

**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 Committee Code Not Found

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BILL: SB 554

INTRODUCER: Senator Bernard

SUBJECT: Nonprofit Corporations

DATE: January 20, 2026      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dike	McKay	CM	<b>Favorable</b>
2. _____	_____	JU	_____
3. _____	_____	FP	_____

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## **I. Summary:**

SB 554 is a comprehensive amendment to the Florida Not for Profit Corporation Act (FNCA), ch. 617, F.S. Representatives of the Florida Bar's Business Law Section recommended these revisions to modernize the FNCA and harmonize its provisions with the updated Florida Business Corporation Act (FBCA), ch. 607, F.S.

The bill takes effect on July 1, 2026.

## **II. Present Situation:**

### **The Model Nonprofit Corporation Act**

Recently, the Business Law Section of the American Bar Association adopted the fourth edition of the Model Nonprofit Corporation Act (MNCA) to bring the model act in alignment with the 2016 update to the Model Business Corporation Act (MBCA).<sup>1</sup> Originally drafted in 1952 by a committee under the American Bar Association, the MNCA closely tracks the language of the MBCA as nonprofit corporations operate similarly to business corporations rather than charitable trusts.<sup>2</sup> This parallelism allows lawyers to apply case law concerning the MBCA to similar provisions in the MNCA.<sup>3</sup>

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<sup>1</sup> Willard L. Boyd III, ABA, *The New Model Nonprofit Corporation Act*, (Oct. 16, 2023), available at [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2023-october/the-new-model-nonprofit-corporation-act/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-october/the-new-model-nonprofit-corporation-act/) (last visited Jan. 20, 2026).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## The Florida Not for Profit Corporation Act

Florida generally follows the revised MNCA as a basis for its laws that govern not-for-profit organizations.<sup>4</sup> As the FNCA has not been significantly amended in over fifteen years, the Business Law Section of The Florida Bar convened a Ch. 617 Task Force (task force) consisting of experienced attorneys to harmonize portions of the FNCA to the recent changes adopted in the FBCA.<sup>5</sup> These changes prevent confusion in the application of similar provisions in both acts and clarifies and updates existing provisions.<sup>6</sup>

For ease of understanding, further discussion of the present situation is included below in the Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### General Provisions (Sections 1-11)

The FNCA requires nonprofit corporations<sup>7</sup> (hereinafter “nonprofit corporation” or “corporation”) that seek to transact business in Florida to register and file articles of incorporation and annual reports with the Department of State (department).<sup>8</sup> The department determines whether submitted filings meet relevant statutory requirements to file.<sup>9</sup> If the department refuses to file documents within thirty days of receipt, the filing corporation may attempt to remedy the defect or may appeal the issue to a court of competent jurisdiction.<sup>10</sup> Currently, there is no way for a corporation to withdraw an incorrect filing.

**Section 1** amends s. 617.01011, F.S., renaming the chapter as the “Florida Nonprofit Corporation Act.”

**Section 9** amends s. 617.01401, F.S., creating and changing definitions for use in ch. 617, F.S.

The bill makes several changes throughout by substituting the word “act” with “chapter” to refer to the FNCA, ch. 617, F.S., and replacing the phrase “Department of State” with “department.”

#### *Filing Requirements*

**Section 2** amends s. 617.01201, F.S., altering the requirements for registering with the department to allow for filed documents to depend upon facts outside the document. When the

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<sup>4</sup> See THE FLORIDA BAR, Business Law Section, *The Florida Bar Business Law Section Task Force Report and Recommendations Fl. Stat. Ch. 617: The Florida Not for Profit Corporation Act*, available at [https://flabizlaw.org/wp-content/uploads/2025/09/Ch-617-NonProfit-White-Paper\\_\\_Final.pdf](https://flabizlaw.org/wp-content/uploads/2025/09/Ch-617-NonProfit-White-Paper__Final.pdf) (last visited Jan. 20, 2026).

<sup>5</sup> *Id.* The FBCA was substantially amended in 2019. See ch. 607, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> “Nonprofit corporation” means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

<sup>8</sup> See DIV. OF CORP., *Instructions for Articles of Incorporation (FL Non-Profit)*, available at <https://dos.fl.gov/sunbiz/start-business/efile/fl-nonprofit-corporation/instructions/> (last visited Jan. 20, 2026).

<sup>9</sup> Section 617.0125, F.S.

<sup>10</sup> Section 617.0126, F.S.

chapter allows for a filed document<sup>11</sup> to depend upon facts objectively ascertainable outside the plan<sup>12</sup> or filed document, the following apply:

- The document must explain how the facts will be relied upon in conjunction with its terms.
- The facts may include, but are not limited to:
  - Any of the following which are available in a nationally recognized news or information medium:
    - Statistical or market indices;
    - Market prices of any security or group of securities;
    - Interest rates;
    - Currency exchange rates; and
    - Similar economic or financial data.
  - A determination or action by a person or body, including the corporation or any other party to the document.
  - The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

However, the following provisions of a plan or filed document may not rely upon outside facts:

- The name and address of any person required.
- The registered office of any entity<sup>13</sup> required.
- The registered agent of any entity required.
- The effective date of a filed document.
- Any required statement in a filed document of the date on which the underlying transaction was approved or the way that approval was given.

If a provision of a filed document depends on facts outside of it and the fact is not ascertainable either (1) in one of the acceptable sources or (2) a document that is a matter of public record and the affected members do not have received notice of that fact from the corporation, then the corporation must file articles of amendment with the department.

**Section 3** amends s. 607.0123, F.S., providing that a document accepted for filing under ch. 617, F.S., may specify a delayed effective date. For initial articles of incorporation, a prior effective date may be specified if such date is within five business days before the date of filing. A document accepted for filing is effective on specific dates and times depending on the information contained in the filing. Under the bill, if the record does not specify the time zone or place at which the date or time is to be determined, the date or time will be that of the place of filing in this state.

### ***Articles of Correction***

**Section 4** amends s. 617.0124, F.S., providing that articles of correction may not contain a delayed effective date for the correction. Unless otherwise provided, a filing delivered to the

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<sup>11</sup> “Filed document” means a document filed with the department pursuant to ch. 617, F.S., except for a document filed pursuant to ss. 617.1501-617.1532, F.S.

<sup>12</sup> “Plan” means a plan of merger, plan of conversion, or plan of domestication.

<sup>13</sup> “Entity” includes corporations and foreign corporations; unincorporated associations; business trusts, estates, limited liability companies, partnerships, trusts, and two or more persons having a joint or common economic interest; any state, the United States, or any foreign government.

department may be withdrawn before it takes effect by delivering a withdrawal statement to the department. A withdrawal statement must be signed by each person who signed the filing being withdrawn except as otherwise agreed, identify the filing to be withdrawn, and state that the filing is withdrawn in agreement with all people who signed it (if not signed by all persons who signed the filing being withdrawn). Once the department files the withdrawal statement, the action or transaction evidenced by the original filing does not take effect.

