

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1620

SPONSOR: Senator Sanderson

SUBJECT: Filings with the Department of State

DATE: March 26, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gillespie	Maclure	CM	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1620 allows the Department of State (department) to discount the filing fees paid by business entities when electronically filing documents with the Division of Corporations. The discount must equal the amount of the convenience charge for electronic filing. The bill also requires the department to waive the late charge for any business entity that did not receive the Uniform Business Report form prescribed by the department. The \$400 late charge is imposed upon any business entity that remits the supplemental corporate fee after May 1 of any year.

This bill substantially amends sections 15.16 and 607.193, Florida Statutes.

## II. Present Situation:

### Electronic Filings

The Division of Corporations within the Department of State is the ministerial filing agency that serves as the statewide central repository for business entity filings and annual reports.<sup>1</sup> The Division of Corporations (division) provides the public with electronic access to digital images of actual documents on file through the division's Internet website, <http://www.Sunbiz.org>. Each new document image is available electronically and certain past filings are also available: corporation annual reports filed since 1996, articles of incorporation filed since 1997, fictitious names filed since 1996, and Uniform Commercial Code (UCC) filings since 1996.

<sup>1</sup> Division of Corporations, Florida Dep't of State, *Our Role and Filing Responsibilities*, at [http://www.dos.state.fl.us/doc/corp\\_rol.html](http://www.dos.state.fl.us/doc/corp_rol.html) (last visited Mar. 24, 2001).

Under current law, the Department of State (department) is authorized to “use government or private sector contractors in the promotion or provision of any electronic filing services.”<sup>2</sup> Using its “Sunbiz™ E-filing” system, the division currently offers electronic filing on the Internet for Corporate, Limited Partnership, Limited Liability Company, General Partnership, Uniform Commercial Code, and Uniform Business Report filings.<sup>3</sup> To provide these filing services, the department has contracted with private sector contractors for the processing of electronic filings.

When filing Uniform Business Reports (annual reports<sup>4</sup>) and other documents, business entities are required to pay statutorily prescribed filing fees. Those business entities that choose to file electronically and pay by credit card must pay a convenience fee for this transaction. Current law requires state agencies to obtain the approval of the Treasurer (Department of Insurance) before accepting credit cards, charge cards, or debit cards in payment for goods and services.<sup>5</sup> The Treasurer allows state agencies to charge convenience fees for credit card payments, but convenience fees must be related to the convenience of the customer, such as eliminating a need to make payment in person.<sup>6</sup> The division reports that it has obtained the required approvals and currently accepts credit card payments and imposes convenience fees.

In addition to a private sector contractor’s costs associated with processing electronic filings, interchange fees are assessed to every credit card transaction by the bankcard association (American Express, Visa, MasterCard, Discover, etc.). Interchange fees are charged by the bankcard association to the merchant’s bank for transferring funds from the cardholder’s bank. Consequently, the merchant’s bank imposes a transaction fee upon the merchant to cover the interchange fee. These interchange fees range between about 1.3 to 2.5 percent of each transaction.<sup>7</sup> When a business entity electronically files a document with the division, the convenience fee covers both the private sector contractor’s costs and the interchange fee. The following table shows the schedule of convenience fees that are currently charged:

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<sup>2</sup> Section 15.16(6), F.S.

<sup>3</sup> Division of Corporations, Florida Dep’t of State, *The Electronic Filing Process*, at <https://ccfss1.dos.state.fl.us/corpweb/efiling/onlmenu.html> (last visited Mar. 24, 2001).

<sup>4</sup> *See s. 606.06, F.S.* (The Department of State may use the uniform business report as a substitute for any annual report or renewal filing required by law.)

<sup>5</sup> Section 215.322, F.S.

<sup>6</sup> Rule 4C-4.0045(2), F.A.C.

<sup>7</sup> *See, e.g., Chase Merchant Services, LLC, CMS Customer Account Center: Interchange Fees*, at <http://www.chase.com/pages/corpinst/middlemarket/merchantservices/travel/customer/interchange-fees> (last visited Mar. 24, 2001).

<b>Florida Department of State Electronic Filing Convenience Fee Schedule<sup>8</sup></b>		
	American Express, Visa, and MasterCard	Discover
Profit and Nonprofit Corporation Filing	\$3	1.45 percent of filing fee (minimum \$1)
Limited Liability Company Filing	\$5	1.45 percent of filing fee (minimum \$1)
Limited Partnership Filing	\$5	1.45 percent of filing fee (minimum \$1)
Profit Corporation UBR	\$3 (plus an additional \$10 if filed after May 1)	1.45 percent of filing fee (minimum \$1)
Nonprofit and Limited Liability Company UBR	\$3	1.45 percent of filing fee (minimum \$1)
Limited Partnership UBR	\$10 (plus an additional \$10 if filed after May 1)	1.45 percent of filing fee (minimum \$1)

Business entities that file documents by mail or in person pay only the statutorily prescribed filing fees. Because the department must collect the entire filing fee mandated by law for deposit into the Corporations Trust Fund<sup>9</sup> and may not discount filing fees for those business entities filing electronically, a business that files electronically must pay more (the cost of the convenience fee) to file electronically. The division reports, however, that it expends about \$4.35 to process each uniform business report that is filed by mail or in person. These costs result from payments to private sector contractors for document imaging and other processing of the filings. The department does not incur these expenses when documents are filed electronically.

