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**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: HB 1157
RELATING TO: Secured Transaction Registry
SPONSOR(S): Representative Miller
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BANKING YEAS 8 NAYS 0
- (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
- (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 12 NAYS 0
- (4)
- (5)

I. SUMMARY:

Florida's Uniform Commercial Code (UCC) allows lenders to file liens on property that is held as collateral for loans (secured transactions). Although the loan documents and the courts ultimately determine settlements of loan defaults or bankruptcies, having lien information in a centralized filing registry and available to other potential lenders, assists in preventing the same collateral from unknowingly being used to secure multiple loans. Currently, the Department of State's Division of Corporations (division) administers the centralized deposit and retrieval of these filings. The division submits each lien filing to a filing officer for review prior to entering the information in the database and authorizes the officer to reject a filing in certain circumstances for incorrectness. This review helps to assure that the information on the filing has been correctly submitted and that ultimately, the division's database is reliable.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has proposed a number of revisions to the UCC regarding the evolution of electronic commerce. To more readily allow direct electronic filing of UCC secured transactions the NCCUSL revisions recommend a reduced amount of detail in the information submitted for each filing and a more limited authority to reject a filing for incorrect information.

This bill provides for the gradual removal of the division's (and the state's) role in administering the centralized registry for UCC secured transaction filings. The division is authorized to contract for the administration of the program for five years, with specific authority to contractually maintain the current operational functions, performance oversight, and fee collection.

The department plans to eliminate 10 FTE when it contracts for the performance of its duties as a filing office and estimates that this will result in a recurring annual savings of \$290,734. The cost of contracting for the performance of this function has not been estimated. At the end of the five-year contract period, state revenues will be reduced by approximately \$5 M.

Traveling with the bill are three amendments: Two by the Committee on Banking, and one substitute amendment by the Competitive Commerce Council. See: AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida's Uniform Commercial Code (UCC) allows lenders to file liens on property that is held as collateral for loans (secured transactions). Although, the loan documents and the courts ultimately determine settlements of loan defaults or bankruptcies, having lien information in a centralized filing registry and available to other potential lenders, assists in preventing the same collateral from unknowingly being used to secure multiple loans. Currently, the Department of State's Division of Corporations (division) administers the centralized deposit and retrieval of these filings (sections 679.401(1)(c), and 679.401(5), F.S.) and is authorized to charge fees for these services (Ch. 15, F.S.) The division submits each secured transaction filing to a filing officer for review prior to entering the information in the database and authorizes the officer to reject a filing in certain circumstances for incorrectness. This review helps to assure that the information on the filing has been correctly submitted and that ultimately, the division's database is reliable.

A recent Office of Program Policy Analysis and Governmental Accountability (OPPAGA) report¹ states that in FY 1999-2000, the division processed nearly 246,000 UCC secured transaction documents. Currently, the division charges a base rate of \$25 per filing and \$1 a page for requested photocopies. Individuals can conduct their own document searches via computer. The program currently nets the state approximately \$5 M annually.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has proposed a number of revisions to Article 9 of the UCC. Among those proposed changes is

a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. . . . Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.²

¹ OPPAGA Report No. 00-10.

² http://www.nccusl.org/uniformact_summaries/uniformacts-s-uccra9st1999.htm

C. EFFECT OF PROPOSED CHANGES:

This bill provides for the gradual removal of the division's (and the state's) role in administering the centralized registry for UCC secured transaction filings. A "Florida Secured Transaction Registry" is created as a substitute for the division as the filing office and officer. The division is authorized to contract for the administration of this registry for five years, with specific authority to contractually maintain the current operational functions, performance oversight, and fee collection. The bill does not provide for administration of the registry at the end of that five years.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 provides a finding that consistent with proposed NCCUSL revisions to the UCC, there is no longer a need for government regulation of a state secured transaction registry. This section also indicates that industry self regulation of such a registry is in keeping with a Legislative policy of reducing governmental regulation and involvement in commerce.

Section 2 amends paragraph (c) of subsection (1) and subsection (5) of s. 679.401, F.S., to allow a lawful alternative to the Department of State as the filing office for UCC secured transaction filings.

Section 3 creates s. 679.4015, F.S., to provide for the creation of a Florida Secured Transaction Registry and for the eventual cessation of the Department of State as the filing office for secured transaction filings as of October 1, 2001. This section authorizes the Department to contract (outside of the state's Ch. 287, F.S., bidding procedures) for the performance of both the administrative and operational functions currently being performed by the department as a filing officer and office for secured transaction filings. As part of its contractual authority, this section specifies that the department will develop qualifications to provide for the organization and maintenance of a centralized filing registry for UCC filings that:

- Is designed to be compatible with the current system;
- Is open to the public and accessible to the Internet;
- Is in compliance with Ch. 119, F.S. (public records);
- Will provide for departmental oversight of the registry's compliance and performance; and
- Will maintain the current level of filing fees and procedures for the deposit of revenues with the department, net of operating costs, for five years.

Finally, this section requires the department to develop performance measures to ensure that the filing system is accurate and complete and to periodically verify that these standards are either met or modified as needed.

Section 4 provides that this act will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

State revenues from UCC filing fees will remain relatively constant for the approximately five years that the department is responsible for administering (itself and through contracts) the performance of this function. After that time, any revenues will inure to the private concern that takes over the performance of the filing function.

2. Expenditures:

The department will experience an annual savings of \$290,743 on the 10 FTE's it plans to delete, however, the total savings is indeterminate since the cost of contracting for the performance of the filing functions has not been estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

It is not clear how the department will enforce the performance standards it is required to develop for the registry once the five year contractual period has been completed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 28, 2001, the Banking Committee adopted two amendments to the bill.

- Amendment #1 provides that, instead of creating the Florida Secured Transaction Registry by law, its scope is defined by law. The registry is then listed as the entity under which to file a UCC filing. Thus, the registry is a defined ministerial function, and not a physical office.
- Under current law, the state receives a surplus resulting from the fact that fee revenues exceed the operating costs of the UCC filing program. This bill would eliminate that surplus after five years. Amendment #2 removes the five-year elimination of the surplus, thus preserving the surplus in the future.

On April 24, 2001, the Competitive Commerce Council adopted a substitute amendment to amendment #1 by the Banking Committee. It mirrors the amendment #1 treatment of the registry, provides some additional definitions, and provides for the immediate resumption of the filing office activities by the department in the event the contractor cannot fulfill the terms of the contract or files for insolvency.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Susan F. Cutchins

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Rebecca R. Everhart

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Hubert "Bo" Bohannon