

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 909 Electronic Filing of Records with the Department of State
SPONSOR(S): State Affairs Committee, Constitutional Rights, Rule of Law & Government Operations
Subcommittee, McFarland and LaMarca
TIED BILLS: CS/HB 911 **IDEN./SIM. BILLS:** SB 948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	14 Y, 0 N, As CS	Wagoner	Miller
2) Infrastructure & Tourism Appropriations Subcommittee	10 Y, 0 N	McAuliffe	Davis
3) State Affairs Committee	18 Y, 0 N, As CS	Wagoner	Williamson

SUMMARY ANALYSIS

The Department of State (DOS) is the central location for filing a number of documents as required by statute, such as service of process for legal proceedings, articles of incorporation, and registration of fictitious names. In receiving and filing required records under 15 different statutory chapters, DOS may accept submission of such documents electronically.

The bill authorizes DOS to implement a password protected system for the electronic filing of certain records. DOS may request that those using the password protected system verify their identity and credentials, including their original signature.

The bill provides a starting point for currently registered businesses to create an account by using their email address that is on file with DOS as of January 1, 2024. Through this registered email address, DOS may require additional verification of an authorized account holder in order to file a record through the electronic system.

The bill may have a negative fiscal impact on state government, but does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Documents Filed with Department of State

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of documents as required by statute, such as service of process for legal proceedings,¹ articles of incorporation,² or registration of fictitious names.³ In receiving and filing required records under 15 different statutory chapters, DOS may accept submission of such documents electronically.⁴ The following are brief, non-exhaustive descriptions of the 15 chapters and examples of documents required to be filed with DOS:

- Chapter 48, Process and service of process: substitute service of process on general partnerships, limited liability companies, and non-residents doing business in Florida;
- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;
- Chapter 605, Florida revised limited liability company act: limited liability companies (LLC) file with DOS a registration with their name, registered agent, and registered office location;
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;
- Chapter 607, Florida business corporation act: corporations file their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;
- Chapter 610, Cable and video services: applicants file a "certificate of franchise authority" containing an official name, a principal place of business, and the federal employer identification number;
- Chapter 617, Corporations not for profit: requires not for profit corporations to file with DOS their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;
- Chapter 620, Partnership laws: limited partnerships must file a certificate of limited partnership with DOS containing the name of the limited partnership, the address, and the business address of each general partner as well as an annual report, among other documents. General partnerships must file a partnership registration statement and an annual report, among other documents;
- Chapter 621, Professional services corporations and limited liability corporations: in addition to filing documents as may be required under ch. 605 or ch. 607, F.S., a professional corporation or limited liability company may change the purpose of rendering a professional service by filing an amendment of its certificate of organization;
- Chapter 679, Uniform commercial code: secured transactions: requires filing of certain financing statements with DOS in order to perfect a lien in different types of personal property and for DOS to retain authority and approve forms required to be filed under the "Florida Secured Transaction Registry;"

¹ See, e.g., ss. 48.061, 48.062, 48.181, F.S.

² S. 607.0203, F.S.

³ S. 865.09, F.S.

⁴ S. 15.16(3), F.S.

- Chapter 713, Liens, generally: the Secretary of State or the Secretary's designee is the filing officer of the state for purposes of receiving, indexing, and maintaining a record of federal liens filed in this state; and,
- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations (Division) within DOS.

Division of Corporations

The Division collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.⁵ The Division also serves as the State's central filing location for filing:

- Business entities;
- Trade and service marks;
- Fictitious name registrations;
- Judgment and federal tax liens;
- Uniform commercial code financing statements; and
- Notary commissions and apostilles.⁶

Sunbiz

All files maintained electronically by the Division may be accessed through its website — Sunbiz.⁷ Records available through Sunbiz are easily accessible and searchable, including the filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. Corporations file and upload their records and pay fees through Sunbiz.⁸ All information filed electronically with the Division may be readily changed. If the submitted document meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by the Division without further inquiry.⁹

Effect of the Bill

The bill authorizes DOS to implement a password protected system for the filing of records. DOS may request that those using the password protected system verify their identity and credentials, including their original signature.

The bill provides a starting point for currently registered businesses to create an account by using their email address on file with DOS as of January 1, 2024. Through this registered email address, DOS may require additional verification of an authorized account holder in order to file a record through the electronic system. For an account holder who is unable to verify his or her identity using an automated process, the bill authorizes DOS to alternate methods of verification, including video chat, in-person verification, and the use of credential service providers that comply with the National Institute of Standards and Technology identity verification guidelines.

⁵ Florida Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/>, (last visited March 16, 2023).

⁶ *Id.*

⁷ Florida Department of State, *Search Records: Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks*, <https://dos.myflorida.com/sunbiz/search/> (last visited March 10, 2023).

⁸ Florida Department of State, *Start E-Filing*, <https://www.dos.myflorida.com/sunbiz/start-business/efile/> (last visited March 10, 2023).;

⁹ Florida Department of State, *Florida Department of State's Duties and Records*, <https://dos.myflorida.com/sunbiz/manage-business/mind-your-sunbizness/sunbizness-identity-theft-resource-guide/florida-department-of-state-s-duties-and-records/>, (last visited March 10, 2023); see also Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, *Herald-Tribune* (Feb. 22, 2023), www.heraldtribune.com (last visited March 2, 2023).

B. SECTION DIRECTORY:

Section 1 amends s.15.16(3), F.S., relating to reproduction and electronic transmission of records.

Section 2 provides for an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill authorizes DOS to develop and implement a new password protected system. Implementation of such a new program may have an indeterminate negative fiscal impact as DOS may need to adjust its present system for filing and maintaining documents, including the retention of necessary identifying information for authorized password users.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority in addition to the authority of the Department of State to implement the statute under its current rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023 the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made conforming changes.

On March 31, 2023, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified the methods of verification the Department of State may use to verify the identity of account holders.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.