

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 Commerce and Tourism

BILL: SB 776

INTRODUCER: Senator Simpson

SUBJECT: Business Entities

DATE: February 28, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 776 reduces and standardizes the various filing fees and other costs limited liability companies (LLCs), for-profit corporations, not-for-profit corporations, and partnerships pay to the Department of State (DOS). The bill reduces filing fees for most documents to \$25 and reduces the cost to have documents provided by the DOS to \$8.75.

The bill also repeals the \$88.75 supplemental corporate fee that is currently paid by LLCs, for-profit corporations, and certain partnerships, and as a consequence, reduces the total costs associated with filing an annual report for these entities to \$125.

Lastly, the bill replaces the flat \$400 late charge for annual reports that are filed after May 1 each year with a tiered late charge structure that provides incrementally larger late charges. Under the tiered system, a business entity filing its annual report after May 1, but during the month of May, will be subject to a late fee of \$125. After May 31, the late fee is \$250. After June 30, the late fee is \$375, and after July 31, the maximum late fee of \$400 will apply.

II. Present Situation:

Business entities, such as LLCs, for-profit corporations, not-for-profit corporations, and partnerships, that do business in Florida are required to file a number of documents with the DOS. Some of the documents that a business must file include its initial filings, such as articles of incorporation or organization and registered agent designation, and filings related to certain business transactions, such as a certificate or articles of merger and amendments of articles of incorporation. Along with the required documents, the business entity must also pay a filing fee, which ranges from \$5 to over \$900 based on the type of document filed and the type of business entity filing the document.

One of the most significant documents a business entity must file is its annual report. A business must file its annual report by May 1 of each year¹ and pay a fee of \$50 if it's an LLC,² \$61.25 if it's a for-profit or a not-for-profit corporation,³ \$411.25 if it's a limited partnership (LP) or limited liability limited partnership (LLLP),⁴ or \$25 if it's a limited liability partnership (LLP).⁵ In addition to the fee for filing an annual report, an LLC, a for-profit corporation, an LP, and an LLLP must also pay an additional annual supplemental corporate fee of \$88.75 at the same time it files its annual report.⁶ Failure to file an annual report and pay the annual report filing fee and supplemental corporate fee by May 1 results in a \$400 late charge, unless the business entity was administratively dissolved or its certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.⁷

III. Effect of Proposed Changes:

LLC Fees

Section 1 amends s. 605.0213, F.S., to change the fees paid by LLCs to the DOS under ch. 605, F.S.

	Current Fee	New Fee Under the Bill
Original articles of organization	\$100	\$125 ⁸
Annual report	\$50	\$125 ⁹
Articles of revocation of dissolution	\$100	\$25
Foreign LLC's application for a certificate of authority to transact business	\$100	\$125 ¹⁰
Certificate of merger	\$25 per party to the merger, unless a specific fee is required for a party under other law	\$25 flat fee
Registered agent's statement of resignation from an active LLC	\$85	\$25

¹ Sections 605.0212(3), 607.1622(5), 617.1622(5), 620.1210(3), and 620.9003(2), F.S.

² Section 605.0213(5), F.S.

³ Sections 607.0122(17) and 617.0122(17), F.S.

⁴ Section 620.1109(7), F.S.

⁵ Section 620.81055(1)(h), F.S.

⁶ Section 607.193, F.S.

⁷ *Id.* at (2)(b).

⁸ Includes the \$25 filing fee for the initial registered agent designation, which is consistent with both the current \$25 filing fee for registered agents in s. 605.0213(7), F.S., and the filing fee for the same in section 1 of the bill.

⁹ According to the DOS, this increase incorporates a portion of the \$88.75 supplemental corporate fee under s. 607.0193(1), F.S., that is repealed in section 5 of the bill. Telephone conversation with the DOS (Feb. 21, 2013).

¹⁰ *Supra* note 8.

Registered agent's statement of resignation from a dissolved LLC	\$25	No change
Application for reinstatement after an administrative or judicial dissolution or a revocation of authority to transact business	\$100	No change
Certificate designating or changing a registered agent	\$25	No change
Certificate of conversion of an LLC	\$25	No change
Certified copy furnished by the DOS	\$30	\$8.75
Certificate of status furnished by the DOS	\$5	No change
Any other LLC document	\$25	No change

For-profit Corporation Fees

Section 2 amends s. 607.0122, F.S., to change the fees paid by for-profit corporations to the DOS under ch. 607, F.S.

