



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the Fifth Meeting of the Corporation Laws Study Group
September 8, 2011**

The fifth meeting of the Corporation Laws Study Group was called to order on Thursday, September 8, 2011, at 11:02 A.M. at the Office of the Secretary of State, 700 North 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 reminded everyone that the group would vote on the proposals at today's meeting. Mr. Ryan Pratt thanked everyone for their time and effort and 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 to researching and drafting the proposals.

Copies of the minutes from the fourth 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, was unable to call in at the start of the meeting but called in later. He forwarded his comments to Mr. Pratt. Before proceeding with any discussion, Mr. Pratt read the proposals for the incentives aloud so those participating via conference call could provide input.

Employee Pass-Through

Mr. Pratt summarized the employee pass-through credit by stating that rather than the company taking the tax credit, the company can designate the amount of the credit to one or more employees. The credits will be calculated the same way as the existing jobs tax credit. The

company will be required to identify the employee(s) and the information required by the Department of Revenue (“DOR”).

Ms. Jan Craig with DOR and Mr. Billy Klauser with the Mississippi Development Authority (“MDA”) brought several issues to the group’s attention. Ms. Craig stated that the employee pass-through credit should not be applied retroactively because the general fund would take a direct hit. The group decided that the credit would not be available until after its passage. Another issue is that the jobs tax credit is based on jobs created in year one, with the company taking the credit in years two through six. There would be another year delay with the employee-pass through credit because the company would have to determine the amount eligible to be taken as a credit. The jobs tax credit is 50% of the company’s income tax liability, so the designated employee(s) should take that amount. For example, if the company’s income tax liability is \$100,000, the company could take \$50,000 as a tax credit. The credit would be passed through to the designated employee(s). A timing issue arises because the amount of the credit is not determined until the corporation prepares the return, which is usually after the individual has already filed. Therefore, the corporation calculates the credit in year two and passes it through to the employee(s), by way of a certificate or other mechanism, in years three through seven. Ms. Craig also stated that the language is vague concerning who is eligible, the number of employees eligible, and whether the company may change employees yearly, providing the credit to one employee(s) one year and another employee(s) the following year. However, the advantage to the vague language is that the DOR can adopt regulations to address those issues. The issues should be considered to ensure that the regulations carry out the intent of the incentive.

Ms. Craig was also concerned about who bears the responsibility if the claw-back provision is triggered. If a company’s jobs tax credit is adjusted, the company bears the responsibility, but if the credit has been passed through, who is responsible for the adjustment? The employee may no longer work for the company or may reside in another state. As a solution, Ms. Craig suggested that the adjustment should remain at the company level. Mr. Pratt stated that the adjustment at the company level is necessary to resolve the issue.

While the timing issue is no longer a danger to the general fund, Ms. Craig stated that the general fund could still take a direct hit if the pass-through was applied retroactively. If the pass-through is retroactive, credits that companies cannot take because of net operating losses (“NOLs”) or other issues could be passed through to the employee(s), causing a hit to the general fund. The same result occurs with credits that companies choose not to take. Both Ms. Craig and Mr. Klauser agreed that the exact amount of the hit is unknown, but it is likely to be substantial and material. Mr. Pratt asked if there is a way to prevent or offset the potential hit. Mr. Klauser stated that MDA does put limits on rebate programs. Several thousand taxpayers could take advantage of the employee pass-through credit.

Mr. Pratt asked the group’s opinion on inserting a claw-back provision at the company level and specifying that the credit would not be applicable until January 1, 2013. He said that any proposals approved by the group would be subject to further approval by DOR and MDA.

Members of the group raised additional concerns about impact to the general fund. Secretary Delbert Hosemann stated that the credit had to pass through to employees because the

employees are where the money and the real problems lie. The fact that we offer a benefit to a company that they cannot use is not an incentive at all. The company's ability to pass the benefit through to the employee allows the company to increase employee salaries or decrease their overhead, increasing their profitability. Secretary Hosemann stated that this is a very big deal in north Mississippi since Tennessee has no income tax. It is important to remember that the employee pass-through credit is an option; therefore, the company does not have to pass it through to the employee and may choose to use it. Regardless of how it is used, the use of the credit will be beneficial to Mississippi. Secretary Hosemann stated that the employee pass-through credit should be well received by the legislature.

Secretary Hosemann asked Ms. Craig how much of the current jobs tax credit is unused, but she was not able to provide this information because their system does not maintain the amount that is unused or carried over. Ms. Craig stated that \$1.3 million was used in 2010, \$10 million in 2009, \$19.6 million in 2008, and \$22 million in 2007. Ms. Craig stated that pushing the credit through to the employee affects the general fund because it allows the employee to offset their liability, so any of their withholdings or estimated payments would be out the door. Secretary Hosemann stated that while the effect on the general fund is unknown, there would have to be a projected cost listed in the bill. Secretary Hosemann asked Ms. Craig's opinion on the structure of the bill. She stated that limiting the credit by \$1,000 increments might limit the company's ability to pass the credit through to employees. She asked that the company report the information to DOR and provide the employees with credit certificates as an additional tracking mechanism.

Relocation Tax Credit

The relocation tax credit, which would be determined by the relocation costs, would be available to any company that relocated its headquarters to Mississippi. Mr. Pratt pointed out that there is no capital investment requirement. A capital investment requirement would exclude those companies creating jobs but not investing capital. Ms. Hall asked how the credit would apply to companies who have their headquarters in Mississippi but created 20 new jobs. Secretary Hosemann stated that the idea behind the credit is to maintain those companies that are passing through the first generation of ownership and may conduct more of their business outside of Mississippi. The goal of the credit is to encourage expansion in Mississippi. Mr. Henry Chatham suggested calling the credit a headquarters tax credit rather than relocation tax credit. Joyce pointed out that the expenses provided in the materials, those expenses point to expansion whether the company has relocated or not. The group decided to change the language to apply to relocation or expansion. Secretary Hosemann said that the credit focuses on headquarters jobs, so that it is consistent with DOR's definition.

