

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 1228

INTRODUCER: Senator Hukill

SUBJECT: Annual Business Organization Reports and Fees

DATE: January 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1228 permits business entities to file either an annual or a biennial report with the Florida Department of State. Currently, these entities must file an annual report and remit related fees each year. Additionally, the bill permits the Department of State to escrow revenues from biennial report filing fees in order to annualize its earnings from those payments.

II. Present Situation:

The Florida Department of State (department) consists of six divisions: the Division of Elections; Division of Historical Resources; Division of Library and Information Services; Division of Cultural Affairs; Division of Administration; and Division of Corporations.¹

The Division of Corporations (division) maintains a registry for recording and retrieving commercial information that business entities file or register with the department.² In total, the division maintains more than eight million records, including a variety of business entity filings such as annual reports, articles of incorporation or other forms of business entity organization, trade and service mark registrations, judgment lien filings, and fictitious name registrations.³ The division determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database of records.⁴ In calendar year 2016, the division received and processed 2,407,422 business entity filings from

¹ Section 20.10, F.S.

² See ss. 55.201 and 606.04, F.S. See also www.sunbiz.org (last visited Jan. 12, 2018) the division's official website that serves as the state's official business index.

³ Florida Auditor General, *Operational Audit: Department of State, Division of Corporations, Museum of Florida History, and Selected Administrative Activities*, Report No. 2017-195, p. 2, (Mar. 2017), available at https://flauditor.gov/pages/pdf_files/2017-195.pdf (last visited Jan. 12, 2018). See also, Florida Department of State, *Long Range Program Plan FY 2018-19 through FY 2022-23*, pp. 13-14, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17110&DocType=PDF> (last visited Jan. 12, 2018).

⁴ *Id.* See also, e.g. ss., 605.0210(5), 607.0125(4), and 617.0125(4), F.S.

corporations, limited partnerships, limited liability companies, general partnerships, and limited liability partnerships.⁵

All business entities that are authorized to transact business in Florida must file an annual report with the department between January 1 and May 1 of each year.⁶ Each entity must pay both an annual report filing fee,⁷ and a supplemental corporate fee⁸ as outlined below:

Type of Business Entity	Annual Report Filing Fee	Supplemental Corporate Fee
Limited Liability Company	\$50	\$88.75
Corporation	\$61.25	\$88.75
Limited Partnership	\$411.25	\$88.75
Limited Liability Partnership	\$25	n/a

In fiscal year 2016-2017, the department collected \$93 million in annual report fees; \$134 million in corporate supplemental fees; and \$52 million in late fees.⁹ As of the 2017 filing deadline for annual reports, 1,731,839 business entities had successfully done so.¹⁰

Generally, a business entity's annual report must include the following information:¹¹

- The entity's name, and the state or country in which it is incorporated;
- When it was incorporated, or admitted to do business in Florida;
- The principal office and mailing addresses of the entity;
- A federal employer identification number (FEIN), or if the entity does not have one, a statement of whether or not an FEIN has been requested;
- The names and addresses of the entity's manager, director, or principal officer;
- If applicable, the name of the entity's registered agent, and the street address of the registered office at which the agent is located; and
- Any additional information the Department may deem necessary.

A business entity's failure to file an annual report by May 1 results in a \$400 late filing fee, in addition to the underlying report and supplemental corporate fees.¹² Alternately, if a business entity fails to file an annual report by the close of business on the third Friday in September, the department may institute proceedings to administratively dissolve the entity, or revoke its authority to transact business in the state.¹³ In calendar year 2017, the Department

⁵ Florida Department of State, *Long Range Program Plan FY 2018-19 through FY 2022-23*, pp. 13-14, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17110&DocType=PDF> (last visited Jan. 12, 2018).

⁶ See, e.g., ss. 605.0212, 607.1622, 620.1210, F.S.; Florida Department of State, *File Annual Report*, available at: <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/> (last visited Jan. 12, 2018).

⁷ See, e.g., ss. 605.0213, 607.0122(17), 617.0122, 620.1109, 620.81055, F.S.

⁸ See, e.g., ss. 607.0122(23), 607.193, 620.1109, F.S.

⁹ Email from Florida Department of State staff to Commerce and Tourism Committee staff (Jan. 11, 2018)(on file with the Senate Committee on Commerce and Tourism).