### ***Appeals***

**Section 5** amends s. 617.0126, F.S., allowing corporations to petition the Circuit Court of Leon County to compel filing of a document if the department refuses to file a document within thirty days of receipt. The department's explanation for its refusal must be attached to such petition. The court may decide the matter in a summary proceeding, summarily order the department to file the document, or take other action.

**Section 6** amends s. 617.0127, F.S., providing that all certificates issued by the department pursuant to ch. 617, F.S., must be taken as *prima facie* evidence of the facts in it.

**Section 7** amends s. 617.0128, F.S., making non-substantive verbiage changes.

**Section 8** amends s. 617.01301, F.S., mandating that interrogatories directed to a corporation must be answered by an authorized officer, director, member, or fiduciary.

### ***Notice***

**Section 10** amends s. 617.0141, F.S., providing that written notice under ch. 617, F.S., may be communicated by mail, e-mail, or fax. When oral notice is allowed, it may be communicated in person, by phone, or other electronic means through which all persons participating can hear one another.

### ***Qualified Director***

**Section 11** creates s. 617.0143, F.S., defining "qualified director" generally as someone who has neither a material interest nor material relationship that would cloud their independent judgment in the outcome of a conflict transaction, derivative action, or indemnification decision. A director is not automatically prevented from being a qualified director in certain circumstances.

## **Incorporation and Corporate Name (Sections 12-18)**

Nonprofit corporations must file articles of incorporation with the department before they may transact business in the state. However, designated classes of nonprofit corporations formed under special provisions in other statutes are not governed under ch. 617, F.S. Generally, s. 617.0202, F.S., requires that a corporation's articles of incorporation include the corporate name, address, and purpose, information on membership and the election of directors, and information about the registered agent.

**Section 12** amends s. 617.0202, F.S., specifying the articles of incorporation include any provision that lawfully limits the corporate powers authorized under ch. 617, F.S. Additionally,

the articles must include the transferability or nontransferability of membership to the extent consistent with s. 617.0605, F.S.

**Section 13** amends s. 617.0204, F.S., removing the “except” clause to allow for valid contracts by promoters and third parties prior to a corporation’s formation. If a person acting on behalf of the corporation knows there was no incorporation, they are jointly and severally liable for any liability they caused preincorporation.

**Section 14** amends s. 617.0206, F.S., providing that the initial bylaws of a corporation must be adopted by the board of directors unless that power is reserved to the members in the articles of incorporation.

**Section 15** amends s. 617.0302, F.S., removing a nonprofit’s power to have succession by its corporate name for the period listed in the articles of incorporation. The bill allows nonprofits to increase or decrease the number of directors, subject to the minimum number required under s. 617.0803, F.S. The bill gives a nonprofit corporation the power to be a promoter, incorporator, partner, member, associate, or manager of any corporation, joint venture, or other entity. Additionally, the bill makes non-substantive verbiage changes and amends provisions to harmonize the statute with the FBCA.

**Section 16** amends s. 617.0304, F.S., clarifying that courts may not award damages for anticipated profits in proceedings under s. 617.0304(2)(a), F.S.

**Section 17** amends s. 617.0401, F.S., permitting a corporation to register under a name that is not otherwise distinguishable on the records of the department if:

- The other entity consents to the use and submits a request to change its name to something distinguishable from the applying corporation; or
- The applicant delivers to the department a certified copy of a court’s final judgement establishing the applicant has the right to use the name.

Moreover, a corporate name as filed with the department is for public notice only—it does not create a presumption of ownership over the name. The bill states that this section does not apply to the use of fictitious names.

**Section 18** amends s. 617.0403, F.S., clarifying language so that foreign nonprofit corporations can conduct business affairs in this state after registering their name according to this section.

### **Registered Agent and Office (Sections 19-23)**

A nonprofit corporation transacting business in Florida must designate and maintain a registered agent and registered office in the state.<sup>14</sup> The registered agent may be either an individual who resides in the state or another corporation whose business address is the same as the registered office.<sup>15</sup>

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<sup>14</sup> Section 617.0501. F.S.

<sup>15</sup> *Id.*

**Section 19** amends s. 617.0501, F.S., creating duties for the registered agent:

- To forward a process, notice, or demand pertaining to the corporation which is served on the agent to the nonprofit corporation; and
- If the registered agent resigns, provide the notice required under s. 617.0502, F.S., to the corporation.

This section also removes the definition for “authorized entity,” which was added to the definitions in s. 617.01401, F.S.

**Section 20** amends s. 617.0502, F.S., requiring that if the street address of the current registered office is to be changed, the nonprofit needs to file a statement of change with the department.

**Section 21** creates s. 617.05021, F.S., providing that a registered agent may resign from a nonprofit corporation regardless of whether the corporation has active status. The registered agent must deliver a signed resignation statement to the department and mail a copy of such to the corporation. If a registered agent is resigning from multiple corporations that have each been dissolved for at least ten years, they may file a composite statement of resignation for all the corporations. A composite statement of resignation must include the names and dates of dissolution for each corporation. A registered agent is terminated upon the earlier of either (1) the 31st day after the department files the statement of resignation or (2) when a statement of change or other record designating a new registered agent is filed by the department. When a statement of resignation takes effect, the registered agent does not hold responsibility for a matter tendered to them as agent for the corporation after the fact.

**Section 22** creates s. 617.05022, F.S., providing that if a registered agent changes their name or business address, the agent may deliver to the department a statement of change which includes:

- The name of the corporation represented by the registered agent.
- The name of the registered agent as currently shown in the records of the department for the corporation.
- If the name and/or address of the registered agent has changed, their new name and/or address.
- A statement that the registered agent has given notice to the corporation of the change.

The registered agent must promptly give notice to the represented corporation of the statement of change and its contents. The bill further states that:

- A statement of change is effective when filed by the department.
- The changes described above may also be made on the corporation’s annual report, in an application for reinstatement, or in an amendment to or restatement of the corporation’s articles of incorporation.
- The department shall collect a fee for filings authorized under this section.

**Section 23** amends s. 617.0503, F.S., harmonizing the statute with the FBCA with verbiage changes. The bill removes definitions which are not applicable to nonprofit corporations.

## Shares and Distributions (Sections 24, 171-172)

Nonprofit corporations in Florida may not pay dividends or make distributions of any part of their net income or earnings to their members, directors, or officers. There are certain exceptions to this prohibition, including:

- Purchase of membership interest by a mutual benefit corporation under s. 617.1302, F.S.;
- Compensation paid to members, directors, or officers for services rendered;
- Distributions upon partial liquidation, dissolution, or full liquidation;
- Refunds to members of exempt utility corporations; and
- Disbursal of refunds, credits, insurance proceeds, or settlements for certain corporations pursuant to s. 617.0505, F.S.

**Section 24** amends s. 617.0505, F.S., consolidating all the distribution provisions in ch. 617, F.S., into one section. There are no material changes in substance to distributions for nonprofit corporations under this chapter.

