

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 738

INTRODUCER: Senator Baxley

SUBJECT: Annual Business Organization Reports and Fees

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 738 allows business entities that are registered in Florida to file either an annual or a biennial report with the Florida Department of State. Currently, these business entities must file an annual report and remit related fees each year.

II. Present Situation:

Domestic and foreign business organizations that do business in Florida are governed pursuant to their pertinent chapter of law:

- Limited Liability Companies are subject to ch. 605, F.S., the “Florida Revised Limited Liability Company Act;”
- Corporations are subject to ch. 607, F.S., the “Florida Business Corporation Act;”
- Corporations Not For Profit are subject to ch. 617, F.S., the “Florida Not For Profit Corporation Act;”
- Limited Partnerships are subject to ss. 620.1102-620.2205, F.S., the “Florida Revised Uniform Limited Partnership Act of 2005;” and
- Limited Liability Partnerships are subject to ss. 620.81001-620.9902, F.S., the “Revised Uniform Partnership Act of 1995.”

Each business organization is similarly required to submit an annual report to the Department of State (Department) between January 1 and May 1 of each year that states its name, date of organization, jurisdiction in which it was formed, principal office and mailing addresses, federal employer identification number, and any additional information the Department may deem

necessary.¹ Each entity must pay both an annual report fee² and supplemental fee³ 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
Corporation Not For Profit	\$61.25	\$88.75
Limited Partnership	\$411.25	\$88.75
Limited Liability Partnership	\$25	n/a

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 fees.⁴ 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.⁵

The Department's Division of Corporations (Division) maintains a registry for recording and retrieving commercial information that is filed or registered with the Department.⁶ In total, the Division maintains more than eight million records, including a variety of business organization's filings such as annual reports, articles of incorporation or other types of business entity organization, bylaws, and shareholder agreements.⁷ 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.⁸ In Fiscal Year 2017-2018, the Division received and processed 395,777 total business entity filings from corporations, limited partnership, limited liability companies, general partnerships, and limited liability partnership.⁹

¹ See, ss. 605.0212(1), 607.1622(1), 617.1622(1), 620.1210(1), and 620.9003(1), F.S. See also, Florida Department of State, *File Annual Report*, <https://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/> (last visited Mar. 1, 2019).

² See, ss. 605.0213(5), 607.0122(17), 617.0122(17), 620.1109(7), 620.81055(1)(h), F.S.

³ Section 607.193, F.S., applies an \$88.75 supplemental fee to each business entity that is authorized to transact business in Florida. See also, ss. 607.0122(23), F.S.

⁴ Section 607.193(2)(b), F.S.

⁵ Sections 607.1420-.1421; 607.1530-.1531; 607.1622(8) F.S.

⁶ See, ss. 55.201 and 606.04, F.S. See also www.sunbiz.org (last visited Mar. 1, 2019) the Division's official website that serves as the state's official business index.

⁷ 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 Mar. 1, 2019). See also, Florida Department of State, *Long Range Program Plan FY 2019-20 through FY 2023-24*, p.14, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=18085&DocType=PDF> (last visited Mar. 1, 2019).

⁸ Florida Department of State, Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/> (last visited Mar. 1, 2019). See also, e.g., ss., 605.0210(5), 607.0125(4), and 617.0125(4), F.S.

⁹ Florida Department of State, Division of Corporations, *Yearly Statistics*, <https://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Mar. 1, 2019).

III. Effect of Proposed Changes:

The bill makes changes throughout Title XXXVI of the Florida Statutes, Business Organizations,¹⁰ to allow business entities that are registered in Florida to file either an annual or a biennial report. The bill makes conforming changes, including:

- Permitting the Department to prescribe the form of an annual and biennial report;
- 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.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not authorize a fee increase to correspond with the filing of biennial reports, but a linked bill (SB 740) does.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁰ 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.

B. Private Sector Impact:

The bill may facilitate a more efficient report filing process for Florida business organizations, which will be able to submit required reports every other year instead of annually. Entities that opt to file biennially will also be subject to fewer possible late filing fees.

C. Government Sector Impact:

The Department may be required to amend certain forms, websites, and informational documents to reflect a business organization's ability to file its annual report either annually or biennially. Overall, biennial reporting may result in a reduction of workload for the Department's employees.

Biennial reporting may cause the Department's annual revenue from fees to fluctuate.

The Florida Department of Law Enforcement (FDLE) opines that biennial reporting may negatively affect its economic crimes investigations.¹¹ 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:

If signed into law, this bill takes effect whether or not its corresponding fee increase bill (SB 740) does. This may result in revenue losses to the Department if business entities are able to file their biennial reports for the same cost as an annual report.

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

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0212, 607.1622, 607.193, 617.1622, 620.1210, 620.9003, 605.0114, 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, and 622.05.

¹¹ Florida Department of Law Enforcement, *SB 738 Agency Analysis*, p. 1 (Feb. 11, 2019) (on file with the Senate Committee on Commerce and Tourism).

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.

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