HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 685 Business Organizations
SPONSOR(S): Civil Justice Subcommittee; Rooney; Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
3) Judiciary Committee		Ward	Havlicak

SUMMARY ANALYSIS

Florida corporations are regulated by the Florida Business Corporation Act and the Florida Not For Profit Corporation Act. These two acts define the basic terms employed by Florida law in regulating corporations. The directors of a corporation established for profit are duty-bound to manage corporate assets for profit. A not for profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.

There is no provision in the law for a profit-making corporation which considers a social purpose or benefit along with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.

The bill creates two new types of corporations called the "social purpose corporation" and the "benefit corporation." Social purpose and benefit corporations protect management for considering the use of corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not for profit corporations. The new forms of corporation are similar; the primary difference being that a social purpose corporation has a specified social purpose or purposes designated in advance, whereas a benefit corporation is created for a general public benefit in a manner selected by management and assessed by a third-party standard.

The name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership must be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term “distinguishable” is not defined by any of these statutes. The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Corporations

Florida corporations are regulated by the Florida Business Corporation Act[1] and the Florida Not For Profit Corporation Act.[2] These two acts define the basic terms employed by Florida law in regulating corporations, their shareholders and officers.[3]

The term "corporation" presumes a corporation established for profit for purposes of the Florida Business Corporation Act.[4] However, a corporation may be established for any lawful purpose, including[5] purposes other than profit, if the articles establish a not for profit corporation.[6]

In both types of corporations, bylaws establish guidelines for the management of the entity.[7] A corporation established for profit appoints officers who then have a fiduciary duty to the shareholders of the corporation for use of the corporate assets.[8] In a corporation for profit, the directors are duty bound to manage those assets for profit.[9] A not for profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.[10]

There is no provision in the law for a profit making corporation which considers a social purpose or benefit as equal in importance with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.[11] This hurdle is overcome by the concept of the "social purpose" and the "benefit" corporation, each of which may focus on societal benefit over maximizing profit, with accountability to shareholders for both goals.

Social Purpose and Benefit Corporations

Social purpose and benefit corporations protect directors and officers who use corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not for profit corporations. Florida does not recognize such corporations, but other states do.

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[1] 8A Fla. Jur 2d Business Relationships s. 1, citing s. 607.0101, et seq., F.S.
[2] 8A Fla. Jur 2d Business Relationships s. 1, citing s. 617.01011, et seq., F.S.
[3] 8A Fla. Jur 2d Business Relationships s. 1.
[4] Section 607.01401(5), F.S.
[5] Section 607.0301, F.S.
[6] Section 617.0301, F.S.
[7] 8A Fla. Jur 2d Business Relationships s. 52.
[8] 8A Fla. Jur 2d Business Relationships s. 285.
[9] Leo E. Stine, *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV 135 (2012).
[10] Section 617.0301, F.S.
[11] In 1917, Henry Ford declared, "My ambition is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business." After shareholders sued Mr. Ford, the court determined that the profits would be paid to shareholders. *Dodge v. Ford Motor Co*., 170 N.W. 668 (MI 1919).

Names of Business Entities

Chapters 605,[12] 607,[13] 617,[14] and 620,[15] F.S., require the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term “distinguishable” is not defined by any of these statutes.

Effect of the Bill

Corporations

The bill amends ch. 607, F.S., to provide for the creation of two new business entity types designated as “social purpose” and “benefit” corporations. The bill also divides ch. 607, F.S., into Parts, I, II, and III. Part I is entitled "Corporations," and addresses matters concerning all three types of for profit corporations, including historic for profit corporations, social purpose, and benefit corporations. Part II is entitled, "Social Purpose Corporations," and Part III is entitled, "Benefit Corporations." The bill provides that these new entities may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

Social Purpose Corporations

A social purpose corporation has the purpose of creating a public benefit. A "public benefit" is defined in the bill as a "positive effect, or the minimization of negative effects taken as a whole, on the environment or on one or more categories of persons or entities other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, from the business and operations of a social purpose corporation." They may be created for the purpose of pursuing or creating one or more public benefits which may be specific in nature.

The bill provides that in order to qualify the articles of incorporation must provide that the corporation is a social purpose corporation under part II of ch. 607, F.S. The bill provides that the articles of incorporation of a social purpose corporation may identify one or more specific public benefits as its purpose. The social purpose corporation may amend or delete the purpose statement, as long as the amendment is adopted by the minimum status vote.