**Sections 171-172** repeal ss. 617.1301-617.1302, F.S., the provisions regarding distributions.

## Members (Sections 25-33, 179)

Nonprofit corporations may have one or more classes of members or no members. A member is someone who has membership rights in a nonprofit corporation in accordance with the articles of incorporation. The rights and interests of members are detailed in the articles of incorporation. Under ch. 617, F.S., nonprofit corporations must keep a list of members with their names and addresses on record.

**Section 25** amends s. 617.0601, F.S., removing the requirement that affiliated chapters of certain nonprofit corporations had to register with the Department of Agriculture if they had a right to vote. Under the bill:

- If a nonprofit corporation has no members, or does not have members entitled to vote, then legal notice of a matter is satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors.
- Except as otherwise provided in the articles of incorporation or bylaws:
  - Each member has the same rights and obligations as every other member.
  - The board of directors may accept members for consideration,<sup>16</sup> which may take any form, including promissory notes, intangible property, or past or future services.
- If membership of a nonprofit corporation is limited to property owners in a specific geographic area, the articles of incorporation may provide for termination of membership upon ceasing to be a property owner within that boundary.
- A nonprofit corporation may not be a member of itself or exercise the rights of a member for itself. If a corporation purchases its own membership interest, that interest is canceled.

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<sup>16</sup> “Consideration simply ‘is the inducement to a contract.’ ‘[I]t is the cause motive, price, or impelling influence which induces one to enter into a contract.’” *Koung v. Giordano*, 346 So. 3d 108, 115 (Fla. 1st DCA 2022) (internal citation omitted).

**Section 26** amends s. 617.0603, F.S., providing that a corporation may pay compensation to its members, directors, officers, agents, and employees for services rendered and may confer benefits onto its members. Upon dissolution or liquidation, the corporation may make distributions to its members or others as allowed under ch. 617, F.S. Such payments and benefits are not considered a dividend or distribution of income or earnings.

**Section 179** repeals s. 617.2102, F.S., removing the provision regarding fines and penalties against members.

### ***Liability of Members***

**Section 27** amends s. 617.0604, F.S., authorizing nonprofit corporations to levy dues, assessments, and fees on its members as allowed by the articles of incorporation or bylaws. Such costs may be imposed on members of the same class in different amounts or members may be exempt. The amount and method of collection of dues, assessments, and fees may be fixed by the articles of incorporation or bylaws, the board of directors, or the members. The articles of incorporation or bylaws may list the means of enforcement of collection of such costs.

Moreover, a creditor of a corporation may not bring a proceeding to reach the liability of a member until a final judgement has been rendered from a court of competent jurisdiction and the execution of such has been returned unsatisfied. All creditors of a corporation may intervene<sup>17</sup> in any other creditors' proceedings brought pursuant to s. 617.0604(5), F.S.

Additionally, any member who owes an unpaid amount to the corporation may be joined<sup>18</sup> in the proceeding. If a member owes unpaid amounts to a corporation, the corporation can satisfy its debt owed to a creditor, and the member can satisfy its debt owed to the corporation, through payment by the member to the creditor of such unpaid amounts.

### ***Transfer of Membership Interests***

**Section 28** amends s. 617.0605, F.S., allowing membership interests and rights to be transferred pursuant to the articles of incorporation.

### ***Resignation, Termination, Expulsion, and Suspension***

**Section 29** amends s. 617.0606, F.S., providing that members may resign at any time for any reason from a nonprofit corporation.

**Section 30** amends s. 617.0607, F.S., specifying that the expulsion, suspension, or termination of a member does not relieve that member of their obligations to the corporation made prior to the expulsion, suspension, or termination. Additionally, the corporation may fine or penalize its members if allowed by the articles of incorporation or bylaws. Such fine or penalty may not be levied until the corporation provides notice and an opportunity to be heard to the member.

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<sup>17</sup> “Intervention is the procedure by which third persons, not originally parties to a lawsuit but claiming an interest in the subject matter, enter the case to protect their rights or to interpose a claim.” *Berenyi v. Fla. Dep’t of Child. & Fams.*, 257 So. 3d 1182, 1184 (Fla. 3d DCA 2018).

<sup>18</sup> “Joiner is the process to consolidate claims or parties into one case.” Legal Information Institute, *Joiner*, available at <https://www.law.cornell.edu/wex/joiner#> (last visited Jan. 20, 2026).

### ***Purchase of Membership***

**Section 31** amends s. 617.0608, F.S., authorizing nonprofit corporations, other than 501(c)(3) organizations, to purchase membership interests if allowed by the articles of incorporation or bylaws. Such purchase may not be considered a dividend or distribution of income or earnings. The corporation may only purchase membership interests if, after completing the purchase, (1) the corporation is able to pay its debts as they become due and (2) the total assets of the corporation are at least equal to its total liabilities.

### ***Meetings***

**Section 32** amends s. 617.0701, F.S., stating that a corporation with members may hold meetings of members for business at times set out by the corporation or in accordance with the articles of incorporation or bylaws. Annual, regular, and special meetings of the members may be held in or out of the state. The failure to hold an annual meeting as outlined in the articles of incorporation or bylaws does not affect the validity of any corporate action.

The bill further specifies that:

- Special meetings of the members may be called by either:
  - The board of directors or the person authorized under the articles of incorporation or bylaws.
  - Members holding at least 10% of all votes, or the amount specified in the articles of incorporation or bylaws, entitled to be cast on an issue being considered at a meeting. Such members must sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing its purpose.
- A written demand for a special meeting may be revoked by submitting a writing to the corporation to that effect before the corporation receives the demands sufficient in number to hold a special meeting.
- Special meetings of members may be held in or out of this state at a place stated in or fixed in accordance with the articles of incorporation or bylaws in the notice of the special meeting. If there is no fixed location in the articles of incorporation or the bylaws, special meetings must be held at the corporation's principal office.

Under the statute, members may take action, that is required or permitted to be taken at the special meeting, without meeting, notice, or vote under certain circumstances. To be effective, the action must be evidenced by written consent. Under the bill, the action taken by written consent is effective when it is signed by the members entitled to cast the required number of votes on the action and delivered to the corporation. If the articles of incorporation or bylaws require that notice of proposed corporate action be delivered to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, notice must be given within thirty days to those members not entitled to vote.

Further, the bill requires that a member may waive any notice required under ch. 617, F.S., the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Such waiver must be in writing, signed, and delivered to the corporation for filing. If a member attends a meeting, they waive objection to:

- Lack of notice or defective notice, unless the member objects at the beginning of the meeting and does not vote on action taken at the meeting; and
- Consideration of a particular matter at the meeting not within the stated purpose in the meeting notice, unless the member objects when the matter is presented.

### ***Appointment of Proxy for Member Voting***

**Section 33** amends s. 617.0721, F.S., permitting members, or their attorney, to appoint a proxy to vote or act for the member by:

- Signing an appointment form via electronic signature or other reasonable means;
- Transmitting an electronic signature to the person who will be the proxy, a proxy solicitation firm, a registrar, or an agent authorized by the person who will be the proxy; or
- Using other means as provided in the articles of incorporation or bylaws.

