



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 1445 and 1446 (as reported without amendment)
Sponsor: Senator Jason E. Allen (S.B. 1445)
Senator Jim Barcia (S.B. 1446)
Committee: Commerce and Tourism

(as enrolled)

Date Completed: 10-8-08

RATIONALE

Private and community foundations often partner with businesses and nonprofit corporations in pursuing community and economic development projects, such as developing affordable housing, supporting educational endeavors, or improving local economic infrastructure. The goal of these efforts is not to create a profit, though incidental profits may be realized, but to enhance the economic and living conditions in the community. Limited liability companies (LLCs) commonly are formed and used as a management vehicle in these joint projects, but the Michigan LLC Act does not recognize nonprofit participation as an acceptable business purpose for the creation of an LLC, and Internal Revenue Service (IRS) regulations reportedly make it difficult for private nonprofit entities like charitable foundations to participate financially in joint ventures when they are structured as LLCs. Some people believe that Michigan law should provide for the creation of a special type of "low-profit" LLC to accommodate the participation of foundations and other nonprofits in joint community and economic development projects.

CONTENT

The bills would amend the Michigan Limited Liability Company Act to do all of the following:

- Define "low-profit limited liability company".
- Require a low-profit LLC to use certain words or abbreviations in its name.

- **Allow the Attorney General to seek the dissolution of a low-profit LLC that failed to meet the requirements for being a low-profit LLC and failed to amend its name to conform with LLC naming requirements.**

The bills are described in detail below.

Senate Bill 1445

The bill would define "low-profit limited liability company" as an LLC that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements:

- The LLC significantly furthers the accomplishment of one or more charitable or educational purposes described in Section 170(c)(2)(b) of the Internal Revenue Code (IRC), and would not have been formed except to accomplish those charitable or educational purposes.
- The production of income or appreciation of property is not a significant purpose of the LLC.
- The purposes of the LLC do not include accomplishing one or more political or legislative purposes described in Section 170(c)(2)(d) of the IRC.

The bill specifies that, in the absence of other factors, the fact that the LLC produced significant income or capital appreciation would not be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(Section 170 of the IRC allows a tax deduction for any charitable contribution paid within the taxable year. Section 170(c) defines "charitable contribution". Section 170(c)(2)(b) includes in that definition a contribution to a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. Section 170(c)(2)(d) includes a contribution to a corporation, trust, or community chest, fund, or foundation that is not disqualified for tax exemption under Section 501(c)(3) of the IRC by reason of attempting to influence legislation, and that does not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office, including the publication or distribution of statements.)

Senate Bill 1446

The Act requires the name of a domestic LLC to contain the words "limited liability company", or the abbreviation "L.L.C." or "L.C.", with or without periods or other punctuation. Under the bill, the name of a low-profit LLC would have to contain the words "low-profit limited liability company", or the abbreviation "L.3.C.", with or without periods or other punctuation.

Under the Act, the Attorney General may bring an action in the circuit court for the county in which an LLC's registered office is located for dissolution of the LLC on the ground that it has committed any of the following acts:

- Procured its organization through fraud.
- Repeatedly and willfully exceeded its legal authority.
- Repeatedly and willfully conducted its business in an unlawful manner.

The bill also would allow the Attorney General to bring an action for dissolution if the LLC were a low-profit LLC that ceased to meet any of the requirements described in the proposed definition of "low-profit limited liability company" and, for 60 days after it ceased to meet those requirements, failed to file a certificate of amendment amending its

name to conform with the naming requirements for an LLC.

MCL 450.4102 (S.B. 1445)
450.4204 et al. (S.B. 1446)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As partners in ventures to improve the quality of life and economic vitality of communities, private and community foundations sometimes work with for-profit organizations in community and economic development projects or educational efforts. These joint endeavors are not designed to seek a profit, but incidental profits may occur, so the ventures are not organized as nonprofit corporations. Although forming an LLC often is the most desirable way to structure these joint efforts, the Michigan LLC Act is not designed for nonprofit entities. Evidently, a charitable foundation wishing to participate financially may make an investment in this type of project, but first must obtain a specific ruling from the IRS that the investment is not a business holding or asset of the foundation, but is recognized as a charitable distribution. Obtaining such a ruling apparently can take a significant amount of time, delaying the progress of the joint project or even discouraging participation in it. By authorizing the creation of low-profit LLCs, the bills would facilitate the use of a mechanism for infusing private funds into economic development projects in Michigan, and accommodate the efforts of foundations to participate with profit-making entities in improving Michigan communities and the general welfare of the State's residents.

Supporting Argument

Although including low-profit LLCs in Michigan law would not eliminate the Federal requirement that a charitable foundation obtain an IRS ruling allowing its participation in a community development partnership with a for-profit entity, the recognition of these charitable purpose LLCs in State law could help prompt the IRS to change its regulations. To date, Vermont has passed a law recognizing low-profit LLCs and legislation similar to the bills reportedly has

been introduced in at least three other states.

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FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.