

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 Rules

BILL: SB 948

INTRODUCER: Senator Grall

SUBJECT: Records Electronically Filed with the Department of State

DATE: April 10, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------------|----------------|-----------|--------------------|
| 1. | <u>Baird</u> | <u>McKay</u> | <u>CM</u> | Favorable |
| 2. | <u>Limonas-Borja</u> | <u>McVane</u> | <u>GO</u> | Favorable |
| 3. | <u>Baird</u> | <u>Twoood</u> | <u>RC</u> | Pre-meeting |

I. Summary:

SB 948 authorizes the Department of State (DOS) to implement a password protected system for the electronic filing of certain records. The bill also authorizes the DOS to require filers to produce supplemental materials to use such system. If the DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in the system.

This bill takes effect July 1, 2023.

II. Present Situation:

Documents Filed with the Department of State

The 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 and registration of fictitious names.³ In receiving and filing required records under 15 different statutory chapters, the DOS may provide that such documents be submitted electronically.⁴ The following are brief, non-exhaustive descriptions of the 15 chapters and examples of documents required to be filed with the 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;⁵

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

² Section 607.0203, F.S.

³ Section 865.09, F.S.

⁴ Section 15.16(3), F.S.

⁵ Sections 48.061(2), 48.062(3), 48.081(1), and 48.181, F.S.

- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;⁶
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;⁷
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;⁸
- 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;⁹
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;¹⁰
- 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;¹¹
- 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;¹²
- 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;¹³
- 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 partner¹⁴ as well as an annual report, among other documents.¹⁵ General partnerships must file a partnership registration statement and an annual report, among other documents;¹⁶
- 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;¹⁷
- 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;"¹⁸

⁶ Section 55.202(2)(a), F.S.

⁷ Sections 117.01(2), 117.05(1), 117.225(4), F.S. *See also* s. 118.10, F.S.

⁸ Section 495.031(2), F.S.

⁹ Sections 605.0112(5), 605.113(4), and 605.113(5), F.S. *See* s. 605.0206, F.S.

¹⁰ Section 606.04(1)(a) and 606.04(1)(c), F.S.

¹¹ Sections 607.0203, F.S., 607.0502, 607.1622, F.S. *See* 607.0120(9), F.S.

¹² Sections 610.102, 610.104(2), F.S.

¹³ Sections 617.0203, 617.0502, 617.1622, F.S.

¹⁴ Sections 620.1109, 620.1201(1)(a)–(e), F.S.

¹⁵ Section 620.1210, F.S.

¹⁶ Sections 620.8105, 620.9003, F.S.

¹⁷ Section 621.13(3), F.S.

¹⁸ Sections 679.5011, 679.527(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;¹⁹ and
- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations within the DOS (Division).²⁰

Public Access to Department of State Filing Data

All files maintained electronically by the Division may be accessed through its website.²¹ Records available through this website are easily accessible and searchable, including filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. The public may access and search specific records filed and maintained as required by the various chapters listed in the statute. Uniform commercial code financing statements are filed and maintained through a separate portal operated and maintained by FloridaUCC, LLC, the contract vendor for DOS.²² Access to this website is limited to registered users and certain uses may require a fee. Using the website of the Division, corporations use a specific link to file or update their records and pay fees.²³ All information filed electronically with DOS may be readily changed. Provided the document submitted meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by DOS.²⁴

III. Effect of Proposed Changes:

Section 1 authorizes the DOS to implement a password protected system for the filing of records. The DOS may request that those using the password protected system verify their identity and credentials. If the DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in the system. The DOS is authorized to verify the identity of an authorized account holder, prior to authorizing the account holder to electronically filing a record with DOS.

Section 2 provides that the bill take effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

¹⁹ See 713.901(5), F.S.

²⁰ Section 865.09, F.S.

²¹ Available at: www.dos.myflorida.com/sunbiz (last visited Mar. 24, 2023).

²² Available at: <https://www.floridaucc.com/uccweb/> (last visited Mar. 24, 2023).

²³ Available at: www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms (last visited Mar. 10, 2023).

²⁴ 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 10, 2023).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOS may incur additional workload associated with emailing each e-mail address on file and verifying credentials, but costs should be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 15.16 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.

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