Under the bill, an appointment form must detail information which shows the member or their attorney authorized the appointment of the proxy. Such appointment is effective when a signed appointment in a record is received by the inspectors of election, the officer or agent authorized to count votes, or the secretary. A member may revoke appointment of a proxy unless the appointment form or transmission states the appointment is irrevocable and coupled with an interest. Moreover, the death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority, unless notice of the death is received by the inspectors of election, the officer or agent authorized to count votes, or the secretary before the proxy exercises their authority. The corporation may reject a vote, ballot, consent, waiver, demand, or proxy appointment if the person authorized to accept or reject such action has a reasonable basis to doubt the validity of the signature on it or the signatory's authority for it.

### ***Remote Meeting of Members***

Section 33 also authorizes the board of directors to make a members' meeting remote, so long as the articles of incorporation, bylaws, or demands of members do not require such meeting to be held at a specific geographic location. The board of directors may authorize members, or their attorney or proxy, to participate in meetings via remote communication. Members are deemed to be present at such remote meetings if the corporation has implemented reasonable measures to verify whether the member, or their attorney or proxy, is a member.

### **Derivative Actions (Sections 34-40, 168)**

Currently, ch. 617, F.S., allows for members to initiate derivative actions. A derivative action is a legal proceeding brought by a member to enforce a right of action that exists on behalf of the corporation.<sup>19</sup> A member may not initiate a proceeding until they have submitted a demand to the board of directors and the demand was refused or ignored for at least 90 days.

**Section 168** repeals s. 617.07401, F.S., which contained provisions outlining derivative actions by members, to move those provisions into sections mirroring the FBCA.

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<sup>19</sup> "A derivative action is generally defined as a cause of action on behalf of a stockholder to enforce a right of action that exists on behalf of the corporation... It seeks redress for an injury suffered by the corporation or the stockholders generally." *Fox v. Pro. Wrecker Operators of Fla., Inc.*, 801 So. 2d 175, 179 (Fla. 5th DCA 2001) (internal citation omitted).

**Sections 34-40** create ss. 617.0741-617.0747, F.S., to harmonize the FNCA's provisions on derivative actions with the FBCA and re-word the provisions repealed under s. 617.0401, F.S. The bill substantively alters these provisions by:

- Allowing directors and officers to bring derivative actions, not just members.
- Removing the requirement that a plaintiff needs to bring a demand on the corporation and wait 90 days for the corporation to reject or ignore the demand before initiating the action.

### **Directors and Officers (Sections 41-54)**

Nonprofit corporations are managed and subject to oversight by their board of directors. All corporate powers must be exercised under the board's authority. Florida law requires a director to be a natural person and over the age of eighteen. Unless the articles of incorporation or bylaws require otherwise, a director does not need to be a resident of the state or member of the corporation.<sup>20</sup>

#### ***Directors***

**Section 41** amends s. 617.0803, F.S., requiring that a nonprofit corporation's board of directors consist of at least one person, unless it is a 501(C)(3) organization, in which case the board of directors must consist of at least three people.

**Section 42** creates s. 617.0804, F.S., making requirements for the selection of a board of directors. For membership corporations, aside from any initial directors named in the articles of incorporation or elected by the incorporators, the directors must be elected by the members entitled to vote at each annual meeting, unless the articles of incorporation or bylaws specify another manner for election.

For non-membership corporations, aside from any initial directors named in the articles of incorporation or elected by the incorporators, the directors must be elected, appointed, or designated as provided in the articles of incorporation. If the articles of incorporation or bylaws do not set forth a method, then the directors are elected by the board of directors.

Further, if members are divided into classes, the articles of incorporation or bylaws may allow the election of directors by the holders of one or more authorized classes of members.

**Section 43** creates s. 617.0805, F.S., prescribing that unless otherwise specified by the articles of incorporation or bylaws:

- The term of a director is one year.
- The term of a director elected to fill a vacancy expires at the end of the term the director is filling.
- The director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office.

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<sup>20</sup> Sections 617.0801-617.0802, F.S.

The bill also sets out that a decrease in the number of directors of term of offices does not shorten an incumbent director's term.

### ***Removal and Vacancies of Directors***

**Section 44** amends s. 617.0808, F.S., removing the provision regarding removal of directors of 501(c) corporations. Directors can still be removed through other means, such as methods detailed in the articles of incorporation.

**Section 45** amends s. 617.0809, F.S., revising provisions regarding a vacancy occurring on a corporation's board of directors. Vacancies typically will be filled by a majority of the remaining directors in office, even if the remaining directors constitute less than a quorum, except as otherwise provided in the articles of incorporation and bylaws and except in the following circumstances:

- When a director was elected by a voting group of members, the vacancy may be filled only during the first three months that the vacancy occurs and only by that voting group.
- When the director was appointed by people, other than the members, the vacancy may be filled only by those people.
- When the director was designated in the articles of incorporation or bylaws, the vacancy may not be filled by the board of directors.

**Section 46** creates s. 617.08091, F.S., authorizing courts to remove a director from office in a proceeding commenced in the right of the corporation, if the court finds that:

- The director engaged in fraudulent conduct, grossly abused the position of director, or intentionally inflicted harm on the corporation; and
- Removal is in the best interest of the corporation, considering the director's conduct and the inadequacy of other remedies.

In addition to removal, the court may bar the director from reelection, redesignation, or reappointment and may order any other relief or remedy within its power. Further, only a member, officer, or director may bring an action under this section, and such action must comply with the derivative action requirements under ss. 617.0742-617.0747, F.S. The action must be brought by a member, or multiple members, having no less than 10% of the corporation's voting power.

### ***Meetings of the Board of Directors***

**Section 47** amends s. 617.0820, F.S., providing that unless the articles of incorporation or the bylaws detail otherwise:

- Meetings of the board of directors may be called and noticed by the chair of the board, the president or similarly situated officer, or 20% of the directors then in office.
- Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- Special meetings of the board of directors must be noticed at least two days prior, detailing the date, time, and place. The notice does not need to contain the purpose of the meeting.

**Section 48** amends s. 617.0821, F.S., allowing a board of directors to take action without a meeting if written consent is signed by each director and delivered to the corporation. A

director's consent may be withdrawn by signed revocation, delivered to the corporation before the written consent is delivered to the corporation.

**Section 169** repeals s. 617.0822, F.S., consolidating the notice provisions into s. 617.0820(5)-(6), F.S.

**Section 49** amends s. 617.0823, F.S., altering the waiver of notice of meeting provision to require a director to not vote for or consent to action taken at a meeting when the director is objecting to the date, place, time, or way the meeting was called.

