

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 222

INTRODUCER: Committee on Commerce and Tourism and Senator Siplin

SUBJECT: Domestic Corporations

DATE: January 10, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tell	Hrdlicka	CM	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This CS provides for conversion of a limited agricultural association into a domestic not-for-profit corporation.

Specifically, this CS establishes requirements for conversion, including certain information that must be filed with the Department of State to convert into a domestic corporation. The conversion does not affect any obligation or liability of the association.

Additionally, this CS creates a fee of \$35 for filing a certificate of conversion into a domestic corporation.

This CS amends s. 604.14, F.S., s. 617.0122, F.S., and creates s. 617.1809, F.S.

II. Present Situation:

According to s. 604.09, F.S., the purpose of limited agricultural associations (LAA), is to promote, foster, and encourage more efficient and progressive agriculture and to enable farmers

and growers of Florida to enjoy the manifold benefits of joint and collective effort without personal liability and without expense and technical involvements incident to corporate structure.

Furthermore, under s. 604.10, F.S., LAAs are granted and may use all powers granted by the laws of Florida to persons, partnerships, corporations for profit, and not-for-profit corporations. These powers are applicable to agriculture or livestock in all its phases and to any incidental operations which may arise. These powers are effective unless they are inconsistent within the provisions of this law.

Under current law, there are no existing provisions providing LAAs the ability to convert to a domestic corporation.¹

History of Limited Agricultural Associations

LAAs were created by statute in 1941, as a way to promote and encourage more efficient and progressive agriculture. Additionally, the statute was conceived as a way to enable agricultural producers in the state to benefit from a collective effort without the expenses imposed by a corporate structure.²

Currently, there are roughly 60 LAAs operating within the State of Florida. The majority of these LAAs are county farm bureaus which provide services to over 140,000 members.³

Non-Profit Domestic Corporations

The statutory framework allowing the existence of non-profit domestic corporations (NPDC) was codified by the Florida Legislature in 1990. The purpose of these statutes was to allow organizations whose primary interest was not pecuniary profit to exist under a corporate structure. A large contingency of these NPDCs have benevolent, charitable, educational, or civic purposes.⁴ The Florida Statutes provide the NPDCs an opportunity to operate with full corporate powers.⁵ Most importantly, the statutes allow NPDC members to avoid personal liability.⁶

III. Effect of Proposed Changes:

This CS provides for conversion of a limited agricultural association into a domestic not-for-profit corporation.

Section 1

This CS amends s. 604.14, F.S., to allow a limited agricultural association to convert to a not-for-profit domestic corporation in accordance with s. 617.1809, F.S.

¹ Sections 604.09-604.14, F.S.

² Section 604.09, F.S.

³ The Florida Farm Bureau indicates that most Florida LAAs are the 60 county farm bureaus.

⁴ Section 617.0301, F.S.

⁵ Section 617.0302, F.S.

⁶ Section 617.0604, F.S.

Section 2

This CS amends s. 617.0122, F.S., to include a \$35 fee for documents delivered to the Department of State for filing a certificate of conversion.

Section 3

This CS creates s. 617.1809, F.S., which sets forth the statutory framework by which a LAA may be converted into a domestic corporation. This bill would not require any existing LAAs to convert to a NPDC. However, if a LAA voluntarily decides to convert to a NPDC, then the association must file the following with the Department of State:

- a certificate of conversion into a domestic corporation which is executed by a person authorized by the rules governing the association; and
- articles of incorporation which comply with s. 617.0202, F.S.,⁷ and which have been executed by the person authorized pursuant to s. 617.01201(6), F.S.⁸

The certificate of conversion must state:

- the date on which the association was first organized;
- the name of the association immediately before the filing of the certificate of conversion;
- the name of the domestic corporation as set forth in the articles of incorporation filed with the Department of State; and
- the effective date or delayed effective date of the conversion into a domestic corporation.

Prior to filing a certificate of conversion with the Department of State the conversion must be approved by a majority vote of the membership of an LAA in the event an association does not have a conversion vote procedure established in either its articles of association or bylaws.

The conversion is effective upon the filing of the certificate of conversion and articles of incorporation, or a delayed effective date. Also, the existence of the corporation shall be deemed to have commenced when the association commenced its existence.⁹

This CS does not affect any existing obligations or liabilities of the association which were incurred prior to the conversion into a domestic corporation.

This CS does not require any existing LAAs to conclude its affairs, pay liabilities, or to distribute its existing assets. All property, assets, and debts due to the association are vested with the NPDC.

⁷ Section 617.0202, F.S., governs the content of articles of incorporation filed by not-for-profit companies.

⁸ Section 617.01201, F.S., states that the articles of incorporation can be submitted by an officer or director of a corporation, by an incorporator, or by a court-appointed fiduciary.

⁹ Section 617.0123, F.S., is the existing statutory provision for non-profit domestic corporations regarding a delayed effective date. This provision has a 90-day maximum for a delayed effective date from the time of filing. The new provision would allow converting LAAs to get around the existing statutory bar, by allowing the date of the commencement of the association as the date of commencement for the corporation.

This CS does not constitute dissolution of the converting LAA.

Section 4

This CS provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This CS creates a \$35 fee for conversion to a NPDC. Additionally, LAAs who voluntarily decide to convert will also be assessed a \$35 fee at the time of application for the required articles of incorporation.¹⁰ If the estimated 60 LAAs were to opt to become a NPDC, the additional revenue from the conversion would be \$4,200.

Furthermore, each year NPDCs are required to submit an annual report to the Department of State, along with a fee of \$61.25.¹¹ Thus, if the estimated 60 LAAs were to convert to a NPDC, the Department of State would receive \$3,675 in recurring yearly fees from the annual reports.

These fees will result in an increase to general revenue.

B. Private Sector Impact:

LAAs will have the ability to convert to NPDCs. Currently no LAAs are paying fees to the Department of State. However, if they voluntarily decide to convert to a NPDC, the fees stated above will apply.

C. Government Sector Impact:

See Tax/Fee Issues above.

¹⁰ Section 617.022 (1), F.S.

¹¹ Section 617.022 (17), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on 1/9/2012:

This committee substitute differs from the bill in that it:

- Amends s. 604.14, F.S., to allow LAAs to convert to Non-Profit Domestic Corporations.
- Provides for a majority vote by members of an LAA to approve the conversion in the event an association does not have a conversion vote procedure established in either its articles of association or bylaws.

- B. **Amendments:**

None.