Mr. Carson Hughes questioned whether the jobs of the holding company and an affiliate could be combined to meet the 20 jobs requirement. Secretary Hosemann said that he did not want to penalize a company for its entity structure if it was creating jobs. Ms. Craig stated that the incentive book provides that only the business, enterprise, or corporation that actually created the jobs qualifying for the credit can receive the credit. That limitation applies to all credits, even those in a combined filing. Secretary Hosemann asked what would happen with a consolidated return, and Ms. Craig stated that generally, the credit is calculated and applied separately. The

credits of a parent company and its wholly owned subsidiary would be calculated and applied separately. Jan said that she was not sure if the issue had been addressed where the credit is applied across entities, but she would look into the issue and provide feedback.

Mr. Justin Fitch said that the amount of the credit needed to be addressed. Currently, the amount mirrors Indiana's credit, which is 50% of the relocation costs. Ms. Craig expressed concern with the language because it is very broad and could lead to a large credit. The capital investments could include land and buildings. Secretary Hosemann stated that nothing depreciable could be considered in calculating the credit. Mr. Klauser stated that, with grants, moving equipment means physically picking up and moving the equipment.

Mr. Hughes asked how the credit would be calculated for a Mississippi company that created 20 jobs. Secretary Hosemann said that the relocation tax credit would not apply to employees who were already here. This credit is applicable to someone hired from out of state that has to be physically moved here. Secretary Hosemann said that it is likely that the language about the new or replacement equipment will be deleted. He does not expect this credit to be used frequently.

Secretary Hosemann asked Ms. Craig her opinion of the amount now that it is limited to non-depreciable items. She said that 50% of the credit is acceptable. She also said that an initial cap might be helpful. Secretary Hosemann asked Mr. Klauser about MDA's Ace grant. Klauser said that the Ace grant is generally used for moving or training expenses. He confirmed that this credit would not interfere with the Ace grant.

Ms. Craig said that the company would be required to provide a list of actual relocation expenses. She also asked that the eligibility language be changed to reflect that the credit is not applicable to companies that move from one location in Mississippi to another. Secretary Hosemann said that he would like to cap the amount of the credit to \$1,000,000 per company. Jan suggested striking the first sentence under the second section of the amount since there is a \$1,000,000 restriction.

Mr. Fitch asked Ms. Craig to address the qualification procedure. She said that if the company did not qualify for the headquarters incentive, it would not qualify for this credit. MDA determines the headquarters expenses, so it should be allowed to determine the relocation expenses as well. Secretary Hosemann agreed.

Tax Credit Monetization

This is an option in addition to the employee pass-through credit. The company would have to qualify for the jobs tax credit or the headquarters credit in order to qualify for tax credit monetization. The company would receive the monetized amount of the loan after year one to maintain consistency with the jobs tax credit and the headquarters credit. Ms. Craig said she is concerned about determining the amount of eligibility on the frontend because the amount of the jobs tax credit is unknown. Secretary Hosemann said the intent of the incentive is to provide businesses with start-up capital so waiting two years before providing the loan is not an option. The amount of the credit would be calculated by using the company's projections. The company

would not be considered in default on the loan if it did not meet the requisite number of jobs; however, the company would need to raise more private capital. Mr. Klauser stated that MDA has a program that allows companies to take advantage of a rebate if they create the number of jobs promised. Companies will often underestimate the number of jobs it plans to create because they will be out of the program if they do not create the number of jobs as promised. Mr. Klauser also said that Ms. Kathy Gelston wanted to mention the Small Business Initiative, which is a federal program where the state gets funds to loan on fixed assets or working capital. Under this program, a bank that is partnered with the MDA makes the loan.

Secretary Hosemann stated that the Secretary of State's Office would include a special fund in its budget to address any defaults. In the event of default, the State would step into the bank's position. Mr. Klauser stated that MDA would handle the application and administration. Secretary Hosemann reassured Jan that this credit is nonrefundable.

The group unanimously passed all three proposals subject to negotiations with DOR and MDA.

Model Business Corporation Act

Next on the agenda was the draft of amendments to the Mississippi Business Corporation Act. The group recommended resubmitting the legislation from 2010 and adding sections 15.32 and 8.58. The group unanimously approved this proposal.

Mr. Bill Mendenhall and Mr. John Flynt have agreed to organize a group to address the other proposals and incorporating Chapter 9. They requested that at least one person from the other subgroups help with this project. Mr. Mendenhall and Mr. Flynt will work on this project throughout the year. Mr. Chatham noted that Caryn Quilter will assist with technical aspects of drafting.

Closing Remarks

Secretary Hosemann welcomed special guest and Senator-Elect, Josh Harkins to the meeting. Mr. Pratt thanked the group members for their work and dedication. The meeting was adjourned at 12:43 P.M.

EXHIBIT A

Minutes of the Corporation Laws Study Group, Meeting # 5

September 8, 2011

Members in Attendance:

1. Billy Boutwell
2. Henry Chatham
3. Jan Craig
4. Joyce Hall
5. Clifton Hodge
6. Carson Hughes
7. Dr. John Igwebuike
8. Barry Jones
9. Billy Klauser
10. Caryn Quilter
11. Thomas Shepherd
12. Senator-Elect Josh Harkins (Guest)

Members in Attendance by Telephone:

1. Eddie Adkins
2. Cheryn Baker
3. John Flynt
4. Mark Hosemann
5. Patrick McCraney
6. Ryan O'Beirne
7. Brian Sanderson

Secretary of State's Staff:

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