The bill provides that the creation of a public benefit is deemed to be in the best interest of the social purpose corporation. Since the social purpose corporation has the purpose of creating a public benefit, the management does not breach its fiduciary duty by making the corporation's beneficial purpose a priority over maximizing profit. This protects the directors and officers from action taken by shareholders for prioritizing social benefit over profit.

An existing corporation may elect to change its status to a social purpose corporation by amending its articles of incorporation, by merger, or by share exchange. The change must be adopted by its shareholders. The amendment must be adopted by a "minimum status vote," defined in the statute.[16] The value of shares held is taken into consideration by the provisions of s. 607.1302, F.S., which is amended by the bill to provide that a shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of conversion of a corporation to a social purpose or benefit corporation. Likewise, a social purpose corporation may terminate its standing by the same means.

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[12] Section 605.0112(1)(b), F.S.
[13] Section 607.0401(4), F.S.
[14] Section 617.0401(1)(e), F.S.
[15] Section 620.1108(4), F.S.
[16] A "minimum status vote" is the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote.

Definitions

The bill provides definitions for terms particular to the new entities. Most of these are more fully described in their context below but introduced here for background. The bill provides that:

- "Benefit director" means a director who must not have an interest in the corporation, and who gives an annual report of his or her opinion on whether the organization is meeting its stated goals;
- "Benefit enforcement proceeding," analogous to a shareholder derivative action, means an action or claim wherein shareholders can hold a social purpose corporation accountable to its stated public benefit;
- "Independent" means "not having a material relationship" with the social purpose corporation or any subsidiary;
- "Minimum status vote" means the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote;
- "Public benefit" means a positive effect, or the minimization of negative effects taken as a whole, on the environment, persons, or entities from the business and operations of a social purpose corporation;
- "Social purpose corporation" means a corporation that is formed or has elected to become subject to the statute, the status of which as a social purpose corporation has not been terminated;
- "Specific public benefit" means a benefit identified as a purpose of the social purpose corporation which is set forth in the articles of incorporation and is consistent with a public benefit;
- "Subsidiary" means, in relation to a person other than an individual, an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests; and
- "Third-party standard" means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business.

Directors of Social Purpose Corporations

The bill provides that in any action or inaction, directors must take into consideration both the shareholders and the ability of the social purpose corporation to accomplish its public benefit goal. The bill provides that in any action or inaction, directors may take into consideration:

- The employees and workforce of the corporation, its subsidiaries and suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit;
- Community and societal factors where the social purpose corporation, its subsidiaries, or suppliers are located;
- The local and global environment;
- The short and long term interests of the corporation; and
- Other pertinent factors of the interests of any other group that they deem appropriate.

The bill also provides that:

- Directors are not required to give equal weight to the interests of any particular person or group listed above unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight;
- Except as provided in the articles of incorporation, a director is not personally liable for monetary damages for failure of the corporation to pursue or create a specific public benefit; and
- Except as provided in the articles of incorporation, a director does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation.

The bill provides for a new office entitled the "benefit director," which may be qualified and described in the articles of incorporation or bylaws. The bill provides that the benefit director has all the powers, duties, rights, and immunities of other directors, plus others additionally outlined in the bill. The benefit director is elected, and may be removed as set out in the bill. The benefit director may also serve as the benefit officer, described below.

Unless the articles of incorporation or bylaws provide otherwise, the benefit director must include in the annual benefit report to shareholders his or her opinion on the following:

- Whether the social purpose corporation in all material respects acted in accordance with its public benefit purpose and any specific public benefit purpose during the period covered by the report;
- Whether the directors and officers met the standards of conduct as set forth in the bill; and
- Whether the social purpose corporation or its directors or officers failed to comply with the standards of conduct toward the shareholders and the stated public benefit, including a written description of the ways in which the social purpose corporation or its directors or officers failed to comply.

The benefit director of a professional corporation[17] is not required to be "independent."[18]

Officers of Social Purpose Corporations

The bill provides standards of conduct for officers of social purpose corporations that shield them from liability in balancing the social purpose of the corporation with the shareholders' interests:

- If an officer of a social purpose corporation reasonably believes that a matter may have a material effect on the ability of the corporation to create a public benefit or a specific public benefit identified in the articles of incorporation and the officer has discretion to act on the matter, the officer must consider the interests and factors provided in the statute on the same basis as the directors;
- The officer's consideration of the above interests and factors is not a violation of s. 607.0841, F.S., which provides that corporate officers have a duty to execute the purposes set out in the corporate bylaws as prescribed by the directors and authorized officers;
- Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages to the corporation or any other person for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit; and
- Except as provided in the articles of incorporation, an officer does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation arising from the status of the person as a beneficiary.

