

STORAGE NAME: h0791.jo.doc
DATE: January 28, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 791
RELATING TO: Unincorporated Business Enterprises
SPONSOR(S): Representative Baker
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 791 creates an alternative to current business organizations, such as corporations, called a "business enterprise". A business enterprise will have the ability to transact business, hold property, and sue or be sued. The business enterprise will have simplified and less expensive filing requirements compared to other forms of business organizations. Business enterprises will be required to file registration statements, maintain an office for service of process, and pay certain fees.

The Department of State believes this bill should have minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates a new business organization in Florida and requires new types of registration and new filing fees.

B. PRESENT SITUATION:

There are currently different methods for a business to register to conduct business in Florida. For example, corporations are governed by chapter 607, F.S. The state imposes a \$70 initial registration fee upon new corporations, and a \$150 annual renewal fee for for-profit corporations. See s. 607.0122, F.S. The registration requirements of ch. 607, F.S., also apply to corporations incorporated in another jurisdiction and doing business in Florida. These corporations are referred to as "foreign corporations." Limited liability companies are governed by chapter 608, F.S. "Corporations Not For Profit" are governed by ch. 617, F.S. Partnerships are governed by chapter 620, F.S. Partnership filing fees can range from \$50 to \$1750.¹

Chapter 622, F.S., governs how "foreign associations" can transact business in Florida. Foreign associations are defined as:

any unincorporated joint stock association for profit, created and existing under the laws of any state other than this state, or of the District of Columbia, or of any territory or possession of the United States, engaged in any business or businesses other than the banking, trust, or insurance business, and having written articles of association, capital stock divided into shares, and a name including the word "company" or "association" or "society"; but shall not mean nor include any unincorporated association, company or group of persons engaged in the banking, trust, or insurance business.

s. 622.02(1), F.S.

Section 622.01, F.S., makes qualification pursuant to ch. 622, F.S., permissive as an alternative to compliance with other laws by which business may be transacted by an unincorporated association, company, or group of persons. Foreign associations may qualify to transact business in the state, to acquire, hold, and dispose of property, and to sue or be sued by complying with the laws, with some exceptions, applicable to foreign corporations. See s. 622.03, F.S. Foreign associations

¹ Current fee structures can be found at the Department of State's website, www.dos.state.fl.us.

must comply with the laws regarding the designation and maintenance of an office for service of process that are applicable to foreign corporations. See s. 622.04, F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that ch. 622, F.S., is applicable to a new form of business association called a "business enterprise." It defines "business enterprise" or "association" as

any unincorporated person or group of persons, sole proprietorship, estate, trust, business trust, company, or other business organization and includes any foreign business enterprise or association that shall have qualified, in the manner permitted by this chapter, to transact business and acquire, hold, and dispose of property, and sue and be sued in this state.

This bill amends the definition section of s. 622.01, F.S., to define "foreign business enterprise" or "foreign association" as "any unincorporated business enterprise, created under the laws of any state other than this state, or the District of Columbia, or of any territory or possession of the United States."

This bill makes clear that a current business entity, such as corporation or limited liability company, does not qualify as a business entity under chapter 622. It defines "unincorporated" as an organization that "has not been formed pursuant to the provisions of chapter 607, chapter 608, chapter 616, chapter 617, chapter 618, chapter 621, or chapter 623."

These changes in definition have the effect of creating a new business association applicable to Florida businesses called a "business enterprise" and altering the definition of "foreign association" to apply to all incorporated business enterprises created outside of Florida.

This bill defines "transacting business" as "engaging in any activity by an enterprise or venture in which a person sells, buys, exchanges, barter, deals, or represents the dealing in any thing or article of value, or renders services for compensation."

This bill amends the qualifications section of chapter 622, F.S. It permits any business enterprise, association, or foreign association to qualify to transact business by recording:

a registration statement, which includes information such as the business name and address, names and addresses of persons who hold an interest in the business, name and address of the office used for service of process, and information relating to the organization of the business if it is a foreign business; and

any amendments to or cancellation of a registration statement in order to maintain an accurate record.

The name submitted in a business enterprise registration statement must be filed without regard to the use of the same or similar name used by another business. The use of the name in the registration statement is for public notice and does not create a presumption of ownership of the name. This is similar to how Florida accepts fictitious name registrations. See s. 865.09(8), F.S.

If the owner of a business enterprise is a legal or commercial entity and not an individual, the owner must organize and register as otherwise required by law and maintain such registrations as active.

This bill amends s. 622.04, F.S. and requires a business enterprise to maintain an office for service of process in compliance with ch. 48, F.S. The office must include a registered office and a

registered agent. The registered agent may be an individual who resides in this state whose business office is identical with the registered office, or a corporation having a business office identical with the registered office, or a foreign corporation having a business office identical with the registered office. This bill amends s. 622.04, F.S., so that associations are also required to maintain an office for service of process pursuant to ch. 622, F.S.

The bill sets forth filing fees as follows:

Business enterprise registration statement	\$35
Amendments to the registration statement	\$25
Cancellation of registration	\$25
Certification of recorded documents	\$15
Certificate of business enterprise status	\$5.

There is no charge for a change of address.

This bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Revenues that will be generated by this bill cannot be estimated, according to the Department of State, but the Department believes the revenue amounts will be insignificant.

2. Expenditures:

Expenses to the Department of State as a result of this bill cannot be estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of State suggests the bill will provide a less expensive alternative than incorporation for small business to register and transact business in Florida.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Tort Liability

This bill is not clear on lawsuit liability. While this bill states that a "business enterprise" can "sue or be sued", it does not address whether individuals involved in the business enterprise can be held personally liable in lawsuits against the business enterprise or whether liability is limited to the assets of the business enterprise. In Guyton v. Howard, 525 So. 2d 948, 956 (Fla. 1st DCA 1988), the First District Court of Appeal discussed unincorporated associations:

We shall attempt to lay to rest some of the evident confusion regarding unincorporated associations whose functions are fraternal and social as opposed to business or profit. **The latter are governed by partnership law.** The former are a legal enigma in Florida. Although we can talk about them, define them, pledge allegiance to them and contribute money to them (often for tax deductions), we cannot sue them. We can only attack their members [citation omitted]. Until the legislature chooses to change the legal status of unincorporated fraternal or social associations, we must operate within the strictures of established law.

In Asociacion de Perjudicados Por Inversiones Efectudadas en U.S.A. v. Citibank, 770 So. 2d 1267 (Fla. 3rd DCA 2000), the Third District Court of Appeal noted that at "common law, unincorporated associations were treated as partnerships." In general, all partners to a partnership are jointly and severally liable for all obligations of the partnership. See ss. 620.8306, 620.8307, F.S. The First District, discussing unincorporated associations that were organized for social purposes, noted that "individual members of an unincorporated association are personally liable for tortious acts which they individually commit or participate in, or which they authorize, assent to, or ratify." Guyton, 525 So. 2d at 956.

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Since unincorporated associations were treated as partnerships at common law and the common law is in force in Florida unless altered by statute, see s. 2.01, F.S., it can be argued that this bill's silence on the tort liability of business enterprises means that business enterprises should be treated like partnerships. If a court were to so hold, each member of the business enterprise could be held jointly and severally liable for the obligations of the business enterprise.

Bill Proponents

The Department of State supports this bill.

The National Federation of Independent Business supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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