### ***General Standards for Directors***

**Section 50** amends s. 617.0830, F.S., updating Florida's business judgment rule and clarifying the standard of care with which directors must act. Specifically, directors must act in good faith and in manner the director reasonably believes is in the best interests of the corporation when discharging their duties. When becoming informed in connection with a decision-making function or devoting attention to an oversight function, the director shall discharge their duties with the care an ordinarily prudent person would believe appropriate in similar circumstances. Additionally, this section expands the group of experts and other people, as laid out in s. 617.0830(5), F.S., upon which the director can rely when making decisions and discharging their duties. Last, this section provides that a director is not a trustee with respect to the corporation or property held by the corporation in trust.

**Section 51** amends s. 617.0832, F.S., regarding director conflict of interest.<sup>21</sup> The bill requires that conflict of interest transactions be fair to the corporation<sup>22</sup> at the time they are authorized. Additionally, there is a shifting burden provision which outlines the legal burden on each party in a proceeding challenging the validity of a director's conflict of interest transaction or seeking relief with respect to that transaction. If a disinterested majority of directors or members, who received advance notice of the conflict, authorized the transaction, then the burden is on the person challenging the transaction to prove it was not valid. If such authorization was not attained, then the burden is on the defendant to prove the fairness and validity of the transaction.

The bill also allows parties to challenge transactions on the grounds that a director or member was not disinterested when voting or approving the transaction. Moreover, the bill provides an exception to required quorum for directors or members to vote under applicable law in these transactions.

### ***Standards of Conduct for Officers***

**Section 54** creates s. 617.0844, F.S., updating Florida's business judgment rule and clarifying the standard of care with which officers must act. Specifically, directors must act in good faith

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<sup>21</sup> "Director's conflict of interest transaction" means a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation's directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the corporation, and has a direct or indirect material financial interest or other material interest.

<sup>22</sup> "Fair to the corporation" means that the transaction, as a whole, is beneficial to the corporation and its members, taking into appropriate account whether it is: 1. Fair in terms of the director's dealings with the corporation in connection with that transaction; and 2. Comparable to what might have been obtainable in an arm's length transaction.

and in manner the officer reasonably believes is in the best interests of the corporation when discharging their duties. The bill provides a substantively similar provision to officers as it does for directors, allowing officers to rely on certain people and information to act. The bill further specifies the duty of an officer includes informing officers and the board of directors of material information about the affairs of the corporation and actual and probable material violations of law.

### ***Liability of Directors and Officers***

**Section 52** amends s. 617.0834, F.S., harmonizing this provision with the FBCA. The bill applies this section of liability of directors<sup>23</sup> and officers<sup>24</sup> to all nonprofit corporations in the state, not just 501(c) corporations. The bill also sets out that:

- In a derivative action, the director or officer's breach of, or failure to perform, their duties constitutes a conscious disregard for the best interest of the corporation or willful or intentional misconduct.
- If a transaction and its benefits are not prohibited by state or federal laws and regulations and the transaction is fair to the corporation, a director or officer has not obtained an improper personal benefit.

### ***Prohibited Activities by Private Foundations***

**Section 53** amends s. 617.0835, F.S., narrowing an exception under this section for certain nonprofit corporations engaging in prohibited actions which would give rise to liability under federal law.

### ***Amending the Articles of Incorporation (Sections 55-57)***

Nonprofit corporations can change their articles of incorporation at any time pursuant to s. 617.1001, F.S. Under s. 617.1006, F.S., the articles of amendment must include the name of the corporation, the text of each amendment adopted, and the date of adoption of the amendment by the members. If the nonprofit corporation has no members, or if members are not entitled to vote, then the articles of amendment must include the date of adoption by the board of directors.

#### ***Authority***

**Section 55** amends s. 617.1001, F.S., adding that the corporation may amend its articles of incorporation to add or change a provision that is required or permitted in the articles or to delete those that are not required or permitted.

#### ***Procedure***

**Section 56** amends s. 617.1002, F.S., specifying that the amendment must be adopted by the board of directors and approved by the members, unless otherwise provided by the articles of incorporation or other portions in this section. Additionally, the board of directors:

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<sup>23</sup> For the purposes of s. 617.0834, F.S., "director" means a person who serves as a director, trustee, or member of the governing board of an organization.

<sup>24</sup> For the purposes of s. 617.0834, F.S., "officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

- Must inform the members of the conflict or special circumstances that led the board to not recommend the proposed amendment.
- May set conditions for the approval or effectiveness of the amendment.

However, the board of directors may adopt amendments without approval of the members to:

- Extend the duration of the corporation;
- Delete the names and addresses of the initial directors, initial registered agent, or registered office;
- Delete information in the articles of incorporation which is solely of historical interest;
- Change the corporate name by substituting the words “corporation” and “incorporated” or altering a geographical attribute to the name.
- Restate without change all of the then operative provisions of the articles of incorporation as provided in s. 617.1007.

Further, the corporation must give proper notice to the members if their approval is required to be given at a meeting. Unless otherwise provided in this chapter, articles of incorporation, or the board of directors, the approval of the amendment requires a quorum of members. If the corporation does not have members and the amendment changes provisions regarding appointment of directors by people other than the board, those people must approve the amendment by vote.

### ***Content***

**Section 57** amends s. 617.1006, F.S., providing that articles of amendment take effect on the effective date determined pursuant to s. 617.0123, F.S. The bill also requires the corporation to deliver the amendment to the department for filing and include:

- The name of the corporation;
- The text of each amendment adopted, or the information required by s. 617.01201(10), F.S.;
- Provisions for implementing the amendment if it exchanges, reclassifies, or cancels memberships;
- The date of each amendment’s adoption; and
- A statement about the amendment in specified circumstances.

### ***Merger (Sections 58-64, 170)***

Under Florida law, two or more domestic, nonprofit corporations may merge into one corporation pursuant to a merger plan approved under s. 617.1101, F.S. Currently, the surviving corporate entity of such merger must be a nonprofit. The plan for merger must be adopted by the board of directors and, if the corporation has members entitled to vote, must be approved by a majority of the members.

### ***Plan of Merger***

**Section 58** amends s. 617.1101, F.S., permitting two or more domestic or foreign, eligible corporate entities to merge into a domestic corporation. Domestic or foreign eligible entities<sup>25</sup>

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<sup>25</sup> “Eligible entity” means a domestic or foreign: 1. Corporation or corporation for profit; 2. General partnership, including a limited liability partnership; 3. Limited partnership, including a limited liability limited partnership; 4. Limited liability

that are not corporations may also be a party to a merger, or be created as the survivor in a merger, with a domestic corporation. To do so, the parties of the merger must comply with requirements in ch. 617, F.S., and the merger must be permitted by the organic law of the eligible entity that is not a corporation. Further, a plan of merger must include:

- The name, jurisdiction of formation, and type of entity of each party;
- The surviving entity's name, jurisdiction of formation, type of entity, and statement if the survivor is to be created in the merger;
- The terms and conditions of the merger;
- The articles of incorporation of the corporation or the public organic record<sup>26</sup> of any eligible entity;
- The effective date and time of the merger; and
- Any other provision required by the laws under which any party of the merger is organized.

