

## **BUSINESS ORGANIZATIONS**

### **SB 872 — Fictitious Names**

by Senator Smith

This bill repeals s. 15.16, F.S., which permits the Department of State (department) to waive the requirement that a business advertise its intention to register a fictitious name with the department in a newspaper in the county of its principal place of business, if the business makes its fictitious name registration available on the department's website. Consequently, should this bill become law, businesses wanting to do business under a fictitious name will be required to publish its intent to use a fictitious name at least one time in a local newspaper before the registration of a fictitious name.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 37-0; House 116-0*

### **CS/HB 1517 — Corporate Annual Financial Statements**

by Insurance, Business and Financial Affairs Policy Committee and Rep. Murzin and others  
(SB 1500 by Senator Fasano)

Section 607.1620(3), F.S., requires corporations to "mail" shareholders annual financial statements within 120 days of the close of the fiscal year. This bill permits corporations to furnish shareholders with annual financial statements by "electronic transmission," as an alternative to mailing those financial statements.

In addition, this bill clarifies that when a corporation that has an outstanding class of securities registered under s. 12 of the Securities Exchange Act furnishes annual reports to its shareholders in a format permitted under federal law, then the corporation's obligation to furnish annual financial statements to shareholders under current state law may be satisfied by furnishing the financial statements in that manner. (This provision is substantially similar to s. 6 of SB 2330, enrolled.)

If approved by the Governor, these provisions take effect upon becoming law, and apply to all fiscal years ending on or after December 31, 2008.

*Vote: Senate 40-0; House 115-0*

## **SB 2330 — Corporations**

by Senator Richter

This bill makes revisions to chs. 607 and 617, F.S., concerning for-profit and not-for-profit corporations, respectively. The revisions relate to administrative matters, voting rights, membership rights, distributions, dissolution, and creditors' rights.

As to not-for-profit corporations, this bill integrates provisions from the Revised Model Nonprofit Corporation Act, prepared by the American Bar Association. The bill also amends a number of provisions in ch. 617, F.S., to be consistent with ch. 607, F.S. In addition, the bill creates a number of provisions to recognize a new category of not-for-profit corporations, known as "mutual benefit corporations."

As to for-profit corporations, the bill incorporates revisions suggested by the Division of Corporations of the Department of State, and the Business Law Section of the Florida Bar.

A summary of the changes to chs. 607 and 617, F.S., is as follows:

### ***Chapter 607, F.S. (For-Profit Corporations)***

As to for-profit corporations, the bill makes the following revisions to ch. 607, F.S.:

- Allows corporations to establish a greater voting requirement than a plurality voting requirement for the election of directors.
- Allows the effective date of resignations to be conditioned on an event, allows such resignations to be irrevocable, and allows for the filling of vacancies for such resignations before the effective date as long as the new director does not take office until the effective date.
- Deletes language in current law that prohibits the department from charging fees for giving the public general information about corporations, to conform to recent changes made to the law.
- Allows corporations to furnish shareholders with annual financial statements by electronic transmission, as well as by mail, which is the current requirement. (This provision is substantially similar to CS/HB 1517 enrolled.)

### ***Chapter 617, F.S. (Not-For-Profit Corporations)***

As to not-for-profit corporations, the bill makes the following revisions to ch. 617, F.S.:

#### **Administrative**

- Prescribes the procedures for filing documents with the department and specifies the format of such documents.
- Requires the department to collect a \$35 fee when a registered agent files a statement of resignation from an inactive, rather than an administratively dissolved, corporation.

- Specifies which filed documents may be corrected, extends the time to correct such documents, and deletes a requirement to have a copy of the defective document attached to the filed correction.
- Deletes language in current law that prohibits the department from charging fees for giving members of the public general information about corporations to conform to recent changes made to the law.
- Prescribes the procedure for an alien business organization to withdraw its registered agent.
- Provides that when there is a conflict between ch. 617, F.S., and provisions relating to condominium corporations (ch. 718, F.S.), cooperatives (ch. 719, F.S.), homeowners' associations (ch. 720, F.S.), vacation and timeshare plans (ch. 721, F.S.), and mobile home owners' associations (ch. 723, F.S.), the provisions of those chapters apply.
- Repeals s. 617.2103, F.S., which exempts corporations described in s. 501(c) of the Internal Revenue Code of 1986, from ss. 617.0808, 617.1601, 617.1602, 617.1603, 617.1604, 617.1605, or s. 617.2102, F.S. With this repeal, all not-for-profit corporations under s. 501(c) of the Internal Revenue Code will be subject to the same requirements as other not-for-profit corporations. This proposed change is prospective and should not affect current practices for existing corporations.

