

**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.)

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

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BILL: SB 554

INTRODUCER: Senator Simmons

SUBJECT: Limited Liability Companies

DATE: February 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 554 makes changes related to the Revised Limited Liability Company Act. The bill requires a company to provide notice to third parties regarding a person's lack of authority to transfer property by filing notice of such limitation in the public records of the office that processes those transfers. Additionally, the bill allows a company to take action that requires the vote or consent of the members to be taken without a meeting, if it meets certain conditions. The bill requires a company to respond to a member's request for information within 10 days. The bill repeals language that directed companies to regard the language in a company's articles of incorporation as if it was the company's operating agreement. The bill also deletes or revises references to the Florida Limited Liability Company Act, which was repealed effective January 1, 2015.

**II. Present Situation:**

**Limited Liability Companies**

A Limited Liability Company (LLC) is a creature of statute created to address the gap in existing business organizations – specifically the gap between a corporation or a partnership. On the one hand, a corporation is highly complex and requires payment of state corporate income taxes, making it less ideal for a small business. On the other hand, a partnership is simpler but carries the risk of full joint and severable liability for each member. The LLC provides its members with the limited liability of a corporation and the tax benefits and management structure of a partnership.<sup>1</sup>

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<sup>1</sup> McGinty, A. Edward, *Olmstead – A Lever from Member's Creditor to Full Multi-member LLC Membership?* 85 FLA. BAR J., 39, 42 (Mar. 2011), available at <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/Author/6E1AD1891CA9E76D85257845004FD5E6> (last visited Feb. 17, 2015).

## Florida Limited Liability Companies

To transact business as a limited liability company in Florida, a company must sign and file its Articles of Organization<sup>2</sup> with the Florida Department of State, and pay the appropriate fee.<sup>3</sup> A company must file an annual report with the Department of State to maintain its ability to transact business in this state.<sup>4</sup>

## Florida Revised Limited Liability Company Act

In 2013, the Florida Legislature enacted a comprehensive law, the Florida Revised Limited Liability Act (revised act),<sup>5</sup> to replace the predecessor act, the Florida Limited Liability Act,<sup>6</sup> to address the formation and operation of LLCs. The revised act is substantially based on the Revised Uniform Limited Liability Company Act,<sup>7</sup> as amended in 2011, but also incorporates provisions that are unique to Florida.<sup>8</sup> The revised act provides that its provisions would apply to an LLC created on or after January 1, 2014, and companies in existence prior to January 1, 2014, were given until January 1, 2015, to comply with the provisions of the revised act.<sup>9</sup> The legislation repealed the predecessor law, the Florida Limited Liability Act, effective January 1, 2015.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 605.0103(4), F.S., to require an LLC that limits the authority of a person to transfer real property in the name of the LLC in its articles of organization to record an affidavit, certificate, or other instrument of such limitation in the office for recording transfers of such real property. Under current law, the only notice required is the statement of such limitation in the LLC's articles of organization.

**Section 2** amends s. 605.0105(3), F.S., to allow an LLC's operating agreement to vary the power of a person to dissociate. Under current law, there is no limitation on a person's ability to dissociate as a member of an LLC.<sup>11</sup>

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<sup>2</sup> Section 605.0201, F.S. The articles of organization must state the name of the LLC, the street and mailing address of the company's principal office, and the registered name, address, and written acceptance. The articles of organization may include a declaration that it is a member-managed company and the names and addresses of one or more of the managers, and a description of the authority or limit of authority of a specific person in the company, among other things.

<sup>3</sup> For a list of fees associated with the formation and maintenance of an LLC in this state, see <http://www.sunbiz.org/feellc.html> (last visited Feb. 25, 2015).

<sup>4</sup> Section 605.0212, F.S. The annual report must include the name of the LLC, the street address of the LLC, the date of organization, the federal employer identification number, the name and address of the person having authority to manage the LLC, and any information required by the Department of State. The annual report is due by May 1 of each year.

<sup>5</sup> Chapter 2013-180, Laws of Fla.

<sup>6</sup> Chapter 608, F.S.

<sup>7</sup> The Revised Uniform Limited Liability Act was drafted by the National Conference of Commissioners on Uniform State Laws in 2006 and revised in 2011. A full version of the document may be found at: [http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ulica\\_final\\_06rev.pdf](http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ulica_final_06rev.pdf) (last visited Feb. 25, 2015).

<sup>8</sup> The Florida Bar Revised LLC Act Drafting Committee, *White Paper: The Proposed Florida Revised Limited Liability Company Act* (March 18, 2013) (on file with the Senate Committee on Commerce and Tourism).

<sup>9</sup> Section 605.1108, F.S.

<sup>10</sup> Chapter 2013-180, s. 5, Laws of Fla.

<sup>11</sup> Section 605.0601, F.S., generally governs a person's power to dissociate as a member of a limited liability company. A member may dissociate at any time, rightfully or wrongfully, by withdrawing by express will. A person who dissociates loses

**Section 3** amends s. 605.04073, F.S., to provide that an action requiring the vote or consent of members may be taken or approved without a meeting provided the action is approved by the minimum number of votes that would be necessary to take action at a meeting, and a record of such action is made.

**Section 4** amends s. 605.0410, F.S., relating to member demand of records. The bill requires a member-managed LLC that has received a demand for information to respond within 10 days of the demand with either the information the company will provide in response to the demand and the manner in which it will be provided or the reason(s) the LLC will not provide the information.

**Section 5** amends s. 605.1108(3), F.S., to delete a provision that directed a member-managed LLC formed under ch. 608, F.S., to regard the language provided in the company's articles of organization as if that language were in the operating agreement.

**Section 14** amends s. 605.0102, F.S., to amend the definition of "majority-in-interest," to provide that the determination of what constitutes an action taken by a "majority-in-interest" is based on the percentage interest in the LLC's profits owned by all the members of the LLC.

**Sections 6-13 and 15-27** amend ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 605.04091, 605.1025, 606.06, 607.1108, 607.1109, 607.11101, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S., respectively, to revise cross-references and make technical changes associated with the repeal of the Florida Limited Liability Company Act.

**Section 28** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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the right to participate in the LLC's management and incurs the liability to the LLC and remaining members for any damages caused by wrongful dissociation.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 605.0103, 605.0105, 605.04073, 605.0410, 605.1108, 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0102, 605.0401, 605.04074, 605.04091, 605.1025, 606.06, 607.1108, 607.1109, 607.11101, 636.204, 655.0201, 658.2953, 694.16, and 1002.395.

**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.