The bill also sets out that terms of a plan of merger may depend on facts objectively ascertainable outside the plan pursuant to s. 617.01201(10), F.S. A plan of merger may be amended only with the consent of each party. The bill details how a domestic party to a merger may approve an amendment to the plan.

### ***Limitation on Merger***

**Section 59** amends s. 617.1102, F.S., allowing nonprofit corporations that hold property for a charitable purpose<sup>27</sup> to merge with another entity, only if the surviving entity is a nonprofit.

### ***Approval and Abandonment of Merger Plan***

**Section 60** amends s. 617.1103, F.S., requiring the board of directors to inform the members of the basis of the lack of recommendation for the plan of merger, if the board cannot make a recommendation to the members due to a conflict of interest or other special circumstances. The bill also sets out that:

- The board of directors may set conditions for the approval or effectiveness of the proposed merger.
- The corporation must give adequate notice to the members entitled to vote if the approval of the merger is to be given at a meeting. Such notice must include the purpose of the meeting, a copy of the plan, and other specified information.

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company; or 5. Other unincorporated entity. (b) The term does not include: 1. An individual; 2. An association or relationship that is not a partnership solely by reason of s. 620.8202(2) or a similar provision of the law of another jurisdiction; 3. A decedent's estate; or 4. A government or a governmental subdivision, agency or instrumentality.

<sup>26</sup> "Public organic record" means a record, the filing of which by a governmental body is required to form an entity, and an amendment to or restatement of such record. When a public organic record has been amended or restated, the term means the public organic record as last amended or restated. The term includes any of the following: (a) The articles of incorporation of a corporation for profit. (b) The articles of incorporation of a nonprofit corporation. (c) The certificate of limited partnership of a limited partnership. (d) The articles of organization, certificate of organization, or certificate of formation of a limited liability company. (e) The articles of incorporation of a general cooperative association or a limited cooperative association. (f) The certificate of trust of a statutory trust or similar record of a business trust. (g) The articles of incorporation of a real estate investment trust.

<sup>27</sup> "Charitable purpose" means a purpose that: (a) Would make a corporation organized and operated exclusively for that purpose eligible to be exempt from taxation under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (b) Is considered charitable under the law of this state other than as set forth in the Internal Revenue Code of 1986, as amended.

- Unless otherwise required, approval of the plan of merger shall require the approval of the members at a meeting at which the current required quorum exists by a majority of the votes entitled to be cast on the plan.
- Separate voting on a plan of merger is required for each class of members that is to be converted under the plan of merger into securities, interests, or obligations; rights to acquire securities or other interests; or cash, other property, or any combination thereof.
- The articles of incorporation may expressly limit or eliminate the separate voting rights as to any class of members.
- If the corporation has no members, or the members are not allowed to vote, then the board of directors may approve the plan via a majority vote.
- After a plan of merger has been approved and before the articles of merger are effective, the plan may be abandoned (as detailed in the plan) in the same manner it was approved. If the merger is abandoned after the articles of merger are delivered to the department but before the articles of merger become effective, a statement of abandonment must be filed with the department with specified information.

### ***Short-form Merger***

**Section 61** amends s. 617.1104, F.S., allowing for merger between a parent company and its subsidiary, so long as the parent owns at least 80% of the voting power of the subsidiary. Such mergers do not require the approval of the board of directors or members unless the articles of incorporation or organic rules<sup>28</sup> of the parent entity specify otherwise. Within ten days of the effective date of the merger, the parent entity must notify each of the subsidiary's members that the merger has become effective.

### ***Articles of Merger***

**Section 62** amends s. 617.1105, F.S., mandating that articles of merger include:

- The name, jurisdiction of formation, and type of entity of each party, including the survivor entity if not already identified;
- The amendment to the survivor's articles of incorporation, if they are being amended;
- The articles of incorporation of the new corporation if a new domestic corporation is being created because of merger;
- A statement that the plan was approved by the members or by separate voting groups, if necessary;
- A statement explaining that the plan of merger did not require approval by the members, if necessary;
- A statement that the participation of the foreign corporation, party to the merger, was authorized in accordance with the foreign corporation's organic law;
- A statement that the participation of a domestic or foreign eligible entity, party to the merger, was authorized in accordance with that entity's organic law;
- A statement that the corporation does not hold any property for a charitable purpose, if the surviving entity is not a domestic or foreign corporation or other eligible entity organized as a nonprofit; and
- Any other provision not prohibited by law.

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<sup>28</sup> "Organic rules" means the public organic records and private organic rules of an entity.

Additionally, the articles of merger must be delivered to the department for filing and may be combined with any other filing required under the organic law governing any other domestic eligible entity involved in the transaction. Last, with respect to the merger with foreign corporations or entities, the merger becomes effective at the later of: (1) when all requisite documents filed in foreign jurisdictions become effective or (2) when the articles of merger take effect.

### ***Effect of Merger***

**Section 63** amends s. 617.1106, F.S., specifying that when a merger becomes effective:

- The survivor entity comes into existence;
- The separate existence of the merging entities ceases;
- All property, contract rights, and other rights possessed by each merging entity vests into the survivor;
- All debts, obligations, and liabilities are transferred to the survivor;
- The name of the survivor may be substituted in any pending proceedings with the names of now non-existing entities;
- Neither the rights of creditors nor liens upon corporate property are impaired;
- If a survivor is a domestic eligible entity, the articles of incorporation and the bylaws or the organic rules of the survivor are amended per the merger;
- The articles of incorporation and bylaws or the organic rules of the survivor, that is created in the merger, are effective;
- The interests of each merging entity which are to be canceled or converted in the merger are canceled or converted;
- Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each eligible entity that is a party to the merger, other than the survivor, become the rights, privileges, franchises, and immunities of the survivor; and
- If the survivor exists before the merger:
  - All the property and contract and other rights of the survivor remain its property and contract and other rights without transfer, reversion, or impairment;
  - The survivor remains subject to all of its debts, obligations, and other liabilities; and
  - Except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

Furthermore, the merger does not constitute a dissolution or termination of one of the entities and does not give rise to any rights an interest holder<sup>29</sup> or third party would have upon dissolution, liquidation, or winding up. If there is property held in trust or dedicated to a charitable purpose before a merger becomes effective, such property may not be diverted from the purposes for which it was dedicated, except as otherwise specified. If a bequest, deviser, gift, promise, or similar grant is made to an eligible party to a merger, such conveyance applies to the survivor. Last, the bill details how trust obligations are to be transferred upon merger.

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<sup>29</sup> “Interest holder” means any of the following persons: (a) A shareholder of a corporation for profit. (b) A member of a nonprofit corporation. (c) A general partner of a general partnership. (d) A general partner of a limited partnership. (e) A limited partner of a limited partnership. (f) A member of a limited liability company. (g) A shareholder or beneficial owner of a real estate investment trust. (h) A beneficiary or beneficial owner of a statutory trust, business trust, or common law business trust. (i) Another direct holder of an interest.