### **Members**

- Clarifies that mutual benefit corporations may purchase equity membership interest of any membership and that purchase does not constitute a distribution.
- Requires the resignation, expulsion, suspension, or termination of membership to be recorded in the membership book.
- Prohibits members from transferring or purchasing a membership or membership rights, except members of mutual benefit corporations may make such transfers or purchases if permitted under the articles of incorporation or bylaws.
- Clarifies that a resigning member maintains obligations incurred before the resignation.
- Mandates and prescribes a procedure for carrying out the expulsion, suspension, or termination of a member, which must be made in good faith and in a fair and reasonable manner.
- Permits members having a voting power of at least 5 percent to call a special meeting, but clarifies that this provision does not apply to condominiums, cooperatives, homeowners' associations, mobile home parks, and certain real estate membership corporations.
- Expands the amount of time members have to provide written consent for the corporation to take a certain action and expands the time to notice members who have not consented in writing to the corporate action.
- Provides for derivative actions by members.

### **Directors**

- Permits one director of a corporation, other than condominiums, cooperatives, homeowners' associations, mobile home parks, and certain real estate membership corporations, to be 15 years of age or older if permitted by the articles of incorporation, bylaws, or by a resolution of the board of directors.
- Clarifies that the articles of incorporation or bylaws may allow for staggered terms for directors.
- Provides certain procedures for the removal of directors, the filling of a vacancy on the board of directors, and the term limit of a director filling a vacancy.
- Provides procedures for voting when one or more directors have a conflict-of-interest.

### **Voting and Corporate Powers**

- Allows a corporation to reject proxy votes under certain circumstances and allows members or proxies to participate in meetings at a location other than where the meeting is being held through electronic communication under certain circumstances.
- Clarifies what constitutes a quorum and prohibits a director younger than 18 years of age from being counted toward a quorum.
- Permits not-for-profit corporations to make guaranties.
- Permits only condominiums, cooperatives, homeowners' associations, mobile home parks, and certain real estate membership corporations to make certain distributions.

### **Merger and Dissolution**

- Prescribes what must be, and what may be, included in a plan of merger.
- Permits a merger of a not-for-profit corporation with another business entity as long as the surviving entity is a not-for-profit corporation.
- Permits a corporation to immediately assume the name of a dissolved corporation, if the dissolved corporation files an affidavit with the department allowing the immediate assumption of the name.
- Provides procedures for notifying and distributing assets to unknown and known creditors of the dissolved corporation.
- Requires a corporation to file a reinstatement form provided by the department if the corporation has been administratively dissolved and seeks reinstatement.
- Requires a certain number of members or a director to seek judicial dissolution before the matter may be heard before a court.

### **Foreign Corporations**

- Requires that if a foreign corporation uses an alternate name in this state, it must be cross-referenced in the department's records to the name the corporation uses in its resident state.

- Requires a foreign corporation's name to be distinguishable from any for-profit corporation doing business in this state.
- Describes and clarifies the legal consequences of domestication of a foreign corporation.

#### **Recordkeeping and Financial Statements**

- Permits a member to inspect the corporation's records at a reasonable location specified by the corporation and requires the member to give the corporation at least 10, as opposed to 5, days notice prior to the inspection of those records.
- Requires corporations to provide annual financial statements to members who submit written requests, as opposed to sending statements routinely to all members, and to state the nature of the financial statements to be provided.

If approved by the Governor, these provisions take effect October 1, 2009, except as otherwise expressly provided in the act.