The bill provides that a social purpose corporation may designate an officer as the benefit officer. The benefit officer has the powers and duties set forth in the bylaws or determined by the board of directors, which may include, but are not limited to:

- Powers and duties relating to the public benefit purpose or a specific public benefit purpose of the corporation; and
- The duty to prepare the annual benefit report required by the bill.

Rights of Action Against a Social Purpose Corporation

The bill does not provide any special immunities for social purpose corporations, but does provide remedies for internal disputes as with other corporations.

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[17] A professional corporation formed under ch. 621, F.S., is a corporation designed to have as its only shareholders other corporations, each of which renders professional services.
[18] The term "independent" is defined in the bill as "not having a material relationship with the corporation."

The bill provides that a "benefit enforcement proceeding" is a claim or action for the failure of a social purpose corporation to pursue or create a public benefit or a specific public benefit established in its articles of incorporation or a violation of any obligation, duty, or standard of conduct under the statute.

The bill provides that a benefit enforcement proceeding may be commenced directly by the corporation, a shareholder, a director, a person or group holding at least five percent interest, or by any other person specified in the articles of incorporation. No other person may bring an action or assert a claim against a social purpose corporation or its directors or officers for a failure to pursue or create a public benefit. Further, a social purpose corporation is not liable for monetary damages under the corporation statute for its failure to pursue or create a public benefit or a specific public benefit.

Annual Benefit Report of a Social Purpose Corporation

The bill provides that unless it is prepared by a benefit director or benefit officer, the board of directors must prepare an annual benefit report that includes the ways in which the social purpose was pursued, the benefit created, any hindrance to the pursuit of the benefit, and the process and rationale for changing to the third party standard, as applicable.

The bill provides the matters to be included and assessed if the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard.

The bill provides that if, during the year covered by an annual benefit report, a benefit director resigned from or refused to stand for reelection to his or her position or was removed from his or her position and he or she furnished written correspondence to the social purpose corporation concerning the circumstances surrounding his or her departure, that correspondence must be included as an exhibit in the annual benefit report.

The bill provides that the annual benefit report and the assessment of the performance of the social purpose corporation in the annual benefit report are not required to be audited or certified by a third-party standards provider.

Availability of Annual Benefit Report

The bill provides that each social purpose corporation must send its annual benefit report to each shareholder:

- Within 120 days after the end of the fiscal year of the social purpose corporation; or
- At the same time that the social purpose corporation delivers any other annual report to its shareholders.

The bill provides that a social purpose corporation must post each annual benefit report on the public portion of its website, if any, and it must remain posted for at least 3 years. If a social purpose corporation does not have a website, the corporation must provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

If a social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the social purpose corporation is located or, if no office is located in this state, the county in which its registered office is located may, after a shareholder of the social purpose corporation requests a copy, summarily order the corporation to furnish the report. If the court orders the report to be furnished, the court may also order the social purpose corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in obtaining the order and otherwise enforcing his or her rights under this section.

<u>Benefit Corporations</u>

The bill creates Part III of ch. 607, F.S., to provide for the creation of a new business entity designated as the “benefit corporation.” The bill provides that both the benefit corporation and the social purpose corporation may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

A benefit corporation is created for a broad purpose and it may pursue many societal and environmental factors simultaneously. The benefit corporation has all of the same provisions as the social purpose corporation with two major exceptions. First, a benefit corporation has the purpose of creating a "general public benefit." The bill defines a "general public benefit" as "a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation." Second, contained within the first, is the assessment using a third party standard for the annual benefit report, as defined in the bill.

As part of the purpose of creating a general public benefit, directors of benefit corporations must consider the effects of any action or inaction upon:

- The shareholders of the benefit corporation;
- The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit and any specific public benefit purposes of the benefit corporation;
- Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- The local and global environment;
- The short-term and long-term interests of the benefit corporation; and
- The ability of the benefit corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes, if any.

<u>Names of Business Entities</u>

The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State. The bill provides that the following do not render a name distinguishable:

- A suffix;
- A definite or indefinite article;
- The word "and" or the symbol "&;"
- The singular, plural or possessive form of a word;
- A recognized abbreviation of a root word; or
- A punctuation mark or symbol.

The bill amends chs. 605, 607, 617, and 620, F.S., to reflect the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement registered with the Department of State, which, like fictitious name registrations, are merely registered with the Department of State for public notice purposes only.

The bill makes other conforming changes to the statutes.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 605.0112, F.S., relating to names.

Section 2 designates ss. 607.0101 through s. 607.193, F.S., as Part I of Chapter 607, F.S., entitled “CORPORATIONS.”

