

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government- This bill creates additional authority for the Department of State to review and approve names for LLCs.

Safeguard individual liberty- The bill restricts the naming options for newly formed LLC's.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A limited liability company (LLC) is a type of business ownership combining several features of corporations and partnership business structures. Owners are called members as opposed to partners or shareholders and the LLC exists as a separate business entity, therefore members cannot be personally liable for debts. The LLC business structure does not require corporate meetings or resolutions and unlike corporations a LLC is dissolved when a member dies or undergoes bankruptcy.

Chapter 608, F.S, is named the "Florida Limited Liability Company Act." Listed within this chapter is the definition of a limited liability company (LLC), the filing requirements for a LLC, the powers of a LLC and the requirement that the Department of State record filings and keep a record of all LLCs. Section 608.406, F.S, specifically deals with the naming of a limited liability company and the requirements for it to be filed with the state. A limited liability company name must contain the words "limited liability company" or "limited company," the section also provides acceptable abbreviations. An LLC may not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in chapter 608 and its articles of organization. A LLC may not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States. The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law. The Department of State shall record the name without regard to any other name recorded.

Over the past five years the number of LLCs filed has steadily risen. In DOS's 2002 filings 38,639 LLCs were listed, in 2004 the filings rose to 100,070, and in 2006 LLC filings amounted to 130,251. The statutory limitation on DOS that it "shall record the name without regard to any other name recorded" has led to 16,433 active corporations, limited liability companies, and limited partnerships with duplicate names. DOS currently receives 850-1,500 complaints a year about duplicate names being issued.

Proposed Changes

The bill requires that the name of a limited liability company must be distinguishable on the databases of the Division of Corporations within DOS. The bill amends s. 608.406, F.S, deleting the provision that DOS record the name without regard for any other name recorded. The bill also amends s. 608.407, F.S, relating to the articles of organization requiring that the name of the LLC must satisfy the requirements of s. 608.406, F.S. These changes are intended to alleviate the confusion associated from duplicate names registered.

The bill also seeks to require that all LLC names registered with the state not be comprised of, contain, or include immoral, deceptive, or scandalous matter. These terms are currently undefined in statute and the bill provides no definitions. The Department of State would be responsible for deeming what names are considered immoral, deceptive, or scandalous. This provision is similar to the standard used for

personalized license plates reviewed by Highway Safety and Motor Vehicles. Section 320.0805 (4), F.S., authorizes the department to reject requests deemed by it to be objectionable, and the department is further authorized to recall, during a registration period, any issued personalized license plate determined by it to be obscene or otherwise objectionable. Applications for personalized license plates are reviewed on a regular basis by a review board comprised of employees of the Department of Highway Safety and Motor Vehicles. The review board relies on the statutory definition of obscene and department criteria of a combination of letters and/or numbers found to be offensive to morality or decency, indecent, lewd, abominable, disgusting, a slur, profanity or description of body parts. Objectionable is deemed a combination of letters and/or numbers that provide a feeling or expression of disapproval, dislike, hatred, violence, method of violence or threat toward a person or group.

According to the Department of State, the change in requirements will only apply to newly formed LLCs and will not affect existing LLCs.

B. SECTION DIRECTORY:

Section 1. Amends 608.406, F.S.: Deletes the provision that requires DOS to record the name of a LLC without regard to any other name recorded. Sets requirements that the name of a limited liability company be distinguishable on the database of the Division of Corporations and that it may not be comprised of, contain, or include immoral, deceptive, or scandalous matter.

Section 2. Amends 608.407, F.S.: Requires that the name of a limited liability company must satisfy the requirements of s. 608.406.

Section 3. Provides the bill will take effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The department's database may provide a greater value to lending institutions and may reduce their research costs when conducting business with LLCs.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state or local governments. DOS does not see any additional costs in fulfilling these new requirements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

None

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2007, the Committee on Tourism and Trade adopted a "strike-all" amendment by the bill sponsor that does the following:

- Eliminates the reference to "limited company" and the abbreviation "L.C".
- Removes the prohibition that a LLC's name may not contain immoral, scandalous, or deceptive matter.
- Provides a provision that an LLC filed prior to July 1, 2007, does not need to meet the duplicative name standard.