

Amendment No. 09 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Council for Smarter Government offered the following:

**Amendment to Amendment (453215)**

On page 122, line 12, through page 126, line 8  
remove from the amendment: all of said lines

and insert in lieu thereof:

679.527 Florida Secured Transaction Registry and  
Authority to Contract Filing Office and Filing Officer Duties  
Under Part V.--

(1) The "Florida Secured Transaction Registry" means  
that centralized data base for which all initial financing  
statements, amendments, assignments, and other statements of  
change ("UCC Records"), that are authorized to be filed under  
this chapter, are filed, maintained, and can be retrieved  
from. The Florida Secured Transaction Registry shall include  
the data and other information pertaining to UCC records filed  
with the Florida Secretary of State and effective under this  
chapter before October 1, 2001, or filed with the Secretary of  
State or filed with the Private Filing Agency as authorized in  
this section after October 1, 2001. Consistent with s.

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1 679.5011(1)(a), this section does not apply to initial  
2 financing statements, amendments, assignments, and other  
3 statements of change filed under this chapter with an office  
4 of the clerk of the circuit court.

5 (2) Except as otherwise provided in this section, the  
6 duties of the filing office and filing officer under this  
7 chapter may be performed by an entity qualified to transact  
8 business in the State of Florida (the "Private Filing Agency")  
9 which has entered into a written contract with the Department  
10 of State satisfying the minimum requirements provided in this  
11 section. The Private Filing Agency, among its other duties  
12 conferred by contract or by this part, shall have the  
13 responsibility for acting as the filing office under this  
14 chapter and overseeing the continued existence and maintenance  
15 of the Florida Secured Transaction Registry.

16 (3) The Secretary of State, or the Private Filing  
17 Agency if authorized by the Secretary of State, may enter into  
18 a contract with an entity qualified to transact business in  
19 the State of Florida for the purpose of physically performing  
20 the filing officer duties under this part. However, the  
21 Private Filing Agency, unless displaced by the Secretary of  
22 State or a subsequent Private Filing Agency, shall remain the  
23 filing office under this chapter.

24 (4) Upon the effective date of the contract with the  
25 Private Filing Agency or October 31, 2001, whichever occurs  
26 later, the Secretary of State shall cease acting as the filing  
27 officer and filing office under this part, although the  
28 Secretary of State shall retain the authority and powers as  
29 otherwise provided in this section or by other applicable law.

30 (5) The Secretary of State is authorized to and shall  
31 immediately develop and issue a Request for Qualifications

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1 seeking a qualified entity to perform the duties of the  
2 Private Filing Agency under this chapter. The qualifications  
3 and any contract shall, at a minimum, require:  
4 (a) Creation and maintenance of a central filing,  
5 recording, retrieval, and response system as part of the  
6 Florida Secured Transaction Registry that is capable of  
7 satisfying the filing officer and filing office requirements  
8 under this chapter, which system shall be comparable and  
9 compatible with the filing system in existence immediately  
10 prior to the effective date of this section to the fullest  
11 extent possible as determined by the Secretary of State;  
12 (b) Continuous and easy access by the public,  
13 including review at no charge through the Internet or such  
14 other substitute medium acceptable to the Secretary of State,  
15 of all UCC Records filed and maintained by the Department of  
16 State under this chapter as of the effective date of this  
17 section, subject to any requirements or limitations of chapter  
18 119 and this chapter;  
19 (c) Records maintenance in compliance with this part  
20 and chapter 119;  
21 (d) Oversight by the Secretary of State, including  
22 compliance audits of the performance standards described  
23 below;  
24 (e) Maintenance of the current level of filing fees  
25 and procedures for the deposit of revenues, net of operating  
26 costs, consistent with chapter 15; and  
27 (f) Bonding in an amount acceptable to the Secretary  
28 of State.  
29 (6) Except as otherwise provided in a contract  
30 approved by the Secretary of State, the Private Filing Agency  
31 shall not be liable to any person harmed by the failure of the

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1 Private Filing Agency to comply with the filing office or  
2 filing officer requirements under this chapter, unless such  
3 failure is due to specific acts or omissions done recklessly  
4 or committed knowingly and with malicious intent and then only  
5 to the extent such acts or omissions directly and proximately  
6 cause identifiable damages.

7 (7) Notwithstanding the requirements of chapter 287,  
8 the Secretary of State shall have the authority to determine  
9 and select the most qualified respondent to the Request for  
10 Qualifications as the Private Filing Agency under this section  
11 and negotiate and enter into one or more contracts as provided  
12 in this section.

13 (8) The Secretary of State shall develop performance  
14 standards to ensure that the Florida Secured Transaction  
15 Registry and its central filing system to be implemented and  
16 maintained by the Private Filing Agency is accurate and  
17 complete, that the system implements and maintains the  
18 responsibilities of the filing office and filing officer under  
19 this chapter, and that the system implemented meets the needs  
20 of various persons and entities using or affected by the  
21 filing system.