Section 3 amends s. 607.0101, F.S., relating to short title.

Section 4 amends s. 607.0401, F.S., relating to corporate names.

Section 5 amends s. 607.1302, F.S, relating to right of shareholders to appraisal.

Section 6 designates ss. 607.501 through 607.513, F.S., as Part II of Chapter 607, F.S., entitled "SOCIAL PURPOSE CORPORATIONS."

Section 7 creates s. 607.501, F.S., relating to applications and effect of part.

Section 8 creates s. 607.502, F.S., relating to definitions.

Section 9 creates s. 607.503, F.S., relating to incorporation.

Section 10 creates s. 607.504, F.S., relating to election of social purpose corporations status.

Section 11 creates s. 607.505, F.S., relating to termination of social purpose corporation status.

Section 12 creates s. 607.506, F.S., relating to corporate purpose.

Section 13 creates s. 607.507, F.S., relating to standard of conduct for directors.

Section 14 creates s. 607.508, F.S., relating to benefit director.

Section 15 creates s. 607.509, F.S., relating to standard of conduct for officers.

Section 16 creates s. 607.510, F.S., relating to benefit officer.

Section 17 creates s. 607.511, F.S., relating to right of action.

Section 18 creates s. 607.512, F.S., relating to preparation of annual benefit report.

Section 19 creates s. 607.513, F.S., relating to availability of annual benefit report.

Section 20 designates ss. 607.601 through 607.613, F.S., as Part III of ch. 607, F.S., entitled "BENEFIT CORPORATIONS."

Section 21 creates s. 607.601, F.S., relating to application and effect of part.

Section 22 creates s. 607.602, F.S., relating to definitions.

Section 23 creates s. 607.603, F.S., relating to incorporation.

Section 24 creates s. 607.604, F.S., relating to election of benefit corporation status.

Section 25 creates s. 607.605, F.S., relating to termination of benefit corporation status.

Section 26 creates s. 607.606, F.S., relating to corporate purpose.

Section 27 creates s. 607.607, F.S., relating to standard of conduct for directors.

Section 28 creates s. 607.608, F.S., relating to benefit director.

Section 29 creates s. 607.609, F.S., relating to standard of conduct for officers.

Section 30 creates s. 607.610, F.S., relating to benefit officer.

Section 31 creates s. 607.611, F.S., relating to right of action.

Section 32 creates s. 607.612, F.S., relating to preparation of annual benefit report.

Section 33 creates s. 607.613, F.S., relating to availability of annual benefit report.

Section 34 amends s. 617.0401, F.S., relating to corporate name.

Section 35 amends s. 620.1108, F.S., relating to name.

Section 36 amends s. 48.091, F.S., relating to corporations; designation of registered agent and registered office.

Section 37 amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 38 amends s. 243.54, F.S., relating to powers of the authority.

Section 39 amends s. 310.171, F.S., relating to pilots may incorporate themselves.

Section 40 amends s. 310.181, F.S., relating to corporate powers.

Section 41 amends s. 329.10, F.S., relating to aircraft registration.

Section 42 amends s. 339.412, F.S., relating to powers of corporation.

Section 43 amends s. 420.101, F.S., relating to Housing Development Corporation of Florida; creation, membership, and purposes.

Section 44 amends s. 420.111, F.S., relating to Housing Development Corporation of Florida; additional powers.

Section 45 amends s. 420.161, F.S., relating to Housing Development Corporation of Florida; period of existence; method of dissolution.

Section 46 amends s. 440.02, F.S., relating to definitions.

Section 47 amends s. 440.386, F.S., relating to individual self-insurers' insolvency; conservation; liquidation.

Section 48 amends s. 609.08, F.S., relating to merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.

Section 49 amends s. 617.1908, F.S., relating to applicability of Florida Business Corporation Act.

Section 50 amends s. 618.221, F.S., relating to conversion into a corporation for profit.

Section 51 amends s. 619.04, F.S., relating to articles of incorporation.

Section 52 amends s. 624.430, F.S., relating to withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.

Section 53 amends s. 624.462, F.S., relating to commercial self-insurance funds.

Section 54 amends s. 624.489, F.S., relating to liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.

Section 55 amends s. 628.041, F.S., relating to applicability of general corporation statutes.

Section 56 amends s. 631.262, F.S., relating to transfers prior to petition.

Section 57 amends s. 636.204, F.S., relating to license required.

Section 58 amends s. 641.2015, F.S., relating to incorporation required.

Section 59 amends s. 655.0201, F.S., relating to service of process, notice, or demand on financial institutions.

Section 60 amends s. 658.23, F.S., relating to submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.

