



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the Fourth Meeting of the Corporation Laws Study Group
August 25, 2011**

The fourth meeting of the Corporation Laws Study Group was called to order on Thursday, August 25, 2011, at 11:00 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of those in attendance is attached as "Exhibit A".

Welcome and Introduction

Mr. Ryan Pratt, Assistant Secretary of State for the Division of Policy and Research, welcomed the group and introduced all members in attendance. He gave a special welcome to Ms. Diane Hawks, the Secretary of State's new Chief of Staff. This was her first meeting with the group. After introductions were made, Ryan turned the meeting over to Ms. Joyce Hall.

Ms. Hall, Co-Chair of the Corporations Laws Study Group, also welcomed the group. She thanked everyone for devoting their time and made special mention of Mr. Patrick McCraney and the Series LLC subgroup. The Series LLC subgroup tabled their issues for a later date.

Copies of the minutes from the third meeting were distributed and a motion was made for their approval. After a second to the motion, the minutes were unanimously adopted as read.

Subcommittee Reports

Corporate Headquarters Incentives

Mr. Mark Hosemann, chairman of the Corporate Headquarters Incentives subcommittee, informed the group that he had not made much progress due to work obligations. However, he stated that both Ryan and Justin participated in a conference call on the subject matter and gained some valuable information on the topic.

Ryan recapped the conference call with Mr. Mark Sweeney, of McCallum Sweeney Consulting. McCallum Sweeney Consulting works with companies around the nation that are considering relocating their headquarters to other states. According to Mr. Sweeney, a company's main concern when looking at relocation is the cost of relocation. The cost of

relocation per job ranges from \$50,000 to \$150,000. He noted that Tennessee has one of the best relocation credits in the country. The summary of Tennessee's credits was provided in the materials for today.

Ryan and Justin received feedback from Mr. Sweeney regarding the proposed incentives for Mississippi. While Mr. Sweeney had never heard of or considered a Dividends Paid Deduction, he felt like it would be a very high impact incentive for Mississippi.

Ryan provided that Mr. Sweeney emphasized monetization would help offset the bulk of the relocation costs and that any incentive that can be provided up-front to help offset relocation costs is a high-impact incentive. Mr. Sweeney thought the Employee Jobs Tax Credit was a good idea. Mr. Sweeney also felt that the Department of Revenue's current definition of "corporate headquarters" is an appropriate definition and the number of jobs included in the definition is appropriate. After the recap of the call with Mr. Sweeney, Ryan discussed the current list of incentives.

Monetization:

In the previous meeting, the group proposed monetization in the form of a loan from another financial institution, which would be guaranteed by the State for an amount up to 85% of the loan. Ryan asked whether the group felt that this was the proper form to propose the incentive. Mr. Mark Hosemann noted that the only other alternative discussed up to this point is one where the State is using state funds to provide the credit upfront. The group agreed that this option was not preferable.

An outstanding issue discussed by the group was the collateral of the loan and how to protect the State's position. While it is easier to protect the State's interest in tangible assets, intellectual property could pose a problem. Mr. Mark Hosemann asked how to best protect the State as the guarantor. Mr. Henry Chatham pointed out that the bank would be holding the collateral for the loan. If more was needed, the State would guarantee that. Therefore, he was unsure of how the State could protect itself. Mr. Bill Mendenhall noted that if the State had to pay on the guarantee, then the State would step into the bank's position with respect to the collateral. Mr. Chatham agreed with this point.

Ms. Hall asked if anyone knew how banks felt about monetization through this type of loan. Mr. Mendenhall responded by saying that it had never been done in Mississippi, but it is possible to find out how banks would feel about the idea. He followed up by saying that some states actually make the loan directly. One member provided an example of the Mississippi Development Authority's ("MDA") lending method whereby the MDA will guarantee letters of credit from the bank. Mr. Mendenhall pointed out that the State would also have typical contractual rights as a fallback in the case of a default. Clearly, there are going to be some risks that the State will have to accept.

Mr. Mark Hosemann suggested that the group look into the idea of letters of credit and attempt to incorporate this idea into the statute. Ryan suggested that the same idea be followed for the pass-through incentive.

Mr. Mendenhall reminded the group that the legislature responds to what other states have done and what is working. Ryan responded by saying that other states are using monetization in some form or another. Mississippi does it in certain respects, but the group would look into other loan programs.

Secretary Hosemann reminded the group that when the idea of monetization surfaced, the concept was that the State would guarantee 85% of 100% loan. The banks will still do their normal credit analysis. If the borrower fails to meet the normal requirements of the credit analysis, the bank may not make the loan. If the bank goes forward, you would assume that the bank made a loan to someone who had collateral or other equity tie-ins that would equal at least the amount of the loan. In the event of default, the bank would get its money, and the State would be left with the remaining balance of the equipment. Other than the amount of the bank loan, the State would stand to own all of the assets of the defaulted borrower. The State would also be protected if the borrower spent more than the 15% gap. Secretary Hosemann stated that he did not see a big risk with this idea. The 85% is the percentage used by the SBA.

Mr. Mendenhall noted that most of the companies the State wants to draw in are larger, successful companies. Therefore, the risk is likely to be lower. Monetization would really help Mississippi compete with other states. Secretary Hosemann emphasized that it would also help the small businesses.

Mr. Mark Hosemann raised the concern of intellectual property as collateral. He also noted that start-up and established companies would be eligible for this credit as contemplated.

