SUBJECT: Revising requirements for business entities and associations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Bailey, Bohac, Solomons, Taylor, Vo, Zedler

                0 nays

                1 absent — Martinez

WITNESSES: For —Daryl Robertson, Texas Business Law Foundation; Elizabeth S.
                Miller

                Against — None

                On — Carmen Flores, Secretary of State's Office

BACKGROUND: The 78th Legislature in 2003 adopted HB 1156 by Giddings, which
                enacted the Business Organizations Code (BOC). The BOC was a joint
                project of the Business Law Section of the State Bar of Texas and the
                Secretary of State's Office, with editing and drafting assistance from the
                Texas Legislative Council.

                The BOC codified provisions of prior law found in the following:
                • Texas Business Corporation Act (TBCA);
                • Texas Non-Profit Corporation Act (TNPCA);
                • Texas Miscellaneous Corporation Laws Act (TMCLA);
                • Texas Limited Liability Company Act (TLLCA);
                • Texas Revised Limited Partnership Act (TRLPA);
                • Texas Real Estate Investment Trust Act (TREITA);
                • Texas Uniform Unincorporated Nonprofit Associations Act
                  (TUUNAA);
                • Texas Professional Corporation Act (TPCA);
                • Texas Professional Associations Act (TPAA);
                • Texas Revised Partnership Act (TRPA);
                • Cooperative Associations Act (CAA); and
                • other existing provisions of statutes governing domestic entities.

The effective date of the BOC is January 1, 2006. Before January 1, 2010, the BOC will not apply to an entity that existed before January 1, 2006, unless that entity expressly elects to adopt the BOC as its governing statute. Entities formed on or after January 1, 2006, will be governed by the BOC in lieu of prior law.

DIGEST: HB 1319 would:

- reconcile inconsistent provisions in the BOC;
- reflect the actual effective date of the BOC;
- revise filing procedures for certain types of transactions;
- fill gaps in coverage of certain provisions of the BOC; and
- specify the transition rules for application of the BOC's provisions.

The bill would revise the definition of "foreign filing entity" in the BOC to exclude foreign limited liability partnerships, which are considered to be foreign non-filing entities for purposes of the BOC, even though they are required to register with the Secretary of State. The bill also would revise the definition of "general partnership" to include a general partnership registered as a limited liability partnership. It would revise the definition of "limited partnership" to require at least one general partner and at least one limited partner and address how that definition relates to limited liability limited partnerships.

The bill would add to the definitions of the words "writing" and "written" a reference to the newly defined term "electronic transmissions." It states that electronic signatures appended to an electronic message would be considered "signed" for purpose of the BOC. HB 1319 also would provide a definition of "distribution," previously omitted from the BOC.

A nonprofit corporation could not be organized or registered under the BOC to engage in water supply or sewer service except as an entity incorporated under the Water Code, ch. 67. A water supply or sewer service corporation formed under the Water Code would be governed by the BOC, subch. A, ch. 23, but only to the extent that the BOC was not inconsistent with Water Code, ch. 67.

The bill would provide for fees for cooperative associations and would prohibit the Secretary of State from imposing a fee for the filing of a written notice of withdrawal of a name reservation. The bill would revise the definitions of "delegate" and "representative" and a provision relating

to mandatory indemnification by adding references to delegates and former governing persons.

HB 1319 would add specific requirements in the BOC for application for registration of a foreign limited liability partnership. The change in the definition of "foreign filing entities" to exclude foreign limited liability partnerships would necessitate this change. The bill would reduce the number of documents that could be filed by a foreign filing entity that undertook a conversion or a merger transaction and would provide for a revocation of registration of a foreign limited liability partnership by the Secretary of State.

The bill would specify the manner of abandonment of a merger, interest exchange, or conversion when no filing was required. It also would clarify provisions related to an involuntary termination decree terminating the existence of a filing entity. The bill would specify that a majority of the outstanding voting shares would be required to remove a director in lieu of prior language that referred to a "specified portion but no less than the majority" of the outstanding voting shares.

The bill would specify how a nonprofit corporation could adopt a restated certificate of formation and how a restated certificate of formation of a limited liability company would have to be approved, how a restated certificate of formation of a cooperative association could be adopted, and how a restated certificate of formation of a limited partnership would have to be approved. It also would specify how a restated certificate of formation of a cooperative association could be adopted.

HB 1319 would detail how a foreign limited liability partnership would be treated during the transition period. The bill would address the application of the BOC to corporations created under special statues outside the BOC. The bill would revise language related to transition rules for indemnification provisions and also for transition rules for entities whose certificate of formation or equivalent governing document had been cancelled, revoked, involuntarily dissolved, suspended, or forfeited under prior law and would state what law governs their reinstatement after the effective date of the BOC.

The effective date of the bill would be January 1, 2006.

SUPPORTERS
SAY:

HB 1319 would make technical changes to the BOC to incorporate changes made to the prior source laws in HB 1165 by Solomons, HB 1637 by Oliveira, HB 3213 by R. Cook, and SB 280 by Nelson, also enacted last session. Since these source laws affecting the most commonly used business organizations will continue to be in effect until 2010, it is important that they be consistent, to the extent possible, with corresponding provisions of the BOC in order to ease the transition process.

In addition, the bill would clarify provisions in the BOC. For example, the foreign limited liability partnership provisions would be adjusted to make certain that foreign and domestic limited liability partnerships were treated consistently, which would simplify registration and use. This would keep Texas business laws consistent and competitive with other leading business organization states, such as Delaware and Nevada.

HB 1319 would correct technical errors in the BOC that have been identified since last session. Because of the immense undertaking of drafting the BOC and the size of it, minor technical mistakes have inevitably come to light. Also, the modernization and reformatting of some provisions would require further elaboration in order for all affected entities to be covered. This bill would make these corrections and address coverage concerns.

The bill would specify transition rules for application of the BOC, versus prior source law. For example, limited liability partnerships would have to renew their registrations with the Secretary of State annually. The bill would provide that after January 1, 2006, LLP registration would be governed by the BOC, not the prior law, eliminating any confusion as to which registration process would apply.

Finally, the bill would streamline filing procedures for certain types of organizational transactions administered by the Secretary of State. These provisions, developed in cooperation with the Secretary of State's Office, would be part of an ongoing process to keep filing requirements efficient and user-friendly.

OPPONENTS
SAY:

No apparent opposition

NOTES: The companion bill, SB 586 by Fraser, has been referred to the Senate
              Business and Commerce Committee.