

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 Committee on Governmental Oversight and Accountability

BILL: SB 1490

INTRODUCER: Senator Latvala

SUBJECT: Business Entity Filing Fees

DATE: April 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Pre-meeting
2.			AFT	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1490 amends provisions related to corporations for profit, limited liability companies, corporations not for profit, and partnerships, by changing some annual reporting requirements to biennial reporting requirements and adjusting the filing fees accordingly; providing for a 15% discount for early filing of the biennial fees; and allowing the Department of State to waive, in cases of demonstrated hardship, the late charge of \$400 required if a supplemental corporate fee is remitted late.

This bill amends the following sections of the Florida Statutes: 607.0122, 607.193, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, 607.1622, 608.452, 608.448, 608.4481, 608.4482, 608.4511, 608.509, 608.5101, 608.512, 608.513, 608.5135, 617.0122, 617.0121, 617.0128, 617.0141, 617.0502, 617.1420, 617.1421, 617.1509, 617.1510, 617.1530, 617.1531, 617.1533, 617.1601, 617.1622, 620.1109, 620.81055, 620.1115, 620.1209, 620.1210, 620.1809, 620.1810, 620.1906, 620.1909, and 620.9003.

II. Present Situation:

Florida law requires certain documents to be filed with the Division of Corporations (division) of the Department of State in order for a business to be organized as a corporation, partnership, or other commercial entity. Each registered business must submit an annual report to the division detailing updated contact information, identities of key persons related to the business, etc., along with a fee for filing the annual report. There are additional fees for other filings with the division which must be submitted in some circumstances (e.g., changing a designated agent,

dissolving the entity, articles of merger).¹ There is a great deal of variation in the cost associated with filing these forms depending on the type of business entity filing the form. For example, the cost to file a form changing a designated agent costs \$35 for a corporation and \$25 for a limited liability company (LLC). According to the division, there is no additional work or cost associated with processing this form if it comes from a corporation as compared to an LLC.

Corporations for Profit (Chapter 607)

In order to organize as a corporation for profit, the person wishing to organize must file articles of incorporation at a cost of \$35, and registration of a designated agent (recipient of service of process) at a cost of \$35, for a total of \$70 in startup fees. Each year the corporation must file an annual report by May 1; the annual report fee is \$61.25. In addition to the annual report fee, the corporation must remit annually a supplemental corporate fee in the amount of \$88.75.² The annual fees total \$150. In calendar year 2012, there were 109,107 filings to organize a new corporation, and 634,248 annual filings from existing corporations.³

Limited Liability Companies (Chapter 608)

In order to organize as an LLC, the person wishing to organize must file articles of organization at a cost of \$100 and registration of a designated agent at a cost of \$25, for a total of \$125 in startup costs. The cost for the annual report is \$50. The total annual fees, including the supplemental corporate fee, are \$138.75. In calendar year 2012, there were 169,450 new LLCs, and 495,418 annual reports filed by existing LLCs.

Corporations Not for Profit (Chapter 617)

In order to organize as a corporation not for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent at a cost of \$35, for a total of \$70 in startup costs. The cost of the annual report is \$61.25. Corporations not for profit are not subject to the supplemental corporate fee. In calendar year 2012, there were 12,538 new corporations not for profit, and 137,858 annual reports by existing corporations not for profit.

Limited Partnerships (Chapter 620, Part I)

In order to organize as a limited partnership, the people wishing to organize must file a certificate of limited partnership at a cost of \$965 and designation of a registered agent at a cost of \$35 for total startup costs of \$1,000. The annual report fee is \$411.25. The total annual fee, including the supplemental corporate fee, is \$500. In calendar year 2012, there were 1,312 new limited partnerships and 19,308 annual filings by existing limited partnerships.

¹ Sections 607.0122, 608.452, 617.0122, 620.81055, & 620.1109, F.S.

² Section 607.193, F.S.

³ Figures from Division of Corporations email on file with House Finance & Tax Subcommittee

General Partnerships (Chapter 620, Part II)

In order to organize as a general partnership, the people wishing to organize must file a partnership registration statement at a cost of \$50. They do not need to register a designated agent. In the event that it is organized as a limited liability partnership, it must file an annual report at a cost of \$25. General partnerships are not subject to the supplemental corporate fee. In calendar year 2012, there were 23 filings for new general partnerships and 3,034 annual filings by existing limited liability partnerships.

Supplemental Corporate Fee, Late Fees, and Disposition of Revenues

When originally imposed, all of the fees discussed in this analysis were deposited into the Corporations Trust Fund, which was used to fund the operations of the division along with some cultural programs. In 1990, the Legislature added the supplemental corporate fee for some entity types and directed those revenues to be deposited into the General Revenue Fund. All filing fees were increased at that time, and a portion of the filing fees were directed into the General Revenue Fund. Late fees were also imposed (currently \$400), if the supplemental corporate fee was not remitted by May 1. When the Corporations Trust Fund was eliminated in 2003, all revenues collected pursuant to these chapters were redirected into the General Revenue Fund.