### ***Merger of Domestic and Foreign Corporations***

**Section 64** amends s. 617.1107, F.S., specifying that if an eligible entity is a foreign entity following a merger under s. 617.1101, F.S., it must comply with the provisions of ch. 617, F.S. Foreign eligible entities are to be governed by the laws of their jurisdiction.

**Section 170** repeals s. 617.1108, F.S., as the merger of nonprofit corporations is detailed in other sections of this bill.

### **Sale of Assets (Section 65)**

**Section 65** amends s. 617.1202, F.S., requiring that if the corporation wishes to sell or otherwise dispose of its property, then the board must first adopt a resolution to sell assets and make a recommendation to the members. The board may set conditions for approval of disposition of assets or, if there is a conflict of interest or special circumstances preventing the board's recommendation, provide a reason for such lack of recommendation for disposition. Then, in a meeting noticed to the members with requisite information, the members may vote on the disposition. A majority of votes of the required quorum are needed to approve the disposition. Assets disposed of during a dissolution of a corporation are not governed under this section.

### **Dissolution (Sections 66-83)**

Generally, dissolution is the act of terminating a corporate entity. In Florida, voluntary dissolution requires a nonprofit corporation to petition a circuit court in the county of its principal office.<sup>30</sup> A circuit court may dissolve a corporation via the Department of Legal Affairs if the corporation perpetuated abuse or fraud, in a proceeding brought by a specified number of members, or in a proceeding by a creditor in specific situations.<sup>31</sup>

**Sections 66-71** amend ss. 617.1401-607.1407, F.S., minorly updating the provisions regarding distribution of assets, receivership of corporation, property held in trust through the dissolution of a nonprofit corporation, and resolution of payment of unknown claims. Primarily, a circuit court may appoint a trustee, custodian, receiver, or provisional director for any property owned by a corporation during the dissolution process if a director or officers is not available.

### ***Known Claims***

**Section 72** amends s. 617.1408, F.S., defining a known claim as any claim or liability that, as of the date of the giving of written notice: (1) has matured sufficiently on or before the date of dissolution to be legally capable of assertion against the dissolved corporation; or (2) is unmatured as of the date of dissolution but will mature in the future solely because of the passage of time. Under the bill, a dissolved corporation or successor entity may dispose of known claims within a specified time by giving written notice. Such written notice must:

- State the name of the corporation that is the subject of dissolution;
- State the corporation is the subject of the dissolution;
- Include the effective date of dissolution;

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<sup>30</sup> Section 617.1402, F.S.

<sup>31</sup> Section 617.1430, F.S.

- Specify the information that must be included in a claim;
- State the claim must be in writing and provide a mailing address;
- State the deadline for the corporation to receive the claim;
- State the claim will be barred if not received by the deadline;
- State the dissolve corporation or successor entity may make distributions thereafter; and
- Be accompanied by a copy of ss. 617.1405-617.14091, F.S.

The bill also specifies how the corporation may reject a claim and when a claim is barred. A claim is barred either (1) if a claimant who is given written notice does not deliver the claim by the specified deadline or (2) if the claim was timely received by the dissolved corporation but was timely rejected and the claimant does not commence an action in circuit court.

### ***Court Proceedings for Claims***

**Section 73** creates s. 617.1409, F.S., providing that if a dissolved corporation has filed or published proper notice, may file an application in the circuit court of applicable jurisdiction for a determination of the amount and form of payment of unknown claims. Under this section of the bill, the corporation must give notice of the proceedings to known claimants, and a court may appoint a guardian ad litem to unknown claimants.

### ***Liability and Claims***

**Section 74** creates s. 617.14091, F.S., providing that directors of dissolved corporations are not personally liable to claimants of a dissolved corporation. For claims that are not barred by ss. 617.1407-617.1408, F.S., limiting actions may be enforced (1) against the dissolved corporation to the extent of its undistributed assets or (2) against a member to the extent of their share of the claim or corporate assets.

### ***Administrative Dissolution***

**Sections 75-76** amend ss. 617.1420-617.1421, F.S., mandating that the department serve a notice of intent onto a corporation when it determines there are grounds for administrative dissolution under s. 617.1420, F.S. The corporation has sixty days after receiving notice to correct each ground for dissolution. If the corporation fails to do so, the department shall dissolve the corporation administratively and issue a notice to the corporation. The notices under these sections may be made via electronic transmission if the department has a corporate email address on file.

### ***Judicial Dissolution***

**Section 77** amends s. 617.1430, F.S., specifying that a circuit court may dissolve a corporation, or pursue other available remedies, in a proceeding with at least fifty members, or members holding at least 10% of voting power, if the directors of the corporation have, are, or will act in a fraudulent manner, or if the corporation has insufficient assets and cannot assemble a quorum of members or directors.

**Section 78** amends s. 617.1431, F.S., permitting courts to award attorney fees and costs when parties bring an action in bad faith under s. 617.1430, F.S.

**Sections 79-80 and 83** amend ss. 617.1432-617.1433, and 617.1440, F.S., making clarifying changes that do not substantively affect existing law.

**Section 81** amends s. 617.1434, F.S., allowing a court in a judicial dissolution proceeding broader discretion to order remedies other than those outlined in statute to avoid dissolution.

**Section 82** creates s. 617.1435, F.S., providing that a court may appoint a provisional director in a proceeding under s. 617.1430, F.S. The bill also limits liability of provisional directors, outlines their duties, details reasonable compensation for the responsibility.

### **Foreign Nonprofit Corporations (Sections 84-100, 173-174)**

In Florida, foreign nonprofit corporations operate under a certificate of authority issued by the Department and, like domestic corporations, must notify the Department of their registered agent, principal office, and other pertinent information. A foreign corporation must amend its certificate of authority to reflect any change in its operating document within 90 days of the occurrence. If a foreign corporation attempts to file for a certificate of authority under a name that is already in use by another business entity, it must find a distinguishable alternative or, pursuant to changes made to s. 617.1506, F.S., in **Section 89**, it may register under a name that is not distinguishable with the written consent of the other entity.

#### ***Corporate Name***

**Section 89** amends s. 617.1506, F.S., setting out that a foreign corporation whose name is unavailable under or whose name does not otherwise comply with s. 617.0401, F.S., must use an alternate name in compliance to transact business in Florida. However, a foreign corporation may register under a name that is not distinguishable from another registered entity if:

- The other entity consents to its use and changes its name with the department; or
- The applicant sends the department a certified copy of a final judgement establishing their right to use the name.

If the foreign corporation chooses to use an alternate name because its actual name does not comply with statutory requirements, the alternate name must be cross-referenced to the actual name of the foreign corporation in the records of the Division of Corporations. The bill provides additional requirements if the foreign corporation wishes subsequently to change its alternate name.

#### ***Registered Agent and Office***

**Sections 90-92** amend ss. 617.1507-617.1509, F.S., to parallel the requirements regarding a foreign corporation's registered agent and office to those of a domestic corporation's registered agent and office.

