



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the Third Meeting of the Corporation Laws Study Group
August 11, 2011**

The third meeting of the Corporation Laws Study Group was called to order on Thursday, August 11, 2011 at 11:03 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of the persons 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. Copies of the minutes from the first meeting were distributed and a motion was made for their approval. After a second to the motion, the minutes were unanimously adopted as read.

Ms. Joyce Hall, co-chair of the Corporations Laws Study Group, also welcomed the group and introduced guest speaker, Ms. Kathy Gelston, with the Mississippi Development Authority (hereafter MDA).

Address from the Mississippi Development Authority

Ms. Gelston spoke to the group about the constraints Mississippi faces in attracting corporate headquarters. Ms. Gelston stated that when comparing the tax burdens between Mississippi and other states, Mississippi is in a good position. However, Ms. Gelston provided that the headquarters are usually where the executive team wants to be and it is hard to get them to move. Quality of life is always a big issue and some communities may not offer what the executive team and their families want. A second constraint is the cost of air service out of Mississippi airports. Ms. Gelston gave several suggestions and engaged in discussions from the standpoint of selling incentives to various corporations on behalf of the state. Mississippi struggles where air service is limited or expensive.

MDA revised the jobs tax credit this past year to lower the number of jobs required from 35 to 20 in order to attract more companies. Only 24 companies took advantage of the jobs tax credit last year. The incentives offered to companies in Mississippi are not being fully utilized.

Monetizing tax credits is an incentive that was discussed in the meeting. If this were to be put in place, Mississippi needs to ensure the value being provided to the State is greater than the credit given to companies. Ms. Gelston stated that monetizing certain credits is a good idea because we can put up certain money knowing it will be returned. Ms. Gelston believes that if we monetize credits it should only be done for job creation. Ms. Gelston also believes that MDA should approve the monetization and there should be a maximum of credits that are monetized.

In describing the process of monetization of a tax credit, Ms. Gelston stated that when a corporation is awarded a tax credit, for either an investment or a job creation, it is taken on future income tax returns. Some states allow corporations to transfer or sell the credit to another company. When a company sells their tax credits, the buyer is not going to pay full face value. Typically, the discounted rate for federal credits is about \$0.70 to the dollar. Rather than letting the company buy the credits from another company, the State would directly pay to the company some cash surrender value for their future credits. Rusty Hawkins added that the companies take the amount of the future tax credit and convert it to cash. The companies do not get to carry the credit forward because they get the discounted amount in cash up front.

In discussing incentives for corporations to relocate their headquarters to Mississippi, Ms. Gelston stated that the issue is not that corporations are not qualifying, they are not applying. Ms. Gelston also mentioned that surrounding states do not tax inventory whereas Mississippi does. This makes it difficult to attract manufacturing companies. Ms. Gelston thinks we have a better chance of getting companies to start in Mississippi rather than relocate their headquarters here.

Secretary Hosemann proposed an idea that he and the subcommittee had discussed at a prior meeting-that the state monetize tax credits for a period of time and serve as a guarantor of loans up to a certain percentage while holding a security interest in any equipment purchased as collateral. Ms. Gelston agreed that this could potentially be very attractive to corporate entities, specifically those involved in Research and Development and high tech industries. She stated that she would consider only making it applicable to those credits which are involved in job creation, rather than all available credits, as the underlying goal to the state is job creation not taxable income. She also encouraged the group, when drafting legislation, to include a default provision in the event that the corporation defaults on their loan payments.

Subcommittee Reports

Mr. Mark Hosemann, chairman of the Corporate Headquarters Incentives subcommittee, updated the group on their research. He informed the members that his subcommittee has been looking into three possible incentives: 1) portable tax credits, 2) dividends paid deductions, and 3) monetization of credits. The first incentive, portable tax credits, is an area that is still being researched by the subcommittee and the Department of Revenue (hereafter DOR), and is not ready for full group discussion at this time. Dividends paid deductions, the second incentive idea, are also still in the research stage and its feasibility may not sustain legislation at this time.

The subcommittee reviewing the option of establishing Series LLCs in Mississippi has collectively decided that such legislation is not feasible in Mississippi at the current time. They have offered the opinion that Series LLCs be tabled and reviewed at a later date.

Henry Chatham and Tommy Shepherd, co-chairs to the Model Act amendments subcommittee, reported that they and their members are looking into the 2010 amendments to the Model Act. He provided the group members with a handout including the proposed additions and discussed which ones the committee would like to submit to the legislature this year.

Closing Remarks

Mr. Pratt reminded the group of the next meeting scheduled for August 25, 2011. At that time, there will be draft legislation for the group to review on the proposed amendments to the Model Act as well as further research and recommendations on corporate headquarters incentives. He informed the group that on September 8th, at their final meeting, a vote would be taken on what proposals to submit to the legislature. There being no other business, the meeting was adjourned at 12:24 P.M.

EXHIBIT A

Minutes of the Corporation Laws Study Group, Meeting # 3

August 11, 2011

Members in Attendance:

1. Cheryn Baker
2. Billy Boutwell
3. Henry Chatham
4. Jan Craig
5. John Flynt
6. Kathy Gelston
7. Joyce Hall
8. Russell Hawkins
9. Mark Hosemann
10. Carson Hughes
11. Barry Jones
12. Billy Klauser
13. Tommy Shepherd
14. Rep. Greg Snowden

Members in Attendance by Telephone:

1. Eddie Adkins
2. Cecil Harper
3. Bill Renick
4. Caryn Quilter
5. George Simmerman

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
3. Justin Fitch, Senior Attorney, Division of Policy and Research
4. Brian Bledsoe, Special Counsel to the Secretary
5. Martin Hegwood, Senior Policy Counsel
6. Paige Rogers, Legal Intern, Division of Policy and Research