

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Padilla Analyst: Angela Raygoza Bill Number: SB 1008
Related Bills: See Legislative History Telephone: 845-7814 Amended Dates: March 15, 2010, & April 28, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Limited Partnerships & Foreign Limited Partnerships/Engineers & Land Surveyors

SUMMARY

This bill would do the following:

- Authorize licensed engineers and land surveyors to organize and operate as limited liability partnerships (LLPs), and
- Require engineers and land surveyors organizing as LLPs to maintain insurance liability coverage.

This analysis will not address the bill's changes to the Business and Professions Code and Corporation Code, except to the extent those provisions affect the department.

SUMMARY OF AMENDMENTS

The bill as introduced February 10, 2010, would have made a technical, non-substantive change to the Business and Professions Code.

The March 15, 2010, amendments replaced the technical, non-substantive change to the Business and Professions Code with the provisions discussed in this analysis.

The April 28, 2010, amendments would do the following:

- Add and repeal sections of the bill related to the organization of civil, electrical, mechanical engineers, and land surveyors; and
- Require \$1.5 million insurance liability coverage for engineers and land surveyors that organize as a limited liability partnership.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to encourage the expansion of business practices and provide flexibility in the business entity form, while bringing California into parity with the vast majority of other states.

Board Position:

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Department Director

Date

Selvi Stanislaus

06/08/10

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and would be operative January 1, 2011, and before January 1, 2016, and as of that date would be repealed and existing law would be reinstated.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under the Beverly-Killea Limited Liability Company Act (the LLC Act) a foreign or domestic limited liability company (LLC) is prohibited from rendering professional services in this state unless expressly authorized under applicable provisions of law. Professional services are those services for which a license, certification, or registration is required under specified statutes.

Existing law authorizes civil, electrical, mechanical, engineers, or land surveyors to practice as a sole proprietorship, partnership, firm, or corporation as specified in the Business and Professions Code.¹ These professions are not authorized to practice as an LLP.

Current law defines "foreign LLP," "registered LLP," and "professional LLP services" to include partnerships licensed to engage in the practice of architecture, public accountancy, or the practice of law.²

Current law assesses an annual tax (\$800) on LLPs that are doing business in California or registered with the California Secretary of State.³

THIS BILL

This bill would add LLPs to the list of approved organizations that can be formed by civil, electrical, or mechanical engineers and land surveyors.

This bill would allow engineers and land surveyors to organize and operate as LLPs.

¹ Business and Professions Code sections 6738 and 8729 provide requirements for a civil, electrical, or mechanical engineer practicing or offering to practice within the scope of their license civil (including geotechnical and structural), electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation.

² Corporation Code section 16101 defines "foreign LLP," "registered LLP," and "professional LLP services."

³ Revenue and Taxation Code (R&TC) section 17948 requires an \$800 annual tax to be assessed on all LLPs doing business in the state or registered with the Secretary of State.

The authority to allow engineers and land surveyors to create a new LLP or operate as an LLP would be repealed as of January 1, 2016. But the bill does not include provisions that cancel any LLPs that were created or registered by civil, electrical, or mechanical engineers or land surveyors between January 1, 2011 to January 1, 2016. As a result, LLPs created or registered by civil, electrical, or mechanical engineers or land surveyors during that period would continue to be required to pay the \$800 annual tax to Franchise Tax Board until the legal existence of the entity is extinguished.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

LEGISLATIVE HISTORY

AB 180 (Horton, 2005) was substantially similar to SB 1008 in its provisions of the organization of engineers and land surveyors as LLPs; however, AB 180 was amended to include a sunset provision. AB 180 failed passage out of the Senate.

AB 469 (Cardoza, Ch. 504, Stats. 1998) authorized architects to form LLPs with insurance liability coverage minimums and a sunset date of January 1, 2002.

AB 1265 (Bennoit, 2003/2004), discussed in greater detail below, would have authorized engineers and land surveyors to practice within the scope of their licensure as an LLP with the same insurance liability coverage requirements as that of architects. This bill was held in the Senate Judiciary Committee due to concerns regarding inadequate insurance coverage.

AB 2914 (Leno, Ch. 426, Stats. 2006) extended the sunset date permitting architects to organize as LLPs to January 1, 2012.

SB 392 (Florez, 2009/2010) and SB 1337 (Correa, 2007/2008) would have allowed a contractor to form an LLC and authorize the issuance of a contractors' license to an LLC under the Business and Professions Code. SB 392 is currently located in the Assembly Judiciary Committee; SB 1337 bill failed passage out of the Senate Judiciary Committee.

SB 513 (Calderon, Ch. 679, Stats. 1995) permitted accountants and attorneys to form LLPs with insurance liability coverage minimums.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York allow engineers and land surveyors to form an LLP if the partners are registered, licensed, or certified by that state or local licensing entity.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of SB1008 Operative For Taxable Years On or After January 1, 2011 Enactment Assumed By September 30, 2010 (\$ in Millions)				
2010-11	2011-12	2012-13	2013-14	2014-15
-\$0.1	-\$0.6	-\$1.4	-\$2.0	-\$2.4

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