Section 61 amends s. 658.2953, F.S., relating to interstate branching.

Section 62 amends s. 658.30, F.S., relating to application of the Florida Business Corporation Act.

Section 63 amends s. 658.36, F.S., relating to changes in capital.

Section 64 amends s. 663.03, F.S., relating to applicability of the Florida Business Corporation Act.

Section 65 amends s. 663.04, F.S., relating to requirements for carrying on financial institution business.

Section 66 amends s. 663.301, F.S., relating to definitions.

Section 67 amends s. 663.306, F.S., relating to decision by office.

Section 68 amends s. 663.313, F.S., relating to ownership of stock.

Section 69 amends s. 718.111, F.S., relating to the association.

Section 70 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 71 amends s. 720.302, F.S., relating to purposes, scope, and application.

Section 72 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 73 amends s. 766.101, F.S., relating to medical review committee, immunity from liability.

Section 74 amends s. 865.09, F.S., relating to fictitious name registration.

Section 75 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.[19]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law at s. 607.0130(4), F.S., gives the Department of State rulemaking power regarding regulation of corporations by reference to the corporations "act" which, under current law, refers to all of ch. 607, F.S. However this bill amends s. 607.0101, F.S., to provide that reference to the "act" only applies to Part I of revised ch. 607, F.S. It appears that the department may have no rulemaking power over parts II and III of ch. 607, F.S., as created by this bill. If the Legislature wishes to clearly give the department rulemaking power over parts II and III, the following amendment to s. 607.0130(4), F.S., is suggested:

> The Department of State shall have the power and authority reasonably necessary to enable it to administer this chapter ~~act~~ efficiently, to perform the duties herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this chapter ~~act~~.

[19] The Department of State, 2014 Agency Legislative Bill Analysis for the companion bill, SB 654, indicates that some computer programming changes may be necessary to implement this bill, but that the cost can be absorbed within existing resources.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The rationale for this alternative form of corporate enterprise has been described by two leading experts as follows:

> The sustainable business movement, impact investing, and social enterprise sectors are developing rapidly but are constrained by an outdated legal framework that is not equipped to accommodate for-profit entities whose social benefit purpose is central to their existence. The Benefit Corporation is the most comprehensive yet flexible legal entity devised to address the needs of entrepreneurs and investors and, ultimately, the general public. Benefit Corporations offer clear market differentiation, broad legal protection to directors and officers, expanded shareholder rights, and greater access to capital than current alternative approaches.[20]

As stated by another commentator:

> Social enterprises are entities dedicated to a blended mission of earning profits for owners and promoting social good. They are neither typical businesses, concentrated on the bottom line of profit, nor traditional charities....Their founders instead see value in blending both goals....Yet, these social entrepreneurs worry traditional organizational forms designed for either businesses or charities will constrain their ability to achieve the gains they see in blended mission enterprises.[21]

It is likely that the so called "green corporations" will receive the maximum benefit of this new type of entity.[22] "Advocates of the benefit corporation recognize that there is a risk of 'green-washing,' i.e. that corporations will use the social purpose or benefit corporation mantle to wrap themselves in a cloak of social goodness while failing to pursue meaningfully any beneficial societal goals. 'Green-washing' is a potential risk because directors of such corporations are only mandated to consider benefit goals, not implement them, nor is there any personal monetary liability imposed upon directors or officers who fail to pursue or achieve such goals."[23] Shareholders and the transparent qualities required of these new corporations are designed to provide accountability as a balance to the risk of "green washing."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides conforming changes to match the bill to CS/SB 654 without substantive change. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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[20] William H. Clark, Jr. and Larry Vranka, White Paper: The Need and Rationale for the Benefit Corporation (January 26, 2012). available at http://benefitcorp.net/storage/documents/The_Need_and_Rationale_for_Benefit_Corporations_April_2012.pdf [last visited February 15, 2014], and on file with the Florida House of Representatives Civil Justice Subcommittee.

[21] Dana Brakman Reiser, The Next Big Thing: Flexible-Purpose Corporations, Brooklyn Law School Legal Studies Research Papers (Oct. 2012), available at http://ssrn.com/abstract=2166474 [last visited February 15, 2014].

[22] Stuart R. Cohn, Stuart D. Ames, Gary Teblum, and James Glover, White Paper: Proposed Legislation To Amend Chapter 607, Florida Statutes to Provide for the Creation of Florida Social Purpose Corporation and a Florida Benefit Corporation, Memorandum of the Business Law Section of the Florida Bar (January 15, 2014), on file with the Florida House of Representatives Civil Justice Subcommittee.

[23] *Id.*