	Current Fee	New Fee Under the Bill
Articles of incorporation	\$35	\$70 ¹¹
Annual report	\$61.25	\$125 ¹²
Supplemental corporate fee	\$88.75	Repealed: \$0
Application for registered name and renewal of registered name	\$87.50	\$25
Application for certificate of authority to transact business by a foreign corporation	\$35	\$70 ¹³
Articles of merger or share exchange	\$35 per party	\$25 flat fee
Agent's statement of resignation from active corporation	\$87.50	\$25
Application for reinstatement following administrative dissolution	\$600	No change

¹¹ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 607.0122(5), F.S.

¹² *Supra* note 9.

¹³ *Supra* note 11.

Agent’s statement of resignation from an inactive corporation	\$35	\$25
Statement of change of registered agent or registered office (if not included on the annual report)	\$35	\$25
Designation of and acceptance by registered agent	\$35	\$25
Amendment of articles of incorporation	\$35	\$25
Restatement of articles of incorporation with amendment of articles	\$35	\$25
Articles of dissolution	\$35	\$25
Articles of revocation of dissolution	\$35	\$25
Application for amended certificate of authority	\$35	\$25
Application for certificate of withdrawal by a foreign corporation	\$35	\$25
Articles of correction	\$35	\$25
Certificate of domestication of a foreign corporation	\$50	\$25
The DOS serving as agent for substitute service of process	\$87.50	\$8.75
Certified copy furnished by the DOS	\$52.50	\$8.75
Certificate of status furnished by the DOS	\$8.75	No change
Any other filed document	\$35	\$25

Not-for-profit Corporation Fees

Section 6 amends. s. 617.0122, F.S., to change the fees paid by not-for-profit corporations to the DOS under ch. 617, F.S.

	Current Fee	New Fee Under the Bill
Articles of incorporation	\$35	\$70 ¹⁴
Annual report	\$61.25	No change

¹⁴ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 617.0122(5), F.S.

Application for registered name and renewal of registered name	\$87.50	\$25
Application for certificate of authority to transact business by a foreign corporation	\$35	\$70 ¹⁵
Articles of merger	\$35 per party	\$25 flat fee
Agent's statement of resignation from active corporation	\$87.50	\$25
Agent's statement of resignation from inactive corporation	\$35	\$25
Statement of change of registered agent or registered office (if not included on the annual report)	\$35	\$25
Designation of and acceptance by registered agent	\$35	\$25
Amendment of articles of incorporation	\$35	\$25
Restatement of articles of incorporation with amendment of articles	\$35	\$25
Articles of dissolution	\$35	\$25
Articles of revocation of dissolution	\$35	\$25
Application for reinstatement following administrative dissolution	\$175	No change
Application for amended certificate of authority	\$35	\$25
Application for certificate of withdrawal by a foreign corporation	\$35	\$25
Articles of correction	\$35	\$25
Certificate of conversion of a limited agricultural association to a domestic corporation	\$35	\$25
The DOS serving as agent for substitute service of process	\$87.50	\$8.75
Certificate of status furnished by the DOS	\$8.75	No change

¹⁵ *Supra* note 14.

Certified copy furnished by the DOS	\$52.50	\$8.75
Any other filed document	\$35	\$25

Partnership Fees

Part I of ch. 620, F.S., applies to LPs and LLLPs.¹⁶ Part II of ch. 620, F.S., applies to general partnerships and LLPs.¹⁷

Section 8 amends s. 620.1109, F.S., to change the fees paid by LPs and LLLPs to the DOS under part I of ch. 620, F.S.

	Current Fee	New Fee Under the Bill
Original certificate of limited partnership	\$965	\$1,000 ¹⁸
Original application for registration as a foreign limited partnership	\$965	\$1,000 ¹⁹
Annual report	\$411.25	\$125 ²⁰
Certificate of merger	\$52.50 per party	\$25 flat fee
Reinstatement application	\$500 for each year in which the partnership was administratively dissolved or revoked	No change
Certificate resigning as a registered agent	\$87.50	\$25
Certificate designating a registered agent	\$35	\$25
Certificate changing a registered agent or registered office address	\$35	\$25
Certificate of conversion	\$52.50	\$25
Certificate of amendment or restatement of the certificate of limited partnership	\$52.50	\$25
Statement of termination	\$52.50	\$25
Notice of cancellation for foreign limited partnership	\$52.50	\$25
Certificate of dissolution	\$52.50	\$25

¹⁶ Section 620.2204(2), F.S.; see s. 620.1102(12), F.S. (including “limited liability limited partnership” within the definition of “limited partnership”).