*Vote: Senate 38-0; House 117-0*

## **CONSUMER SERVICES**

### **CS/CS/HB 167 — Energy-efficient Appliance Rebate Program**

by Finance and Tax Council; Energy and Utilities Policy Committee; and Rep. Abruzzo and others (CS/CS/SB 942 by Finance and Tax Committee; Commerce Committee; and Senators Sobel, Baker, and Bennett)

This bill directs the Florida Energy and Climate Commission (commission) to develop and administer a consumer rebate program for energy-efficient residential appliances consistent with federal guidance or regulations. The commission is authorized to adopt rules designating eligible appliances, rebate amounts, and the administration of the issuance of rebates. The commission may also enter into contracts or agreements to administer this new section.

The bill appropriates \$150,000 to the commission from the General Revenue Fund for FY 2009-2010. The release of the appropriation to the commission is contingent upon submission of a report by the commission to the Legislative Budget Commission certifying that the creation of Florida's rebate program meets the federal requirements, including those of the American Recovery and Reinvestment Act of 2009. Pursuant to current federal law, in order to implement the rebate program and receive federal funding, the state must show that it will use the allocation to supplement, but not supplant, funds made available to carry out the state's program. The federal allocation may be used to pay up to 50 percent of the cost of establishing and carrying out the state rebate program. The U.S. Department of Energy is currently developing guidelines for state rebate programs to be eligible for funding under the American Recovery and Reinvestment Act of 2009. The commission estimates that Florida's share of the federal funding will be about \$18 million.

If approved by the Governor, these provisions take effect on July 1, 2009.

*Vote: Senate 40-0; House 115-0*

### **CS/CS/HB 375 — Reimbursement of Federal Excise Taxes on Motor Fuel**

by Civil Justice and Courts Policy Committee; Insurance, Business, and Financial Affairs Policy Committee; and Rep. Legg (CS/SB 1024 by Commerce Committee and Senators Dean, Lynn, Baker, and Justice)

The bill creates a new section of Florida law to address fuel supply contracts that require reimbursement of federal fuel excise taxes. It allows a party who is required by contract to reimburse another party for federal fuel excise taxes imposed by federal law to exercise an option to make the reimbursement 1 business day before the tax is to be remitted to the Internal Revenue Service (IRS). The bill specifies that exercising the option does not relieve a party of an obligation to make reimbursement, but alters the timing of that payment. Notice of the exercise of the option is required to be made in writing, and will not be effective for 30 days or the beginning of the other party's next federal excise tax quarter, whichever is later. The reimbursed party may require additional security and may request funds to be delivered by electronic transfer.

The bill applies to all contracts entered into after July 1, 2009, and all continuing contracts with no fixed expiration in effect on July 1, 2009. The bill does not apply to contracts of fixed expiration entered into prior to July 1, 2009.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 40-0; House 112-0*

### **CS/CS/SB 2700 — Secondhand Dealers**

by Finance and Tax Committee; Commerce Committee; and Senator Gelber

This bill amends s. 538.03, F.S., to exclude cardio and strength training or conditioning equipment designed for indoor use from the definition of "secondhand goods," and creates part III of ch. 538, F.S., to define, require registration, and provide regulation of "mail-in secondhand precious metals dealers."

This bill proposes regulatory requirements for mail-in secondhand precious metals dealers that are similar to those regulatory requirements for precious metals secondhand dealers currently provided for in part I of ch. 538, F.S., except the proposed part III does not require the physical verification of the identity of the seller and the submission of a thumbprint by the seller at the time of the transaction. (The regulatory provisions of this bill are substantially similar to section 3 of CS/CS/HB 339, enrolled.) However, the bill does require the seller to provide his or her name, address, telephone number, e-mail address, if available, and driver's license number and issuing state or other government-issued identification number. If the seller fails to provide this information, the buyer must verify the identity and information through a national provider of personal identification services, or request the information from the seller. A seller who has

not provided sufficient information to the mail-in secondhand precious metals dealer may request that the property be returned. If the seller does not provide the required information or request that the property be returned, the seller's property is deemed to be abandoned and is relinquished to the Bureau of Unclaimed Property.

