

DELEG

The new Department of Energy, Labor & Economic Growth (DELEG) officially opened for business on December 29. This follows Governor Jennifer M. Granholm's signing of Executive Order 2008-20 on October 27, 2008, creating the DELEG. The new department will streamline state government by aligning all renewable energy and energy efficiency programs together and adding "Energy" to the former Department of Labor & Economic Growth's name in recognition of this concentrated effort. Granholm appointed her special advisor on renewable energy, Stanley "Skip" Pruss, as director and as the state's new Chief Energy Officer to oversee the workforce and economic development efforts to prepare for Michigan's new energy economy.

The new DELEG brings together state employees from the Department of Environmental Quality, the Energy Office, and the Public Service Commission to work on energy-related initiatives. This new office will partner closely with the Michigan Economic Development Corporation's tax incentive and business attraction efforts.

DELEG is also home to the Green Jobs workforce initiative as part of the governor's No Worker Left Behind that is training workers for high growth industries. For qualifying participants, No Worker Left Behind provides up to two years of free tuition at any Michigan community college, university, or other approved training program.

As part of the Green Jobs initiative, DELEG is investing \$6 million for green jobs to:

- Increase the number of green industries and businesses in Michigan.
- Develop green education and training programs, spurring the growth of Michigan's green economy.
- Invest in worker education and training to prepare our workers for green jobs.

- Support urban renewal by creating green jobs and training opportunities for a diverse mix of people.

Michigan workers interested in pursuing new energy careers can find NWLB approved training programs on the Green Jobs Web site at www.Michigan.gov/greenjobs. For more information about DELEG, visit www.michigan.gov/dleg. The DELEG will be hosting a daylong "Green Today, Jobs Tomorrow" conference on May 11 at the Lansing Center in Lansing. The conference will focus on workforce and economic development for Michigan's emerging green economy. The conference will bring together business, education and training, labor, environmental, community- and faith-based, and policy advocacy partners and stakeholders who are currently working on nurturing a green economy and talent base in Michigan. To sign up for email updates about the conference, please visit www.michigan.gov/greenjobconference.

Business Corporation Act Amendments

HB 5356 amending the Business Corporation Act was drafted by the section's Committee on Corporate Laws. Governor Granholm signed the bill on January 5, 2009. It is Public Act 402 of 2008 and effective on January 6, 2009. The amendments add two new substantially similar sections, sections 745 and 746 (MCL 450.1745, .1746), authorizing conversions of a domestic corporation to a business organization and a business organization to a domestic corporation. PA 402 amends section 545a (MCL 450.1545a) to clarify that satisfying requirements that preclude an action regarding a transaction in which a director or officer has an interest would not preclude other claims. It also repeals Chapter 7B of the act regarding control share acquisitions. Amendments to sections 211 (MCL 450.1211) and 241 (MCL 450.1241) permit abbreviations of required words in corporate name with or without periods and permit a domestic LLC or foreign LLC authorized to transact business

in the state to be appointed as resident agent.

Amendments added to HB 5356 in the senate add new section 806 (MCL 450.1806). It provides that a certificate of dissolution submitted to the administrator would be effective at the time the certificate was first received by the administrator, not the date of filing, if certain conditions were met. The conditions are: 1) the dissolution is pursuant to an agreement under section 488 or is commenced under section 804; 2) the administrator received the certificate of dissolution after June 21, 2003 and before June 30, 2003; 3) the corporation published notice of dissolution of the corporation under section 842a after June 21, 2003 and before June 30, 2003; 4) the certificate does not set forth a subsequent effective time, not later than 90 days after the date the certificate is received by the administrator. New section 806 provides that the administrator's date stamp on the certificate of dissolution is evidence of the date the administrator received the certificate. If there are multiple date stamps on the certificate, the earliest date stamp is evidence of the date the administrator first received the certificate.

In *Duro Supply*¹ and *Freeman v Hi-Temp*² the Michigan Court of Appeals addressed whether notice of dissolution published before the Certificate of Dissolution is endorsed "filed" by the agency could cut off claims and concluded notice must be given after the agency endorsed Certificate of Dissolution is "filed". Notice given after the Certificate of Dissolution was endorsed "filed" by the agency did cut off claims.³ No information regarding publication of notices of dissolution under section 842a (MCL 450.1842a) are reported to the division, and it is unknown how many corporations will actually benefit from new section 806 or how many claims will be impacted. According to the records of the Corporation Division, however, the agency received 61 Certificates of Dissolution after June 21, 2003, and before June 30, 2003.

