577 (c) By the shareholders, but shares owned by or voted under
 578 the control of a director or officer who, at the time of the
 579 determination, is not a qualified director or an officer who is
 580 a party to the proceeding may not be counted as votes in favor

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581 of the determination.

582 Section 25. Subsection (1) of section 607.0858, Florida
583 Statutes, is amended to read:

584 607.0858 Variation by corporate action; application of ss.
585 607.0850-607.0859.—

586 (1) The indemnification provided pursuant to ss. 607.0851
587 and 607.0852 and the advancement of expenses provided pursuant
588 to s. 607.0853 are not exclusive, and a corporation may, by a
589 provision in its articles of incorporation, bylaws, or any
590 agreement, or by vote of shareholders or disinterested
591 directors, or otherwise, obligate itself in advance of the act
592 or omission giving rise to a proceeding to provide any other or
593 further indemnification or advancement of expenses to any of its
594 directors or officers. Any such obligatory provision shall be
595 deemed to satisfy the requirements for authorization referred to
596 in ss. 607.0853(3) and 607.0855(3). Any such provision that
597 obligates the corporation to provide indemnification to the
598 fullest extent permitted by law shall be deemed to obligate the
599 corporation to advance funds to pay for or reimburse expenses in
600 accordance with s. 607.0853 to the fullest extent permitted by
601 law, unless the provision specifically provides otherwise.

602 Section 26. Paragraph (f) of subsection (1) of section
603 607.0901, Florida Statutes, is amended to read:

604 607.0901 Affiliated transactions.—

605 (1) For purposes of this section:

606 (f) "Control," "controlling," "controlled by," and "under
607 common control with" mean the possession, directly or
608 indirectly, through the ownership of voting interests ~~shares~~, by
609 contract, arrangement, understanding, relationship, or

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610 otherwise, of the power to direct or cause the direction of the
611 management and policies of a person. A person who is the owner
612 of 20 percent or more of the outstanding voting interests ~~shares~~
613 of any corporation, partnership, unincorporated association, or
614 other entity is presumed to have control of such entity, in the
615 absence of proof by a preponderance of the evidence to the
616 contrary. Notwithstanding the foregoing, a person shall not be
617 deemed to have control of an entity if such person holds voting
618 interests ~~shares~~, in good faith and not for the purpose of
619 circumventing this section, as an agent, bank, broker, nominee,
620 custodian, or trustee for one or more beneficial owners who do
621 not individually or as a group have control of such entity.

622 Section 27. Subsection (11) of section 607.1002, Florida
623 Statutes, is amended to read:

624 607.1002 Amendment by board of directors.—Unless the
625 articles of incorporation provide otherwise, a corporation's
626 board of directors may adopt one or more amendments to the
627 corporation's articles of incorporation without shareholder
628 approval:

629 (11) To make any other change expressly permitted by this
630 chapter ~~act~~ to be made without shareholder approval.

631 Section 28. Paragraph (a) of subsection (2) and subsection
632 (4) of section 607.1003, Florida Statutes, are amended to read:

633 607.1003 Amendment by board of directors and shareholders.—
634 If a corporation has issued shares, an amendment to the articles
635 of incorporation shall be adopted in the following manner:

636 (2) (a) Except as provided in s. 607.1002, s. 607.10025,
637 s. 607.1008, or ~~and~~, with respect to restatements that do
638 not require shareholder approval, s. 607.1007, the amendment

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639 shall then be approved by the shareholders.

640 (4) If the amendment is required to be approved by the
641 shareholders, and the approval is to be given at a meeting, the
642 corporation must notify each shareholder, whether or not
643 entitled to vote, of the meeting of shareholders at which the
644 amendment is to be submitted for approval. The notice must be
645 given in accordance with s. 607.0705; must state that the
646 purpose, or one of the purposes, of the meeting is to consider
647 the amendment; and must contain or be accompanied by a copy of
648 the amendment.

649 Section 29. Subsections (1) and (6) of section 607.1102,
650 Florida Statutes, are amended to read:

651 607.1102 Share exchange.—

652 (1) By complying with this chapter, including adopting a
653 plan of share exchange in accordance with subsection (3) and
654 complying with s. 607.1103:

655 (a) A domestic corporation may acquire all of the shares or
656 one or more classes or series of shares or rights to acquire
657 shares of one or more classes or series of shares or rights to
658 acquire shares of another domestic or foreign corporation, or
659 all of the eligible interests of one or more classes or series
660 of interests of a domestic or foreign eligible entity, or any
661 combination of the foregoing, pursuant to a plan of share
662 exchange, in exchange for:

- 663 1. Shares or other securities.
- 664 2. Eligible interests.
- 665 3. Obligations.
- 666 4. Rights to acquire shares, other securities, or eligible
667 interests.

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668 5. Cash.

669 6. Other property.

670 7. Any combination of the foregoing; or

671 (b) All of the shares of one or more classes or series of
672 shares or rights to acquire shares of a domestic corporation may
673 be acquired by another domestic or foreign eligible entity,
674 pursuant to a plan of share exchange, in exchange for:

675 1. Shares or other securities.

676 2. Eligible interests.

677 3. Obligations.

678 4. Rights to acquire shares, other securities, or eligible
679 interests.

680 5. Cash.

681 6. Other property.

682 7. Any combination of the foregoing.

683 (6) A plan of share exchange may be amended only with the
684 consent of each party to the share exchange, except as provided
685 in the plan. A domestic eligible entity may approve an amendment
686 to a plan:

687 (a) In the same manner as the plan was approved, if the
688 plan does not provide for the manner in which it may be amended;
689 or

690 (b) In the manner provided in the plan, except that
691 shareholders, members, or interest holders that were entitled to
692 vote on or consent to approval of the plan are entitled to vote
693 on or consent to any amendment of the plan that will change:

- 694 1. The amount or kind of shares or other securities;
695 eligible interests; obligations; rights to acquire shares, other
696 securities, or eligible interests; cash; ~~or~~ other property; or

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697 any combination of the foregoing, to be received under the plan
 698 by the shareholders, members, or interest holders of the
 699 acquired eligible entity; or

700 2. Any of the other terms or conditions of the plan if the
 701 change would adversely affect such shareholders, members, or
 702 interest holders in any material respect.

703 Section 30. Section 607.1103, Florida Statutes, is amended
 704 to read:

705 607.1103 Action on a plan of merger or share exchange.—In
 706 the case of a domestic corporation that is a party to a merger
 707 or is the acquired eligible entity in a share exchange, the plan
 708 of merger or the plan of share exchange must be adopted in the
 709 following manner:

710 (1) The plan of merger or the plan of share exchange shall
 711 first be adopted by the board of directors of such domestic
 712 corporation.

713 (2) (a) Except as provided in subsections (8), (10), and
 714 (11), and in ss. 607.11035 and 607.1104, the plan of merger or
 715 the plan of share exchange shall then be adopted by the
 716 shareholders.

717 (b) In submitting the plan of merger or the plan of share
 718 exchange to the shareholders for approval, the board of
 719 directors shall recommend that the shareholders approve the
 720 plan, or in the case of an offer referred to in s.
 721 607.11035(1)(b), that the shareholders tender their shares to
 722 the offeror in response to the offer, unless:

723 1. The board of directors makes a determination that
 724 because of conflicts of interest or other special circumstances,
 725 it should not make such a recommendation; or

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726 2. Section 607.0826 applies.

727 (c) If either subparagraph (b)1. or subparagraph (b)2.
 728 applies, the board shall inform the shareholders of the basis
 729 for its so proceeding without such recommendation.

730 (3) The board of directors may set conditions for the
 731 approval of the proposed merger or share exchange by the
 732 shareholders or the effectiveness of the plan of merger or the
 733 plan of share exchange.

734 (4) If the plan of merger or the plan of share exchange is
 735 required to be approved by the shareholders, and if the approval
 736 is to be given at a meeting, the corporation shall notify each
 737 shareholder, regardless of whether entitled to vote, of the
 738 meeting of shareholders at which the plan is submitted for
 739 approval in accordance with s. 607.0705. The notice shall also
 740 state that the purpose, or one of the purposes, of the meeting
 741 is to consider the plan of merger or the plan of share exchange,
 742 regardless of whether or not the meeting is an annual or a
 743 special meeting, and contain or be accompanied by a copy of the
 744 plan. If the corporation is to be merged into an existing
 745 foreign or domestic eligible entity, the notice must also
 746 include or be accompanied by a copy of the articles of
 747 incorporation and bylaws or the organic rules of that eligible
 748 entity into which the corporation is to be merged. If the
 749 corporation is to be merged with a domestic or foreign eligible
 750 entity and a new domestic or foreign eligible entity is to be
 751 created pursuant to the merger, the notice must include or be
 752 accompanied by a copy of the articles of incorporation and
 753 bylaws or the organic rules of the new eligible entity.
 754 Furthermore, if applicable, the notice shall contain a clear and

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755 concise statement that, if the plan of merger or share exchange
756 is effected, shareholders dissenting therefrom may be entitled,
757 if they comply with the provisions of this chapter regarding
758 appraisal rights, to be paid the fair value of their shares, and
759 shall be accompanied by a copy of ss. 607.1301-607.1340.

760 (5) Unless this chapter, the articles of incorporation, or
761 the board of directors (acting pursuant to subsection (3))
762 requires a greater vote or a greater quorum in the respective
763 case, approval of the plan of merger or the plan of share
764 exchange shall require the approval of the shareholders at a
765 meeting at which a quorum exists by a majority of the votes
766 entitled to be cast on the plan, and, if any class or series of
767 shares is entitled to vote as a separate voting group on the
768 plan of merger or the plan of share exchange, the approval of
769 each such separate voting group at a meeting at which a quorum
770 of the voting group is present by a majority of the votes
771 entitled to be cast on the merger or share exchange by that
772 voting group.

773 (6) (a) Subject to subsection (7), voting by a class or
774 series as a separate voting group is required on a plan of
775 merger:

776 1. By each class or series of shares of the corporation
777 that would be entitled to vote as a separate voting group on any
778 provision in the plan which, if such provision had been
779 contained in a proposed amendment to the articles of
780 incorporation of a surviving corporation, would have entitled
781 the class or series to vote as a separate voting group on the
782 proposed amendment under s. 607.1004, ~~or~~

783 2. If the plan contains a provision that would allow the

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784 plan to be amended to include the type of amendment to the
785 articles of incorporation referenced in subparagraph 1., by each
786 class or series of shares of the corporation that would have
787 been entitled to vote as a separate voting group on any such
788 amendment to the articles of incorporation, ~~or~~

789 3. By each class or series of shares of the corporation
790 that is to be converted under the plan of merger into shares;
791 other securities; eligible interests; obligations; rights to
792 acquire shares, other securities, or eligible interests; cash;
793 property; or any combination of the foregoing, ~~or~~

794 4. If the plan contains a provision that would allow the
795 plan to be amended to convert other classes or series of shares
796 of the corporation, by each class or series of shares of the
797 corporation that would have been entitled to vote as a separate
798 voting group if the plan were to be so amended.

799 (b) Subject to subsection (7), voting by a class or series
800 as a separate voting group is required on a plan of share
801 exchange:

802 1. By each class or series that is to be exchanged in the
803 exchange, with each class or series constituting a separate
804 voting group, ~~or~~

805 2. If the plan contains a provision that would allow the
806 plan to be amended to include the type of amendment to the
807 articles of incorporation referenced in subparagraph (a)1., by
808 each class or series of shares of the corporation that would
809 have been entitled to vote as a separate voting group on any
810 such amendment to the articles of incorporation.

811 (c) Subject to subsection (7), voting by a class or series
812 as a separate voting group is required on a plan of merger or a

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813 plan of share exchange if the group is entitled under the
814 articles of incorporation to vote as a separate voting group to
815 approve the plan of merger or the plan of share exchange,
816 respectively.

817 (7) The articles of incorporation may expressly limit or
818 eliminate the separate voting rights provided in any one or more
819 of subparagraphs (6)(a)3. and 4. and subparagraph (6)(a)3.,
820 ~~subparagraph (6)(a)4., or~~ subparagraph (6)(b)1. as to any class
821 or series of shares, except when the plan of merger or the plan
822 for share exchange:

823 (a) Includes what is or would be, in effect, an amendment
824 subject to any one or more of subparagraphs (6)(a)1. and 2. and
825 (6)(b)2.; and

826 (b) Will not affect a substantive business combination.

827 (8) Unless the corporation's articles of incorporation
828 provide otherwise, approval by the corporation's shareholders of
829 a plan of merger is not required if:

830 (a) The corporation will survive the merger;

831 (b) The articles of incorporation of the surviving
832 corporation will not differ (except for amendments enumerated in
833 s. 607.1002) from its articles of incorporation before the
834 merger; and

835 (c) Each shareholder of the surviving corporation whose
836 shares were outstanding immediately prior to the effective date
837 of the merger will hold the same number of shares, with
838 identical designations, preferences, rights, and limitations,
839 immediately after the effective date of the merger.

840 (9) If, as a result of a merger or share exchange, one or
841 more shareholders of a domestic corporation would become subject

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842 to new interest holder liability, approval of the plan of merger
843 or the plan of share exchange shall require, in connection with
844 the transaction, the signing by each such shareholder of a
845 separate written consent to become subject to such new interest
846 holder liability, unless in the case of a shareholder that
847 already has interest holder liability with respect to such
848 domestic corporation:

849 (a) The new interest holder liability is with respect to a
850 domestic or foreign corporation (which may be a different or the
851 same domestic corporation in which the person is a shareholder);
852 and

853 (b) The terms and conditions of the new interest holder
854 liability are substantially identical to those of the existing
855 interest holder liability (other than for changes that reduce or
856 eliminate such interest holder liability).

857 (10) Unless the articles of incorporation otherwise
858 provide, approval of a plan of share exchange by the
859 shareholders of a domestic corporation is not required if the
860 corporation is the acquiring eligible entity in the share
861 exchange.

862 (11) Unless the articles of incorporation otherwise
863 provide, shares in the acquired eligible entity not to be
864 exchanged under the plan of share exchange are not entitled to
865 vote on the plan.

866 Section 31. Subsection (1) of section 607.11035, Florida
867 Statutes, is amended to read:

868 607.11035 Shareholder approval of a merger or share
869 exchange in connection with a tender offer.—

870 (1) Unless the articles of incorporation otherwise provide,

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871 shareholder approval of a plan of merger or a plan of share
 872 exchange under s. 607.1103(1)(b) is not required if:

873 (a) The plan of merger or share exchange expressly:

874 1. Permits or requires the merger or share exchange to be
 875 effected under this section; and

876 2. Provides that, if the merger or share exchange is to be
 877 effected under this section, the merger or share exchange will
 878 be effected as soon as practicable following the satisfaction of
 879 the requirement in paragraph (f);

880 (b) Another party to the merger, the acquiring eligible
 881 entity in the share exchange, or a parent of another party to
 882 the merger or the parent of the acquiring eligible entity in the
 883 share exchange, makes an offer to purchase, on the terms
 884 provided in the plan of merger or the plan of share exchange,
 885 any and all of the outstanding shares of the corporation that,
 886 absent this section, would be entitled to vote on the plan of
 887 merger or the plan of share exchange, except that the offer may
 888 exclude shares of the corporation that are owned at the
 889 commencement of the offer by the corporation, the offeror, or
 890 any parent of the offeror, or by any wholly owned subsidiary of
 891 any of the foregoing;

892 (c) The offer discloses that the plan of merger or the plan
 893 of share exchange provides that the merger or share exchange
 894 will be effected as soon as practicable following the
 895 satisfaction of the requirement in paragraph (f) and that the
 896 shares of the corporation that are not tendered in response to
 897 the offer will be treated pursuant to paragraph (h);

898 (d) The offer remains open for at least 10 days;

899 (e) The offeror purchases all shares properly tendered in

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900 response to the offer and not properly withdrawn;

901 (f) The shares listed below are collectively entitled to
 902 cast at least the minimum number of votes on the merger or share
 903 exchange that, absent this section, would be required by this
 904 chapter and by the articles of incorporation for the approval of
 905 the merger or share exchange by the shareholders and by each
 906 other voting group entitled to vote on the merger or share
 907 exchange at a meeting at which all shares entitled to vote on
 908 the approval were present and voted:

909 1. Shares purchased by the offeror in accordance with the
 910 offer;

911 2. Shares otherwise owned by the offeror or by any parent
 912 of the offeror or any wholly owned subsidiary of any of the
 913 foregoing; and

914 3. Shares subject to an agreement that provides that they
 915 are to be transferred, contributed, or delivered to the offeror,
 916 any parent of the offeror, or any wholly owned subsidiary of any
 917 of the foregoing in exchange for shares or eligible interests in
 918 such offeror, parent, or subsidiary;

919 (g) The offeror or a wholly owned subsidiary of the offeror
 920 merges with or into, or effects a share exchange in which it
 921 acquires shares of, the corporation; and

922 (h) Each outstanding share of each class or series of
 923 shares of the corporation that the offeror is offering to
 924 purchase in accordance with the offer, and that is not purchased
 925 in accordance with the offer, is to be converted in the merger
 926 into, or into the right to receive, or is to be exchanged in the
 927 share exchange for, or for the right to receive, the same amount
 928 and kind of securities, eligible interests, obligations, rights,

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 929 cash, other property, or any combination of the foregoing, to be
 930 paid or exchanged in accordance with the offer for each share of
 931 that class or series of shares that is tendered in response to
 932 the offer, except that shares of the corporation that are owned
 933 by the corporation or that are described in subparagraph (f)2.
 934 or subparagraph (f)3. need not be converted into or exchanged
 935 for the consideration described in this paragraph.

936 Section 32. Subsection (1) of section 607.11045, Florida
 937 Statutes, is amended to read:

938 607.11045 Holding company formation by merger by certain
 939 corporations.-

940 (1) This section applies only to a corporation that has
 941 shares registered pursuant to s. 12 of the Securities Exchange
 942 Act of 1934, or held of record by not fewer than 2,000
 943 shareholders.

944 Section 33. Subsection (1) of section 607.1106, Florida
 945 Statutes, is amended to read:

946 607.1106 Effect of merger or share exchange.-

947 (1) When a merger becomes effective:

948 (a) The domestic or foreign eligible entity that is
 949 designated in the plan of merger as the survivor continues or
 950 comes into existence, as the case may be;

951 (b) The separate existence of every domestic or foreign
 952 eligible entity that is a party to the merger, other than the
 953 survivor, ceases;

954 (c) All real property and other property, including any
 955 interest therein and all title thereto, owned by, and every
 956 contract right possessed by, each domestic or foreign eligible
 957 entity that is a party to the merger, other than the survivor,

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 958 become the property and contract rights of and become vested in
 959 the survivor, without transfer, reversion, or impairment;
 960 (d) All debts, obligations, and other liabilities of each
 961 domestic or foreign eligible entity that is a party to the
 962 merger, other than the survivor, become debts, obligations, and
 963 liabilities of the survivor;

964 (e) The name of the survivor may be, but need not be,
 965 substituted in any pending proceeding for the name of any party
 966 to the merger whose separate existence ceased in the merger;

967 (f) Neither the rights of creditors nor any liens upon the
 968 property of any corporation party to the merger shall be
 969 impaired by such merger;

970 (g) If the survivor is a domestic eligible entity, the
 971 articles of incorporation and bylaws or the organic rules of the
 972 survivor are amended to the extent provided in the plan of
 973 merger;

974 (h) The articles of incorporation and bylaws or the organic
 975 rules of a survivor that is a domestic eligible entity and is
 976 created by the merger become effective;

977 (i) The shares, obligations, and other securities (and the
 978 rights to acquire shares, obligations, or other securities) of
 979 each domestic or foreign corporation party to the merger, and
 980 the eligible interests in any other eligible entity that is a
 981 party to the merger, that are to be converted in accordance with
 982 the terms of the merger into shares or other securities;
 983 eligible interests; obligations; rights to acquire shares, other
 984 securities, or eligible interests; cash; other property; or any
 985 combination of the foregoing, are converted, and the former
 986 holders of such shares, obligations, other securities, and

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987 eligible interests (and the rights to acquire shares,
 988 obligations, other securities, or other eligible interests) are
 989 entitled only to the rights provided to them by those terms of
 990 the merger or to any rights they may have under s. 607.1302 or
 991 under the organic law governing the eligible entity;

992 (j) Except as provided by law or the plan of merger, all
 993 the rights, privileges, franchises, and immunities of each
 994 eligible entity that is a party to the merger, other than the
 995 survivor, become the rights, privileges, franchises, and
 996 immunities of the survivor; and

997 (k) If the survivor exists before the merger:

998 1. All the property and contract rights of the survivor
 999 remain its property and contract rights without transfer,
 1000 reversion, or impairment;

1001 2. The survivor remains subject to all of its debts,
 1002 obligations, and other liabilities; and

1003 3. Except as provided by law or the plan of merger, the
 1004 survivor continues to hold all of its rights, privileges,
 1005 franchises, and immunities.

1006 Section 34. Subsection (3) of section 607.11920, Florida
 1007 Statutes, is amended to read:

1008 607.11920 Domestication.—

1009 (3) In a domestication under subsection (2), the
 1010 domesticating eligible entity must enter into a plan of
 1011 domestication. The plan of domestication must include:

1012 (a) The name of the domesticating corporation;

1013 (b) The name and jurisdiction of formation of the
 1014 domesticated corporation;

1015 (c) The manner and basis of reclassifying the shares and

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1016 rights to acquire shares of the domesticating corporation into
 1017 shares or other securities, obligations, rights to acquire
 1018 shares or other securities, cash, other property, or any
 1019 combination of the foregoing;

1020 (d) The proposed organic rules of the domesticated
 1021 corporation which must be in writing; and

1022 (e) The other terms and conditions of the domestication.

1023 Section 35. Subsections (5) and (6) of section 607.11921,
 1024 Florida Statutes, are amended to read:

1025 607.11921 Action on a plan of domestication.—In the case of
 1026 a domestication of a domestic corporation into a foreign
 1027 jurisdiction, the plan of domestication shall be adopted in the
 1028 following manner:

1029 (5) Unless this chapter, the articles of incorporation, or
 1030 the board of directors acting pursuant to subsection (3) ~~r~~
 1031 require a greater vote or a greater quorum in the respective
 1032 case, approval of the plan of domestication requires:

1033 (a) The approval of the shareholders at a meeting at which
 1034 a quorum exists consisting of a majority of the votes entitled
 1035 to be cast on the plan; and

1036 (b) Except as provided in subsection (6), the approval of
 1037 each class or series of shares voting as a separate voting group
 1038 at a meeting at which a quorum of the voting group exists
 1039 consisting of a majority of the votes entitled to be cast on the
 1040 plan by that voting group.

1041 (6) The articles of incorporation may expressly limit or
 1042 eliminate the separate voting rights provided in paragraph
 1043 (5) (b) as to any class or series of shares, except when the
 1044 public organic rules of the foreign corporation resulting from

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1045 the domestication include what would be in effect an amendment
 1046 that would entitle the class or series to vote as a separate
 1047 voting group under s. 607.1004 if it were a proposed amendment
 1048 of the articles of incorporation of a domestic domesticating
 1049 corporation.