For example, each for-profit corporation authorized to transact business in this state is required to file an annual report with the division<sup>10</sup> accompanied by an annual report fee of \$61.25<sup>11</sup> and a supplemental fee of \$88.75<sup>12</sup> (a total of \$150). These corporations are required to file the Uniform Business Report (UBR) as their annual report. A corporation filing the UBR electronically would pay \$153 if the report was filed timely. Conversely, a corporation filing the UBR by mail or in person would pay only the statutorily prescribed \$150. The division received more than 480,000 new corporate filings in 2000.<sup>13</sup> During FY 1999-2000, the department reports, about 3,300 business entities filed electronically.

<sup>8</sup> Division of Corporations, Florida Dep't of State, *Electronic Filing Convenience Fee Schedule*, at <https://ccfss1.dos.state.fl.us/corpweb/efiling/onlconv.html> (last visited Mar. 24, 2001) & <https://ccfss1.dos.state.fl.us/corpweb/efiling/efilconv.html> (last visited Mar. 24, 2001).

<sup>9</sup> See s. 607.1901, F.S.

<sup>10</sup> Section 607.1622, F.S.

<sup>11</sup> Section 607.0122(17), F.S.

<sup>12</sup> Sections 607.0122(23) & 607.193, F.S.

<sup>13</sup> Division of Corporations, Florida Dep't of State, *Annual Statistics: Activity by Calendar Year January 1, 1991 - December 31, 2000*, at [http://www.dos.state.fl.us/doc/corp\\_stat.html](http://www.dos.state.fl.us/doc/corp_stat.html) (last visited Mar. 24, 2001).

## Late Charges

Any business entity that is authorized to transact business in this state must file by May 1 of each year an annual report with the division accompanied by an annual report fee.<sup>14</sup> These business entities are also required to pay to an \$88.75 supplemental corporate fee.<sup>15</sup> If a business entity remits the supplemental corporate fee after May 1, the entity is required to pay a \$400 late charge.<sup>16</sup> The department is responsible for adopting rules and prescribing the forms necessary to collect the supplemental corporate fee.<sup>17</sup>

In practice, the division mails a Uniform Business Report form to all business entities in late December of each year. Businesses complete the forms and remit their payments with the completed forms. A relatively small number of business entities do not receive the form in the mail. In Florida, corporations are subject to administrative dissolution after 30 days if they do not notify the department that their registered office has changed or been discontinued.<sup>18</sup>

The postal service returns a large proportion of these undelivered forms to the division. Electronic images of the undelivered forms are recorded and retained by the department. In addition, some undelivered forms are not returned by the postal service. When a business entity does not file its annual report or remit the supplemental corporate fee by May 1, the department verifies against the department's records the business entity's claim that it did not receive the prescribed form. The department waives the late charge unless there is evidence contrary to the business entity's claim. The division reports that these circumstances impact about 0.01 percent of annual filings.

### III. Effect of Proposed Changes:

The bill allows the Department of State (department) to discount the filing fees paid by business entities when electronically filing documents with the Division of Corporations. The bill requires that the discount be equal to the amount of the convenience charge for electronic filing. Thus, the fees paid by a business entity for filing documents electronically through the Internet would be the same as the fees paid by business entities that file by mail or in person.

The bill does not limit the amount of the discount beyond requiring that the discount equal the amount of the convenience charge for electronic filing. Thus, the bill allows the department to determine the amount of the discount when contracting the amount of convenience charges with private sector contractors.

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<sup>14</sup> See ss. 607.0122, 607.1622, 608.452, 620.177 & 620.182, F.S.

<sup>15</sup> Section 607.193, F.S. The proceeds from the supplemental corporate fee, including any late charges, are deposited into the General Revenue Fund. Section 607.193(3), F.S.

<sup>16</sup> *Id.* s. 607.193(2)(a), F.S.

<sup>17</sup> Section 607.193(3), F.S.

<sup>18</sup> See ss. 607.0502 & 607.1420(1)(c), F.S.

The bill also requires the department to waive the \$400 late charge for filing the supplemental corporate fee after May 1 of any year if the business entity did not receive the Uniform Business Report form prescribed by the department. The bill does not prescribe requirements for a business entity to prove that it did not receive the report or detail procedures for the division to verify a business entity's claim that it did not receive the report.

The bill takes effect July 1, 2001.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

By discounting filing fees to absorb convenience charges for electronic filing, the Department of State (department) estimates the bill will reduce the General Revenue Fund by about \$16,500 (average \$5 discount for 3,300 electronic filings<sup>19</sup>). The department estimates that it would otherwise have paid about \$14,355 for manual processing of these documents by a private sector contractor. Thus, the difference of \$2,145 is negligible. It is noted, however, that the department's estimate is based upon past participation in electronic filing. It is anticipated that the bill's removal of the disincentives against electronic filing will increase the number of business entities that electronically file documents with the Division of Corporations.

The department estimates that waiver of the \$400 late charge for business entities that remit the supplemental corporate fee after May 1 would have no impact on revenues. The department explains that it currently waives the late charge when a business entity claims it did not receive the Uniform Business Report form and there exists no evidence to the contrary.

##### **B. Private Sector Impact:**

Business entities that file documents with the Division of Corporations electronically through the Internet will pay the same fees as business entities that file by mail or in person.

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<sup>19</sup> These figures are based on data for FY 1999-2000.

**C. Government Sector Impact:**

The Department of State estimates the bill will have no significant impact on its operational costs; however, the bill may have a negligible impact on fee revenues, as discussed above.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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