The bill provides a process by which, if there is probable cause that the goods are stolen, a law enforcement agency can take possession of the goods for the purpose of a legal proceeding to determine ownership, to determine whether a crime has been committed, or to safeguard the property.

The bill also provides for penalties for violations of the requirements provided for in the bill. The penalties are consistent with current penalties provided for in part I of ch. 538, F.S., relating to non-mail-in precious metals secondhand dealers.

If approved by the Governor, these provisions take effect October 1, 2009.

*Vote: Senate 40-0; House 119-0*

## **ECONOMIC DEVELOPMENT**

### **CS/CS/HB 127 — Enterprise Zones**

by Economic Development and Community Affairs Policy Council; Economic Development Policy Committee; and Rep. Chestnut and others (SB 628 by Senators Lynn and Oelrich)

The bill creates an opportunity for the city of Ocala to apply for and receive an enterprise zone designation. Ocala's proposed enterprise zone may be located in the city's west end and may be up to 5 square miles in size.

City officials must file the enterprise zone application to the Governor's Office of Tourism, Trade and Economic Development (OTTED) by December 31, 2009. The application must comply with the requirements in s. 290.0055, F.S. OTTED is given discretion to designate the enterprise zone, and if that happens, must establish the enterprise zone's effective date.

If approved by the Governor, these provisions take effect January 1, 2010.

*Vote: Senate 40-0; House 117-0*

### **CS/CS/HB 485 — Fast Track Economic Stimulus for Small Businesses**

by Finance and Tax Council; Economic Development Policy Committee; and Rep. Weatherford and others (CS/CS/SB 1502 by Community Affairs Committee; Commerce Committee; and Senators Fasano, Haridopolos, Richter, Bennett, Sobel, Oelrich, Storms, Lynn, and Crist)

Also called the "New Markets Development Tax Credit Program," the bill creates state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for private investments through a Qualified Community Development Entity

(CDE) in businesses within low-income communities. It is modeled after the federal New Markets program managed by the U.S. Treasury Department.

The cap on the Florida tax credits is \$97.5 million over 7 years, and the tax credits can be carried forward for up to 5 years. The credits can be claimed beginning in the program's third year, which is FY 2011-2012. The program expires December 31, 2022.

Investors in Florida New Markets projects can recapture up to 39 percent of their investment as a state tax credit, in addition to the 39-percent federal income tax credit allowed under the federal program.

To be eligible to receive the private investments, a business must comply with a number of requirements, including:

- Derive at least 50 percent of its total gross income each taxable year from its business activities within the low-income community;
- Create or retain jobs that pay an average wage of at least 115 percent of the federal poverty wage for a family of four (which currently is \$25,357); and
- Not be engaged in such activities as golf courses, massage parlors, tanning salons, and sale of alcohol for off-site consumption.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 40-0; House 116-0*

### **CS/CS/HB 7031 — Economic Development**

by Finance and Tax Council; Economic Development and Community Affairs Policy Council; Economic Development Policy Committee; and Rep. Carroll and others (CS/CS/CS/SB 2034 by Finance and Tax Committee; Governmental Oversight and Accountability Committee; and Commerce Committee)

The bill creates or modifies a number of economic development-related programs in Florida law. Specifically, the bill:

- Amends the state's Innovation Incentive Program in s. 288.1089, F.S., to improve monitoring, oversight, and reporting, as detailed in Interim Project Report 2009-107.
- Creates a uniform state incentive application review and approval process for the various state business incentives reviewed by Enterprise Florida, Inc. (EFI) and approved by the Office of Tourism, Trade, and Economic Development (OTTED). Basically, a business owner applying for a state incentive will learn within 32 days if he or she is successful.
- Codifies two programs that address rural economic development: the Rural Infrastructure Fund, the Rural Economic Development Initiative (REDI), and the Rural Area of Critical Economic Concern (RACEC).