1050 Section 36. Subsection (1) of section 607.11923, Florida
 1051 Statutes, is amended to read:

1052 607.11923 Amendment of a plan of domestication;
 1053 abandonment.—

1054 (1) A plan of domestication of a domestic corporation
 1055 adopted under s. 607.11920(3) may be amended:

1056 (a) In the same manner as the plan of domestication was
 1057 approved, if the plan does not provide for the manner in which
 1058 it may be amended; or

1059 (b) In the manner provided in the plan of domestication,
 1060 except that a shareholder that was entitled to vote on or
 1061 consent to approval of the plan is entitled to vote on or
 1062 consent to any amendment of the plan that will change:

1063 1. The amount or kind of shares or other securities;
 1064 obligations; rights to acquire shares or, other securities, ~~or~~
 1065 ~~eligible interests~~; cash; other property; or any combination of
 1066 the foregoing, to be received by any of the shareholders or
 1067 holders of rights to acquire shares or, other securities, ~~or~~
 1068 ~~eligible interests~~ of the domesticating corporation under the
 1069 plan;

1070 2. The organic rules of the domesticated corporation that
 1071 are to be in writing and that will be in effect immediately
 1072 after the domestication becomes effective, except for changes
 1073 that do not require approval of the shareholders of the

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1074 domesticated corporation under its organic rules as set forth in
 1075 the plan of domestication; or

1076 3. Any of the other terms or conditions of the plan, if the
 1077 change would adversely affect the shareholder in any material
 1078 respect.

1079 Section 37. Subsection (1) and paragraph (d) of subsection
 1080 (3) of section 607.11924, Florida Statutes, are amended to read:

1081 607.11924 Effect of domestication.—

1082 (1) When a domestication becomes effective:

1083 (a) All real property and other property owned by the
 1084 domesticating corporation, including any interests therein and
 1085 all title thereto, and every contract right possessed by the
 1086 domesticating corporation, are the property and contract rights
 1087 of the domesticated corporation without transfer, reversion, or
 1088 impairment;

1089 (b) All debts, obligations, and other liabilities of the
 1090 domesticating corporation are the debts, obligations, and other
 1091 liabilities of the domesticated corporation;

1092 (c) The name of the domesticated corporation may be, but
 1093 need not be, substituted for the name of the domesticating
 1094 corporation in any pending proceeding;

1095 (d) The organic rules of the domesticated corporation
 1096 become effective;

1097 (e) The shares and other securities (and the rights to
 1098 acquire shares or other securities) or equity interests of the
 1099 domesticating corporation are reclassified into shares, ~~or~~ other
 1100 securities, obligations, rights to acquire shares or other
 1101 securities, cash, ~~or~~ other property, or any combination of the
 1102 foregoing, in accordance with the terms of the domestication,

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1103 and the shareholders or equity owners of the domesticating
 1104 corporation are entitled only to the rights provided to them by
 1105 those terms and to any appraisal rights they may have under the
 1106 organic law of the domesticating corporation; and
 1107 (f) The domesticated corporation is:
 1108 1. Incorporated under and subject to the organic law of the
 1109 domesticated corporation;
 1110 2. The same corporation, without interruption, as the
 1111 domesticating corporation; and
 1112 3. Deemed to have been incorporated or formed on the date
 1113 the domesticating corporation was originally incorporated.
 1114 (3) Except as otherwise provided in the organic law or
 1115 organic rules of a domesticating foreign corporation, the
 1116 interest holder liability of a shareholder or equity holder in a
 1117 foreign corporation that is domesticated into this state who had
 1118 interest holder liability in respect of such domesticating
 1119 corporation before the domestication becomes effective shall be
 1120 as follows:
 1121 (d) The shareholder or equity holder shall ~~may~~ not, by
 1122 reason of such prior interest holder liability, have interest
 1123 holder liability with respect to any interest holder liabilities
 1124 that are incurred after the domestication becomes effective.
 1125 Section 38. Paragraph (a) of subsection (2) and subsection
 1126 (5) of section 607.11932, Florida Statutes, are amended to read:
 1127 607.11932 Action on a plan of conversion.—In the case of a
 1128 conversion of a domestic corporation to a domestic or foreign
 1129 eligible entity other than a domestic corporation, the plan of
 1130 conversion must be adopted in the following manner:
 1131 (2) (a) The plan of conversion must ~~shall~~ then be approved

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1132 by the shareholders of such domestic corporation.
 1133 (5) Unless this chapter, the articles of incorporation, or
 1134 the board of directors acting pursuant to subsection (3)~~7~~
 1135 require a greater vote or a greater quorum in the respective
 1136 case, approval of the plan of conversion requires:
 1137 (a) The approval of the shareholders at a meeting at which
 1138 a quorum exists consisting of a majority of the votes entitled
 1139 to be cast on the plan; and
 1140 (b) The approval of each class or series of shares voting
 1141 as a separate voting group at a meeting at which a quorum of the
 1142 voting group exists consisting of a majority of the votes
 1143 entitled to be cast on the plan by that voting group.
 1144 Section 39. Paragraph (a) of subsection (4) of section
 1145 607.11933, Florida Statutes, is amended to read:
 1146 607.11933 Articles of conversion; effectiveness.—
 1147 (4) (a) If the ~~a~~ converted eligible entity is a domestic
 1148 eligible entity, the conversion becomes effective when the
 1149 articles of conversion are effective.
 1150 Section 40. Subsection (1) and paragraph (d) of subsection
 1151 (4) of section 607.11935, Florida Statutes, are amended to read:
 1152 607.11935 Effect of conversion.—
 1153 (1) When a conversion becomes effective:
 1154 (a) All real property and other property owned by,
 1155 including any interest therein and all title thereto, and every
 1156 contract right possessed by, the converting eligible entity
 1157 remain the property and contract rights of the converted
 1158 eligible entity without transfer, reversion, or impairment;
 1159 (b) All debts, obligations, and other liabilities of the
 1160 converting eligible entity remain the debts, obligations, and

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1161 other liabilities of the converted eligible entity;

1162 (c) The name of the converted eligible entity may be, but
1163 need not be, substituted for the name of the converting eligible
1164 entity in any pending action or proceeding;

1165 (d) If the converted eligible entity is a filing entity, a
1166 domestic corporation, or a domestic or foreign nonprofit
1167 corporation, its public organic record and its private organic
1168 rules become effective;

1169 (e) If the converted eligible entity is a nonfiling entity,
1170 its private organic rules become effective;

1171 (f) If the converted eligible entity is a limited liability
1172 partnership, the filing required to become a limited liability
1173 partnership and its private organic rules become effective;

1174 (g) The shares, obligations, eligible interests, and other
1175 securities (and the rights to acquire shares, obligations,
1176 eligible interests, or other securities) and obligations of the
1177 converting eligible entity are reclassified into shares, other
1178 securities, eligible interests, obligations, rights to acquire
1179 shares, ~~or other securities, or eligible interests, obligations,~~
1180 cash, other property, or any combination of the foregoing
1181 ~~thereof~~, in accordance with the terms of the conversion, and the
1182 shareholders or interest holders of the converting eligible
1183 entity are entitled only to the rights provided to them by those
1184 terms and to any rights they may have under s. 607.1302 or under
1185 the organic law of the converting eligible entity; and

1186 (h) The converted eligible entity is:

1187 1. Deemed to be incorporated or organized under and subject
1188 to the organic law of the converted eligible entity;

1189 2. Deemed to be the same entity without interruption as the

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1190 converting eligible entity; and

1191 3. Deemed to have been incorporated or otherwise organized
1192 on the date that the converting eligible entity was originally
1193 incorporated or organized.

1194 (4) Except as otherwise provided in the organic law or the
1195 organic rules of the domestic or foreign eligible entity, the
1196 interest holder liability of an interest holder in a converting
1197 eligible entity that converts to a domestic corporation who had
1198 interest holder liability in respect of such converting eligible
1199 entity before the conversion becomes effective shall be as
1200 follows:

1201 (d) The eligible interest holder shall ~~may~~ not, by reason
1202 of such prior interest holder liability, have interest holder
1203 liability with respect to any interest holder liabilities that
1204 arise after the conversion becomes effective.

1205 Section 41. Subsection (4) of section 607.1202, Florida
1206 Statutes, is amended to read:

1207 607.1202 Shareholder approval of certain dispositions.—

1208 (4) If the disposition is required to be approved by the
1209 shareholders under subsection (1) and if the approval is to be
1210 given at the meeting, the corporation shall notify each
1211 shareholder, regardless of whether entitled to vote, of the
1212 meeting of shareholders at which the disposition is to be
1213 submitted for approval. The notice must state that the purpose,
1214 or one of the purposes, of the meeting is to consider the
1215 disposition and shall contain a description of the disposition
1216 and the consideration to be received by the corporation.
1217 Furthermore, the notice shall contain a clear and concise
1218 statement that, if the transaction is effected, shareholders

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1219 dissenting therefrom are or may be entitled, if they comply with
1220 the provisions of this ~~chapter~~ act regarding appraisal rights,
1221 to be paid the fair value of their shares and such notice must
1222 be accompanied by a copy of ss. 607.1301-607.1340.

1223 Section 42. Subsection (2) and paragraph (a) of subsection
1224 (6) of section 607.1301, Florida Statutes, are amended to read:
1225 607.1301 Appraisal rights; definitions.—The following
1226 definitions apply to ss. 607.1301-607.1340:

1227 (2) "Affiliate" means a person that directly or indirectly
1228 through one or more intermediaries controls, is controlled by,
1229 or is under common control with another person or is a senior
1230 executive of such person. For purposes of paragraph (6) (a), a
1231 person is deemed to be an affiliate of its senior executives.

1232 (6) "Interested transaction" means a corporate action
1233 described in s. 607.1302(1), other than a merger pursuant to s.
1234 607.1104, involving an interested person in which any of the
1235 shares or assets of the corporation are being acquired or
1236 converted. As used in this definition:

1237 (a) "Interested person" means a person, or an affiliate of
1238 a person, who at any time during the 1-year period immediately
1239 preceding approval by the board of directors of the corporate
1240 action:

1241 1. Was the beneficial owner of 20 percent or more of the
1242 voting power of the corporation, other than as owner of excluded
1243 shares;

1244 2. Had the power, contractually or otherwise, other than as
1245 owner of excluded shares, to cause the appointment or election
1246 of 25 percent or more of the directors to the board of directors
1247 of the corporation; or

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1248 3. Was a senior executive or director of the corporation or
1249 a senior executive of any affiliate of the corporation, and will
1250 receive, as a result of the corporate action, a financial
1251 benefit not generally available to other shareholders as such,
1252 other than:

1253 a. Employment, consulting, retirement, or similar benefits
1254 established separately and not as part of or in contemplation of
1255 the corporate action;

1256 b. Employment, consulting, retirement, or similar benefits
1257 established in contemplation of, or as part of, the corporate
1258 action that are not more favorable than those existing before
1259 the corporate action or, if more favorable, that have been
1260 approved on behalf of the corporation in the same manner as is
1261 provided in s. 607.0832; or

1262 c. In the case of a director of the corporation who, in the
1263 corporate action, will become a director or governor of the
1264 acquirer or any of its affiliates ~~in the corporate action~~,
1265 rights and benefits as a director or governor that are provided
1266 on the same basis as those afforded by the acquirer generally to
1267 other directors or governors of such entity or such affiliate.

1268 Section 43. Subsection (1) of section 607.1302, Florida
1269 Statutes, is amended to read:

1270 607.1302 Right of shareholders to appraisal.—

1271 (1) A shareholder of a domestic corporation is entitled to
1272 appraisal rights, and to obtain payment of the fair value of
1273 that shareholder's shares, in the event of any of the following
1274 corporate actions:

1275 (a) Consummation of a domestication or a conversion of such
1276 corporation pursuant to s. 607.11921 or s. 607.11932, as

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1277 applicable, if shareholder approval is required for the
 1278 domestication or the conversion;

1279 (b) Consummation of a merger to which such corporation is a
 1280 party:

1281 1. If shareholder approval is required for the merger under
 1282 s. 607.1103 or would be required but for s. 607.11035, except
 1283 that appraisal rights shall not be available to any shareholder
 1284 of the corporation with respect to shares of any class or series
 1285 that remains outstanding after consummation of the merger where
 1286 the terms of such class or series have not been materially
 1287 altered; or

1288 2. If such corporation is a subsidiary and the merger is
 1289 governed by s. 607.1104;

1290 (c) Consummation of a share exchange to which the
 1291 corporation is a party as the corporation whose shares will be
 1292 acquired, except that appraisal rights are not available to any
 1293 shareholder of the corporation with respect to any class or
 1294 series of shares of the corporation that is not acquired in the
 1295 share exchange;

1296 (d) Consummation of a disposition of assets pursuant to s.
 1297 607.1202 if the shareholder is entitled to vote on the
 1298 disposition, including a sale in dissolution, except that
 1299 appraisal rights shall not be available to any shareholder of
 1300 the corporation with respect to shares or any class or series
 1301 if:

1302 1. Under the terms of the corporate action approved by the
 1303 shareholders there is to be distributed to shareholders in cash
 1304 the corporation's net assets, in excess of a reasonable amount
 1305 reserved to meet claims of the type described in ss. 607.1406

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1306 and 607.1407, within 1 year after the shareholders' approval of
 1307 the action and in accordance with their respective interests
 1308 determined at the time of distribution; and

1309 2. The disposition of assets is not an interested
 1310 transaction;

1311 (e) An amendment of the articles of incorporation with
 1312 respect to a class or series of shares which reduces the number
 1313 of shares of a class or series owned by the shareholder to a
 1314 fraction of a share if the corporation has the obligation or the
 1315 right to repurchase the fractional share so created;

1316 (f) Any other merger, share exchange, disposition of
 1317 assets, or amendment to the articles of incorporation, in each
 1318 case to the extent provided by the articles of incorporation,
 1319 bylaws, or a resolution of the board of directors, except that
 1320 no bylaw or board resolution providing for appraisal rights may
 1321 be amended or otherwise altered except by shareholder approval;

1322 (g) An amendment to the articles of incorporation or bylaws
 1323 of the corporation, the effect of which is to alter or abolish
 1324 voting or other rights with respect to such interest in a manner
 1325 that is adverse to the interest of such shareholder, except as
 1326 the right may be affected by the voting or other rights of new
 1327 shares then being authorized of a new class or series of shares;

1328 (h) An amendment to the articles of incorporation or bylaws
 1329 of a corporation, the effect of which is to adversely affect the
 1330 interest of the shareholder by altering or abolishing appraisal
 1331 rights under this section;

1332 (i) With regard to a class of shares prescribed in the
 1333 articles of incorporation prior to October 1, 2003, including
 1334 any shares within that class subsequently authorized by

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1335 amendment, any amendment of the articles of incorporation if the
 1336 shareholder is entitled to vote on the amendment and if such
 1337 amendment would adversely affect such shareholder by:

1338 1. Altering or abolishing any preemptive rights attached to
 1339 any of his, ~~or~~ her, or its shares;

1340 2. Altering or abolishing the voting rights pertaining to
 1341 any of his, ~~or~~ her, or its shares, except as such rights may be
 1342 affected by the voting rights of new shares then being
 1343 authorized of any existing or new class or series of shares;

1344 3. Effecting an exchange, cancellation, or reclassification
 1345 of any of his, ~~or~~ her, or its shares, when such exchange,
 1346 cancellation, or reclassification would alter or abolish the
 1347 shareholder's voting rights or alter his, ~~or~~ her, or its
 1348 percentage of equity in the corporation, or effecting a
 1349 reduction or cancellation of accrued dividends or other
 1350 arrearages in respect to such shares;

1351 4. Reducing the stated redemption price of any of the
 1352 shareholder's redeemable shares, altering or abolishing any
 1353 provision relating to any sinking fund for the redemption or
 1354 purchase of any of his, ~~or~~ her, or its shares, or making any of
 1355 his, ~~or~~ her, or its shares subject to redemption when they are
 1356 not otherwise redeemable;

1357 5. Making noncumulative, in whole or in part, dividends of
 1358 any of the shareholder's preferred shares which had theretofore
 1359 been cumulative;

1360 6. Reducing the stated dividend preference of any of the
 1361 shareholder's preferred shares; or

1362 7. Reducing any stated preferential amount payable on any
 1363 of the shareholder's preferred shares upon voluntary or

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1364 involuntary liquidation;

1365 (j) An amendment of the articles of incorporation of a
 1366 social purpose corporation to which s. 607.504 or s. 607.505
 1367 applies;

1368 (k) An amendment of the articles of incorporation of a
 1369 benefit corporation to which s. 607.604 or s. 607.605 applies;

1370 (l) A merger, domestication, conversion, or share exchange
 1371 of a social purpose corporation to which s. 607.504 applies; or
 1372 (m) A merger, domestication, conversion, or share exchange
 1373 of a benefit corporation to which s. 607.604 applies.

1374 Section 44. Subsection (1) of section 607.1303, Florida
 1375 Statutes, is amended to read:

1376 607.1303 Assertion of rights by nominees and beneficial
 1377 owners.—

1378 (1) A record shareholder may assert appraisal rights as to
 1379 fewer than all the shares registered in the record shareholder's
 1380 name but owned by a beneficial shareholder or a voting trust
 1381 beneficial owner only if the record shareholder objects with
 1382 respect to all shares of the class or series owned by the
 1383 beneficial shareholder or the a voting trust beneficial owner
 1384 and notifies the corporation in writing of the name and address
 1385 of each beneficial shareholder or voting trust beneficial owner
 1386 on whose behalf appraisal rights are being asserted. The rights
 1387 of a record shareholder who asserts appraisal rights for only
 1388 part of the shares held of record in the record shareholder's
 1389 name under this subsection shall be determined as if the shares
 1390 as to which the record shareholder objects and the record
 1391 shareholder's other shares were registered in the names of
 1392 different record shareholders.

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1393 Section 45. Subsection (1) of section 607.1320, Florida
 1394 Statutes, is amended to read:
 1395 607.1320 Notice of appraisal rights.—
 1396 (1) If a proposed corporate action described in s.
 1397 607.1302(1) is to be submitted to a vote at a shareholders'
 1398 meeting, the meeting notice (or, where no approval of such
 1399 action is required pursuant to s. 607.11035, the offer made
 1400 pursuant to s. 607.11035), must state that the corporation has
 1401 concluded that shareholders are, are not, or may be entitled to
 1402 assert appraisal rights under this chapter. If the corporation
 1403 concludes that appraisal rights are or may be available, a copy
 1404 of ss. 607.1301-607.1340 must accompany the meeting notice or
 1405 offer sent to those record shareholders entitled to exercise
 1406 appraisal rights.

1407 Section 46. Subsection (1) of section 607.1333, Florida
 1408 Statutes, is amended to read:
 1409 607.1333 Limitation on corporate payment.—
 1410 (1) No payment shall be made to a shareholder seeking
 1411 appraisal rights if, at the time of payment, the corporation is
 1412 unable to meet the distribution standards of s. 607.06401. In
 1413 such event, the shareholder shall, at the shareholder's option:
 1414 (a) Withdraw his, ~~or her,~~ or its notice of intent to assert
 1415 appraisal rights, which shall in such event be deemed withdrawn
 1416 with the consent of the corporation; or
 1417 (b) Retain his, ~~or her,~~ or its status as a claimant against
 1418 the corporation and, if it is liquidated, be subordinated to the
 1419 rights of creditors of the corporation, but have rights superior
 1420 to the shareholders not asserting appraisal rights, and if the
 1421 corporation is not liquidated, retain his, ~~or her,~~ or its right

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1422 to be paid for the shares, which right the corporation shall be
 1423 obliged to satisfy when the restrictions of this section do not
 1424 apply.

1425 Section 47. Subsection (1) of section 607.1340, Florida
 1426 Statutes, is amended to read:
 1427 607.1340 Other remedies limited.—
 1428 (1) A shareholder entitled to appraisal rights under this
 1429 chapter may not challenge a completed corporate action for which
 1430 appraisal rights are available unless such corporate action was
 1431 either:
 1432 (a) Not authorized and approved in accordance with the
 1433 applicable provisions of this chapter; or
 1434 (b) Procured as a result of fraud, a material
 1435 misrepresentation, or an omission of a material fact necessary
 1436 to make statements made, in light of the circumstances in which
 1437 they were made, not misleading.

1438 Section 48. Subsection (3) of section 607.1403, Florida
 1439 Statutes, is amended to read:
 1440 607.1403 Articles of dissolution.—
 1441 (3) For purposes of ss. 607.1401-607.1410, the term
 1442 "dissolved corporation" means a corporation whose articles of
 1443 dissolution have become effective and includes a successor
 1444 entity. Further, for the purposes of this subsection, the term
 1445 "successor entity" includes a trust, receivership, or other
 1446 legal entity governed by the laws of this state to which the
 1447 remaining assets and liabilities of a dissolved corporation are
 1448 transferred and which exists solely for the purposes of
 1449 prosecuting and defending suits by or against the dissolved
 1450 corporation, thereby enabling the dissolved corporation to

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1451 settle and close the business of the dissolved corporation, to
 1452 dispose of and convey the property of the dissolved corporation,
 1453 to discharge the liabilities of the dissolved corporation, and
 1454 to distribute to the dissolved corporation's shareholders any
 1455 remaining assets, but not for the purpose of continuing the
 1456 activities and affairs for which the dissolved corporation was
 1457 organized.

1458 Section 49. Paragraph (a) of subsection (5) of section
 1459 607.1406, Florida Statutes, is amended to read:

1460 607.1406 Known claims against dissolved corporation.—

1461 (5) (a) For purposes of ss. 607.1401-607.1410, the term ~~this~~
 1462 ~~section~~, "known claims" means any claim or liability that, as of
 1463 the date of the giving of the written notice contemplated by
 1464 subsections (1) and (2):

1465 1. Has matured sufficiently on or prior to the effective
 1466 date of the dissolution to be legally capable of assertion
 1467 against the dissolved corporation; or

1468 2. Is unmatured as of the effective date of the dissolution
 1469 but will mature in the future solely based on the passage of
 1470 time.

1471 Section 50. Subsections (1) and (6) of section 607.1422,
 1472 Florida Statutes, are amended to read:

1473 607.1422 Reinstatement following administrative
 1474 dissolution.—

1475 (1) A corporation that is administratively dissolved under
 1476 s. 607.1420 or that was dissolved under former s. 607.1421
 1477 before January 1, 2020, may apply to the department for
 1478 reinstatement at any time after the effective date of
 1479 dissolution. The corporation must submit all fees and penalties

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1480 then owed by the corporation at the rates provided by law ~~laws~~
 1481 at the time the corporation applies for reinstatement, together
 1482 with an application for reinstatement prescribed and furnished
 1483 by the department, which is signed by both the registered agent
 1484 and an officer or director of the corporation and states:

1485 (a) The name of the corporation;

1486 (b) The street address of the corporation's principal
 1487 office and mailing address;

1488 (c) The date of the corporation's organization;

1489 (d) The corporation's federal employer identification
 1490 number or, if none, whether one has been applied for;

1491 (e) The name, title or capacity, and address of at least
 1492 one officer or director of the corporation; and

1493 (f) Additional information that is necessary or appropriate
 1494 to enable the department to carry out this chapter.

1495 (6) If the name of the dissolved corporation has been
 1496 lawfully assumed in this state by another eligible business
 1497 entity, the department shall require the dissolved corporation
 1498 to amend its articles of incorporation to change its name before
 1499 accepting its application for reinstatement.

1500 Section 51. Subsection (1), paragraph (b) of subsection
 1501 (3), and subsection (4) of section 607.1430, Florida Statutes,
 1502 are amended to read:

1503 607.1430 Grounds for judicial dissolution.—

1504 (1) A circuit court may dissolve a corporation or order
 1505 such other remedy as provided in s. 607.1434:

1506 (a) In a proceeding by the Department of Legal Affairs to
 1507 dissolve a corporation if it is established that:

1508 1. The corporation obtained its articles of incorporation

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1509 through fraud; or

1510 2. The corporation has continued to exceed or abuse the
1511 authority conferred upon it by law.