Low Profit LLCs

2008 PA 566 and 567 amended the Michigan Limited Liability Company Act to permit the formation of a “low profit limited liability company.” 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. A “low-profit limited liability company” would be defined as an LLC that includes 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 IRC 170(c)(2)(b) 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 IRC 170(c)(2)(d).

The name of such limited liability companies would have to contain the words “low-profit limited liability company,” or the abbreviation “L3.C.,” with or without periods or other punctuation. The amendments provide that the attorney general may bring an action for dissolution if the LLC has ceased to meet any of the requirements in the definition of “low-profit limited liability company” and failed to file a certificate of amendment changing its name.

Light Rail Service

HB 6542, HB6543, and HB 6546 to provide for nonprofit street railways are tie-barred to SB 1588, SB 1589, SB 1590, and 1592. The senate bills are tie-barred to the three house bills and to HB 6625. The bills were signed by Governor Granholm and are Public Acts 481, 482, 483, 485, 486, 487, 488, and 484 of 2008, respectively. The bills have immediate effect and pro-

vide for the development of “light rail” service.

Public Acts 481, 486, and 488 amend 1867 PA 35, the Street Railway Company Act, to provide for formation of nonprofit street railway companies. Public Act 482 amends the Nonprofit Corporation Act to make it applicable to nonprofit street railway companies. Public Act 483 amends the Railroad Code of 1993 to clarify it does not apply to nonprofit street railway companies. All records for corporations formed under the Street Railway Company Act will be transferred to the Corporation Division and any nonprofit street railway companies formed on or after the effective date of the amendment will be subject to the Nonprofit Corporation Act.

The Corporation Division’s database, name availability program, forms, and online information will be modified to implement the new legislation. Updated information will be posted on www.michigan.gov/corporations as soon as it is available.

Notice of Dissolution

In *Jeffrey Thomas & Rootwell v Department of Labor & Econ Growth*, No 280918, 2008 Mich App LEXIS 2496 (Dec 16, 2008) (unpublished), the plaintiff alleged that the corporation did not receive notice of impending dissolution required by section 922 of the Business Corporation Act (MCL 450.1922), and, therefore, the corporation should not have automatically dissolved. The plaintiff argued the corporation should not have been required to select a different name in conjunction with submission of annual reports to renew its existence. The court of appeals affirmed the trial court’s order granting the department summary disposition. The court concluded that whether or not the plaintiff actually received the notice was not relevant to a determination whether the department complied with the notice requirement. The court found there was no genuine issue of material fact as to whether the department notified plaintiff-Thomas of the impending corporate dissolution in sufficient time to allow him

to file the delinquent 2004 annual report before automatic dissolution of his corporation (plaintiff-Rootwell) would occur.

In February 2009, Notice of Impending Dissolution was sent to domestic profit corporations that did not file their 2007 annual report. In July 2009, Notice of Impending Dissolution will be sent to domestic nonprofit corporations that did not file their 2007 annual report. Corporations in good standing may use www.michigan.gov/fileonline to determine if any annual reports are due and to file annual reports online.

NOTES

1. *Pettit v Duro Supply*, No 238243, 2003 Mich App LEXIS 3315 (Dec 18, 2003).
2. *Freeman v Hi Temp Products, Inc.*, 229 Mich App 92; 580 NW2d 918 (1998).
3. *Gilliam v Hi Temp Products, Inc.*, 260 Mich App 98, 677 NW2d 856 (2003).

G. Ann Baker is the director of the Corporation Division of the Michigan Bureau of Commercial Services, Lansing. Ms. Baker routinely works with the department, legislature, and State Bar of Michigan’s Business Law Section to review legislation. From 1981 to 1984, she served as the Director of the Office of Franchise and Agent Licensing, administering the Michigan Franchise Investment Law and the broker, dealer, agent, and investment adviser portion of the Michigan Uniform Securities Act. Ms. Baker is a member of the International Association of Commercial Administrators, and of the State Bar’s Committee on Libraries, Legal Research and Legal Publications. She is a past chairperson of the Business Law Section and a current member of the Section’s Corporate Laws Committee and the Unincorporated Enterprises Committee’s Subcommittee on the LLC Act. Ms. Baker has been a frequent speaker at ICLE courses and is actively involved in programs to train officers and directors of nonprofit corporations.