- Adjusts the definition of “rural community” in state law to increase the population cap from 100,000 to 125,000 for any county that is adjacent to another county with no more than 75,000 residents. This will allow Highlands County to continue, and Putnam County in the near future, to be eligible to participate in the state RACEC program.
- Reinstates the so-called “QTI economic-stimulus exemption” for qualified targeted industries for 30 months, from January 1, 2009, to July 1, 2011, to allow eligible businesses to renegotiate and extend the receipt of the incentive, rather than lose it.
- Authorizes EFI and OTTED to waive Quick Action Closing Fund (QACF) eligibility criteria for projects located in RACECs.
- Authorizes the Florida Opportunity Fund to make direct investments or to provide loans to early-stage Florida businesses, or to invest in infrastructure projects.
- Designates EFI as the clearinghouse for information about Florida’s business opportunities and economic incentives.
- Allows nonresident boat purchasers to stay an extra 90 days in Florida – for a total of 180 days – before having to pay sales tax on their new boats. The extension decal costs \$425.
- Gives OTTED access to confidential and exempt tax records held by the Department of Revenue and confidential unemployment compensation records held by the Agency for Workforce Innovation, to assist in its review of the state’s incentive programs.
- Amends the Qualified Defense and Spaceflight Contractor Incentive Program to reduce the cumulative award cap an eligible business may receive (for all fiscal years) from \$7.5 million to \$5 million.
- Lowers the capital investment requirement for the brownfields incentive program from \$2 million to \$500,000 for areas that do not require extensive site cleanup.
- Updates several industry identification codes.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 39-0; House 118-0*

### **CS/HB 7043 — Open Government Sunset Review/Scripps Florida Funding Corporation**

by Economic Development and Community Affairs Policy Council; Governmental Affairs Policy Committee; and Rep. Schenck (CS/SB 2032 by Governmental Oversight and Accountability Committee and Commerce Committee)

The bill reenacts the public records/open meetings exemptions for the Scripps Florida Funding Corporation, the entity created by the Legislature in 2003 to oversee the state’s 20-year agreement with The Scripps Research Institute and to release the state funds earmarked for the institute’s Florida research facility.

It also:

- Extends the exemptions' repeal date 5 years, from October 2, 2009 to October 2, 2014;
- Declares that The Scripps Research Institute and its Florida research facility are not subject to the public records and open meetings requirements;
- Removes the Governor's Office of Tourism, Trade, and Economic Development from the exemption, since its access to confidential and exempt business-related records is protected by another statute related to economic incentive programs;
- Reduces the penalty for persons who willfully and knowingly disclose confidential information from a first-degree misdemeanor to a second-degree misdemeanor, which is consistent with the penalty for similar exemptions; and
- Makes several grammatical and technical changes to the existing statute.

If approved by the Governor, these provisions take effect October 1, 2009.

*Vote: Senate 38-1; House 86-28*

## **WORKFORCE DEVELOPMENT**

### **CS/CS/SB 810 — Unemployment Compensation**

by Policy and Steering Committee on Ways and Means; Commerce Committee; and Senators Garcia, Hill, and Lynn

This bill has four major components:

- Creation of a temporary state extended unemployment compensation benefits program;
- Changes in the computation of employers' tax rates and the parameters for the replenishment of the Unemployment Compensation Trust Fund;
- Specific authorization to the Governor to request and repay federal advances to the trust fund; and
- Clarification of disqualification for benefits in certain situations to address an emerging issue.

#### ***Temporary State Extended Unemployment Compensation Benefits***

Effective between February 1, 2009, and January 2, 2010, the bill creates temporary state extended benefits for unemployed individuals in order to qualify for federal funds under the American Recovery and Reinvestment Act of 2009. Individuals who have exhausted regular benefits and emergency federal extended benefits between February 1, 2009, and December 12, 2009, will be eligible for temporary state extended benefits to be paid for up to 13 or 20 weeks, depending on the average total rate of unemployment, from February 22, 2009, until January 2, 2010. By implementing a state extended benefits period based upon the average total unemployment rate, Florida will qualify for 100 percent funding, or federal sharing

(approximately \$418 million in stimulus funds), for the state extended benefits for private employers.

Extended benefits for former state and local employees do not qualify for federal funding, due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The extended benefits for these former employees must be paid by the governmental entity. The cost is estimated to total \$24.4 million, approximately \$2.4 million from state funds and \$22 million from local government funds. In order to participate in federal sharing, the state extended benefits program must encompass unemployed individuals of both the private and public sectors.

