

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 827 (CS/CS/SB 222)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Agriculture & Natural Resources Subcommittee; Porter and others (Agriculture; Commerce and Tourism; Siplin)	116 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 222	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 827 passed the House on February 23, 2012, and subsequently passed the Senate on March 9, 2012. The bill provides a process that allows limited agricultural associations (LAAs) to convert to a domestic corporation not for profit. The bill also requires a \$35 filing fee for a certificate of conversion of a LAA to a domestic corporation to be collected by the Department of State (department).

The bill authorizes an LAA to convert to a domestic corporation not for profit by filing the following documents to the department:

- A certificate of conversion, which must be executed by an authorized person and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation.

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation. However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of law pertaining to not for profit corporations, but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The bill appears to have a positive but insignificant fiscal impact on state government revenues by requiring LAAs that choose to convert to a domestic corporation not for profit to pay a \$35 filing fee to the Department of State for a certificate of conversion. Currently, no LAAs are paying fees to the Department of State. The bill does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on April 6, 2012, ch. 2012-71, Laws of Florida. The effective date of the bill is upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** April 10, 2012

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus. Under current law, any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. No member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association.<sup>1</sup>

The articles of association must be subscribed by the original members and acknowledged by one of the original members before an officer of the state authorized to take acknowledgements and administer oaths. Two copies of the articles of association, together with a certificate of the Department of State stating that there is no other LAA within the state having the same name, is required to be filed with the clerk of the circuit court in the county where the principal place of business of the association is to be located. The proposed articles of association must be endorsed and approved by the circuit judge. Upon endorsement by the circuit judge, the articles of association must be recorded by the clerk of the circuit court. The clerk of the circuit court must then transmit a copy of the articles of association to the Department of State for filing. The Department of State and the clerk of the court are entitled to a fee of \$5.25 for services rendered in connection with the formation of the LAA.<sup>2</sup>

The articles of association must set forth:

- The name of the LAA and the location of the principal place of business.
- The purpose for which the LAA is formed.
- The term of existence for the LAA.
- Which officers will conduct the business of the LAA, as well as the names of the officers who will conduct the business until their successors are eligible to serve.<sup>3</sup>
- The number, to be not less than three, of the LAA's managing committee members.<sup>4</sup>
- The fact that the members may not be held personally liable for any claims against or indebtedness and obligations of the LAA.

The name of the proposed LAA must be different from that of any other LAA in the state and must include the words "Limited Agricultural Association" or the letters "LAA" to distinguish it from a natural person, firm, co-partnership, or corporation.

Each LAA must adopt bylaws within 30 days after organization. The bylaws must provide for such matters as the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assign ability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the LAA and the election, powers, and duties of its officers.

LAAs can be dissolved if the members present a petition of dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the

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<sup>1</sup> Section 604.10, F.S.

<sup>2</sup> Section 604.11, F.S.

<sup>3</sup> Officers must be members of the LAA.

<sup>4</sup> Managing committee members must be members of the LAA.

association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.<sup>5</sup>

According to the Florida Farm Bureau, many Farm Bureaus in other states have converted LAAs to not for profit corporations, but there is no efficient way to seamlessly convert an LAA into a not for profit corporation under Florida law.

Any business corporation incorporated under the laws of Florida, which is engaged solely in carrying out the purposes and objects for which nonprofit corporations are authorized under Florida law to carry out, may change its corporate nature from a business corporation to that of a nonprofit corporation. Upon approval of the conversion, the resulting nonprofit corporation will succeed to the rights, liabilities, and assets of its corporate predecessor;<sup>6</sup> in turn, its rights, powers, immunities, duties, and liabilities as a business corporation will cease and determine, and it will instead become subject to all the rights, powers, immunities, duties, and liabilities of nonprofit corporations under Florida law.<sup>7</sup>