Dividends-Paid Credit:

Mr. Mark Hosemann looked to the Department of Revenue (DOR) for an economic analysis for dividends paid, but they were not able to provide one. Although other states have not offered a dividends paid credit, Ryan stated that Mark Sweeney endorsed this idea from the company's perspective.

Secretary Hosemann stated that the dividends could be deducted at the corporate level. Another option would be no deduction at the corporate level, but the dividends would be tax free to the shareholder. In both instances, there would be one level of tax paid. The question is whether this is a good idea.

Mr. Mark Hosemann was concerned with the idea because the deduction at the individual income level would not be enough to incentivize companies to make distributions. Ms. Jan Craig from the DOR noted that Mississippi currently has an exclusion for the individual provided in Miss. Code Ann. § 27-7-15(4). A point was made that a dividends paid deduction is not going to be as lucrative in Mississippi as it might be in other states.

Relocation Credit:

Ryan opened the discussion with information about Tennessee's relocation credit where companies are allowed to take a credit for "qualified relocation expenses." He also mentioned the method used in Indiana, which allows a company to take credit in year one for 50% of the actual relocation expenses. Ryan posed the question of whether this idea was something that the group should pursue. Ryan restated that Mr. Sweeney provided that relocation credits are one of

the primary factors he considers when assisting companies in making a decision to relocate. He feels that the relocation credit could be the incentive that has the most impact on a decision to relocate. Mr. Mendenhall also endorsed the idea. The issue is whether the credit should be tied to an investment threshold or job creation or both. Mr. Mendenhall suggested that either approach is a workable idea because it would attract a wider range of companies.

Ryan stated that Tennessee has a refundable credit, but Mississippi does not generally provide refundable credit. A refundable credit is a direct hit to the general fund. The better option is to allow a carry forward, which is used in Indiana.

Mr. Russell Hawkins expressed that his main concern is that Mississippi does not have any type of cash-upfront credit. Cash upfront seems to attract companies, and most states have some form of a cash-upfront credit. Mr. Hawkins stated that the inventory credits that some counties allow are also another good idea. Generally, the counties have a fund devoted to cash up-front credits.

Other Incentives:

Ryan referred the group to the “Competitive Gap” section of the “Corporate Headquarters Incentives” handout in the meeting packet. He specifically mentioned the Governor’s Opportunity Fund in Virginia and the similar fund in Louisiana. The issue with a Cash Up-front program is the expense placed on the State. Ryan asked Mr. Bill Mendenhall for assistance on drafting legislation pertaining to the relocation credit. Mr. Mendenhall confirmed that he would assist with the drafting. Secretary Hosemann stated that expansion and incentivizing should also be part of the legislation.

Ryan posed the question of whether a payroll withholding tax is something to consider. The group will consider and report back. Ryan opened the floor for other thoughts on what the State could do to attract other companies. Mr. Hawkins suggested that it would be nice to have an ongoing study of innovative ways to attract companies to Mississippi. Ryan closed the discussion on Corporate Headquarters Incentives.

Model Business Corporation Act

Next on the agenda was the draft of amendments to the Mississippi Business Corporation Act. Mr. Chatham directed the group to the drafts in the meeting packet and stated that there are several amendments and revisions that need to be made. Those amendments/revisions include the act pertaining to LLCs and the indemnification statute. The question of whether the indemnification statute could be expanded was posed. Mr. Chatham stated that this would not be an easy question to answer. The statute outlines many things that can and cannot be done.

Next, Mr. Chatham discussed a change that would eliminate appraisal rights in the event of a sell of assets for cash. Mr. John Flynt noted that the amendment assumes that the cash value is fair from the shareholder’s point of view. However, it may or may not be fair. Mr. Chatham pointed the group to two exceptions related to appraisal rights. There is another aspect related to preferred stock that allows you to eliminate appraisal rights to preferred stock. Secretary Hosemann noted his concerns with appraisal rights.

Mr. Chatham suggested that the issues he has discussed be brought up again at the next meeting due the level of complexity. The discussion of the Model Act will continue at the next meeting.

Closing Remarks

Ryan informed the group that the final meeting is September 8th. A vote will be taken on what proposals to submit to the legislature. Secretary Hosemann noted that he did not expect a final draft. He was more concerned with the content of the proposal. There being no other business, the meeting was adjourned at 12:15 p.m.

EXHIBIT A

Minutes of the Corporation Laws Study Group, Meeting # 4

August 25, 2011

Members in Attendance:

1. Billy Boutwell
2. Henry Chatham
3. John Flynt
4. Joyce Hall
5. Russell Hawkins
6. Cliff Hodge
7. Mark Hosemann
8. Caryn Quilter

Members in Attendance by Telephone:

1. Cheryn Baker
2. Chad Davidson
3. Barry Jones
4. Billy Klauser
5. Bill Mendenhall
6. Brian Sanderson

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Diane Hawks, Chief of Staff to Secretary Hosemann
3. Lindell Floyd, Special Assistant to the Secretary
4. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
5. Justin Fitch, Senior Attorney, Division of Policy and Research
6. Brian Bledsoe, Special Counsel to the Secretary
7. Martin Hegwood, Senior Policy Counsel
8. Tom Riley, Assistant Secretary of State, Division of Business Services
9. Landon Phillips, Legal Extern, Division of Policy and Research