1512

1513 The enumeration in subparagraphs 1. and 2. of grounds for
1514 involuntary dissolution does not exclude actions or special
1515 proceedings by the Department of Legal Affairs or any state
1516 official for the annulment or dissolution of a corporation for
1517 other causes as provided in any other statute of this state;

1518 (b) In a proceeding by a shareholder to dissolve a
1519 corporation if it is established that:

1520 1. The directors are deadlocked in the management of the
1521 corporate affairs, the shareholders are unable to break the
1522 deadlock, and:

1523 a. Irreparable injury to the corporation is threatened or
1524 being suffered;

1525 b. The business and affairs of the corporation can no
1526 longer be conducted to the advantage of the shareholders
1527 generally because of the deadlock; or

1528 c. Both sub-subparagraphs a. and b.; or

1529 2. The shareholders are deadlocked in voting power and have
1530 failed to elect successors to directors whose terms have expired
1531 or would have expired upon qualification of their successors;

1532 3. The corporate assets are being misapplied or wasted,
1533 causing material injury to the corporation; or

1534 4. The directors or those in control of the corporation
1535 have acted, are acting, or are reasonably expected to act in a
1536 manner that is illegal or fraudulent;

1537 (c) In a proceeding by a creditor if it is established

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1538 that:

1539 1. The creditor's claim has been reduced to judgment, the
1540 execution on the judgment returned unsatisfied, and the
1541 corporation is insolvent; or

1542 2. The corporation has admitted in writing that the
1543 creditor's claim is due and owing and the corporation is
1544 insolvent;

1545 (d) In a proceeding by the corporation to have its
1546 voluntary dissolution continued under court supervision; or

1547 (e) In a proceeding by a shareholder if the corporation has
1548 abandoned its business and has failed within a reasonable period
1549 of time to liquidate and distribute its assets and dissolve.

1550 (3)

1551 (b) For purposes of As used in this section, the term
1552 "deadlock sale provision" means a provision in a shareholder
1553 agreement that complies with s. 607.0732, which is or may be
1554 applicable in the event of a deadlock among the directors or
1555 shareholders of the corporation, which neither the directors nor
1556 the shareholders, as applicable, of the corporation are able to
1557 break, ~~and~~ and which provides for a deadlock breaking mechanism,
1558 including, but not limited to:

1559 1. A redemption or a purchase and sale of shares or other
1560 equity securities;

1561 2. A governance change;

1562 3. A sale of the corporation or all or substantially all of
1563 the assets of the corporation; or

1564 4. A similar provision that, if initiated and effectuated,
1565 breaks the deadlock by causing the transfer of the shares or
1566 other equity securities, a governance change, or a sale of the

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1567 corporation or all or substantially all of the corporation's
1568 assets.

1569 (4) A deadlock sale provision in a shareholder agreement
1570 ~~that which~~ complies with s. 607.0732 which is not initiated and
1571 effectuated before the court enters an order of judicial
1572 dissolution under subparagraph (1)(b)1. or subparagraph
1573 (1)(b)2., as the case may be, or an order directing the purchase
1574 of petitioner's interest under s. 607.1436, does not adversely
1575 affect the rights of shareholders to seek judicial dissolution
1576 under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the
1577 case may be, or the rights of the corporation or one or more
1578 shareholders to purchase the petitioner's interest under s.
1579 607.1436. The filing of an action for judicial dissolution on
1580 the grounds described in subparagraph (1)(b)1. or subparagraph
1581 (1)(b)2., as the case may be, or an election to purchase the
1582 petitioner's interest under s. 607.1436, does not adversely
1583 affect the right of a shareholder to initiate an available
1584 deadlock sale provision under the shareholder agreement that
1585 complies with s. 607.0732 or to enforce a shareholder-initiated
1586 or an automatically-initiated deadlock sale provision if the
1587 deadlock sale provision is initiated and effectuated before the
1588 court enters an order of judicial dissolution under subparagraph
1589 (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an
1590 order directing the purchase of petitioner's interest under s.
1591 607.1436.

1592 Section 52. Subsection (5) of section 607.1431, Florida
1593 Statutes, is amended to read:

1594 607.1431 Procedure for judicial dissolution.—

1595 (5) If the court determines that any party has commenced,

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1596 continued, or participated in a proceeding under s. 607.1430 and
1597 has acted arbitrarily, frivolously, vexatiously, or not in good
1598 faith, the court may, in its discretion, award attorney fees and
1599 other reasonable expenses to the other parties to the proceeding
1600 ~~action~~ who have been affected adversely by such actions.

1601 Section 53. Subsection (5) of section 607.1432, Florida
1602 Statutes, is amended to read:

1603 607.1432 Receivership or custodianship.—

1604 (5) The court from time to time during the receivership or
1605 custodianship may order compensation paid and expense
1606 disbursements or reimbursements made to any ~~the~~ receiver or
1607 custodian and his, her, or its counsel from the assets of the
1608 corporation or proceeds from the sale of the assets.

1609 Section 54. Section 607.14401, Florida Statutes, is amended
1610 to read:

1611 607.14401 Deposit with Department of Financial Services.—
1612 Assets of a dissolved corporation that should be transferred to
1613 a creditor, claimant, or shareholder of the corporation who
1614 cannot be found or who is not competent to receive them shall be
1615 reduced to cash and deposited with the Department of Financial
1616 Services for safekeeping. When the creditor, claimant, or
1617 shareholder furnishes satisfactory proof of entitlement to the
1618 amount ~~or assets~~ deposited, the Department of Financial Services
1619 shall pay such person or his, ~~or her,~~ or its representative that
1620 amount.

1621 Section 55. Paragraphs (c), (h), and (k) of subsection (2)
1622 of section 607.1501, Florida Statutes, are amended to read:

1623 607.1501 Authority of foreign corporation to transact
1624 business required; activities not constituting transacting

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1625 business.-

1626 (2) The following activities, among others, do not

1627 constitute transacting business within the meaning of subsection

1628 (1):

1629 (c) Maintaining ~~bank~~ accounts in financial institutions.

1630 (h) Securing or collecting debts or enforcing mortgages or

1631 security interests in property securing the debts, ~~or and~~

1632 holding, protecting, or maintaining property so acquired.

1633 (k) Owning and controlling a subsidiary corporation

1634 incorporated in or limited liability company formed in, or

1635 transacting business within, this state; or voting the shares of

1636 any such subsidiary corporation~~r~~ or voting the membership

1637 interests of any such limited liability company, which it has

1638 lawfully acquired.

1639 Section 56. Subsections (3) and (8) of section 607.1502,

1640 Florida Statutes, are amended to read:

1641 607.1502 Effect of failure to have a certificate of

1642 authority.-

1643 (3) A court may stay a proceeding commenced by a foreign

1644 corporation or its successor or assignee until it determines

1645 whether the foreign corporation or its successor or assignee

1646 requires a certificate of authority. If it so determines, the

1647 court may further stay the proceeding until the foreign

1648 corporation or its successor or assignee has obtained a

1649 certificate of authority to transact business in this state.

1650 (8) If a foreign corporation transacts business in this

1651 state without a certificate of authority or cancels its

1652 certificate of authority, it appoints the secretary of state as

1653 its agent for service of process in proceedings and actions for

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1654 ~~rights of action~~ arising out of the transaction of business in

1655 this state.

1656 Section 57. Subsection (2) of section 607.1503, Florida

1657 Statutes, is amended to read:

1658 607.1503 Application for certificate of authority.-

1659 (2) The foreign corporation shall deliver with a completed

1660 application under subsection (1) a certificate of existence or a

1661 record of similar import, duly authenticated~~r~~, not more than 90

1662 days prior to delivery of the application to the department,

1663 signed by the official having custody of the foreign

1664 corporation's publicly filed records in its jurisdiction of

1665 incorporation. A translation of the certificate, under oath of

1666 the translator, must be attached to a certificate which is in a

1667 language other than the English language.

1668 Section 58. Paragraph (c) of subsection (1) and paragraph

1669 (c) of subsection (2) of section 607.1504, Florida Statutes, are

1670 amended to read:

1671 607.1504 Amended certificate of authority.-

1672 (1) A foreign corporation authorized to transact business

1673 in this state shall deliver for filing an amendment to its

1674 certificate of authority to reflect a change in any of the

1675 following:

1676 (c) The name and street address in this state of the

1677 foreign corporation's registered agent in this state, unless the

1678 change was timely made in accordance with s. 607.1508 or s.

1679 607.15091 ~~s. 607.0502 or s. 607.05031~~.

1680 (2) The amendment must be filed within 90 days after the

1681 occurrence of a change described in subsection (1), must be

1682 signed by an officer of the foreign corporation, and must state

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1683 the following:

1684 (c) The date the foreign corporation was authorized to
1685 transact ~~do~~ business in this state.

1686 Section 59. Subsection (1) of section 607.1505, Florida
1687 Statutes, is amended to read:

1688 607.1505 Effect of a certificate of authority.—

1689 (1) Unless the department determines that ~~than~~ an
1690 application for a certificate of authority of a foreign
1691 corporation to transact business in this state does not comply
1692 with the filing requirements of this chapter, the department
1693 shall, upon payment of all filing fees, authorize the foreign
1694 corporation to transact business in this state and file the
1695 application for certificate of authority.

1696 Section 60. Subsection (3) of section 607.1507, Florida
1697 Statutes, is amended to read:

1698 607.1507 Registered office and registered agent of foreign
1699 corporation.—

1700 (3) Each initial registered agent, and each successor
1701 registered agent that is appointed, shall file a statement in
1702 writing with the department, in the form and manner prescribed
1703 by the department, accepting the appointment as a registered
1704 agent while simultaneously being designated as the registered
1705 agent. The statement of acceptance must provide that the
1706 registered agent is familiar with, and accepts, the obligations
1707 of that position.

1708 Section 61. Subsection (3) of section 607.1509, Florida
1709 Statutes, is amended to read:

1710 607.1509 Resignation of registered agent of foreign
1711 corporation.—

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1712 (3) A registered agent is terminated upon the earlier of:

1713 (a) The 31st day after the department files the statement
1714 of resignation; or

1715 (b) When a statement of change or other record designating
1716 a new registered agent is filed with ~~by~~ the department.

1717 Section 62. Subsection (1) of section 607.15091, Florida
1718 Statutes, is amended to read:

1719 607.15091 Change of name or address by registered agent.—

1720 (1) If a registered agent changes his, ~~or~~ her, or its name
1721 or address, the agent may deliver to the department for filing a
1722 statement of change containing the following:

1723 (a) The name of the foreign corporation represented by the
1724 registered agent.

1725 (b) The name of the registered agent as currently shown in
1726 the records of the department for the corporation.

1727 (c) If the name of the registered agent has changed, his,
1728 her, or its new name.

1729 (d) If the address of the registered agent has changed, the
1730 new address.

1731 (e) A statement that the registered agent has given the
1732 notice required under subsection (2).

1733 Section 63. Subsection (7) of section 607.15101, Florida
1734 Statutes, is amended to read:

1735 607.15101 Service of process, notice, or demand on a
1736 foreign corporation.—

1737 (7) Any notice or demand on a foreign corporation under
1738 this chapter may be given or made: to the chair of the board,
1739 the president, any vice president, the secretary, or the
1740 treasurer of the foreign corporation; to the registered agent of

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 1741 the foreign corporation at the registered office of the foreign
 1742 corporation in this state; or to any other address in this state
 1743 that is in fact the principal office of the foreign corporation
 1744 in this state.

1745 Section 64. Paragraph (e) of subsection (1) of section
 1746 607.1520, Florida Statutes, is amended to read:

1747 607.1520 Withdrawal and cancellation of certificate of
 1748 authority for foreign corporation.—

1749 (1) To cancel its certificate of authority to transact
 1750 business in this state, a foreign corporation must deliver to
 1751 the department for filing a notice of withdrawal of certificate
 1752 of authority. The certificate of authority is canceled when the
 1753 notice of withdrawal becomes effective pursuant to s. 607.0123.
 1754 The notice of withdrawal of certificate of authority must be
 1755 signed by an officer or director and state the following:

1756 (e) That the foreign corporation ~~it~~ revokes the authority
 1757 of its registered agent to accept service on its behalf and
 1758 appoints the secretary of state as its agent for service of
 1759 process based on a cause of action arising during the time it
 1760 was authorized to transact business in this state.

1761 Section 65. Subsections (1), (2), and (8) of section
 1762 607.1602, Florida Statutes, are amended to read:

1763 607.1602 Inspection of records by shareholders.—

1764 (1) A shareholder of a corporation is entitled to inspect
 1765 and copy, during regular business hours at the corporation's
 1766 principal office, any of the records of the corporation
 1767 described in s. 607.1601(1), excluding minutes of meetings of,
 1768 and records of actions taken without a meeting by, the
 1769 corporation's board of directors and any board committees of the

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 1770 corporation established under s. 607.0825, if the shareholder
 1771 gives the corporation written notice of the shareholder's demand
 1772 at least 5 business days before the date on which the
 1773 shareholder wishes to inspect and copy.

1774 (2) A shareholder of a corporation is entitled to inspect
 1775 and copy, during regular business hours at a reasonable location
 1776 specified by the corporation, any of the following records of
 1777 the corporation if the shareholder meets the requirements of
 1778 subsection (3) and gives the corporation written notice of the
 1779 shareholder's demand at least 5 business days before the date on
 1780 which the shareholder wishes to inspect and copy:

1781 (a) Excerpts from minutes of any meeting of, or records of
 1782 any actions taken without a meeting by, the corporation's board
 1783 of directors and board committees of the corporation maintained
 1784 in accordance with s. 607.1601(1);

1785 (b) The financial statements of the corporation maintained
 1786 in accordance with s. 607.1601(2);

1787 (c) Accounting records of the corporation;

1788 (d) The record of shareholders maintained in accordance
 1789 with s. 607.1601(4); and

1790 (e) Any other books and records.

1791 (8) A corporation may deny any demand for inspection made
 1792 pursuant to subsection (2) if the demand was made for an
 1793 improper purpose, or if the demanding shareholder has within 2
 1794 years preceding his, ~~or~~ her, or its demand sold or offered for
 1795 sale any list of shareholders of the corporation or any other
 1796 corporation, has aided or abetted any person in procuring any
 1797 list of shareholders for any such purpose, or has improperly
 1798 used any information secured through any prior examination of

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1799 the records of the corporation or any other corporation.

1800 Section 66. Subsections (1) and (3) of section 607.1604,

1801 Florida Statutes, are amended to read:

1802 607.1604 Court-ordered inspection.—

1803 (1) If a corporation does not allow a shareholder who

1804 complies with s. 607.1602(1) to inspect and copy any records

1805 required by that subsection to be available for inspection, the

1806 circuit court in the applicable county may summarily order

1807 inspection and copying of the records demanded at the

1808 corporation's expense upon application of the shareholder. If

1809 the court orders inspection and copying of the records demanded

1810 under s. 607.1602(1) ~~s. 607.1601(1)~~, it shall also order the

1811 corporation to pay the shareholder's expenses, including

1812 reasonable attorney fees, incurred to obtain the order and

1813 enforce its rights under this section.

1814 (3) If the court orders inspection or ~~and~~ copying of the

1815 records demanded under s. 607.1602(2), it may impose reasonable

1816 restrictions on the disclosure, use, or distribution of, and

1817 reasonable obligations to maintain the confidentiality of, such

1818 records, and it shall also order the corporation to pay the

1819 shareholder's expenses incurred, including reasonable attorney

1820 fees, incurred to obtain the order and enforce its rights under

1821 this section unless the corporation establishes that the

1822 corporation refused inspection in good faith because the

1823 corporation had:

1824 (a) A reasonable basis for doubt about the right of the

1825 shareholder to inspect or copy the records demanded; or

1826 (b) Required reasonable restrictions on the disclosure,

1827 use, or distribution of, and reasonable obligations to maintain

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1828 the confidentiality of, such records demanded to which the

1829 demanding shareholder had been unwilling to agree.

1830 Section 67. Subsections (2) and (4) of section 607.1622,

1831 Florida Statutes, are amended to read:

1832 607.1622 Annual report for department.—

1833 (2) If an annual report contains the name and address of a

1834 registered agent which differs from the information shown in the

1835 records of the department immediately before the annual report

1836 becomes effective, the differing information in the annual

1837 report is considered a statement of change under s. 607.0502 or

1838 s. 607.1508, as the case may be.

1839 (4) The first annual report must be delivered to the

1840 department between January 1 and May 1 of the year following the

1841 calendar year in which a domestic corporation's articles of

1842 incorporation became effective or a foreign corporation obtained

1843 its certificate of authority to transact business in this state.

1844 Subsequent annual reports must be delivered to the department

1845 between January 1 and May 1 of each calendar year thereafter. If

1846 one or more forms of annual report are submitted for a calendar

1847 year, the department shall file each of them and make the

1848 information contained in them part of the official record. The

1849 first form of annual report filed in a calendar year shall be

1850 considered the annual report for that ~~the~~ calendar year, and

1851 each report filed after that one in the same calendar year shall

1852 be treated as an amended report for that calendar year.

1853 Section 68. Section 607.1703, Florida Statutes, is created

1854 to read:

1855 607.1703 Interrogatories by department; other powers of

1856 department.—

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1857 (1) The department may direct to any domestic corporation
 1858 or foreign corporation subject to this chapter, and to any
 1859 officer or director of any domestic corporation or foreign
 1860 corporation subject to this chapter, interrogatories reasonably
 1861 necessary and proper to enable the department to ascertain
 1862 whether the domestic corporation or foreign corporation has
 1863 complied with the provisions of this chapter applicable to the
 1864 domestic corporation or foreign corporation. The interrogatories
 1865 must be answered within 30 days after the date of mailing, or
 1866 within such additional time as fixed by the department. The
 1867 answers to the interrogatories must be full and complete and
 1868 must be made in writing and under oath. If the interrogatories
 1869 are directed to an individual, they must be answered by the
 1870 individual, and if directed to a domestic corporation or foreign
 1871 corporation, they must be answered by an officer or director of
 1872 the domestic corporation or foreign corporation, by a
 1873 shareholder if there are no officers or directors of the
 1874 domestic corporation or foreign corporation, or by a fiduciary
 1875 if the corporation is in the hands of a receiver, trustee, or
 1876 other court-appointed fiduciary.

1877 (2) The department need not file a record in a court of
 1878 competent jurisdiction to which the interrogatories relate until
 1879 the interrogatories are answered as provided in this chapter,
 1880 and is not required to file a record if the answers disclose
 1881 that the record is not in conformity with the requirements of
 1882 this chapter or if the department has determined that the
 1883 parties to such document have not paid all fees, taxes, and
 1884 penalties due and owing this state. The department shall certify
 1885 to the Department of Legal Affairs, for such action as the

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1886 Department of Legal Affairs may deem appropriate, all
 1887 interrogatories and answers that disclose a violation of this
 1888 chapter.

1889 (3) The department may, based upon its findings under this
 1890 section or as provided in s. 213.053(15), bring an action in
 1891 circuit court to collect any penalties, fees, or taxes
 1892 determined to be due and owing the state and to compel any
 1893 filing, qualification, or registration required by law. In
 1894 connection with such proceeding, the department may, without
 1895 prior approval by the court, file a lis pendens against any
 1896 property owned by the corporation and may further certify any
 1897 findings to the Department of Legal Affairs for the initiation
 1898 of an action permitted pursuant to this chapter which the
 1899 Department of Legal Affairs may deem appropriate.

1900 (4) The department has the power and authority reasonably
 1901 necessary to administer this chapter efficiently, to perform the
 1902 duties herein imposed upon it, and to adopt reasonable rules
 1903 necessary to carry out its duties and functions under this
 1904 chapter.

1905 Section 69. Section 607.1907, Florida Statutes, is amended
 1906 to read:

1907 607.1907 Saving provision.—

1908 (1) Except as to procedural provisions, chapter 2019-90,
 1909 Laws of Florida, this act does not affect a pending action or
 1910 proceeding or a right accrued before January 1, 2020, and a
 1911 pending civil action or proceeding may be completed, and a right
 1912 accrued may be enforced, as if chapter 2019-90, Laws of Florida,
 1913 this act had not become effective.

1914 (2) If a penalty or punishment for violation of a statute

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 1915 or rule is reduced by chapter 2019-90, Laws of Florida, ~~this~~
 1916 ~~act~~, the penalty or punishment, if not already imposed, shall be
 1917 imposed in accordance with chapter 2019-90, Laws of Florida ~~this~~
 1918 ~~act~~.

1919 Section 70. Subsection (3) of section 607.504, Florida
 1920 Statutes, is amended to read:

1921 607.504 Election of social purpose corporation status.—

1922 (3) If an entity elects to become a social purpose
 1923 corporation by amendment of the articles of incorporation or by
 1924 a merger, domestication, conversion, or share exchange, the
 1925 shareholders of the entity are entitled to appraisal rights
 1926 under and pursuant to ss. 607.1301-607.1340.

1927 Section 71. Subsection (1) of section 605.0116, Florida
 1928 Statutes, is amended to read:

1929 605.0116 Change of name or address by registered agent.—

1930 (1) If a registered agent changes his, ~~or~~ her, or its name
 1931 or address, the agent may deliver to the department for filing a
 1932 statement of change that provides the following:

1933 (a) The name of the limited liability company or foreign
 1934 limited liability company represented by the registered agent.

1935 (b) The name of the registered agent as currently shown in
 1936 the records of the department for the limited liability company
 1937 or foreign limited liability company.

1938 (c) If the name of the registered agent has changed, his,
 1939 her, or its new name.

1940 (d) If the address of the registered agent has changed, the
 1941 new address.

1942 (e) A statement that the registered agent has given the
 1943 notice required under subsection (2).

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 1944 Section 72. Subsections (2) and (7) of section 605.0207,
 1945 Florida Statutes, are amended to read:

1946 605.0207 Effective date and time.—Except as otherwise
 1947 provided in s. 605.0208, and subject to s. 605.0209(3), any
 1948 document delivered to the department for filing under this
 1949 chapter may specify an effective time and a delayed effective
 1950 date. In the case of initial articles of organization, a prior
 1951 effective date may be specified in the articles of organization
 1952 if such date is within 5 business days before the date of
 1953 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
 1954 605.0209, a record filed by the department is effective:

1955 (2) If the record filed specifies an effective time, but
 1956 not a prior or delayed effective date, on the date the record is
 1957 accepted, as evidenced by the department's endorsement, and
 1958 ~~filed~~ at the time specified in the filing.

1959 (7) If the record filed ~~a filed document~~ does not specify
 1960 the time zone or place at which the date or time, or both, is to
 1961 be determined, the date or time, or both, at which it becomes
 1962 effective shall be those prevailing at the place of filing in
 1963 this state.

1964 Section 73. Section 605.0215, Florida Statutes, is amended
 1965 to read:

1966 605.0215 Certificates to be received in evidence and
 1967 evidentiary effect of certified copy of filed document.—All
 1968 certificates issued by the department in accordance with this
 1969 chapter shall be taken and received in all courts, public
 1970 offices, and official bodies as prima facie evidence of the
 1971 facts stated. A certificate from the department delivered with a
 1972 copy of a document filed by the department bearing the signature

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1973 of the secretary of state, which may be in facsimile, and the
 1974 seal of this state, is conclusive evidence that the original
 1975 document is on file with the department.