The conversion from business to nonprofit status is accomplished by the filing of a petition for conversion in the circuit court of the county wherein the corporation seeking to convert has its principal place of business, in the name of the corporation, signed by an officer of the corporation and under its corporate seal, setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed.<sup>8</sup> It must be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file the petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities, and the proposed articles of incorporation, signed by the president and secretary of the petitioning corporation.<sup>9</sup>

If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, the judge will approve the articles of incorporation by endorsing his or her approval on such. Thereafter the articles, endorsed with the judge's approval, are sent to the Florida Department of State (department).<sup>10</sup>

Upon receipt of the articles, and upon the payment of all taxes due the state by the petitioning corporation, if any, the department will issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of specified filing fees, the department will file the articles of incorporation. Thenceforth, the petitioning corporation will be a nonprofit corporation under the name adopted in the articles of incorporation.<sup>11</sup>

### **Effect of Proposed Changes**

The bill amends s. 604.14, F.S., to provide that LAAs may convert to a corporation not for profit in accordance with s. 617.1809, F.S. The bill also amends s. 617.0122, F.S. to include a \$35 fee for a certificate of conversion of a limited agricultural association to a domestic corporation.

Section 617.1809, F.S., is created to provide a method for conversion of an LAA to a domestic corporation not for profit. An LAA may convert to a domestic corporation not for profit by filing the following documents to the department:

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<sup>5</sup> Section 604.14, F.S.

<sup>6</sup> Section 617.1805, F.S.

<sup>7</sup> Section 617.1807, F.S.

<sup>8</sup> Section 617.1805, F.S.

<sup>9</sup> Section 617.1806, F.S.

<sup>10</sup> Section 617.1807, F.S.

<sup>11</sup> Section 617.1807, F.S.

- A certificate of conversion, which must be executed by a person authorized in S. 617.01201(6), F.S.,<sup>12</sup> and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation;<sup>13</sup>

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion must be a date certain and the same as the effective date of the articles of incorporation.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation, and the corporation becomes subject to the provisions in chapter 617, F.S.<sup>14</sup> However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of chapter 617, F.S., but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The LAA is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute dissolution of the LAA, but is a continuation of the LAA's existence in the form of a domestic corporation. Before the LAA can file a certificate of conversion with the department, unless the LAA's bylaws or articles of conversion specify otherwise, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved in the same manner as the approval for conversion. The converting LAA may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record can also contain other provisions relating to conversion, including, but not limited to the right of the converting LAA to abandon the proposed conversion or an effective date for the conversion.

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<sup>12</sup> Section 617.01201(6), F.S. The document must be executed: by a director of a domestic or foreign corporation, or by its president or by another of its officers; if directors or officers have not been selected or the corporation has not been formed, by an incorporator; or if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by the fiduciary.

<sup>13</sup> Must be in compliance with s. 617.0202, F.S., and be executed by a person authorized in s. 617.01201(6), F.S.; a fee of \$35 shall be collected by the department documents delivered for filing, s. 617.0122(1), F.S.

<sup>14</sup> Chapter 617, F.S., is the "Florida Not For Profit Corporation Act."

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department of State indicates the impact is insignificant. The bill requires LAAs that seek to convert to a domestic corporation not for profit shall pay a filing fee of \$35 to the Department of State for a certificate of conversion from the limited agricultural association to a domestic corporation not for profit. Currently no LAAs are paying fees to the Department of State. If the estimated 60 LAAs were to opt to become a domestic corporation not for profit, the additional revenue from the conversion would be \$4,200. Furthermore, each year domestic corporations not for profit are required to submit an annual report to the Department of State, along with a filing fee of \$61.25. If all the estimated 60 LAAs were to convert to a domestic corporation not for profit, the Department of State would receive \$3,675 in filing fees from the annual reports.

#### 2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

LAAs that wish to take advantage of the provisions in the bill and convert to a domestic corporation not for profit will pay the \$35 filing fee required in the bill. Currently no LAAs are paying fees to the Department of State.

### D. FISCAL COMMENTS:

None