22 (9) Any contract between the Secretary of State and  
23 the Private Filing Agency shall not be assignable, absolutely  
24 or for security, or otherwise transferable, without the  
25 express written consent of the Secretary of State, which  
26 consent may be withheld in his or her sole and absolute  
27 discretion.

28 (10) The Secretary of State shall immediately assume,  
29 either temporarily or permanently, the duties of the filing  
30 office and filing officer under this chapter, or assign such  
31 filing office and filing officer duties to a new Private

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1 Filing Agency that meets the requirements of this chapter and  
2 enters into a new contract with the Secretary of State  
3 satisfying the requirements of this section, upon the  
4 happening of any one of the following:

5 (a) a Private Filing Agency has not been approved by  
6 the Secretary of State and a contract required by this section  
7 has not been executed;

8 (b) the Private Filing Agency ceases, is unable, or  
9 fails, to perform the duties required under this chapter by  
10 the filing office or filing officer or as provided for in any  
11 contract, as determined by the Secretary of State in  
12 accordance with the terms of the contract;

13 (c) an assignee for the benefit of creditors is  
14 appointed for the Private Filing Agency or its assets or a  
15 receiver is appointed for the Private Filing Agency or its  
16 assets other than the Secretary of State;

17 (d) a bankruptcy case or other insolvency proceeding  
18 is commenced by the Private Filing Agency; or

19 (e) an involuntary bankruptcy case or other insolvency  
20 proceeding is commenced against the Private Filing Agency and  
21 the case or proceeding is not dismissed within five (5)  
22 business days of the filing of the petition.

23 (11) Immediately upon the occurrence of an event  
24 described in subsection (10) any rights of the Private Filing  
25 Agency pertaining to the contract or otherwise, with respect  
26 to this chapter, shall terminate without any further action  
27 being required. Additionally, any rights of the Private  
28 Filing Agency pertaining to the contract or otherwise, with  
29 respect to this chapter shall terminate in the discretion of  
30 the Secretary of State upon written notice to said Private  
31 Filing Agency.

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1           (12) If required by the Secretary of State, any  
2 contracts with the Private Filing Agency entered into pursuant  
3 to this section shall provide that any exclusive rights of the  
4 Private Filing Agency shall terminate automatically without  
5 further action upon any default under the contract, even if  
6 the default is capable of being cured.

7           (13) The Florida Secured Transaction Registry; data  
8 bases, source or object codes, and any software relating to  
9 the Florida Secured Transaction Registry and system for  
10 central filing under this part, and all information contained  
11 in any of the foregoing; all documents and records, in  
12 whatever form or medium, filed with, created by or maintained  
13 by the Private Filing Agency under this chapter, including all  
14 UCC Records and any other records or documents relating to the  
15 UCC Records, in whatever form or medium, whether existing  
16 prior to the effective date of this section or thereafter  
17 (collectively, the "UCC Filing Office Materials and Records");  
18 are and shall remain the sole and exclusive property of the  
19 State of Florida, and upon demand the originals and all copies  
20 are subject to the immediate turnover by the Private Filing  
21 Agency to the Secretary of State upon the occurrence of any of  
22 the events in subsection (10). The Secretary of State shall  
23 have the right to inspect at anytime, and make copies of, the  
24 UCC Filing Office Materials and Records. The Private Filing  
25 Agency shall not acquire rights to the Florida Secured  
26 Transaction Registry or the UCC Filing Office Materials and  
27 Records, and may not sell, license, lease, donate, copyright,  
28 patent, trademark, pledge or otherwise transfer any of the UCC  
29 Filing Office Materials and Records to any person or entity,  
30 except as authorized in writing by the Secretary of State.

31           (14) To the extent permitted by its contract with the

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1 Secretary of State and provided the procedures for  
 2 certification required by the Secretary of State are complied  
 3 with, the Private Filing Agency is authorized to certify any  
 4 of the UCC Records for the purposes of admissibility in a  
 5 state or federal court or other tribunal proceeding, upon  
 6 request for an authenticated record. Said certified record  
 7 shall constitute a public record under s. 90.803(8).

8 (15) The Private Filing Agency shall be subject to the  
 9 exclusive original jurisdiction of the Circuit Court of Leon  
 10 County, Florida, for any litigation between the Secretary of  
 11 State and the Private Filing Agency. The Secretary of State  
 12 shall be entitled to injunctive relief on an emergency basis  
 13 if the Private Filing Agency or its agents or employees fail  
 14 to turn over any of the UCC Filing Office Materials and  
 15 Records or otherwise fails to comply with the contracts or  
 16 with the filing officer or filing office duties under this  
 17 chapter.

18 (16) The terms "Florida Secretary of State,"  
 19 "Secretary of State," or "Secretary", when employed in this  
 20 chapter in and connection with carrying out the filing office  
 21 and filing officer duties assigned under this chapter, also  
 22 shall mean the Private Filing Agency except as otherwise  
 23 provided in the approved contract with said entities.

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