1976 Section 74. Paragraph (b) of subsection (2) of section
 1977 605.0702, Florida Statutes, is amended to read:
 1978 605.0702 Grounds for judicial dissolution.—
 1979 (2)
 1980 (b) For purposes of ~~As used in~~ this section, the term
 1981 “deadlock sale provision” means a provision in an operating
 1982 agreement which is or may be applicable in the event of a
 1983 deadlock among the managers or the members of the limited
 1984 liability company which the members of the company are unable to
 1985 break and which provides for a deadlock breaking mechanism,
 1986 including, but not limited to:

- 1987 1. A redemption or a purchase and sale of interests;
- 1988 2. A governance change, among or between members;
- 1989 3. The sale of the company or all or substantially all of
 1990 the assets of the company; or
- 1991 4. A similar provision that, if initiated and effectuated,
 1992 breaks the deadlock by causing the transfer of interests, a
 1993 governance change, or the sale of all or substantially all of
 1994 the company’s assets.

1995 Section 75. Subsection (2) of section 605.0716, Florida
 1996 Statutes, is amended to read:
 1997 605.0716 Judicial review of denial of reinstatement.—
 1998 (2) Within 30 days after service of a notice of denial of
 1999 reinstatement, a limited liability company may appeal the denial
 2000 by petitioning the Circuit Court of Leon County to set aside the
 2001 dissolution. The petition must be served on the department and

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2002 must contain a copy of the department’s notice of administrative
 2003 dissolution, the company’s application for reinstatement, and
 2004 the department’s notice of denial.

2005 Section 76. Subsection (1) of section 617.0501, Florida
 2006 Statutes, is amended to read:
 2007 617.0501 Registered office and registered agent.—
 2008 (1) Each corporation shall have and continuously maintain
 2009 in this state:

- 2010 (a) A registered office which may be the same as its
 2011 principal office; and
- 2012 (b) A registered agent, who may be either:
 2013 1. An individual who resides in this state whose business
 2014 office is identical with such registered office; or
 2015 2.a. Another domestic entity that is an authorized entity
 2016 whose business address is identical to the address of the
 2017 registered office; or
 2018 b. A foreign entity authorized to transact business in this
 2019 state that is an authorized entity and whose business address is
 2020 identical to the address of the registered office.

2021 Section 77. Section 617.0825, Florida Statutes, is amended
 2022 to read:
 2023 617.0825 Board committees and advisory committees.—
 2024 (1) Unless the articles of incorporation or the bylaws
 2025 otherwise provide, the board of directors, by resolution adopted
 2026 by a majority of the full board of directors, may create an
 2027 executive committee and one or more other committees of the
 2028 board and appoint directors or such other persons as the board
 2029 of directors designates to serve on such committee or
 2030 committees. The majority of the persons on each committee must

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2031 be directors.

2032 (2) Notwithstanding subsection (1), a board committee may

2033 be composed of less than a majority of directors or entirely of

2034 non-directors if:

2035 (a) The committee is created by the board of directors or

2036 is otherwise authorized by the articles of incorporation or the

2037 bylaws; and

2038 (b) The committee relates to the election, nomination,

2039 qualification, or credentials of directors or is involved in the

2040 process of electing directors. designate from among its members

2041 an executive committee and one or more other committees each of

2042 which.

2043 (3) To the extent provided by the board of directors in a

2044 such resolution or in the articles of incorporation or the

2045 bylaws of the corporation, each such committee shall have and

2046 may exercise powers and all the authority of the board of

2047 directors, except that no such committee shall have the power or

2048 authority to:

2049 (a) Approve or recommend to members actions or proposals

2050 required by this act to be approved by members.

2051 (b) Fill vacancies on the board of directors or any

2052 committee thereof.

2053 (c) Adopt, amend, or repeal the bylaws.

2054 (4)(2) Unless the articles of incorporation or the bylaws

2055 provide otherwise, ss. 617.0820, 617.0822, 617.0823, and

2056 617.0824, which govern meetings, notice and waiver of notice,

2057 and quorum and voting requirements of the board of directors,

2058 apply to committees and their members as well.

2059 (5)(3) Each committee must have two or more members who

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2060 serve at the pleasure of the board of directors. The board, by

2061 resolution adopted in accordance with and consistent with

2062 subsection (1), may designate one or more ~~directors~~ as alternate

2063 members of any such committee who may act in the place and stead

2064 of any absent member or members at any meeting of such

2065 committee.

2066 (6) A committee member who is not a director has the same

2067 responsibility and fiduciary duties with respect to activities

2068 of such committee, and the same liability protections, as a

2069 committee member who is a director.

2070 (7)(4) Neither the designation of any such committee, the

2071 delegation thereto of authority, nor action by such committee

2072 pursuant to such authority shall alone constitute compliance by

2073 any member of the board of directors not a member of the

2074 committee in question with his or her responsibility to act in

2075 good faith, in a manner he or she reasonably believes to be in

2076 the best interests of the corporation, and with such care as an

2077 ordinarily prudent person in a like position would use under

2078 similar circumstances.

2079 (8) A corporation may create or authorize the creation of

2080 one or more advisory committees with any number of persons on

2081 the committee being non-directors. An advisory committee:

2082 (a) Is not a committee of the board of directors; and

2083 (b) May not act on behalf of or exercise any of the powers

2084 or authority of the board of directors or bind the corporation

2085 to any action, but may make recommendations to the board of

2086 directors, to the officers, or to the members.

2087 Section 78. This act shall take effect upon becoming a law.

Proposed Modifications to Chapter 607 (Florida Business Corporation Act)

January 24, 2019

The Florida Bar Business Law Section ("Section") has a long history of proposing entity statutes for our state. The Section comprehensively updated and modernized Florida's corporate statute in the late 1980s, updated Florida's partnership statute in the mid 1990s, updated Florida's limited partnership statute in the early 2000s, and updated Florida's LLC statute in the late 1990s and, in a far more comprehensive fashion, in 2013, and the Section is now – once again – proposing to update and modernize Florida's corporate statute.

Florida is a Model Act/Uniform Laws state with respect to its entity statutes, but unlike Delaware, for example, the Section is not in a position to propose and pursue significant changes to our State's entity statutes on a year-in and year-out basis. Thus, the Section's efforts to update and modernize the State's entity statutes have tended to be to present large comprehensive bills to replace older entity statutes with updated and modernized ones. That is not to say that the Section has not previously made proposals to update and modernize provisions of the Florida Business Corporation Act ("FBCA"), but that these previous efforts since 1989 have generally been on selected topics and have not been on a comprehensive basis.

When it comes to for-profit corporations in Florida, Florida generally follows the revised Model Business Corporation Act (the "MBCA" or the "Model Act"), which is promulgated by the Corporate Laws Committee of the ABA Business Law Section. Although the Model Act has changed extensively over the past thirty-five years, Chapter 607 has been overhauled only once (in 1989) and otherwise has endured patchwork amendments, with more significant changes in 1996 and 2003. Recently, in 2016, the MBCA itself was updated and modernized in its entirety. For all of these reasons, it has been deemed a necessity to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

There are a large number of entities organized in Florida. At the beginning of 2018, Florida had 760,000 corporations and almost 1.2 million limited liability companies in existence - probably more than any other state – growing at the rate of about 100,000 new corporations and more than 250,000 new LLCs per year (while the net growth is smaller, because many corporations and LLCs are dissolved each year, it is still significant growth under any circumstances). Because so many of the users of Florida's entity statutes are private companies, Florida's entity laws have tended to be as proscriptive as possible to offer clarity in our law for users that range from non-lawyers, to lawyers who are not necessary experts in entity matters, and to judges, all of whom are able to benefit from the proscriptive guidance in our State's entity statutes.

In 2014, a drafting task force (the "Drafting Subcommittee" or the "Subcommittee") was organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section to make recommendations as to proposed changes to the FBCA. The Drafting Subcommittee's mission statement was to comprehensively study Florida's business corporation statute and to propose a more cohesive revision and set of amendments with the purpose of (i) bringing Florida's

business corporation statute in line with the revisions to the MBCA and the trends affecting the use of corporations by businesses today, (ii) maintaining Florida's competitiveness with other jurisdictions, (iii) seeking to fix issues presented by the existing statute that have been experienced by practitioners in practice and in litigating disputes concerning the operations of Florida corporations, and (iv) continuing to encourage formation and use of Florida corporations, where appropriate.

The proposal includes changes to Chapter 607 of the Florida Statutes, harmonizing changes to other Florida entity statutes to make them consistent with revised Chapter 607, and necessary corrections to cross references appearing in other Chapter 607 sections and in other Florida Statutes (the "Updated Act").

The following bullet point summary of the Updated Act has been prepared by the co-chairs of the Subcommittee to facilitate the review of the proposed statute by interested persons. References in this bullet point summary to "Existing Law" refer to existing Chapter 607 of the Florida Statutes. References to "Updated Act" refer to Chapter 607, and to certain corresponding, mirror and/or related provisions of certain other chapters of the Florida Statutes, as proposed to be revised. Unlike the recent revision to Florida's limited liability company statute, where Chapter 608 was replaced entirely by Chapter 605, the proposed revisions to the FBCA, although extensive, are all being made within existing Chapter 607 of the Florida Statutes.

The proposal contemplates that if it is passed by the Florida legislature during the 2019 legislative session, it will become effective for all Florida corporations as of January 1, 2020.

OVERVIEW OF THE UPDATED ACT

The Updated Act follows, for the most part, the 2016 version of the Model Act, yet deviates in a number of respects by:

- (i) retaining certain non-Model Act provisions already contained in existing Chapter 607;
- (ii) borrowing language from the Delaware General Corporation Law ("DGCL"); and
- (iii) borrowing parallel language and approaches from the Florida Revised Limited Liability Company Act ("FRLCA") for purposes of harmonizing the two statutes on issues where harmonization is considered appropriate.

The Updated Act introduces more definitions than were set forth in Existing Law, many of which are necessary because of new provisions not contained in Existing Law. The Updated Act also updates and tries to become more consistent in the use of certain defined terms and terminology (such as references to the "department" and the "chapter" and the use of the term "signed" rather than "executed").

Some of the more important changes reflected in the Updated Act are as follows:

- Clarifies the extent to which plans and filed documents can be dependent on facts objectively ascertainable outside a plan or filed document;

- Modifies and expands the terms as to the date and time when a filed document under Chapter 607 is effective, paralleling (for the most part) the comparable provision in FRLUCA;
- Modifies the provisions relating to correcting filed documents, such that corrections can be filed at any time and will no longer be limited to the 30 day period following the initial filing;
- In several places, and at the request of the Florida Department of State, Division of Corporations (the "Department"), modifies the proper jurisdiction for bringing actions against the Florida Department of State from the county where a corporation's principal place of business is located to Leon County, Florida;
- Harmonizes the specifics to be contained in a certificate of status with how the Department currently operates, paralleling (for the most part) the comparable provision in FRLUCA;
- Updates definitions of "electronic," "electronic record," "electronic transmission," "record," and "sign" and methods of giving, transmitting and delivering notice to be more in tune with current and anticipated electronic technology;
- Adds the concept of "qualified director" to identify who should be considered a truly independent director for purposes of the updated derivative action provisions, the updated director conflict of interest provisions, and the updated indemnification provisions;
- Consistent with what has been considered implicit under the Existing Law (but was not expressly stated), expressly authorizes Articles of Incorporation and/or bylaws to include exclusive forum provisions relative to proceedings addressing internal corporate claims;
- Expressly prohibits provisions in Articles of Incorporation or in bylaws purporting to impose liability upon a shareholder for attorneys' fees or expenses in connection with an internal corporate claim proceeding, but allows such provisions to be included in a shareholders' agreement that complies with the requirements of s. 607.0732 of the FBCA;
- Makes it expressly clear that proxy access provisions in corporate bylaws are permissible;
- Adds language to expressly authorize a corporation (consistent with current Department practice) to adopt an otherwise prohibited name if written consent from the other entity using that name is obtained and filed and the names are not identical;
- Adds back the concept of a short term reservation of a corporate name prior to incorporation, which was removed from the statute in 1998;
- Expands the types of entities that can serve as a registered agent for a corporation, paralleling the comparable provision in FRLUCA (for the most part);
- Updates service of process provisions for corporations;

- Authorizes boards of directors to delegate to committees and/or any officers authorization to issue equity compensation awards, without specifying limits;
- Updates provisions dealing with participation in meetings by way of remote communications in order to take into account existing and future technological developments;
- Expressly allows for bi-furcated record dates for shareholders meetings (i.e., who gets notice vs. who gets to vote);
- Consistent with what has been considered implicit under the Existing Law (but was not expressly stated), expressly states that the failure to provide the 10-day notice of an action taken by written consent does not invalidate or delay the effectiveness of the action taken;
- Seeks to clarify obligations with respect to the maintaining of, and rights to access, shareholder lists;
- Clarifies when shares of a corporation are considered owned by that corporation and thus not entitled to a vote;
- Changes the language used to identify public companies by keying into corporations with shares registered under section 12 of the Securities Exchange Act of 1934;
- Adds a separate provision addressing in detail and, by way of guidance, the way in which inspectors of election operate, particularly for public companies;
- Through changes to section titles, clarifies that there is a difference between "voting agreements" and "shareholders agreements;"
- Eliminates the statutory restriction that shareholder agreements that change traditional corporate norms can only be implemented by corporations with 100 or fewer shareholders;
- Expressly validates fee shifting provisions in certain shareholders' agreements unanimously adopted under s. 607.0732 of the FBCA;
- In the context of what is not permitted to be included in shareholders' agreements that change traditional corporate norms, removes the examples of what is considered contrary to public policy, instead leaving that determination to the courts;
- Clarifying what is considered the current law to the effect that, notwithstanding the statutorily authorized shareholder agreements which require all shareholders to be parties to be enforceable, agreements among selected groups of shareholders (yet less than all) will still be enforceable between and among such contracting shareholders to the extent otherwise valid under general contract law principles;
- Provides greater detail and instruction for addressing derivative actions by expanding provisions and breaking out the procedural aspects of derivative actions into seven separate

sections (addressing standing, the requirement to plead demand unless demand would be futile, stay of proceedings, process for evaluating whether to dismiss the action, discontinuance or settlement of the action, payment of expenses, and nonapplicability to foreign corporations) and changing certain of those procedural aspects;

- Adds statutory language expressly authorizing a court to appoint a custodian or receiver in a proceeding by a shareholder, but outside the context of a dissolution proceeding and, as for appointing a receiver, without any need to show insolvency;
- Adds statutory language expressly authorizing the appointment by a court of a provisional director in a proceeding by a shareholder where a deadlock exists and outside the context of a dissolution proceeding;
- Adds statutory language expressly authorizing a court to remove a director, in a derivative proceeding, under certain specified circumstances;
- Modifies how director vacancies in director positions that have been elected by a separate voting group shall be filled;
- Updates provisions relating to the composition, operation, and authority of board committees, including authorizing board committees comprised of one board member and modifying what actions cannot be delegated to a board committee;
- Eliminates the provision in current law that imposes limits on the ability of a board of directors to delegate the issuance or sale of shares, or the designation of relative rights preferences and limitations of a voting group, to a Board committee, and instead authorizes such ability to delegate without the need to establish parameters;
- Clarifies the statutory language addressing director fiduciary duty standards and the business judgment rule, but without intending to make any substantive change;
- Adds an express authorization for a corporation to enter into an agreement containing a "force the vote" provision;
- Includes extensive modifications to the director conflicts of interest provision to match the conflict of interest approach adopted in FRLCA, and particularly to make clear that (i) an "unfair" conflict of interest transaction cannot be "sanitized" by an approval of disinterested directors (now called qualified directors) or disinterested shareholders, and (ii) approval of a conflict of interest transaction by qualified directors or disinterested shareholders will shift the burden of who has to prove that such transaction is or was fair;
- Adds a statutory provision expressly addressing in some detail the standards of conduct for officers, paralleling the statutory fiduciary duties of directors, with the intent of replacing common law agency principles, and adds "up the line" reporting obligations and rights to reasonably rely on certain others and certain information;

- Provides greater detail and instruction with respect to indemnification of directors and officers by expanding provisions and breaking out the existing "long" indemnification statute into ten separate sections (providing certain definitions, addressing permissive versus mandatory indemnification (including the need to be "wholly successful" to obtain statutorily mandated indemnification), advancing of expenses, court ordered indemnification, determination of whether standards for permissible indemnification have been met, power to purchase indemnification insurance, ability to indemnify beyond statutory indemnification, and the outside limits on the ability to indemnify);
- Allows the authorization for director approved share splits or combinations without shareholder approval, which are already available under Existing Law to corporations with 35 or more shareholders, to also be available to corporations with fewer than 35 shareholders;
- With respect to amendments to the articles of incorporation that need to be approved by shareholders, modifies the statute to require that a full copy of the amendment (and not just a summary) must be provided to shareholders for approval;
- Adds "interest holder liability" concepts in various places including with respect to amendments to articles of incorporation, mergers, share exchanges, conversions, and domestications;
- Adds provisions relating to authorizing bylaws to include certain provisions relating to majority voting for directors and holdover directors;
- Modifies provisions for judicial dissolution and appointment of receivers and custodians in the context of judicial dissolution proceedings, including adding "oppression" as one of the grounds for judicial dissolution (subject to a limitation that only a shareholder who holds more than 10% of a corporation's outstanding common stock may bring an action seeking judicial dissolution based on oppression);
- Adds provisions to allow shareholders who enter into a shareholders' agreement complying with s. 607.0732 of the FBCA to include a deadlock sale provision or a shareholder oppressive action sale provision in their shareholders' agreement that, if applicable, will be given effect instead of allowing for judicial dissolution in the event of deadlock or shareholder oppressive action;
- Modifies provisions governing approvals required for certain affiliated party transactions engaged in primarily by public companies, including changes in certain percentage thresholds and clarifications in terms of how boards of directors can bless such transactions without the need for shareholder approval;
- Modifies provisions governing organic transactions like mergers, share exchanges, conversions, domestications, and sales of all or substantially all of the assets;
- Adds provisions permitting the merger of corporations without a shareholder vote following a tender offer, if certain conditions are met;

- Modifies provisions regarding conversions so as to more clearly address both inbound and outbound conversions;
- Modifies provisions governing domestications so as to expand domestications to include in-bound domestications by foreign corporations and out-bound domestications by Florida corporations into foreign corporations, so long as the domestication is permitted under the laws of the foreign jurisdiction, such that moving a corporation into a different state of organization can effectively be achieved, at the election of the corporation, by either a domestication, a merger, or a conversion;
- Modifies appraisal rights provisions, including adding events that trigger appraisal rights, and providing clarifications to the procedural aspects of the appraisal rights provisions, particularly in dealing with organic transactions approved by way of written consent; and
- Modifies provisions that address the obligations of corporations to make financial statements available to shareholders, the maintenance of corporate records, and the inspection rights of shareholders and directors.

A few things did not change from before and a few of the new items in the Model Act are not proposed to be adopted. The Drafting Subcommittee:

- Did **NOT** add the provisions in the Model Act relating to "ratification of defective acts."
- Did **NOT** add the provision in the Model Act permitting corporations to include in their articles of incorporation a provision that limits or eliminates a director's or an officer's duty to present a business opportunity to the corporation.
- Did **NOT** add the provision in the Model Act that requires shareholder approval of any share issuances of more than 20% of voting power.
- Did **NOT** add default rules contained in the Model Act for the conduct of a shareholders meeting.
- Did **NOT** include the provision in the Model Act requiring the duration of a voting trust to be expressly set forth in the voting trust instrument.

If you have any questions about the Updated Act, please feel free to contact the co-chairs of the Subcommittee, Philip B. Schwartz (philip.schwartz@akerman.com) and Gary I. Teblum (gteblum@trenam.com).

WHITE PAPER FOR S.B. _____ & H.B. _____

"AN ACT RELATING TO BUSINESS ORGANIZATIONS"

Prepared by
The Florida Bar Business Law Section
Chapter 607 Drafting Subcommittee
Co-Chairs, Philip B. Schwartz and Gary I. Teblum

October 21, 2019

INTRODUCTION & BACKGROUND

During the 2019 Florida Legislative Session, a bill was presented to the Florida legislature proposing comprehensive changes to Chapter 607 of the Florida Statutes, the Florida Business Corporation Act, and to make harmonizing changes to certain other Florida entity statutes. The bill passed the Florida House of Representatives on April 25, 2019 and the Florida Senate on April 30, 2019. It was signed by Governor DeSantis on June 7, 2019 and will become effective for all Florida corporations on January 1, 2020. The bill as adopted has been designated as Laws of Florida, Chapter 2019-90 (the "revised act"). The bill that became the revised act was developed by the Chapter 607 Drafting Subcommittee (the "Drafting Subcommittee") of the Corporations, Securities and Financial Services Committee of the Business Law Section of The Florida Bar.

The revised act includes (i) changes that follow the 2016 version of the Model Business Corporation Act, which the model statute on which Chapter 607 is based, (ii) language changes that make the statutory provisions more understandable and usable by those who have to work with the statute (including judges), including fixing issues in the existing statute that have been identified over the years, (iii) changes that borrow parallel language and approaches from the Florida Revised Limited Liability Company Act ("FRLLLCA") for purposes of harmonizing the two statutes on issues where harmonization was considered appropriate, and (iv) necessary corrections to cross references. The revised act also retains certain non-Model Act provisions already contained in existing Chapter 607 and continues, in certain cases, to borrow language from the Delaware General Corporation Law.

The revised act was a large piece of legislation (the bill that passed the legislature was more than 500 pages). In the course of the Drafting Subcommittee's final review of the legislation as adopted, a number of glitches were identified, including typos, errors in cross references, and inconsistencies in the structure and/or terminology used in various sections. In order to address these various glitches that have been identified, a bill (designated as H.B. _____ and S.B. _____) has been drafted for presentation to the Florida legislature for consideration during the 2020 Legislative Session.

For the most part, the glitches do not have a substantive impact on the revised act as adopted and are merely corrections to what are obvious glitch errors in the 2019 legislation. These particular non-substantive changes are described generically below. There are, however, a very limited number of glitches that are in need of correction because they do not reflect the intent of the proponents of the 2019 legislation – and those particular corrections might be considered to have more of a substantive effect on the meaning and operation of the affected provisions. These limited number of potentially substantive glitch corrections, and the effect thereof, are described more specifically below.

Finally, there is one additional provision in the bill that reflects a substantive change. This change relates to the permitted composition of committees of boards of directors of Florida not-for profit corporations. During the 2019 legislative session, the Drafting Committee was approached by a large Florida not-for-profit health care system that wanted to add an amendment to the bill that would expressly allow non-board members to serve on board committees of Florida not-for-profit corporations. The members of the Drafting Committee believed that the

concept of what was being proposed made sense, but wanted to study the proposal before recommending its addition to the Florida Not-For-Profit Corporation Act (Chapter 617, Florida Statutes). Following passage of the revised act, the Drafting Subcommittee studied this topic and, working with the proponents of this change, crafted a revised version of §617.0825 that addresses the needs and concerns of not-for-profit corporations in this state while providing necessary protections from a corporate governance perspective. The portion of the bill addressing this change is described in more detail below and reflects the results of this dialog.

CORRECTIONS AND CLEAN UP ITEMS

The overwhelming number of changes included in the proposed legislation are in the nature of glitch fixes to the legislation passed in the 2019 legislative session (Chapter 2019-90, Laws of Florida). These changers correct typographical errors, grammatical errors, incorrect wording and inadvertent lack of parallel wording in comparable sections of the revised act as adopted. For example, the 2019 legislation intended to change all references to Chapter 607 so that they read "chapter" instead of "act." In several places, that change was not picked up.

All of the changes in the bill, other than the one change to §617.0825 that is described below, are believed to fall into the category of glitch fixes. However, for several of the glitches, further explanation was considered advisable and that further explanation is set forth in the "Specific Glitch Provisions" section of this white paper.