III. Effect of Proposed Changes:

Corporations for Profit (Chapter 607)

Sections 1, 2, and 7 through 21 amend ss. 607.0122, 607.193, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.1622, F.S., respectively, to make the following changes related to corporations for profit:

- The annual reporting requirement is changed to a biennial reporting requirement;
- To reflect change from annual to biennial reporting, the annual report filing fee is changed from \$61.25 to \$122.50;
- Supplemental corporate fee is changed from \$88.75 to \$177.50;
- Specified filing fees must be reduced by 15% if paid by January 31 of the year the report is due; and
- The Department of State is permitted to waive, in cases of demonstrated hardship, the late charge of \$400 required if the supplemental corporate fee is remitted after May 1 of the year the biennial report is due.

Limited Liability Companies (Chapter 608)

Sections 3 and 22 through 30 amend ss. 608.452, 608.448, 608.4481, 608.4482, 608.4511, 608.509, 608.5101, 608.512, 608.513, and 608.5135, F.S., respectively, to make the following changes related to limited liability companies:

- The annual reporting requirement is changed to a biennial reporting requirement;
- To reflect change from annual to biennial reporting, the annual report filing fee is changed from \$50 to \$100; and

- Specified filing fees must be reduced by 15% if paid by January 31 of the year the report is due.

Corporations Not for Profit (Chapter 617)

Sections 4 and 31 through 43 amend ss. 617.0122, 617.0121, 617.0128, 617.0141, 617.0502, 617.1420, 617.1421, 617.1509, 617.1510, 617.1530, 617.1531, 617.1533, 617.1601, and 617.1622, F.S., respectively, to make the following changes related to corporations not for profit:

- The annual reporting requirement is changed to a biennial reporting requirement;
- The annual reporting requirement for foreign corporations is changed to a biennial reporting requirement;
- To reflect change from annual to biennial reporting, the annual report filing fee is changed from \$61.25 to \$122.50; and
- Specified filing fees must be reduced by 15% if paid by January 31 of the year the report is due.

Partnerships (Chapter 620)

Sections 5, 6, and 44 through 51 amend ss. 620.1109, 620.81055, 620.1115, 620.1209, 620.1210, 620.1809, 620.1810, 620.1906, 620.1909, and 620.9003, F.S., respectively, to make the following changes related to general and limited partnerships:

- The annual reporting requirements for limited partnerships and foreign limited partnerships are changed to biennial reporting requirements;
- To reflect change from annual to biennial reporting, the annual report fee for limited partnerships is changed from \$411.25 to \$822.50;
- To reflect change from annual to biennial reporting, limited liability partnership annual filing fee is changed from \$25 to \$50;
- The supplemental corporate fee is changed from \$88.75 to \$177.50; and
- Specified filing fees must be reduced by 15% if paid by January 31 of the year the report is due.

Effective Date

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The separation of powers provision in the Constitution of the State of Florida states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991). Under the nondelegation doctrine the legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers absent ascertainable minimal standards and guidelines. *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

In this bill, the department is given the authority to waive a late charge in cases of “demonstrated hardship,” but the bill does not give standards as to what constitutes such a hardship. Absent legislative direction on the standards and guidelines to be utilized by the department when determining what constitutes “demonstrated hardship,” this provision may potentially violate the nondelegation portion of the separation of powers doctrine.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Indeterminate at this time. The Revenue Estimating Conference has not considered the fiscal impact of this legislation. To the extent business entities take advantage of the early filing/payment discount, the state tax revenues will be reduced. Likewise, any waivers granted for the late payment of the supplemental corporate fee will reduce state tax revenues.

On the other hand, if a business entity pays the biennial fees but is not in existence the following year, the state may receive greater state tax revenues. It is unclear whether the fees (associated with the second year) are refundable.

Private Sector Impact:

The bill provides a discount of 15% for the early filing of certain required biennial reports.

B. Government Sector Impact:

The Department of State (department) advises that the late fee hardship waiver may reduce revenue. Based on previous experience, the department projects that more entities may file late with the existence of a late fee waiver, and then claim paying the late fee is a hardship. The department also anticipates a significant increase in communication traffic to process waiver requests. The department estimates that the loss in revenues, from the late fee waiver and the early-filing discount, may be \$10 million per year.⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Moving from annual to biennial reporting will necessarily mean that some information related to the affected entities will be less current.

Most of early payment fee adjustments required by the bill use the term “reduced;” on line 80 the term used is “discounted.”

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴ Department of State bill analysis of SB 1490, dated March 28, 2013.