¹⁷ Section 620.8106(2), F.S.

¹⁸ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 620.1109(8), F.S.

¹⁹ *Supra* note 18.

²⁰ The reduction from \$411.25 to \$125 makes this filing fee for LPs and LLLPs the same as those for LLCs and for-profit corporations in sections 1 and 2 of the bill.

Certificate of revocation of dissolution	\$52.50	\$25
Certified copy furnished by the DOS	\$52.50 for first 15 pages plus \$1 for each additional page	\$8.75
Certificate of status or authorization furnished by the DOS	\$8.75	No change
Filing any other document	\$52.50	\$25

Section 10 amends s. 620.81055, F.S., to change the fees paid by general partnerships and LLPs under part II of ch. 620, F.S. The current fees in s. 620.81055, F.S., are consistent with the new fees in s. 620.1109, F.S., as updated in section 9 of the bill. The only substantive update to the fees in s. 620.81005, F.S., in the bill is to change the filing fee for a certificate of merger from \$25 per party to a flat fee of \$25. This change is consistent with other certificate of merger filing fee changes in the bill.

Supplemental Corporate Fees and Late Charges

Sections 4 and 5 repeal s. 607.193, F.S., and create s. 607.1623, F.S., to repeal the \$88.75 supplemental corporate fee and \$400 late charge for annual reports not filed by May 1 each year that applies to LLCs, for-profit corporations, LPs, and LLLPs. The bill replaces the \$400 late charge for these entities with a tiered late fee for annual reports filed after May 1 as follows:

Annual report fee remitted after May 1:	\$125
Annual report fee remitted after May 31:	\$250
Annual report fee remitted after June 30:	\$375
Annual report fee remitted after July 31:	\$400

A late charge will not be incurred if a business entity is administratively dissolved or its certificate of authority is revoked due to its failure to file an annual report and the entity subsequently applies for reinstatement and pays the applicable reinstatement fee.

Sections 3, 7, and 9 amend ss. 607.01401, 620.1102, and 620.8101, F.S., respectively, to define the term “department” as used in chs. 607 and 620, F.S., to mean the Department of State.

Sections 11 through 15 amends ss. 339.12, 605.0118, 607.0505, 610.104, and 631.0515, F.S., to conform to changes made by the bill, to conform cross-references, and to delete obsolete cross-references.

Section 16 provides an effective date of January 1, 2015.

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:

The Revenue Estimating Conference estimates SB 776 will result in the following negative impact to general revenue:²¹

	General Revenue²²
	Recurring
FY 2014-15	(40.7)
FY 2015-16	(41.7)
FY 2016-17	(42.6)
FY 2017-18	(43.4)
FY 2018-19	(44.1)

B. Private Sector Impact:

The decreased and standardized filing fees and costs for documents filed with the DOS will likely reduce costs for LLCs, for-profit corporations, not-for-profit corporations, and partnerships that operate in Florida. Specifically, the repeal of the \$88.75 supplemental corporate fee will likely result in net savings of \$13.75 for an LLC, \$25 for a for-profit corporation, and \$286.25 for an LP or LLLP due to a net reduction in fees when an annual report is filed. Additionally, business entities will also no longer pay a flat \$400 late charge for annual reports that are filed after May 1 each year, but instead will pay a late charge based on a tiered charge that increases each 30 days past due the annual report is late up to a maximum of \$400.

C. Government Sector Impact:

According to the DOS, the bill will not have any fiscal impact on its operations; however, the DOS notes the bill will have an impact on its technology system due to extensive computer code changes necessitated by the bill.²³

²¹ Office of Economic and Demographic Research, Revenue Estimating Conference, *Analysis of HB 767: Corporate Filing Fees* (Feb. 6, 2014) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/pages165-168.pdf> (last visited Feb. 25, 2014).

²² Amounts are in millions of dollars.

²³ DOS, *Analysis of SB 776* (Feb. 24, 2014) (on file with the Committee on Commerce and Tourism).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0213, 607.0122, 607.01401, 617.0122, 620.1102, 620.1109, 620.8101, 620.81055, 339.12, 605.0118, 607.0505, 610.104, and 631.0515.

This bill creates section 607.1623 of the Florida Statutes.

This bill repeals section 607.193 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.