SPECIFIC GLITCH PROVISIONS

Changes to §607.0707. When subsection (10) was added to §607.0707 by Laws 2019-90, the section ended up with two subsections addressing the same concept, but with slightly different language. The intent had been to replace the language in subsection (2) with the more current Model Act language that was added in subsection (10), but this change was inadvertently not presented in this fashion in the statute. The change in the bill effectuates this intended change. But rather than presenting this change as a deletion of subsection (10) and showing the addition in full in subsection (2), subsection (2) is instead deleted and the numbering of subsection (10) is changed to show it is intended to become subsection (2). Although the bill language actually shows the numbering out of order, it is our understanding, based on discussions with legislative bill drafting personnel, that the correct numbering and ordering of the sections will appear in the actual statute once this bill is adopted.

Changes to §§ 607.1106, 607.11920, 607.11923, 607.11924 and 607.11935. These sections deal with certain organic transactions for corporations, such as mergers, share exchanges, domestications and conversions. In each such organic transaction, the statute addresses the ability to effectuate an exchange of shares, rights to acquire shares and other securities of the corporation into other equity interests, rights to acquire equity interests and/or other property. In reviewing the provisions in these sections following adoption of the revised act, it was discovered that the language identifying the exchanged shares, rights to acquire shares

and securities and the language identifying the shares, rights to acquire shares, and other property which would result from the exchange was not parallel in those sections, in a situation where it is believed that parallel language should have been used. The bill creates parallel language for the terminology of the list of exchanged items and the property into which these items are being exchanged in each of these sections. These changes are not intended to be substantive, but rather are intended to clarify that all of these sections should deal with this topic in a parallel manner.

Changes to §607.1703. In the course of revising Chapter 607, language concerning the ability of the Florida Department of State (the "Department"), in its administration of compliance with Chapter 607, to direct interrogatories to corporations and other persons was inadvertently left out of the revised act. The intent had been to remove the interrogatories language from §607.0130 and move it instead to a standalone section (consistent with §605.1104 of FRLCA). Unfortunately, however, the standalone section never was added to the 2019 legislation. Representatives of the Department brought this omission to the attention of the Drafting Subcommittee following adoption of the revised act, and this proposed addition of new §607.1703 is intended to fix that glitch.

Changes to §607.1907. This section of Chapter 607, which is a savings provision to the effect that, notwithstanding the change in the chapter effectuated by the 2019 legislation, pending actions and proceedings and rights accrued prior to January 1, 2020, the effective date of the 2019 legislation are preserved. In referring to the 2019 legislation, the changes to §607.1907 effectuated by the 2019 legislation used references to "this act." It is believed that the terminology "this act" tends to be confusing and that these references should instead be to "chapter 2019-90, Laws of Florida" in each place where "this act" is referenced in §607.1907.

CHANGE TO §617.0825 OF THE FLORIDA NOT-FOR-PROFIT CORPORATION ACT

During the 2019 legislative session, the Drafting Subcommittee was approached by a large Florida not-for-profit health care system that proposed a modification to §617.0825 that it was seeking to have added as an amendment to the bill that became the revised act. The proposal was intended to modify that section to expressly permit not-for-profit corporations to designate non-board members to committees of the board, in a manner similar to statutory changes that are contained in the not-for-profit corporation statutes in Texas and Illinois. The Drafting Subcommittee believed this basic concept made sense, but also felt that if a proposal on this topic were to be added to Chapter 617 it would be advisable to include certain controls for corporate governance purposes. An agreement was reached not to include this proposed change in the 2019 legislation, but rather to study the issue, with an understanding that if agreement was reached on proposed changes to this section, they would be included in this glitch bill legislation.

Over the summer months in 2019, representatives of the Drafting Subcommittee studied the issue in more detail, including reviewing how this issue is addressed in §8.25 of the Model Not-For-Profit Corporation Act. Based on the results of that study and further discussions with representatives of the not-for-profit health care system that made the request, compromise language was developed and approved. The proposed changes to §617.0825 are the results of

that further study and compromise and are believed by the Drafting Subcommittee to be good policy changes that give not-for-profit corporations the necessary flexibility to organize their committees (consistent with the way many not-for-profit corporations are believed to act today, notwithstanding that it is not permitted under the current statute) but at the same time with corporate governance protections that are appropriate under the circumstances.

If this proposal is adopted, with the exception of a not-for-profit corporation's nominating committees (which under the proposed revision will be allowed to be comprised of as many non-board members as provided for in the not-for-profit corporation's bylaws), board committees for not-for-profit corporations will be allowed to include non-board members, but only so long as a majority of the persons on the committee are board members. Moreover, any non-board member serving on a board committee will have the same responsibility and fiduciary duties with respect to the activities of such committee (as well as the same liability protections) as board members serving on the committee.

Finally, consistent with the Model Not-For-Profit Corporation Act, if the bill is adopted, a Florida not-for-profit corporation will be expressly authorized to create one or more advisory committees with no limit on the number of non-board persons who could serve on such an advisory committee; but such advisory committee will not be considered a committee of the board, cannot be delegated board authority, and can only make recommendations to the board, the corporation's officers and/or the corporation's members for their consideration.

Further information. This white paper was prepared by the Drafting Committee. The co-chairs of the Drafting Committee, Philip B. Schwartz and Gary I. Teblum, are available to answer any questions regarding the glitch bill. The contact information for Messrs. Schwartz and Teblum is as follows:

Philip B. Schwartz
Akerman LLP
(954) 468-2455
philip.schwartz@akerman.com

Gary I. Teblum
Trenam Law
(813) 227-7457
GTebulum@trenam.com

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date
1/14/20

Bill Number (if applicable)
SB 838

Amendment Barcode (if applicable)
506566

Topic Business Organizations
Name FRENCH BROWN

Job Title Lobbyist
Address 118 S. Monroe St. Suite 815 Phone 850-459-0982

City Tallahassee State FL Zip 32301
Email fbrown@deanward.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Pen Property, Probate, and Trust Law Section of the FL BAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

838

Meeting Date _____ Bill Number (if applicable)

Topic Business Organizations Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S Monroe Phone 205-9000

Street City TCH State Zip Email doug.bell@wldfirm.com

Speaking: For Against Information Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Business Law Section, FL BAR

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 848

INTRODUCER: Senator Montford and others

SUBJECT: Rural Communities

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 848 creates s. 288.062, F.S., the Florida Rural Jobs and Business Recovery Act. The bill allows investors to earn state insurance premium tax credits equal to their investment in certified growth funds. In turn, the growth funds will invest in certain businesses located in Florida's non-urbanized areas. The bill caps investment at a level that will result in no more than \$5 million in tax credits cumulatively claimed each year and no more than \$25 million in total credits under the program.

The Department of Economic Opportunity will administer the program by certifying growth funds, granting tax credits to investors, and if necessary, revoking the fund's tax credits and authority.

The bill provides ongoing requirements for the growth funds to meet while participating in the program, allows growth funds to reinvest their rural growth investments, and outlines steps for a growth fund to withdraw from the program.

The bill takes effect July 1, 2020, and applies to tax returns due on or after January 1, 2021.

II. Present Situation:

The U.S. Census Bureau defines urban areas as urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population.¹ The U.S. Census Bureau considers anything that is not an urban area to be rural.² Geographically, 86.2 percent of Florida's land lies in rural areas but only 8.8 percent of Florida's population lives in those rural

¹ U.S. Census Bureau, *Defining Rural at the U.S. Census Bureau: American Community Survey and Geography Brief*, (Dec. 2016), available at https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf (last visited Jan. 13, 2020).

² *Id.* at 1.

areas.³ Higher population density in Florida's urban areas drives a more robust jobs market and overall economic development.⁴

Economic Development Incentives Targeted to Florida's Rural Communities

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) encourages and facilitates the location and expansion of economic development projects of significant scale in Florida's rural communities.⁵ The REDI, which is administered by the Department of Economic Opportunity (DEO), coordinates the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.⁶ In particular, the REDI acts in rural areas of opportunity⁷ (RAO) to promote the location or expansion of businesses to the RAO to serve as economic generators.⁸

Regional Rural Development Grants Program⁹

The Regional Rural Development Grants Program provides matching grants to build the professional capacity of Florida's regional economic development organizations (EDO).¹⁰ A grant to an EDO is capped at \$50,000, or \$150,000 if located in an RAO, per year; the EDO must match the state's grant with non-state resources.¹¹ In Fiscal Year 2018-2019, the DEO allocated \$682,300 to EDOs.¹²

Rural Infrastructure Fund¹³

The Florida Rural Infrastructure Fund (Fund) provides grants and loans to local governments and businesses to facilitate the planning, preparation, and financing of traditional economic development or nature-based tourism infrastructure projects that encourage job creation and capital investment in rural communities.¹⁴ The amount awarded and any required local

³ Florida Legislature Office of Economic and Demographic Research, *Florida: An Economic Overview Focusing on County Differences*, 10 (Jan. 8, 2019), available at <http://edr.state.fl.us/Content/presentations/economic/EconomicOverviewFocusingonCounty%20Differences.pdf> (last visited Jan. 13, 2020).

⁴ *Id.* at 8-13.

⁵ Section 288.0656, F.S.

⁶ Section 288.0656(3), F.S.

⁷ Section 288.0656(2)(d), F.S., defines a "rural area of opportunity" as a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

⁸ *See* ss. 288.0656(7)(c), (2)(a) F.S.

⁹ Section 288.018, F.S.

¹⁰ Section 288.018(1), F.S.

¹¹ Section 288.018(1), F.S.

¹² Florida Dep't of Economic Opportunity, *2019 Incentives Report*, p. 18, available at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Jan. 13, 2020). The DEO may allocate up to \$750,000 from the Rural Community Development Revolving Loan Fund to the Regional Rural Development Grants Program. *Id.*

¹³ Section 288.0655, F.S.

¹⁴ Section 288.0655(2)(b), F.S.

government match vary based on whether the project is located in an RAO, a catalyst site, or rural community.¹⁵ In Fiscal Year 2018-2019, the DEO awarded \$2,711,307 through the Fund.¹⁶

Federal Rural Business Investment Company and Small Business Investment Programs^{17,18}

Rural Business Investment Companies (RBIC) and Small Business Investment Companies (SBIC) are privately owned and managed investment funds that are licensed and regulated by the U.S. Department of Agriculture and Rural Development¹⁹ and Small Business Administration (SBA)²⁰ respectively, that make capital investments in small businesses located in rural communities or other qualifying businesses.

An RBIC or SBIC program offers incentives for private capital to invest in small businesses, startups, low-income areas, or regions otherwise under economic distress. These programs often include special criteria for a certain quantity of the credit to focus on rural or underdeveloped areas.

Economic Development Incentives that use Tax Credits

Rural Job Tax Credit Program²¹

The Florida Rural Job Tax Credit Program offers a tax credit incentive for eligible businesses that are located within a designated qualified rural area to create new jobs. The tax credit ranges from \$1,000 to \$1,500 per qualified employee and can be taken against either the businesses' corporate income tax or sales and use tax liabilities. A business is limited to no more than \$500,000 of tax credits per year.²² The DEO administers this program, and may approve up to \$5 million in tax credits per year; in calendar year 2018, the DEO approved \$141,000 in rural job tax credits.²³

Florida New Markets Development Program²⁴

The Florida New Markets Development Program (NMDP), similar to the program created in this bill, uses tax credits to spur economic development. The NMDP allows Florida taxpayers to earn tax credits against corporate income tax and insurance premium tax by investing in qualified community development entities (CDEs) that make investments in qualified low-income community businesses. CDEs are domestic corporations or partnerships that have a primary role in administering the tax credit program and act as intermediaries between the investors,

¹⁵ See Florida Dep't of Economic Opportunity, *Rural Infrastructure Fund*, available at <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund> (last visited Jan. 13, 2020).

¹⁶ Florida Dep't of Economic Opportunity, *supra* note 12, at 18.

¹⁷ 7 U.S.C. s. 2009cc *et seq.*; 7 C.F.R. s. 4290 *et seq.* (2009).

¹⁸ 15 U.S.C. s. 681-688.

¹⁹ United States Department of Agriculture and Rural Development, *Rural Business Investment Program*, available at <https://www.rd.usda.gov/programs-services/rural-business-investment-program> (last visited Jan. 13, 2020).

²⁰ U.S. Small Business Administration, *Become an SBIC*, available at <https://www.sba.gov/partners/sbics/apply-be-sbic> (last visited Jan. 13, 2020).

²¹ Sections 212.098, and 220.1895, F.S.

²² Section 212.098(6)(d), F.S.

²³ Florida Dep't of Economic Opportunity, *supra* note 12, at 19.

²⁴ Sections 288.991-.9922, F.S.

financiers, and low-income community businesses. The NMDP is modeled after the federal New Markets Tax Credit program.²⁵ The NMDP is capped at a cumulative investment that would result in no more than \$216.34 million in tax credits, and an annual investment that would result in no more than \$36.6 million in a single fiscal year.²⁶ The NMDP has exhausted its credit allocation. It has not issued tax credits since Fiscal Year 2014-2015.²⁷

Examples of Similar Rural Jobs Acts in Other States

Utah passed a substantially similar bill, the Utah Rural Jobs Act, which authorizes up to \$42 million in tax credits, and caps the total contributions one entity may make under the program at \$24.36 million. Additionally, Utah assesses a \$50,000 annual fee that is split between all the certified growth fund entities.²⁸

In 2017, Georgia created the Georgia Agribusiness and Rural Jobs Act, which is designed to spur \$100 million in capital investments in rural businesses in the state. Investors may redeem up to \$15 million in tax credits annually for four years (for a total of \$60 million tax credits) against their corporate income tax and premium tax liabilities.²⁹

Similar legislation has been proposed in several other states, including Kentucky³⁰ and Washington. Additionally, New Markets Tax Credit Programs, which are structurally similar to the program created by the bill, are active in several other states, including Florida.³¹

III. Effect of Proposed Changes:

The bill creates s. 288.062, F.S., the “Florida Rural Job and Business Recovery Act.” The bill uses tax credits against the state insurance premium tax to incentivize investors to give funds to certified growth fund entities that, in turn, will make capital or equity investments, or loans with a maturity date of at least one year, in growth businesses located in non-urbanized areas of the state or in an urbanized area within a county designated by Federal Emergency Management Agency declaration FEMA-4399-DR if the urbanized area had sustained winds in excess of 100 miles per hour during Hurricane Michael. The bill caps the amount of investments at a level that will result in no more than \$5 million in tax credits claimed under the program each year and \$25 million in tax credits claimed under the program in total.

A growth business is one that:

- Has fewer than 200 employees;

²⁵ Florida Legislature Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, 32-36 (Mar. 2017), available at <http://edr.state.fl.us/content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf> (last visited Jan. 13, 2020).

²⁶ Section 288.9914(3)(c), F.S.

²⁷ Florida Dep’t of Economic Opportunity, *2017 Incentives Report*, 11 available at <http://www.floridajobs.org/docs/default-source/reports-and-legislation/2017-annual-incentives-report.pdf?sfvrsn=4> (last visited Jan. 13, 2020).

²⁸ Utah Code Annotated s. 63N-4-301, et seq. (2017).

²⁹ Ga. Code Annotated s. 33-1-25, et seq. (2017).

³⁰ Kentucky House Bill 203 (2019), <https://apps.legislature.ky.gov/record/19rs/hb203.html> (last visited Jan. 13, 2020).

³¹ Doug Farquhar, *Jump-Starting Rural Economies* (Apr. 2018), available at <http://www.ncsl.org/research/environment-and-natural-resources/jump-starting-rural-economies.aspx> (last visited Jan. 13, 2020).

- Has its principal place of business operations in an area of Florida that is defined as not urbanized by the U.S. Census Bureau; and
- Participates in approved agriculture, forestry, fishing, hunting; mining, oil, and gas extraction; utilities; construction; manufacturing; transportation and warehousing; professional, scientific, or technical services; healthcare and social assistance; or any industry determined by the DEO to be beneficial to the area.

The DEO will administer the program and monitor jobs created or retained as a result of the growth fund entities' investments in growth businesses.

Tax Credit Application, Approval, and Allocation

Beginning September 1, 2020, the DEO must accept applications for approval as a growth fund. The application must include the following:

- Total investment authority sought by the applicant;
- Evidence that the applicant or an affiliate of the applicant is licensed as a rural business investment company or small business investment company, as defined in federal law;³²
- Evidence that at least one principal in the rural business investment company or small business investment company is, and has been for at least four years, an officer or employee of the applicant or an affiliate of the applicant on the date the application is submitted;
- Evidence that the applicant or its affiliates have invested at least \$100 million in private companies that are located in nonmetropolitan counties;
- An estimate of the total number of new annual jobs that will be created and jobs retained in the state as a result of the applicant's growth investments;
- A business plan that includes a 10-year revenue impact estimate of the proposed growth investments, including the investment's effect on state and local tax revenues, and state expenditures. This business plan must be prepared by an independent third-party economic forecasting firm that uses a dynamic economic forecasting model;
- A signed affidavit from the applicant's investors stating the investment each commits to make; and
- A commitment by the growth fund applicant to give first priority to growth investments located in those counties designated by Federal Emergency Management Agency declaration FEMA-4399-DR.

The DEO must grant or deny an application within 45 days of its receipt. The DEO must deny an application if:

- The application is incomplete;
- The applicant does not qualify as a growth fund;
- The business plan does not evidence that the positive revenue impact on this state over a 10-year period will be greater than the cumulative amount of tax credits that would be issued to the applicant's investors;

³² See 7 U.S.C. s. 2009cc *et seq.* and 15 U.S.C. s. 681 *et seq.*

- The growth fund has failed to commit investor contributions equal to at least 75 percent of the investment authority it seeks; or
- The DEO has already approved the investment authority permitted.

If the DEO denies an application on certain grounds, the applicant has 15 days to cure the defect. The DEO must review the additional filing and issue an ultimate decision within 30 days of the application's initial submission. Additionally, the DEO may not approve or deny an application that is submitted after another for which additional information was needed until it approves or denies the "first" or "initial" application with additional information.

Upon approval of an application, the DEO must provide a notice to the applicant that certifies it as a growth fund, states the fund's investment authority, and specifies the investor contributions required. Ten percent of the fund's investment authority must consist of equity investments contributed by the fund's affiliates.

The DEO may not reduce the growth fund's investment authority from that requested on its application unless such an allocation would cause the DEO to exceed the year's permitted tax credits. If the DEO approves applications received on the same day that seek investment authorities that would collectively exceed the permitted annual tax credits, the DEO must approve both applicants, but proportionally reduce each applicant's investment authority and investor contributions to comply with the tax credit limit.

Within 60 days of its certification, a growth fund must collect all of its committed investor contributions and any additional cash investments. The fund must provide proof to the DEO that it collected all required contributions and investments within 65 days of certification. A fund's certification will be subject to revocation if it fails to perform these duties.

The DEO must provide tax credit certificates to investors upon notice from a certified fund that it collected the investor's contribution.

Tax Credit Established

An investor in a fund is vested with an earned credit against its state premium tax liability equal to the value of its contribution to the fund. The investor may not sell, transfer, or allocate the credit to any entity other than an affiliate of the fund.

An investor may claim 20 percent of its credit each taxable year from the year that the fund collects the investor contributions and any additional investments (defined in the bill as the "closing date") through the fourth anniversary of such date. If an investor's annual tax credit portion exceeds its state premium tax liability for the year, the investor may carry forward the excess for up to 10 years. In order to claim a credit, the investor must submit a copy of the tax credit certificate with its tax return for each taxable year it claims the credit.

The DEO must provide the Department of Revenue (DOR) with the names and Federal Employment Identification Numbers of insurance companies that are allocated tax credits under the program and the amount of credit awarded to each company.

Revocation of Tax Credit Certificates and Exit From the Program

The DEO must revoke a tax credit certificate if:

- The fund fails to collect all of its investor contributions and any other required investments;
- The fund does not invest 100 percent of its investment authority in state growth investments within two years after the closing date;
- The fund fails to maintain investments equal to 100 percent of its investment authority until the sixth anniversary of its closing date (with a permitted 12 months between receipt of capital and reinvestment of that capital);
- The fund makes a distribution or payment that results in the fund having less than 100 percent of its investment authority invested in Florida growth investments, or available for state growth investments and held in cash or other securities; or
- The fund invests in a growth business that directly, or indirectly through an affiliate, owns, has the right to acquire an ownership interest in, makes a loan to, or makes an investment in the fund, an affiliate of the fund, or an investor of the fund.

The DEO must give a growth fund notice of a pending revocation and the fund has 90 days to cure any violation. If the DEO revokes tax credits after a growth fund has collected its investor contribution obligations, then the revoked growth fund's investment authority and collected investor contributions will not count toward the program's limit on investment authority and investor contributions.

On or after the seventh anniversary of the closing date, a growth fund may apply to the DEO to exit the program. The DEO must approve the request within 30 days if no tax credit certificates issued to the fund's investors have been revoked, and the fund's certification has not been revoked or is not currently subject to revocation.

The DEO may not revoke a tax credit certificate after a fund exits the program.

Growth Fund's Reporting Obligations

Each fund must submit an annual report to the DEO on or before the fifth business day after each anniversary of its closing date. The report must include:

- A bank statement evidencing each of the fund's investments;
- The name, location, and industry of each growth business that receives a growth investment or evidence that a growth business qualified as such at the time the fund made the investment;
- The number of employment positions at the growth business on the date of the fund's initial investment;
- The number of new and retained annual jobs and their average salary at each growth business;
- The cumulative amount of growth investments made in the growth business;
- Any other information required by the DEO; and
- If available, a report on redeemed or repaid growth investments.

Distributions to the Growth Fund's Equity Holders

A growth fund that has not exited the program may not make any distribution that results in the diminishment of its investments below its certified investment authority.

After its exit from the program, a growth fund may make distributions in excess of its investment authority, in accordance with certain restrictions. Specifically, a growth fund that distributes an amount greater than its investment authority to its equity holders must also make a payment to the DEO equal to the proposed distribution multiplied by the difference between one and a fraction the numerator of which is the aggregate number of new and retained annual jobs reported in the fund's annual report and the denominator of which is the projected number of new and retained annual jobs reported on the fund's application. No payment is due if the aggregate number of new and retained jobs equals or exceeds the number of new or retained jobs that were initially projected.

Additionally, after it exits the program, the fund may not make a payment to its equity holders unless it has invested at least 150 percent of its investment authority in growth investments. The fund must annually report its growth investments to the DEO until it has made the required growth investments.

Miscellaneous

A fund may request the DEO to issue a written opinion advising whether a potential investment business qualifies as a growth business; if the DEO does not respond within 15 days of the request, the business is deemed a growth business.

The bill grants the DEO rulemaking authority to implement this program.

The bill applies only to tax returns or reports originally due on or after January 1, 2021.

The bill takes effect July 1, 2020, and expires on December 21, 2031.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not yet determined the fiscal impact of this year's bill. During the 2019 Legislative Session, the REC reviewed CS/HB 739 (2019), which is substantially similar to the provisions of SB 848 (2020).³³ The REC found that CS/HB 739 (2019) would reduce General Revenue Fund receipts by \$5 million a year, with a two-year lag after the bill takes effect until the first credit is taken, and would have a \$5 million recurring reduction.³⁴ Both CS/HB 739 (2019) and SB 848 (2020) cap total credits claimed under the program at \$25 million.

B. Private Sector Impact:

Businesses in non-urbanized areas may be able to access funding that would not have otherwise been available to them through traditional financing institutions, e.g., bank loans. However, these investments will still likely have fees and interest attached to them.

A certified growth fund will likely see a positive financial impact as the result of its activity under the program. Similarly, growth fund investors will see a positive impact on their tax liabilities as a result of their use of tax credits issued under the program.