¹⁰ *Id.*

¹¹ See, e.g., ss. 605.0212, 607.1622, 617.1622, 620.1210, 620.9003 F.S.

¹² Section 607.193(2)(b), F.S.

¹³ Sections 607.1420-.1421; 607.1530-.1531; 607.1622(8) F.S.

administratively dissolved 261,482 business entities out of a total of 2,067,750 active businesses registered with the Department.¹⁴

III. Effect of Proposed Changes:

The bill makes changes throughout Title XXXVI of the Florida Statutes, Business Organizations,¹⁵ to allow business entities that currently file annual reports with the department to file biennial reports instead. The bill makes conforming changes, including:

- Updating statutory fee schedules to reflect a biennial report filing fee (that is double the annual fee) for each business entity;
- Adding a biennial supplemental corporate filing fee of \$177.50;
- Clarifying the filing deadlines for biennial reports, specifically requiring all business entities to file their first annual or biennial report within 1 year of the entity's creation, e.g., incorporation; and
- Specifying that any additional report filed during the biennial period is an amended report for purposes of filing by the Department.

Additionally, the bill allows the department to escrow¹⁶ revenues from biennial filing fees and biennial supplemental corporate fees in an escrow account in order to reflect revenues collected on an annual basis.

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Email from Florida Department of State staff to Commerce and Tourism Committee staff (Jan. 11, 2018)(on file with the Senate Committee on Commerce and Tourism); Florida Department of State, *Yearly Statistics*, (Oct. 26, 2017) <http://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Jan. 12, 2018).

¹⁵ For purposes of this bill, the business organizations eligible for the biennial reporting include those created in: ch. 605, F.S., the Revised Limited Liability Company Act; ch. 607, F.S., the Business Corporation Act; ch. 617, F.S., the Florida Not For Profit Corporation Act; Part I of ch. 620, F.S., the Revised Uniform Limited Partnership Act of 2005; Part II of ch. 620, F.S., the Revised Uniform Partnership Act; and ch. 621, F.S., the Professional Service Corporation and Limited Liability Company Act.

¹⁶ "Escrow" is defined as property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the property to the promisee. BLACK'S LAW DICTIONARY (10th ed. 2014).

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

None.

B. Private Sector Impact:

Private businesses that use the biennial filing option may miss fewer filing deadlines, and therefore see a reduction in late fees.

C. Government Sector Impact:

The department may see a reduction in late filing fee collections, which it approximates total \$52 million per year.¹⁷

The department may be required to amend certain forms to reflect a business entity's ability to file its report annually or biennially. Overall, however, biennial reporting may result in a reduction of workload for the department's employees.

The Florida Department of Law Enforcement (FDLE) opines that biennial reporting may negatively affect its economic crimes investigations.¹⁸ The FDLE mines data, such as an IP address and banking information, from annual reporting that it uses to link an individual bad actor to the business name under which he or she operates. The FDLE states that it may be less effective in these investigations with a reduction in filing as a result of biennial reporting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Biennial reporting may potentially result in a greater lag in time between when a business entity ceases to be an active and the department's administrative dissolution of the entity for inactivity or noncompliance.

All moneys received by the state, unless provided otherwise by law, must be deposited into one of three types of funds: the General Revenue Fund; Trust funds; or the Budget Stabilization Fund.¹⁹ It is unclear whether the proposed "escrow" in this bill is consistent with requirements for funds received by the state.

¹⁷ Email from Florida Department of State staff to Commerce and Tourism Committee staff (Jan. 11, 2018)(on file with the Senate Committee on Commerce and Tourism).

¹⁸ Florida Department of Law Enforcement, *SB 1228 Agency Analysis*, p. 1 (Dec. 13, 2017) (on file with the Committee on Commerce and Tourism).

¹⁹ Section 215.32, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0212, 605.0213, 607.0122, 607.1622, 607.193, 617.0122, 617.1622, 620.1109, 620.1210, 620.81055, 620.9003, 605.0114, 605.0118, 605.0211, 605.0714, 605.0715, 605.0908, 605.0909, 606.06, 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, 617.0121, 617.0128, 617.0502, 617.1420, 617.1421, 617.1509, 617.1510, 617.1530, 617.1531, 617.1533, 617.1601, 620.1111, 620.1115, 620.1209, 620.1809, 620.1810, 620.1906, 620.1909, 622.05.

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.