### ***Unemployment Compensation Trust Fund***

The bill also amends portions of the unemployment compensation statutes in ch. 443, F.S., related to calculation of employers' tax rates and Unemployment Compensation (UC) Trust Fund solvency. The effect is to replenish the UC Trust Fund sooner than under the parameters in current law for recoupment.

The bill decreases the portion of an individual's wages exempt from determining an employer's contributions from the excess of \$7,000 to the excess of \$8,500. After January 1, 2015, the portion is increased back to wages in excess of \$7,000. In other words, employers will be taxed on an additional \$1,500 for the next 5 years.

For the calculation of employers' contributions rates effective January 1, 2010, the bill increases the positive fund balance adjustment factor (low trigger) from 3.7 percent of taxable payrolls to 4 percent. Additionally, the time to recapture the funds is shortened from 4 years to 3 years. The recapture time period is restored to 4 years on January 1, 2015. Further, the positive adjustment factor remains in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; this will effectively leave the rate at a higher level for longer, resulting in the recoupment of more funds. This will revert to 4 percent on January 1, 2015.

The bill increases the negative fund balance adjustment factor (high trigger) from 4.7 percent of taxable payrolls to 5 percent. It delays the annual computation of the negative adjustment factor until January 1, 2015. Thereafter, the negative adjustment factor will remain in effect until the balance of the UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

The proposed changes to the tax structure will infuse significant cash into the UC Trust Fund; however, it is estimated that the fund will continue in deficit over the next 5 years, thereby requiring advances from the federal government to maintain the solvency of the trust fund. The projected deficit in the second quarter of 2014 would improve from \$3.7 billion under current law to \$863.4 million under the proposed law.

### ***Requests and Repayment of Federal Advances***

As stated above, the UC Trust Fund balance will decline into a deficit in upcoming years, and this will require Florida to request advances from the federal government in order to maintain the solvency of the trust fund. In the bill, the Governor, or his designee, is specifically authorized to request advances from the federal government to finance the UC Trust Fund. Further, the use of moneys in the trust fund to repay advances is specifically authorized.

### ***Clarification of Disqualification for Benefits***

The bill adds provisions related to disqualification for benefits for two situations when an employee separates from employment. One provision ensures that if an individual gives notice that he or she is going to quit, and the employer fires that individual, without misconduct, before his or her end date, then the individual will be eligible for unemployment benefits until the effective date of his or her notice. Conversely, the second provision states that when an employer gives an individual notice that he or she will be discharged, and that individual quits work before that date without good cause, then the individual is not available for work and not eligible for unemployment benefits until the effective date of the employer's discharge.

If approved by the Governor, these provisions take effect at different times. The temporary state extended benefits program is effective upon becoming a law, but is retroactively effective dating back to February 1, 2009, and expires January 2, 2010. The issues relating to the UC Trust Fund take effect January 1, 2010. All other issues take effect upon becoming a law.

*Vote: Senate 38-0; House 117-0*

## **CS/CS/SB 1062 — Unemployment Compensation**

by Transportation and Economic Development Appropriations Committee; Commerce Committee; and Senators Fasano and Crist

This bill amends ss. 443.036 and 443.1216, F.S., to establish the "Accurate Employment Statistics Enhancement Act," which requires employee leasing companies, also known as Professional Employer Organizations (PEOs), to file reports with the Labor Market Statistics Center of the Agency for Workforce Innovation (AWI). Compared to current law, this bill requires that employee leasing companies report additional and more specific information more frequently (quarterly instead of biannually) to AWI. The quarterly reports must contain specific information about each employee leasing company and client "establishment," including various types of identification, the number of employees, wages paid, and contract information.

This bill also prescribes a format for such reports and the time within which the reports must be filed. This bill grants AWI authority to adopt rules to implement these provisions and to administer, collect, enforce, and waive penalties for failure to file such reports.

If approved by the Governor, these provisions take effect October 1, 2009.

*Vote: Senate 37-0; House 116-0*