C. Government Sector Impact:

The DEO may incur administrative costs to implement and operate the program.

The DOR reports that it will be required to modify the Unified Tax (SUNTAX) System and make related updates to rules and forms. The total estimated cost of these updates is \$80,368.³⁵

VI. Technical Deficiencies:

The DEO is required to notify the DOR of the name of each insurance company that is allocated tax credits, but it not required to provide the fund's closing date or notification of any subsequent revocation or lapse of the credits. Similarly, the DEO is not required to notify the DOR of the

³³ Florida Legislature Office of Economic and Demographic Research, *CS/HB 739 Analysis*, 32-36 (Mar. 27, 2019), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/page289-291.pdf (last visited Jan. 13, 2020).

³⁴ *Id.* at 291.

³⁵ Florida Department of Revenue, *SB 848 Agency Analysis* pps. 5-7 (Dec. 5, 2019) (on file with the Senate Committee on Commerce and Tourism).

sale, transfer, or allocation of a credit or the identifying information of the subsequent credit recipient. The DOR will require such information to be able to determine an investor's or affiliate's eligibility to claim the credit.³⁶ The DOR also states that the taxpayer should be required to provide a reconciliation schedule with its tax return to assist with tracking the amount of the credit granted and used by the initial investor or its affiliate.³⁷

VII. Related Issues:

It is unclear how the calculation of the program's overall investment authority will be affected if a growth fund's certification is revoked after it has otherwise claimed part of its credits, pursuant to section 11 of the bill.

Further guidance could be provided regarding how, or whether, a tax credit may be applied to an investor's insurance premium tax liability or retaliatory tax liability (which, together, constitute the "state premium tax liability" as defined on lines 164-165 of the bill). The DOR notes that it is uncertain whether a taxpayer will be able to split its credit between the two tax liabilities, or if it must exhaust one liability first before it may apply the credit to the next.³⁸ This may cause confusion in processing or claiming the credit.

VIII. Statutes Affected:

This bill creates section 288.062 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁶ *Id.* at 4.

³⁷ *Id.* at 4.

³⁸ *Id.* at 4.

By Senator Montford

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1 A bill to be entitled
 2 An act relating to rural communities; creating s.
 3 288.062, F.S.; providing a short title; defining
 4 terms; requiring the Department of Economic
 5 Opportunity to accept applications for approval as
 6 growth funds in a specified manner; requiring certain
 7 information to be submitted in an application;
 8 requiring the department to approve or deny
 9 applications within a specified timeframe; prohibiting
 10 the department from approving more than a certain
 11 amount of investment authority or investor
 12 contributions; requiring the department to deny
 13 applications under certain circumstances; authorizing
 14 an applicant whose application was denied to provide
 15 additional information within a certain timeframe to
 16 cure defects in the application; requiring the
 17 department to review and reconsider such applications
 18 within a certain timeframe; prohibiting the department
 19 from reducing the investment authority of an
 20 application or denying an application unless certain
 21 circumstances are met; requiring the department to
 22 certify approved applications; providing requirements
 23 for certified growth funds; requiring the department
 24 to provide a tax credit certificate to certain
 25 taxpayers; requiring the department to revoke a growth
 26 fund's certification under specified conditions;
 27 requiring the department to distribute revoked
 28 investment authority among certain growth funds;
 29 authorizing growth funds to allocate associated

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30 investor contribution authority to certain taxpayers;
 31 granting a credit against state premium tax liability
 32 for specified investors; providing restrictions on the
 33 credit; requiring that taxpayers claiming a credit
 34 submit a copy of the tax credit certificate with their
 35 tax return; requiring the department to revoke a tax
 36 credit certificate under certain circumstances;
 37 authorizing growth funds to request certain
 38 determinations from the department; providing a
 39 formula for calculating the maximum amount of
 40 investments; specifying a timeframe within which
 41 growth funds may correct violations to avoid
 42 revocation of a tax credit certificate; authorizing
 43 the department to distribute reverted investment
 44 authority among certain growth funds; authorizing
 45 growth funds to submit an exit application; providing
 46 a timeframe and procedures for use by the department
 47 in handling exit applications; prohibiting growth
 48 funds that have exited the program from making certain
 49 distributions or paying certain fees under certain
 50 circumstances; requiring growth funds to remit certain
 51 payments to the department under certain
 52 circumstances; prohibiting the department from
 53 revoking a growth fund's tax credit certificate after
 54 it exits the program; requiring growth funds to submit
 55 an annual report to the department; requiring that the
 56 annual report include certain information; providing
 57 for rulemaking; requiring the department to notify the
 58 Department of Revenue of any insurance company that is

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59 allocated tax credits; specifying that a growth fund
60 is deemed to be a recipient of state financial
61 assistance under certain circumstances; providing
62 applicability; providing for future expiration;
63 providing an effective date.

64
65 Be It Enacted by the Legislature of the State of Florida:

66
67 Section 1. Section 288.062, Florida Statutes, is created to
68 read:

69 288.062 Florida Rural Jobs and Business Recovery Act.-

70 (1) This section may be cited as the "Florida Rural Jobs
71 and Business Recovery Act."

72 (2) The following terms when used in this section shall
73 have the following meanings unless the context clearly indicates
74 otherwise:

75 (a) "Affiliate" means an entity that directly, or
76 indirectly through one or more intermediaries, controls, is
77 controlled by, or is under common control with another entity.
78 For the purposes of this paragraph, an entity is controlled by
79 another entity if the controlling entity holds, directly or
80 indirectly, the majority voting or ownership interest in the
81 controlled entity or has control over the day-to-day operations
82 of the controlled entity.

83 (b) "Closing date" means the date on which a growth fund
84 has collected all amounts specified by paragraph (8) (a).

85 (c) "Department" means the Department of Economic
86 Opportunity.

87 (d) "Full-time high wage employment position" means an

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88 employment position that is filled, pays a high wage, and
89 requires at least 35 hours of work per week or any other period
90 of time generally accepted by custom, industry, or practice as
91 full-time employment.

92 (e) "Growth business" means a business that, at the time a
93 growth fund initially invests in the business:

94 1. Has fewer than 200 employees;

95 2. Has its principal business operations in at least one
96 growth zone in this state; and

97 3. Is engaged in North American Industry Classification
98 System sectors: 11, 21, 22, 23, 31-33, 48-49, 54, or 62.

99 However, if the business is not engaged in such industries, the
100 department shall determine whether the investment will create
101 new jobs or retain jobs.

102 (f) "Growth fund" means an entity certified by the
103 department under subsection (7).

104 (g) "Growth investment" means any capital or equity
105 investment in a growth business or any loan to a growth business
106 with a stated maturity at least 1 year after the date of
107 issuance.

108 (h) "Growth zone" means:

109 1. All locations outside an urbanized area with a
110 population equal to or greater than 50,000, as identified by the
111 United States Census Bureau; or

112 2. Any urbanized area within a county designated by Federal
113 Emergency Management Agency declaration FEMA-4399-DR if the
114 urbanized area had sustained winds in excess of 100 miles per
115 hour during Hurricane Michael.

116 (i) "High wage" means a wage in any county which is greater

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117 than 100 percent of the county average.

118 (j) "Investment authority" means the amount certified by
 119 the department under subsection (7). At least 75 percent of a
 120 growth fund's investment authority must consist of investor
 121 contributions.

122 (k) "Investor contribution" means a cash investment in a
 123 growth fund by an entity that is subject to the state premium
 124 tax under ss. 624.509 and 624.5091. The cash investment must
 125 equal the amount specified for that entity in the department's
 126 approval of a growth fund's application under subsection (4).
 127 The cash investment shall purchase an equity interest in the
 128 growth fund or purchase at par value or premium a debt
 129 instrument that has a maturity date at least 5 years from the
 130 closing date and a repayment schedule that is no greater than
 131 level principal amortization over 5 years.

132 (l) "Jobs retained" means the number of full-time high wage
 133 employment positions that existed before the initial growth
 134 investment in a growth business and for which the growth
 135 business' chief executive officer or similar officer certifies
 136 that the employment positions would have been eliminated but for
 137 the initial growth investment.

138 (m) "New annual jobs" means the difference between:

139 1.a. The average monthly number of full-time high wage
 140 employment positions at a growth business in the preceding
 141 calendar year; or

142 b. If the initial growth investment occurred during the
 143 preceding calendar year, the average monthly number of full-time
 144 high wage employment positions for the months during which the
 145 initial growth investment was made through the end of the

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146 preceding calendar year; and

147 2. The number of full-time high wage employment positions
 148 at the growth business on the date of the initial growth
 149 investment.

150
 151 If the resulting total is less than zero, the new annual jobs
 152 amount is equal to zero.

153 (n) "Principal business operation" of a business means the
 154 location or locations where at least 60 percent of the
 155 business's employees work or where the employees who are paid at
 156 least 60 percent of the business' payroll are located. A
 157 business that agrees to relocate or hire new employees using the
 158 proceeds of a growth investment to establish its principal
 159 business operation in a growth zone in this state is deemed to
 160 have its principal business operations in the new location
 161 provided it satisfies this definition within 180 days after
 162 receiving the growth investment, unless the department agrees to
 163 a later date.

164 (o) "State premium tax" means the tax identified in s.
 165 624.509 or s. 624.5091.

166 (3) Beginning September 1, 2020, the department shall
 167 accept applications for approval as a growth fund on a form
 168 adopted by the department. The application shall include the
 169 following:

170 (a) The total investment authority sought by the applicant.

171 (b) Evidence that:

172 1. The applicant or an affiliate of the applicant is
 173 licensed as a rural business investment company under 7 U.S.C.
 174 s. 2009cc or as a small business investment company under 15

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175 U.S.C. s. 681. The applicant or the affiliate must include a
 176 certificate executed by an executive officer of the applicant
 177 attesting that such license remains in effect and has not been
 178 revoked; and

179 2. At least one principal in a rural business investment
 180 company or a small business investment company is, and has been
 181 for at least 4 years, an officer or employee of the applicant or
 182 an affiliate of the applicant on the date the application is
 183 submitted.

184 (c) Evidence that, as of the date the application is
 185 submitted, the applicant or affiliates of the applicant have
 186 invested at least \$100 million in nonpublic companies located in
 187 nonmetropolitan counties as defined by the Office of Management
 188 and Budget within the Office of the President of the United
 189 States on the basis of county or county-equivalent units.

190 (d) An estimate of the total number of new annual jobs that
 191 will be created and jobs that will be retained over the life of
 192 the program in this state because of the applicant's growth
 193 investments.

194 (e) A business plan that includes a revenue impact
 195 assessment projecting state and local tax revenues to be
 196 generated, as well as state expenditures to be reduced, by the
 197 applicant's proposed growth investments, prepared by a
 198 nationally recognized third-party independent economic
 199 forecasting firm using a dynamic economic forecasting model that
 200 analyzes the applicant's business plan over the 10 years
 201 following the date the application is submitted to the
 202 department.

203 (f) A signed affidavit from each investor stating the

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204 amount of investor contribution the investor will make.

205 (g) A commitment by the growth fund applicant to give first
 206 priority to growth investments located in those counties
 207 designated by Federal Emergency Management Agency declaration
 208 FEMA-4399-DR.

209 (4) (a) Within 45 days after receipt of a completed
 210 application containing the information set forth in subsection
 211 (3), the department shall approve or deny the application.

212 (b) The department shall deem applications that are
 213 received on the same day as having been received simultaneously.

214 (c) The department shall approve investment authority up to
 215 an amount that would allow no more than \$5 million in tax
 216 credits to be taken in any one year, excluding any credits
 217 carried forward pursuant to paragraph (10) (c). No more than a
 218 total of \$25 million in tax credits may be approved by the
 219 department under the program. If requests for investment
 220 authority exceed this tax credit limitation, the department
 221 shall proportionally reduce the investment authority and the
 222 investor contributions for each approved application as
 223 necessary to avoid exceeding the limit.

224 (5) The department shall deny an application if:

225 (a) The application is incomplete;

226 (b) The applicant does not satisfy the criteria set forth
 227 in subsection (3);

228 (c) The revenue impact assessment submitted under paragraph
 229 (3) (e) does not demonstrate that the applicant's business plan
 230 will result in a positive revenue impact on this state over a
 231 10-year period which exceeds the cumulative amount of tax
 232 credits that would be issued to the applicant's investors;

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233 (d) The investor contributions described in affidavits
 234 submitted under paragraph (3) (f) do not equal at least 75
 235 percent of the total amount of investment authority sought under
 236 the applicant's business plan; or

237 (e) The department has already approved the maximum amount
 238 of investment authority and investor contributions allowed under
 239 subsection (4).

240 (6) If the department denies an application, the applicant,
 241 within 15 days after the denial, may provide additional
 242 information to the department to cure any defects in the
 243 application identified by the department, except for failure to
 244 comply with paragraph (5) (c), paragraph (5) (d), or paragraph
 245 (5) (e). The department shall review and reconsider such
 246 applications within 30 days after receipt and before approving
 247 any pending applications submitted after the original submission
 248 date of the reconsidered application.

249 (7) The department shall not reduce the requested
 250 investment authority or deny a growth fund application for
 251 reasons other than those described in subsection (4) or
 252 subsection (5). After the department approves an application, it
 253 shall certify:

254 (a) The applicant as a growth fund;

255 (b) The amount of the applicant's investment authority;

256 (c) The investor contributions required from each investor
 257 that submitted an affidavit with the growth fund's application;
 258 and

259 (d) The number of new annual jobs and jobs retained that
 260 will be required of the growth fund, as prorated, based on the
 261 investment authority awarded to the growth fund.

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262 (8) (a) Within 60 days after receiving the certification
 263 issued under subsection (7), a growth fund shall collect all
 264 investor contributions and collect additional investments of
 265 cash which, when added to the investor contributions, at least
 266 equal the growth fund's investment authority. Within 65 days
 267 after receiving the certification issued under subsection (7), a
 268 growth fund shall send to the department documentation that it
 269 has collected the amounts described in this subsection. At least
 270 10 percent of the growth fund's investment authority must
 271 consist of equity investments contributed by affiliates of the
 272 growth fund. The growth fund shall report to the department the
 273 date on which the investor contributions and additional
 274 investments of cash were collected.

275 (b) Upon receipt of the documentation required by paragraph
 276 (a), the department shall provide a tax credit certificate to
 277 each taxpayer who has made an investor contribution in the
 278 amount of the investor contribution.

279 (9) If the growth fund fails to fully comply with
 280 subsection (8), the department shall revoke the growth fund's
 281 certification and the corresponding investment authority and
 282 investor contributions will not count toward the limits on the
 283 program size set forth in subsection (4). The department shall
 284 first award revoked investment authority pro rata to each growth
 285 fund that was awarded less than the investment authority for
 286 which it applied, and a growth fund may allocate the associated
 287 investor contribution authority to any taxpayer with state
 288 premium tax liability in its discretion. Any remaining
 289 investment authority may be awarded by the department to new
 290 applicants.

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291 (10) (a) Any taxpayer that makes an investor contribution is
 292 vested with an earned credit against state premium tax liability
 293 equal to that investor's investor contribution. The credit may
 294 be used over 5 years such that 20 percent of the credit is
 295 applied in each of the taxable years that includes the year of
 296 the closing date through the fourth anniversary of the closing
 297 date, unless a specific request is made to carry them forward
 298 for a period not to exceed 10 years.

299 (b) The credit is nonrefundable and may not be sold,
 300 transferred, or allocated to any other entity other than an
 301 affiliate that was an affiliate at the time of the submission of
 302 the investor's affidavit included in the growth fund's
 303 application.

304 (c) The amount of the credit claimed by a taxpayer may not
 305 exceed the amount of such taxpayer's state premium tax liability
 306 for the tax year for which the credit is claimed.

307 (d) A taxpayer claiming a credit under this section shall
 308 submit a copy of the tax credit certificate with the taxpayer's
 309 return for each taxable year for which the credit is claimed.

310 (e) The credit shall be allowed after deducting from the
 311 tax the deductions for assessments made pursuant to s. 440.51;
 312 the credits for taxes paid under ss. 175.101 and 185.08; the
 313 credits for income taxes paid under chapter 220; the credit
 314 allowed under s. 624.509(5), as such credit is limited by s.
 315 624.509(6); and the credit allowed under s. 624.51055.

316 (11) The department must revoke the tax credit certificates
 317 issued under paragraph (8) (b) if any of the following occurs
 318 with respect to a growth fund before the growth fund exits the
 319 program in accordance with paragraph (16) (a):

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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320 (a) The growth fund does not invest 100 percent of its
 321 investment authority in growth investments in this state within
 322 2 years of the closing date;

323 (b) The growth fund, after initially satisfying paragraph
 324 (a), fails to maintain growth investments equal to 100 percent
 325 of its investment authority until the sixth anniversary of the
 326 closing date. For purposes of this paragraph, an investment is
 327 maintained even if it is sold or repaid, so long as the growth
 328 fund reinvests an amount equal to the capital returned or
 329 recovered from the original investment, exclusive of any profits
 330 realized, in other growth investments in this state within 12
 331 months of the receipt of such capital. Amounts received
 332 periodically by a growth fund shall be treated as continuously
 333 invested in growth investments if the amounts are reinvested in
 334 one or more growth investments by the end of the following
 335 calendar year;

336 (c) The growth fund, before exiting the program in
 337 accordance with paragraph (16) (a), makes a distribution or
 338 payment that results in the growth fund having less than 100
 339 percent of its investment authority invested in growth
 340 investments in this state or available for investment in growth
 341 investments and held in cash and other marketable securities; or

342 (d) The growth fund invests in a growth business that
 343 directly, or indirectly through an affiliate, owns, has the
 344 right to acquire an ownership interest in, makes a loan to, or
 345 makes an investment in the growth fund of an affiliate of the
 346 growth fund or an investor in the growth fund. This paragraph
 347 does not apply to investments in publicly traded securities by a
 348 growth business or an owner or affiliate of such growth

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349 business. For purposes of this paragraph, a growth fund is not
 350 considered an affiliate of a growth business solely because of
 351 its growth investment.

352 (12) Before making a growth investment, a growth fund may
 353 request a written opinion from the department as to whether the
 354 business in which it proposes to invest satisfies the definition
 355 of a growth business. The department, not later than the 15th
 356 business day after the date of receipt of the request, shall
 357 provide the growth fund with a determination letter providing
 358 its opinion. If the department fails to issue a determination
 359 letter by the 15th business day, the business in which the
 360 growth fund proposes to invest shall be considered a growth
 361 business.

362 (13) The maximum amount of growth investments in a growth
 363 business, including amounts invested in affiliates of the growth
 364 business, which a growth fund may count in satisfying the
 365 requirements of paragraphs (11) (a) and (b) is the greater of \$5
 366 million or 20 percent of its investment authority, exclusive of
 367 repaid or redeemed growth investments.

368 (14) Before revoking a tax credit certificate under
 369 subsection (11), the department shall notify the growth fund of
 370 the reasons for the pending revocation. The growth fund shall
 371 have 90 days from the date the notice was received to correct
 372 any violation outlined in the notice to the satisfaction of the
 373 department and avoid revocation of the tax credit certificate.

374 (15) If the department revokes any tax credit certificates
 375 under subsection (11), the associated investment authority and
 376 investor contributions will not count toward the limit on total
 377 investment authority and investor contributions described in

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378 subsection (4). The department may award any remaining
 379 investment authority to new applicants.

380 (16) (a) On or after the seventh anniversary of the closing
 381 date, a growth fund may apply to the department to exit the
 382 program and no longer be subject to regulation except as set
 383 forth in paragraph (b). The department shall approve or deny the
 384 application within 30 days of receipt. In evaluating the
 385 application, the fact that no tax credit certificates have been
 386 revoked and that the growth fund has not received a notice of
 387 revocation that has not been cured pursuant to subsection (14)
 388 is sufficient evidence to prove that the growth fund is eligible
 389 for exit. The department shall not unreasonably deny an
 390 application submitted under this paragraph. If the application
 391 is denied, the notice shall include the reasons for the
 392 determination.

393 (b) After its exit from the program in accordance with
 394 paragraph (a), a growth fund may not make distributions or pay
 395 any fees except as allowed under paragraph (11) (c) to its
 396 investors unless it has made growth investments equal to at
 397 least 150 percent of its investment authority. Each growth fund
 398 shall continue to report the amount of growth investments made
 399 to the department annually until it has made growth investments
 400 equal to at least 150 percent of its investment authority.

401 (c) After its exit from the program in accordance with
 402 paragraph (a), if the growth fund proposes to make a
 403 distribution to its investors which, when added to all previous
 404 distributions to its investors, exceeds its investment
 405 authority, the growth fund shall remit to the department a
 406 payment equal the product of the proposed distribution and the

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407 difference between one and a fraction, the numerator of which is
 408 the aggregate number of new annual jobs and jobs retained
 409 reported to the department pursuant to subsection (18) and the
 410 denominator of which is the number of new annual jobs and jobs
 411 retained as set forth in the growth fund's certification. No
 412 payment is due if the aggregate number of new annual jobs and
 413 jobs retained as of the date of the proposed distribution equals
 414 or exceeds the number of new annual jobs and jobs retained as
 415 projected in the growth fund's certificate issued under
 416 subsection (7).

417 (17) The department may not revoke a tax credit certificate
 418 after a growth fund exits the program.

419 (18) (a) Each growth fund shall submit an annual report to
 420 the department on or before the 5th business day after each
 421 anniversary of the closing date prior to its exit from the
 422 program in accordance with paragraph (16) (a). The report shall
 423 identify each growth investment made by the growth fund and
 424 shall include:

425 1. A bank statement evidencing each growth investment, if
 426 not previously reported;

427 2. The name, location, and industry of each growth business
 428 receiving a growth investment, including either the
 429 determination letter set forth in subsection (12) or evidence
 430 that the business qualified as a growth business at the time the
 431 investment was made, if not previously reported;

432 3. The number of full-time high wage employment positions
 433 at each growth business and jobs retained on the date of the
 434 growth fund's initial growth investment;

435 4. The number of new annual jobs and jobs retained at each

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436 growth business, provided the number of jobs retained may not
 437 exceed the number of jobs retained, as reported in subsection
 438 (3) and the number of jobs retained that must be reduced if the
 439 full-time high wage employment positions reported drops below
 440 the jobs retained as reported in subsection (3);

441 5. The average annual salary of the positions described in
 442 paragraph (3) (d);

443 6. The cumulative amount of growth investments made in
 444 growth businesses; and

445 7. Any other information required by the department.

446 (b) The growth fund is not required to provide information
 447 with respect to growth investments that have been redeemed or
 448 repaid as part of the annual report set forth in paragraph (a)
 449 but shall provide such information if available.

450 (19) The department:

451 (a) May adopt rules to implement this section.

452 (b) Shall adopt forms and notices to implement this
 453 section.

454 (c) Shall notify the Department of Revenue of the name and
 455 federal employer identification number of any insurance company
 456 allocated tax credits under this act and the amount of such
 457 credits.

458 (20) A growth fund that issues a growth investment approved
 459 by the department shall be deemed a recipient of state financial
 460 assistance under s. 215.97, the Florida Single Audit Act.

461 However, a growth fund business that receives a growth fund
 462 investment is not a subrecipient for the purposes of s. 215.97.

463 (21) This section applies only to tax returns or reports
 464 originally due on or after January 1, 2021.

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465 (22) This section expires on December 21, 2031.
466 Section 2. This act shall take effect July 1, 2020.



2020 AGENCY LEGISLATIVE BILL ANALYSIS

DEPARTMENT OF REVENUE

BILL INFORMATION

BILL NUMBER:	SB 848
BILL TITLE:	Rural Business
BILL SPONSOR:	Senator Montford
EFFECTIVE DATE:	July 1, 2020

DL
the

COMMITTEES OF REFERENCE

1) Commerce and Tourism
2) Finance and Tax
3) Appropriations
4)
5)

CURRENT COMMITTEE

Commerce and Tourism

SIMILAR BILLS

BILL NUMBER:	
SPONSOR:	

IDENTICAL BILLS

BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION

YEAR/BILL NUMBER/SPONSOR/LAST ACTION: 2019/ SB 298 / Senators Montford, Torres, Braxley, Broxson and Gruters / Indefinitely postponed and withdrawn from consideration; Died in Appropriations 2019/ HB 739 / Representative Hill/ Indefinitely postponed and withdrawn from consideration; Died in Ways and Means Committee

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 5, 2019
LEAD AGENCY ANALYST:	Debbie Longman (850) 617-8324

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.

Section 1. Florida Rural Job and Business Recovery Act. (pp. 3 – 17):

PRESENT SITUATION

The Florida Rural Job and Business Recovery Act does not currently exist.

EFFECT OF THE BILL

The bill proposes the creation of the Florida Rural Job and Business Recovery Act. The Act provides for a new credit to be claimed against the state premium tax liability for an investor that contributes to a certified growth fund. The state premium tax liability is defined as Florida insurance premium tax and retaliatory tax.

The credit is to be claimed at a rate of 20 percent of the investment each year, over a period of five years, starting with the year that includes the closing date through the fourth anniversary of the closing date. If the credit cannot be fully used in a tax year, the balance for that year may be carried forward for up to 10 years. The credit cannot be sold, transferred, or allocated to another entity other than to an affiliate.

The bill requires the Department of Economic Opportunity to accept applications for certification as a growth fund and provides that applicants meet certain requirements. DEO is to certify approved applicants as growth funds and to specify their required investment authority and investor contributions.

The bill sets forth the conditions under which DEO may deny or revoke a credit, and under what conditions a credit may lapse. It also provides that DEO may award a credit arising from such events to other taxpayers. A growth fund may apply to DEO to exit the program after seven years, after which time, allocated credits can no longer be revoked or modified.

DEO is to provide the Department of Revenue (DOR) a list of insurers with each insurer’s credit amount. A copy of the tax credit certificate must be submitted with each return on which the credit is claimed. DEO is to provide the Department of Revenue the federal employer identification number of any insurance company allocated tax credits. An order of credits is provided. DEO shall approve investment authority up to an amount that would allow no more than \$5 million in tax credits to be taken in any one year and no more than a total of \$25 million in tax credits may be approved by DEO.

Section 2. (p. 17): Provides an effective date of July 1, 2020.

2. DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES? YES NO

If yes, explain:	This will require new credit lines on the DR-908. It will also require DOR to create a credit process against retaliatory tax, which currently does not exist. The form changes will need to be adopted by rule.
Rule(s) impacted (provide references to F.A.C., etc.):	Rule 12B-8.003, F.A.C., will need to be amended to adopt the changes to Form DR-908, and instructions, Form 908N.

3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS? N/A

4. DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS? YES NO

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? YES NO

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

6. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government.
Expenditures: <i>(only expenditure impacts on the Department are identified)</i>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES, BUT INSIGNIFICANT <input type="checkbox"/> UNABLE TO DETERMINE See Additional Comments section below if it is determined there is a significant operational impact to the Department.
Does the legislation contain an appropriation to the Department?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

8. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? The Department of Revenue does not conduct this analysis.

9. DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. **STATUTE(S) AFFECTED:** Section 288.062, F.S.

11. **HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION?** YES NO

If no, go to #12. If yes:

A. **Identify bill number or source.**

B. **Were issues/problems identified?** YES NO

a. **If yes, have they been resolved?** YES NO **If no, briefly explain.**

C. **Are new issues/problems created?** YES NO **If yes, briefly identify.**

12. **DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT?** YES NO

If yes, describe administrative problems, technical errors, or other difficulties:

1. The bill requires DEO to notify DOR of the name of each insurance company that is "allocated" tax credits, and the amount of the tax credits allocated. It does not require DEO to notify DOR when credits are subsequently revoked or lapse.
2. While DEO is required to provide the name of the entity certified to claim the credit, and the amount of the credit certified, DOR will also need the closing date in order to process the credit correctly and ensure the proper entity receives the credit.
3. State premium tax liability is defined on lines 164 and 165 as any insurance premium tax liability or any retaliatory tax liability. It is unclear if a taxpayer must choose between the two, whether the tax credit certificates would distinguish which tax they were available for, and whether a taxpayer can break the credit up and annually split its credit amount between both taxes or if the credit applies to one tax first and then the other.

An alternative could be to remove the credit for retaliatory tax and add language stating, "An insurer that claims a credit against premium-tax liability earned by making an investor contribution under this section need not pay any additional retaliatory tax levied under s. 624.5091 as a result of claiming such a credit. Section 624.5091 does not limit such a credit in any manner." This would allow the sponsor to ensure that the claiming of this credit against the insurance premium tax will not create an increase in the amount of retaliatory tax due.

4. The bill allows the credit to be sold, transferred, or allocated to an affiliate that was an affiliate at the time of the submission of the investor's affidavit included in the growth fund's application. DOR will need the names and federal identification numbers of the affiliates eligible to receive the sold, transferred, and allocated credits. Taxpayer should also provide a reconciliation schedule attached with the tax return tracking the amount of credit granted and used by Taxpayer or affiliate through the return date.

13. **OTHER:** None

**2020
DEPARTMENT OF REVENUE
FISCAL IMPACT ANALYSIS**

Bill number SB 848
Short title Rural Communities
Bill sponsor Senator Montford

Date of Analysis: December 12, 2019
Agency Contact: Debbie Longman

Telephone: (850) 617-8324

Estimate amounts required to administer the bill's provisions by appropriation categories (Salaries & Benefits, OPS, Expenses, Operating Capital Outlay, etc.)

I. FISCAL IMPACT ON STATE AGENCY:	(FY 19-20) \$ / FTE	(FY 20-21) \$ / FTE	(FY 21-22) \$ / FTE	(FY 22-23) \$ / FTE
A. REVENUES: All revenue estimates will be provided by the Revenue Estimating Conference.				
B. EXPENDITURES:				
1. Recurring	\$0	\$0	\$0	\$0
FTE				
Salaries				
OPS				
Expense				
HR Contract				
Contracted Services				
2. Non-Recurring	\$0	\$80,368	\$0	\$0
OPS				
Expense				
OCO				
Contracted Services		\$80,368		
C. TOTAL:	\$0	\$80,368	\$0	\$0
GR				
TF				

II. EXPLANATION OF COST ANALYSIS (Include methodology and assumptions):

The proposed bill creates a new nonrefundable credit against the state insurance premium tax liability and/or retaliatory tax liability, equal to the amount of the investor contribution made by each taxpayer to growth funds certified by the Department of Economic Opportunity. The Department of Economic Opportunity is authorized to issue a total of \$5 million in credits in any one year for a period of five years. Provides for an effective date of July 1, 2020.

**Business Technology Office – System for Unified Tax (SUNTAX): FY 20/21 \$16,368 (Non-
Recurring); FY 20/21 \$64,000 (Non-Recurring) Baca, Stein, White & Associates (BSWA) Contractor**

The proposed bill would require approximately 176 contractor hours at \$93 per hour and 966 in-house hours to provide the necessary modifications to Revenue's Unified Tax System (SUNTAX). Additional cost for Revenue's e-Services vendor to perform necessary updates are estimated at \$64,000. These hours would be utilized as follows:

176 Contractor Hours

- **Information Services – SUNTAX team** – Gather requirements and design; perform technical testing
 - Modification to IPT File Format
 - IPT Website (Modifications to IPT load program, Math Audit code, and credit tracking tables)
 - Test IPT files from BSWA and DPS systems

966 In-house Hours – Gather requirements and design; update functional specifications; perform functional testing

- **Account Management (16 Hours)**
 - DR-908 form revisions
- **Payment and Fund Distribution (60 Hours)**
 - Update the Credit Tracking System
 - Credit Tracking System configuration changes
- **Revenue Processing (382 Hours)**
 - Business Analyst Hours- SOW, Test Plan/Scripts, and assist with User Acceptance Testing
 - Update DR-908 RIS Template, RIS Export, OCREVAL, Data validation, and SAP Upload
- **Electronic Data Interchange (EDI) / Extensible Markup Language (XML) Team (258 Hours)**
 - IPT XML; XML Guide; XML Schema; XML XPath
 - IPT BSWA XML Changes
 - ALM Testing
- **Receivables Management and Return Reconciliation (88 Hours)**
 - Update DR-908 Return (new credit line for Schedule III, Resurrect Sch XV, line 9 front page redirects from Schedule XIV to XV, update file layout, update logic to read/update Credit Tracking table)
- **Data Support Services (32 Hours)**
 - Updates to Reports showing IPT Data in BI and ECC Due to New Line Items in Tax Return
 - Updates to BW Extractor of IPT Data
- **Information Services – .NET team (120 Hours)** – Gather requirements and design; perform technical testing
 - Update DR-908, DR-908 Schedules III, XIV, & XV RIS Template
 - Update IMS ImgProc program
 - Update IMS Oracle File Packages
 - Update SAP-Upload
- **Information Services – SUNTAX team (10 Hours)**
 - DR-908: Form Revision

Revenue's e-Services Applications

Revenue's e-Services vendor, Baca, Stein, White and Associates, Inc. (BSWA) will modify the Insurance Premium Tax (IPT) File and Pay website and the IPT XML application. The required edits and coding changes to the web applications and databases are classified as "significant-system cost" changes and will cost an estimated \$64,000 (\$44,000 web applications and \$20,000 XML).

Distribution:

Revenue Accounting will assist with posting of approved credits, monitoring the status of progress toward calendar year limitations, and related correspondence. A position is already dedicated to performing these tasks for similar credit processing.

Tax Information Publication (TIP) and Forms:

A Tax Information Publication (TIP) will be posted the Department's website using existing resources.

The Insurance Premium Taxes and Fees Return (Form DR-908), schedule III, will be updated with a new line for the credit. A new credit schedule for credits against the retaliatory tax will be created.

III. Is an appropriation for the Department of Revenue provided in the bill? YES NO
If yes, provide amount(s) and fiscal year(s) for the appropriation.

IV. COMMENTS:

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

January 14, 2020

848

Meeting Date

Bill Number (if applicable)

Topic Rural Communities

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Director of Business, Economic Development and Innovation Policy

Address 136 South Bronough Street

Phone (850) 521-1200

Street Tallahassee

City State Florida

Email cjohnson@flchamber.com

Zip 32301

Waive Speaking: For Against Information In Support Against

(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20
Meeting Date

848
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Rural Jobs Bill

Name Chloe Coniaris

Job Title Associate

Address 3132 State Street, Apt B Phone 732-947-9909

Dallas Texas 75204
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Advantage Capital

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 1/14/2020

Bill Number (if applicable) SB 848

Amendment Barcode (if applicable) _____

Topic RURAL JOBS
Name SLATER BATLISS

Job Title _____
Address 204 S. MONROE ST

Phone 850 222 8900

City TALLAHASSEE State FL Zip 32301

Email SWB@CARDENAS.PARRI-CA

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing STONEHENGE CAPITAL

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/14/20

Meeting Date

RURAL JOBS

Topic

W.A. Toups

Name

Job Title

1028 320 6T, NW

Address

Street

WASH, D.C. 2007

City

State

Zip

504-495-6412

Phone

TTOUPO@INSTAIE

Email

PARTIAL

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing RURAL JOBS COALITION

Appearing at request of Chair: Yes No

Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

SB 848

Bill Number (if applicable)

Amendment Barcode (if applicable)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20

Meeting Date

848

Bill Number (if applicable)

Topic Rural Communities

Amendment Barcode (if applicable)

Name Sarah Suskey

Job Title

Address 204 S. Monroe St.

Phone 850.222.8900

Street

City Tallahassee

State

Zip 32301

Email

sbs@cardenaspartners.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing Enhanced Capital

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

848

Bill Number (if applicable)

Topic Rural Communities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

FL

City

State

32301

Zip

Email bbevis@aif.com

Speaking: For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes

No

Lobbyist registered with Legislature: Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 886

INTRODUCER: Senator Powell

SUBJECT: Errors in Deeds

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 886 provides that, in certain instances, a deed containing a scrivener’s error in the legal description of property and subsequent deeds containing the same error may be corrected by the filing of a curative notice.

The bill defines the errors or omissions that constitute “scrivener’s errors” and describes the circumstances under which such errors may be corrected by a curative notice. A curative notice corrects all deeds for the same property containing the same scrivener’s error, and releases any cloud or encumbrance that an erroneous deed may have created as to other properties.

The bill takes effect July 1, 2020.

II. Present Situation:

Generally, deeds containing scrivener’s errors should be reformed to reflect the true intentions of the parties.¹

The Florida Statutes do not expressly mention “corrective deeds,” but courts have established a general rule of law allowing for corrective instruments conveying real property. For instance, a deed containing an incorrect description or a misspelling of names may be corrected by a subsequent instrument clearly identified as a correction deed.² Corrective deeds need not restate all material portions of the deed being corrected if such portions contain no errors.³ Corrective deeds and non-erroneous portions of original deeds are “construed together.”⁴

¹ See *Burke v. Piccone*, 523 So. 2d 664, 665 (Fla. 2d DCA 1988); see also *Brown v. Brown*, 501 So. 2d 24, 26-27 (Fla. 5th DCA 1986); *Gennaro v. Leeper*, 313 So. 2d 70, 72 (Fla. 2d DCA 1975); *Jacobs v. Parodi*, 39 So. 833 (1905).

² *Golden v. Hayes*, 277 So. 2d 816, 817 (Fla. 1st DCA 1973).

³ *Id.*

⁴ *Id.*

A reformation relates back to the time the instrument was originally executed and simply corrects the document's language to read as it should have read all along.⁵ The theory of reformation on grounds of mistake is to reform the agreement to reflect what the parties would have agreed to had there been no mistake.⁶ Claims for reformation of a deed are subject to a 20-year limitations period.⁷ A party seeking reformation of a deed may seek, in the same pleading, quiet title to reflect the correct ownership.⁸

Courts have contemplated remedying alleged defects in deeds through "curative deeds,"⁹ although the term is not mentioned in the Florida Statutes.

Errors in the legal description of property, contained in a deed or mortgage existing prior to entry of the final judgment, cannot be remedied by simply amending or correcting the final judgment, but errors in the legal description of the property that occur upon entry of the final judgment itself, and did not exist in a deed or mortgage (or other document conveying or encumbering the property) prior to entry of the final judgment can be corrected through an amended or corrected judgment.¹⁰

The Florida Statutes describe instances where certain entities may amend errors in the legal description of condominium property. Section 718.110(5), F.S., allows a condominium's board of administration to file an amendment to a condominium declaration if it appears that, due to a scrivener's error, the "common elements" of the condominium have not been distributed equally in the declaration. Similarly, a "termination trustee" charged with terminating a condominium declaration may record an amended plan of termination if the trustee discovers a scrivener's error in the plan, and the amended plan must be executed in the same manner as required for the execution of a deed.¹¹

⁵ *Kartzmark v. Kartzmark*, 709 So. 2d 583, 585 (Fla.4th DCA 1998).

⁶ *Id.*; "A mistake is mutual when the parties agree to one thing and then, due to either a scrivener's error or inadvertence, express something different in the written instrument." *Circle Mortgage Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994).

⁷ Section 95.231, F.S.; *Inglis v. First Union Nat. Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

⁸ See, e.g., *Rigby v. Liles*, 505 So. 2d 598, 599 (Fla. 1st DCA 1987); see also s. 65.021, F.S.

⁹ See *Heartwood 2, LLC v. Dori*, 208 So. 3d 817, 822-23 (Fla. 3d DCA 2017) ("Any alleged defect in the deed into the mortgagor ... should remain for a separate action ... or a curative deed to be obtained from the grantor by consent" (Salter, J., concurring in part and dissenting in part) (emphasis added)).

¹⁰ *Baker v. Courts at Bayshore I Condominium Ass'n, Inc.*, 279 So. 3d 799, 801-02 (Fla. 2d DCA 2019) (emphasis removed); see also *Fed. Nat. Mortg. Ass'n v. Sanchez*, 187 So. 3d 341, 343 (Fla. 4th DCA 2016) (holding in such case that the trial court must first vacate the judgment, the sale and any certificates of title or sale); *Caddy v. Wells Fargo Bank, N.A.*, 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016); *Wells Fargo Bank, N.A. v. Giesel*, 155 So. 3d 411, 414 (Fla. 1st DCA 2014); *Lucas v. Barnett Bank of Lee Cty.*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998); *Fisher v. Villamil*, 56 So. 559, 561-62 (Fla. 1911) ("[W]hen a mortgage misdescribes the property intended to be mortgaged the mistake may be corrected by a proper proceeding before judicial foreclosure; but, if the mistake has been carried into a bill, filed for the purpose of foreclosing such mortgage, into the decree ordering foreclosure, into the advertisement, and into the deed, the purchaser at such foreclosure sale cannot maintain a bill in equity to correct the description of the land as contained in the mortgage, in the decree, and in the deed").

¹¹ Section 718.117(2)(d), F.S.

III. Effect of Proposed Changes:

The bill states that a deed containing a “scrivener’s error” conveys title to the “intended real property” as if there had been no error, and states that each subsequent erroneous deed containing the identical scrivener’s error also conveys title as if there had been no error.

The bill defines a “scrivener’s error” as a single error or omission in the legal description of the “intended real property,” i.e. the property which the grantor intended to be conveyed by the deed, that is one of the following:

- an error or omission of one lot or block identification of a recorded platted lot,¹²
- an error or omission of one unit, building, or phase identifications of a condominium or cooperative unit, or
- an error or omission in one directional designation or numerical fraction of a tract of land that is described as a fractional portion of a section, township, or range.¹³

The bill states that deeds containing scrivener’s errors convey title to the intended property as if there had been no error if:

- the grantor held record title to the intended property at the time the deed containing the scrivener’s error was executed,
- the grantor or the erroneous deed did not hold title to any other real property in the same subdivision, condominium, or cooperative development or in the same section, township, or range described in the deed containing the scrivener’s error within 5 years before the record date of that deed,
- the record property is not described exclusively as a metes and bounds legal description, and
- a curative notice evidencing the intended real property to be conveyed by the grantor is recorded in the official records of the county where the intended real property is located.

The bill provides the form for a curative notice, which requires a description of the original erroneous deed and any subsequent deeds containing the same error, a statement that the person filing the notice has confirmed, through an examination of the official county records, that the above-mentioned requirements for conveyance of title were met, and a statement that the real property described in the notice was the property intended to be conveyed by the erroneous deeds.

The bill states that circuit court clerks may accept a curative notice as evidence of a grantor’s intent to convey the intended property, and states that the corrections made by the curative notice relate back to the record date of the original erroneous deed and release any clouds or encumbrances created by the erroneous deeds as to any property other than the intended real property.

The bill states that its remedies are not exclusive and do not abrogate any other remedy under Florida law.

¹² For the purposes of the bill, transposition of lot and block identifications are considered one error.

¹³ For the purposes of the bill, an error or omission in the directional description and numerical fraction of the same call is considered one error.

The bill allows for the correction of errors meeting its definition without having to file a claim for reformation of deed or quiet title action in a court. The bill alters the rule established in case law by more clearly defining the form of a curative deed and narrowing the types of errors that constitute “scrivener’s errors” that may be corrected with a subsequent curative deed. However, because the bill states that its remedies are not exclusive, it appears that deeds containing erroneous legal descriptions of property that do not meet the bill’s definition of “scrivener’s errors” may be remedied through the current method of filing actions for reformation of deed or quiet title. The bill does not specify whether it is subject to the 20-year limitations period that pertains to traditional claims for reformation of deed.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By filing a curative notice, a property owner may be able to sufficiently clear title to property without the expenses associated with a claim for reformation of deed or a quiet title action.

C. Government Sector Impact:

The bill provides a method for correcting scrivener's errors in deeds other than by a claim of reformation of deed or quiet title, and therefore may reduce judicial labor. However, the bill will potentially result in an increase in the workloads of court clerks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 138-140 of the bill state that the court clerks "may" accept and record curative notices "as evidence of the intent of the grantor in the erroneous deed." The Legislature may wish to revise this sentence to state that the clerks "shall" accept and record the curative notices and that the notices are evidence of the intent of the grantor. As currently drafted, the language appears to give clerks discretion in deciding whether to accept a notice and a duty or authority to evaluate whether the curative notice is evidence of a grantor's intent.

VIII. Statutes Affected:

This bill creates section 689.041 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Powell

30-01022-20

2020886__

1 A bill to be entitled
 2 An act relating to errors in deeds; creating s.
 3 689.041, F.S.; defining terms; providing that a deed
 4 containing a scrivener's error conveys title as if
 5 there had been no such error if certain requirements
 6 are met; providing a form for a curative notice;
 7 authorizing the clerks of the circuit court to accept
 8 and record curative notices; providing for the
 9 operation of a curative notice; providing
 10 construction; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 689.041, Florida Statutes, is created to
 15 read:

16 689.041 Curative procedure for scrivener's errors in
 17 deeds.-

18 (1) As used in this section, the term:

19 (a) "Erroneous deed" means any deed, other than a quitclaim
 20 deed, which contains a scrivener's error.

21 (b) "Intended real property" means the real property vested
 22 in the grantor and intended to be conveyed by the grantor in the
 23 erroneous deed.

24 (c) "Scrivener's error" means a single error or omission in
 25 the legal description of the intended real property in no more
 26 than one of the following categories:

27 1. An error or omission in no more than one of the lot or
 28 block identifications of a recorded platted lot; however, the
 29 transposition of the lot and block identifications is considered

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2020886__

30 one error for the purposes of this subparagraph;

31 2. An error or omission in no more than one of the unit,
 32 building, or phase identifications of a condominium or
 33 cooperative unit; or

34 3. An error or omission in no more than one directional
 35 designation or numerical fraction of a tract of land that is
 36 described as a fractional portion of a section, township, or
 37 range; however, an error or omission in the directional
 38 description and numerical fraction of the same call is
 39 considered one error for the purposes of this subparagraph.

40
 41 The term "scrivener's error" does not include any error in a
 42 document that contains multiple errors.

43 (2) A deed that contains a scrivener's error conveys title
 44 to the intended real property as if there had been no
 45 scrivener's error, and, likewise, each subsequent erroneous deed
 46 containing the identical scrivener's error conveys title to the
 47 intended real property as if there had been no such error if all
 48 of the following apply:

49 (a) Record title to the intended real property was held by
 50 the grantor of the first erroneous deed at the time the first
 51 erroneous deed was executed.

52 (b) Within the 5 years before the record date of the
 53 erroneous deed, the grantor of any erroneous deed did not hold
 54 title to any other real property in the same subdivision,
 55 condominium, or cooperative development or in the same section,
 56 township, and range, described in the erroneous deed.

57 (c) The intended real property is not described exclusively
 58 by a metes and bounds legal description.

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59 (d) A curative notice is recorded in the official records
 60 of the county in which the intended real property is located
 61 which evidences the intended real property to be conveyed by the
 62 grantor.

63 (3) A curative notice must be in substantially the
 64 following form:

65 Curative Notice, Per Sec. 95.2311, F.S.
 66 Scrivener's Error in Legal Description

67 The undersigned does hereby swear and affirm:

70
 71 1. The deed which transferred title from ...(Insert
 72 Name)... to ...(Insert Name)... on ...(Date)... and recorded on
 73 ...(Record Date)... in O.R. Book ..., Page ..., and/or
 74 Instrument No. ..., of the official records of ...(Name of
 75 County)..., Florida, (hereinafter referred to as "first
 76 erroneous deed") contained the following erroneous legal
 77 description:

78 ...(Insert Erroneous Legal Description)...

81 2. The deed transferring title from ...(Insert Name)... to
 82 ...(Insert Name)... and recorded on ...(Record Date)... in O.R.
 83 Book ..., Page ..., and/or Instrument No. ..., of the
 84 official records of ...(Name of County)..., Florida, contains
 85 the same erroneous legal description described in the first
 86 erroneous deed.

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88 ...(Insert and repeat paragraph 2. as necessary to include
 89 each subsequent erroneous deed in the chain of title containing
 90 the same erroneous legal description)...
 91

92 3. I have examined the official records of the county in
 93 which the intended real property is located and have determined
 94 that the deed dated ...(Date)..., and recorded on ...(Record
 95 Date)... in O.R. Book ..., Page ... and/or Instrument No.
 96 ..., official records of ...(Name of County)..., Florida,
 97 establishes that record title to the intended real property was
 98 held by the grantor of the first erroneous deed at the time the
 99 first erroneous deed was executed.

100
 101 4. I have examined or have had someone else examine the
 102 official records of ...(Name of County)..., Florida, and certify
 103 that:

104 a. Record title to the intended real property was held by
 105 the grantor of the first erroneous deed, ...(Insert Name)..., at
 106 the time that deed was executed.

107 b. The grantor of the first erroneous deed and the grantors
 108 of any subsequent erroneous deeds listed above did not hold
 109 record title to any property other than the intended real
 110 property in either the same subdivision, condominium or
 111 cooperative or the same section, township and range, if
 112 described in this manner, at any time within the 5 years before
 113 the date that the erroneous deed was executed.

114 c. The intended real property is not described by a metes
 115 and bounds legal description.

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117 5. This notice is made to establish that the real property
118 described as ...(insert legal description of the intended real
119 property)... (hereinafter referred to as the "intended real
120 property") was the real property that was intended to be
121 conveyed in the first erroneous deed and all subsequent
122 erroneous deeds.

123
124 ...(Signature)...
125 ...(Printed Name)...
126
127

128 Sworn to (or affirmed) and subscribed before me this
129 day of, ...(year)..., by ...(name of person making
130 statement)....

131 ...(Signature of Notary Public - State of Florida)...
132 ...(Print, Type, or Stamp Commissioned Name of Notary
133 Public)...
134

135 Personally Known OR Produced Identification
136 Type of Identification Produced.....
137

138 (4) The clerks of the circuit court for the circuit in
139 which any intended real property is located may accept and
140 record curative notices in the form described in subsection (3)
141 as evidence of the intent of the grantor in the erroneous deed
142 to convey the intended real property to the grantee in the
143 erroneous deed.

144 (5) A curative notice recorded pursuant to this section
145 operates as a correction of the first erroneous deed and all

30-01022-20 2020886__

146 subsequent erroneous deeds containing the same scrivener's error
147 described in the curative notice and releases any cloud or
148 encumbrance that any of the erroneous deeds may have created as
149 to any property other than the intended real property. The
150 correction relates back to the record date of the first
151 erroneous deed.

152 (6) The remedies under this section are not exclusive and
153 do not abrogate any right or remedy under the laws of this state
154 other than this section.

155 Section 2. This act shall take effect July 1, 2020.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20
Meeting Date

886
Bill Number (if applicable)

Topic ERRORS IN DEEDS

Amendment Barcode (if applicable)

Name FRENCH BROWN

Job Title lobbyist

Address 113 S. MONROE ST. Suite 815

Phone 850-459-0992

Street TAMMUNESSA FL
City State Zip

Email fbrown@deanward.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing REAL PROPERTY, PROBATE, AND TRUST LAW SECTION OF THE FL BAR

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1192

INTRODUCER: Senator Gruters

SUBJECT: Tax on Aviation Fuel

DATE: January 13, 2020

REVISED: 1/14/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 1192 repeals the excise tax imposed on aviation fuel, aviation gasoline, and kerosene sold or brought into the state.

The bill takes effect July 1, 2020.

II. Present Situation:

Aviation Fuel Tax in Florida

Part III of ch. 206, F.S., imposes an excise tax of 4.27 cents per gallon on aviation fuel, aviation gasoline, and kerosene sold in or brought into the state.¹ The fuel sales tax, constitutional fuel tax, county fuel tax, and municipal fuel tax are also imposed when aviation fuel is handled under certain circumstances.²

Tax exemptions and credits are authorized under several conditions:

- Airline fuel sold to certain qualified colleges and universities and exclusively used for flight training is exempt from the excise tax. A supplier that sells aviation fuel to a qualified

¹ “Aviation fuel” means fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications. “Kerosene” means all aviation turbine fuels and any distillate known as diesel #1, K-1, or any product suitable for use as a substitute for kerosene not taxed as a diesel fuel under chapter 206 part II, F.S. “Aviation gasoline” means any motor fuel blended or produced specifically for use in aircraft which has been dyed in accordance with federal regulations. Aviation gasoline does not include any such fuel used in any manner other than being placed in the storage tank of an aircraft.

² Section 206.41(6), F.S. Current tax rates can be found in the Florida Office of Economic and Demographic Research’s *Florida Tax Handbook*, 130 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Jan. 13, 2020).

college or university and does not collect the excise tax may receive an ultimate vendor credit for the 4.27-cent excise tax previously paid.³

- Kerosene prepackaged in containers of 5 gallons or less sold for home heating and cooking is exempt from the excise tax. Packagers may qualify for a refund of taxes previously paid.⁴
- An air carrier conducting certain scheduled operations or all-cargo operations is entitled to a refund of 1.42 cents per gallon of the excise taxes imposed on aviation fuel purchased by such a carrier.⁵
- An air carrier transporting persons or property for compensation is entitled to a refund, not to exceed 0.6 percent of the wages paid by the carrier to certain employees, of the excise taxes imposed on aviation fuel purchased by such a carrier.⁶
- The tax refund provided to an air carrier may not exceed 4.27 cents per gallon of aviation fuel purchased by the carrier.⁷

Every retail dealer selling aviation fuel to the public must clearly post on each pump or dispensing device the price of the aviation fuel and whether the price includes tax.⁸

The excise tax on aviation fuel was created in 1985. In 1996, in an attempt to attract new airlines to the state, the Legislature established an aviation fuel tax credit for air carriers offering transcontinental jet services that increased their Florida workforces by more than 1000 percent. The original tax credit expired in 2001 and was reauthorized without an expiration date after the events of September 11, 2001. Chapter 16-220, L.O.F., provided that carriers may not qualify for the tax credit after 2016 but may continue receiving the credit until 2019, after which the tax credit expired and the excise tax on aviation fuel decreased from 6.9 to 4.27 cents per gallon.

The Transportation Revenue Estimating Conference reported \$56,400,000 in gross revenue from the aviation fuel excise tax in Fiscal Year 2018-2019. After \$12,800,000 in tax credits and refunds were distributed and \$3,700,000 in administrative fees and service charges were deducted, \$39,900,000 was transferred to the State Transportation Trust Fund.⁹

Aviation Fuel Tax in Other States

All but ten states impose a specific tax on aviation fuel. Oklahoma (.08 cents per gallon), Georgia (.01 cents per gallon), and Hawaii (.01 cents per gallon) impose some of the lowest taxes, and Vermont (31.01 cents per gallon), Maine (30 cents per gallon), and Massachusetts (25.3 cents per gallon) impose the highest taxes. Florida's tax is the ninth lowest state tax on aviation fuel.¹⁰

³ Section 206.9825(1)(b), F.S.

⁴ Section 206.9825(2)(c), F.S.

⁵ Section 206.9826, F.S.

⁶ Section 206.9855, F.S.

⁷ *Supra* note 3.

⁸ Section 206.9837, F.S.

⁹ Florida Office of Economic and Demographic Research, *Revenue Estimating Conference – Revenues to State Transportation Trust Fund*, 6 (August 2019), available at <http://edr.state.fl.us/Content/conferences/transportation/archives/190802transportation.pdf> (last visited Jan. 13, 2020).

¹⁰ United States Energy Information Administration, *2019 State Aviation Fuel Taxes*, available at <https://www.eia.gov/petroleum/marketing/monthly/xls/aviationtaxes.xls> (last visited Jan. 13, 2020).

III. Effect of Proposed Changes:

Section 1 repeals part III of chapter 206, F.S., to remove the excise tax imposed on aviation fuel, aviation gasoline, and kerosene sold or brought into the state.

Section 2 amends s. 163.3206(2)(a), F.S., relating to fuel terminal infrastructure, to remove a reference to the definition of “aviation fuel” in s. 206.9815, F.S., which is deleted by section 1 of the bill. The reference is replaced with the same definition of the term.

Sections 3, 4, 5, 6, 7, 8, and 9 make conforming changes to statutes containing references to the repealed provisions.

Section 10 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or to take an action requiring expenditure, does not reduce the authority of municipalities and counties to raise revenues, and does not reduce the percentage of a state tax shared with municipalities and counties. Counties and municipalities do receive shares of certain state taxes on aviation fuel, but not the excise tax on aviation fuel that the bill would repeal. Deposits of the aviation fuel tax to the State Transportation Trust Fund are dedicated to aviation-related purposes.¹¹ The provisions of Article VII, Sections 18(b) and (c) of the Florida Constitution do not apply to the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹¹ Florida Department of Transportation, *Florida's Transportation Tax Sources*, 30 (2017), available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content/comptroller/pdf/gao/revmanagement/tax-primer.pdf?sfvrsn=f1eadaf7_0 (last visited Jan. 13, 2020).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Dealers and purchasers paying the excise tax on aviation fuel will realize savings.

C. Government Sector Impact:

The bill will decrease deposits to the State Transportation Trust Fund by an indeterminate amount.

The Department of Revenue estimates that \$85,113 in nonrecurring funds would be required to modify the department's tax systems in order to comply with the bill's provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3206, 206.42, 206.9915, 207.003, 207.005, 213.053, 332.007, and 332.009.

This bill repeals the following sections of the Florida Statutes: 206.9815, 206.9825, 206.9826, 206.9835, 206.9837, 206.9845, 206.9855, 206.9865, and 206.9875.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gruters

23-01453-20

20201192__

1 A bill to be entitled
 2 An act relating to the tax on aviation fuel; repealing
 3 ss. 206.9815, 206.9825, 206.9826, 206.9835, 206.9837,
 4 206.9845, 206.9855, 206.9865, and 206.9875, F.S.,
 5 relating to definitions, the tax on aviation fuel,
 6 refunds for certain air carriers, administration of
 7 the tax, disclosure of price, distribution of
 8 proceeds, refunds to carriers, commercial air carrier
 9 registration and reporting, and a tax exemption for
 10 federal entities, respectively; amending ss. 163.3206,
 11 206.42, 206.9915, 207.003, 207.005, 213.053, 332.007,
 12 and 332.009, F.S.; conforming provisions to changes
 13 made by the act; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Part III of chapter 206, Florida Statutes,
 18 composed of ss. 206.9815, 206.9825, 206.9826, 206.9835,
 19 206.9837, 206.9845, 206.9855, 206.9865, and 206.9875, Florida
 20 Statutes, is repealed.

21 Section 2. Paragraph (a) of subsection (2) of section
 22 163.3206, Florida Statutes, is amended to read:

23 163.3206 Fuel terminals.—

24 (2) As used in this section, the term:

25 (a) "Fuel" means any of the following:

26 1. Alternative fuel as defined in s. 525.01.

27 2. Aviation fuel. As used in this subparagraph, the term
 28 "aviation fuel" means fuel for use in aircraft, and includes
 29 aviation gasoline and aviation turbine fuels and kerosene, as

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20201192__

30 determined by the American Society for Testing and Materials
 31 specifications D-910 or D-1655 or current specifications as
 32 defined in s. 206.9815.

33 3. Diesel fuel as defined in s. 206.86.

34 4. Gas as defined in s. 206.9925.

35 5. Motor fuel as defined in s. 206.01.

36 6. Natural gas fuel as defined in s. 206.9951.

37 7. Oil as defined in s. 206.9925.

38 8. Petroleum fuel as defined in s. 525.01.

39 9. Petroleum product as defined in s. 206.9925.

40 Section 3. Subsection (1) of section 206.42, Florida
 41 Statutes, is amended to read:

42 206.42 Aviation gasoline exempt from excise tax; rocket
 43 fuel.—

44 (1) Each and every dealer in aviation gasoline in the state
 45 by whatever name designated who purchases from any terminal
 46 supplier, importer, or wholesaler, and sells, aviation gasoline
 47 (A.S.T.M. specification D-910 or current specification), of such
 48 quality not adapted for use in ordinary motor vehicles, being
 49 designed for and sold and exclusively used for aircraft, is
 50 exempted from the payment of taxes levied under this part, ~~but~~
 51 ~~is subject to the tax levied under part III.~~

52 Section 4. Subsection (3) of section 206.9915, Florida
 53 Statutes, is amended to read:

54 206.9915 Legislative intent and general provisions.—

55 (3) The provisions of ss. 206.01, 206.02, 206.026, 206.027,
 56 206.028, 206.051, 206.052, 206.054, 206.055, 206.06, 206.07,
 57 206.075, 206.08, 206.09, 206.095, 206.10, 206.11, 206.12,
 58 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-01453-20 20201192__
 59 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22,
 60 206.24, 206.27, 206.28, 206.416, 206.42, 206.44, 206.48, 206.49,
 61 206.56, 206.59, 206.86, 206.87, 206.872, 206.873, 206.8735,
 62 206.874, 206.8741, 206.8745, 206.94, and 206.945, ~~and 206.9815~~
 63 shall, as far as lawful or practicable, be applicable to the
 64 levy and collection of taxes imposed pursuant to this part as if
 65 fully set out in this part and made expressly applicable to the
 66 taxes imposed herein.

67 Section 5. Section 207.003, Florida Statutes, is amended to
 68 read:

69 207.003 Privilege tax levied.—A tax for the privilege of
 70 operating any commercial motor vehicle upon the public highways
 71 of this state shall be levied upon every motor carrier at a rate
 72 which includes the minimum rates provided in parts I, II, and
 73 III ~~IV~~ of chapter 206 on each gallon of diesel fuel or motor
 74 fuel used for the propulsion of a commercial motor vehicle by
 75 such motor carrier within the state.

76 Section 6. Subsection (3) of section 207.005, Florida
 77 Statutes, is amended to read:

78 207.005 Returns and payment of tax; delinquencies;
 79 calculation of fuel used during operations in the state; credit;
 80 bond.—

81 (3) For the purpose of computing the carrier's liability
 82 for the road privilege tax, the total gallons of fuel used in
 83 the propulsion of any commercial motor vehicle in this state
 84 shall be multiplied by the rates provided in parts I, II, and
 85 III ~~IV~~ of chapter 206. From the sum determined by this
 86 calculation, there shall be allowed a credit equal to the amount
 87 of the tax per gallon under parts I, II, and III ~~IV~~ of chapter

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 88 206 for each gallon of fuel purchased in this state during the
 89 reporting period when the diesel fuel or motor fuel tax was paid
 90 at the time of purchase. If the tax paid under parts I, II, and
 91 III ~~IV~~ of chapter 206 exceeds the total tax due under this
 92 chapter, the excess may be allowed as a credit against future
 93 tax payments, until the credit is fully offset or until eight
 94 calendar quarters shall have passed since the end of the
 95 calendar quarter in which the credit accrued, whichever occurs
 96 first. A refund may be made for this credit provided it exceeds
 97 \$10.

98 Section 7. Paragraph (h) of subsection (8) of section
 99 213.053, Florida Statutes, is amended to read:

100 213.053 Confidentiality and information sharing.—

101 (8) Notwithstanding any other provision of this section,
 102 the department may provide:

103 (h) Names and addresses of persons paying taxes pursuant to
 104 part III ~~IV~~ of chapter 206 to the Department of Environmental
 105 Protection in the conduct of its official duties.

106
 107 Disclosure of information under this subsection shall be
 108 pursuant to a written agreement between the executive director
 109 and the agency. Such agencies, governmental or nongovernmental,
 110 shall be bound by the same requirements of confidentiality as
 111 the Department of Revenue. Breach of confidentiality is a
 112 misdemeanor of the first degree, punishable as provided by s.
 113 775.082 or s. 775.083.

114 Section 8. Subsection (7) of section 332.007, Florida
 115 Statutes, is amended to read:

116 332.007 Administration and financing of aviation and

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20201192__

117 airport programs and projects; state plan.-

118 (7) Subject to the availability of appropriated funds ~~in~~
 119 ~~addition to aviation fuel tax revenues~~, the department may
 120 participate in the capital cost of eligible public airport and
 121 aviation discretionary capacity improvement projects. The annual
 122 legislative budget request shall be based on the funding
 123 required for discretionary capacity improvement projects in the
 124 aviation and airport work program.

125 (a) The department shall provide priority funding in
 126 support of:

127 1. Land acquisition which provides additional capacity at
 128 the qualifying international airport or at that airport's
 129 supplemental air carrier airport.

130 2. Runway and taxiway projects that add capacity or are
 131 necessary to accommodate technological changes in the aviation
 132 industry.

133 3. Airport access transportation projects that improve
 134 direct airport access and are approved by the airport sponsor.

135 4. International terminal projects that increase
 136 international gate capacity.

137 (b) No single airport shall secure discretionary capacity
 138 improvement project funds in excess of 50 percent of the total
 139 discretionary capacity improvement project funds available in
 140 any given budget year.

141 (c) Unless prohibited by the General Appropriations Act or
 142 by law, the department may transfer funds within each category
 143 of the airport and aviation discretionary capacity improvement
 144 program to maximize the aviation services or federal aid
 145 available to this state.

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146 (d) The department may fund up to 50 percent of the portion
 147 of eligible project costs which are not funded by the Federal
 148 Government except that the department may initially fund up to
 149 75 percent of the cost of land acquisition for a new airport or
 150 for the expansion of an existing airport which is owned and
 151 operated by a municipality, a county, or an authority, and shall
 152 be reimbursed to the normal statutory project share when federal
 153 funds become available or within 10 years after the date of
 154 acquisition, whichever is earlier.

155 Section 9. Section 332.009, Florida Statutes, is amended to
 156 read:

157 332.009 Limitation on operation of chapter.-~~Nothing in this~~
 158 ~~chapter shall be construed to authorize expenditure of aviation~~
 159 ~~fuel tax revenues on space transportation projects.~~ Nothing in
 160 this chapter shall be construed to limit the department's
 161 authority under s. 331.360.

162 Section 10. This act shall take effect July 1, 2020.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020
Meeting Date

1192
Bill Number (if applicable)

Topic Tax on Aviation Fuel Amendment Barcode (if applicable) _____

Name Chris Dawson

Job Title _____

Address 301 E. Pine Street, Suite 1400 Phone 407 843 8880

Orlando FL 32801 Email chris.dawson@gray-robinson.com
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Orlando - Melbourne International Airport

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/13/19

1192

Meeting Date

Bill Number (if applicable)

Topic Aviation Fuel Tax

Amendment Barcode (if applicable)

Name Eric Fletcher

Job Title Director, Government Affairs

Address 1201 North Town Center Drive Phone 702-830-8161

Street

Las Vegas

NV

89144

Email ERIC.FLETCHER@ALLEGIAN7

City

State

Zip

Speaking: For

Against

Information

In Support

Against

(The Chair will read this information into the record.)

Representing Allegiant Air

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-2020
Meeting Date

SB 1192
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Lisa Waters

Job Title CEO- Florida Airpnts Council

Address 325 John Knop Rd.

Phone 850-205-5632

Tallahassee FL 32303
City State Zip

Email lisa@floridaairpnts.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Airpnts Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-14-2020
Meeting Date

1192
Bill Number (if applicable)

Topic Airport Fuel Tax

Amendment Barcode (if applicable)

Name Chad Rosenstein

Job Title Government Affairs & Grants, Director

Address 11000 Terminal Access Rd
Street

Phone 239-590-4611

Fort Myers FL
City State

Email croseinstein.eh@cpa.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Lee County Port Authority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020

Meeting Date

1192

Bill Number (if applicable)

Topic Tax on Aviation Fuel

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/20
Meeting Date

1192
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Airport Fuel Tax

Name Luis Olivero

Job Title Asst Director

Address 1 Jeff Fugate Blvd.

Orlando City FL State 32827 Zip

Phone 407-825-2294

Email lolivero@qona.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Airports Council

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/14/2020
Meeting Date

SB 1192
Bill Number (if applicable)

Topic Aviation Fuel Tax
Name Fred Baggett
Job Title _____

Amendment Barcode (if applicable) _____

Address 101 E. College Ave. Phone 850 425 8512

City Tall. State FL Zip 32302 Email Baggett@GTLaw.com

Speaking: For Against Information In Support Against
Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fir lines for America (A4A)

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: EL 110

Caption: Senate Commerce Committee

Case No.:

Judge:

Type:

Started: 1/14/2020 2:31:48 PM

Ends: 1/14/2020 3:06:36 PM

Length: 00:34:49

2:31:56 PM Chair Gruters called meeting to order
2:32:09 PM Tab 1, SB 838, Sen. Simmons
2:32:42 PM Sen. Simmons yielded his time to Sen. Montford to present his bill, SB 848
2:33:21 PM Sen. Montford explains bill
2:35:57 PM Sen. Montford waived close
2:36:08 PM Roll call
2:36:15 PM SB 848 Passed favorable
2:36:29 PM SB 838, Sen. Simmons
2:37:31 PM 76118 amendment
2:37:52 PM Amendment passed
2:38:12 PM 218100 amendment
2:38:24 PM Amendment passed
2:38:36 PM 621802 amendment
2:38:54 PM Amendment passed
2:39:07 PM 506566 amendment
2:39:27 PM Amendment passed
2:39:41 PM On bill as amended
2:40:00 PM Waived close
2:40:06 PM Roll call
2:40:11 PM SB 838 Passed CS
2:40:20 PM Tab 3, 886, Sen. Powell
2:41:19 PM SB 886, pass favorably
2:41:33 PM SB 1192, Sen. Gruters
2:41:54 PM Sen. Gruters explain bill
2:42:46 PM Question, Sen. Torres
2:42:56 PM Response, bill sponsor
2:43:05 PM Follow up question Sen. Torres
2:43:16 PM Response
2:44:06 PM Eric Fletcher, speaker
2:45:30 PM Question of sponsor
2:46:00 PM Response
2:46:04 PM Lisa Walers, CEO FL Airports Council
2:47:45 PM Chad Rosenstein, Lee Co. Port Authority
2:51:53 PM Luis Olivero, FL Airports Council (Orlando)
2:52:59 PM Sen. Torres, question
2:53:07 PM Speaker response
2:53:19 PM Follow up
2:53:24 PM Response
2:53:37 PM Sen. Stewart, question
2:54:12 PM Response
2:54:45 PM Continue questions and response
2:55:22 PM Sen. Hutson, question
2:55:31 PM Response of speaker
2:55:51 PM Continue line of questioning
2:56:19 PM Fred Baggett, Airlines for America
3:00:44 PM Sen. Stewart, comment
3:01:37 PM Sen. Wright, comments
3:02:05 PM Sen. Torres, comments
3:04:44 PM Sen. Gruters close on bill
3:05:49 PM Roll call
3:06:08 PM SB 1192 passes favorably
3:06:19 PM Sen. Torres moved adjournment