#### ***Notice***

**Section 93** amends s. 617.15091, F.S., providing that foreign corporations must give notice or other communication under ch. 617, F.S., via delivery by hand, the U.S. Postal Service, a commercial delivery service, and electronic transmission. Delivery is only effective once the department has received the notice or communication.

***Certificate of Authority***

**Section 84** creates s. 617.15015, F.S., providing that the laws of this state, or other jurisdiction under which a foreign corporation exists, govern the organization, internal affairs, and interest holder liability<sup>32</sup> of its members. Moreover, a foreign corporation may not be denied a certificate of authority because of different laws of its jurisdiction of formation.

**Section 85** amends s. 617.1502, F.S., specifying that a foreign corporation's organic law applies when the corporation fails to have a certificate of authority to transact business in Florida, and the Florida Secretary of State is the designated agent for the corporation should any unauthorized transactions occur in Florida.

**Sections 86 and 88** amend ss. 617.1503 and 617.1505, F.S., making clarifying changes that do not substantively affect existing law.

**Section 87** amends s. 617.1504, F.S., requiring that a foreign corporation amend its certificate of authority when the corporation changes the name and street address of its registered agent in the state.

**Section 94** amends s. 617.1520, F.S., allowing a foreign corporation to cancel its certificate of authority by filing a notice of withdrawal signed by an officer and stating:

- The name of the foreign corporation;
- The name of the foreign corporation's jurisdiction of incorporation;
- The date the foreign corporation was authorized to conduct affairs in Florida;
- That the foreign corporation is withdrawing its certificate of authority;
- That the foreign corporation revokes the authority of its registered agent to accept service of process and the Secretary of State is now its agent for service of process;
- Mailing and email addresses; and
- A commitment to notify the department in the future of change in addresses.

**Section 95** creates s. 617.1521, F.S., deeming a certificate of authority to be withdrawn if the foreign corporation converts into a domestic organization.

**Section 96** creates s. 617.1522, F.S., mandating foreign corporations to deliver a notice of withdrawal of certificate of authority to the department if:

- The foreign corporation has dissolved and completed winding up;
- The foreign corporation has merged into a foreign eligible entity not authorized to conduct business in Florida; or
- The foreign corporation has converted to an entity that is not formed through public filing of a record in Florida.

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<sup>32</sup> "Interest holder liability" means: (a) Personal liability for a liability of an entity which arises, except as otherwise provided in the organic rules of the entity, when the entity incurs the liability and which is imposed on a person: 1. Solely by reason of the status of the person as an interest holder; or 2. By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or (b) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

**Section 97** creates s. 617.1523, F.S., granting the Department of Legal Affairs authority to bring legal action to enjoin a foreign corporation from conducting affairs in violation of ch. 617, F.S.

**Section 98** amends s. 617.1530, F.S., permitting the department to revoke a certificate of authority if:

- The foreign corporation does not deliver for filing a statement of change under s. 617.1508, F.S.;
- The foreign corporation has failed to amend its certificate of authority; or
- The foreign corporation's period of duration stated in its articles of incorporation has expired.

The bill further outlines details for the date that revocation must occur each year and issuance of notice of revocation by the department. The foreign corporation has sixty days after receiving a notice of intent to revoke a certificate of authority to correct each ground for revocation to the satisfaction of the department.

**Section 99** creates s. 617.15315, F.S., permitting foreign corporations to apply for reinstatement after the effective date of revocation of the certificate of authority. The corporation must pay all fees and penalties alongside an application for reinstatement signed by a registered agent and officer/director, and including the following information:

- Name and street address of the foreign corporation;
- The jurisdiction of the corporation's formation;
- The foreign corporation's federal employer identification number;
- The name, title or capacity, and address of at least one officer or director; and
- Any other necessary information.

Under the bill, the corporation may apply for reinstatement alongside its annual report. The department must reinstate the corporation if it meets the statutory requirements to do so.

**Section 100** amends s. 617.1532, F.S., providing that the department must serve a corporation with a written notice explaining its reason for denial if the department denies an application for reinstatement after revocation of the certificate of authority. The foreign corporation may appeal the department's denial to the Circuit Court of Leon County.

**Sections 173-174** amend ss. 617.1531 and 617.1533, F.S., as the bill amends and creates other provisions regarding withdrawal/cancellation of a certificate of authority.

## **Records and Reports (Sections 101-107)**

### ***Maintenance of Records***

**Section 101** amends s. 617.1601, F.S., mandating that corporations maintain the following records:

- Articles of incorporation and bylaws.
- The minutes of all members' meetings and records of all member action taken over the last three years.
- The minutes of all board of directors' meetings, a record of all actions taken by the board without a meeting, and a record of all actions taken by a committee on behalf of the board.

- All written communications within the past three years to members, including financial statements.
- A list of names and street addresses of current directors and officers.
- The most recent annual report delivered to the department under s. 617.1622, F.S.

Moreover, the bill provides additional requirements for records to be maintained in a specific manner.

### ***Inspection of Records by Members***

**Section 102** amends s. 617.1602, F.S., altering the provisions allowing members to inspect a corporation's records. Importantly, the bill provides that the corporation may impose reasonable restrictions on the disclosure, use, and distribution of such records but the corporation may not abolish or limit access to records under its articles of incorporation or bylaws. The bill further limits members from distributing information from records and limits the sale or commercial use of membership lists.

**Section 103** amends s. 617.1603, F.S., allowing corporations to give copies of records via electronic delivery to members for inspection.

**Section 104** amends s. 617.1604, F.S., excusing a corporation from court-ordered inspection of records if a member did not agree to reasonable restrictions on the disclosure and confidentiality of corporate records.

**Section 105** amends s. 617.1605, F.S., mandating a corporation make available, on its website or through other generally recognized means, the latest financial statements to members within five business days of a request for such records. If the annual financial statements have not been prepared for the fiscal year requested, then the corporation must notify the member within five business days and make the statements available within a specified period after the request. Even so, the corporation may decline to make available financial statements if it determines the member's request was not made in good faith, or the corporation may make reasonable restrictions on the confidentiality, use, and distribution of the financial statements.

If the corporation does not respond to the member's request, the requesting member may seek a court order to access the requested statements. The court may order access to the statements and impose reasonable restrictions on access. In such legal proceedings, the corporation has the burden to demonstrate it reasonably determined the member's request was not in good faith or for a proper purpose. The court may order the corporation to give the member access to requested statements; the corporation is liable for the member's expenses and attorney fees.

### ***Inspection Rights of Directors***

**Section 106** creates s. 617.16051, F.S., permitting directors of a corporation to inspect and copy the books, records, and documents of the corporation at any reasonable time in a reasonable manner. A circuit court may order a corporation to allow the director to inspect such records, unless the corporation establishes the director is not entitled to do so. The corporation may be liable for the director's costs and attorney fees if it improperly denies access to records.

### ***Annual Report to Department***

**Section 107** amends s. 617.1622, F.S., establishing that an annual report is considered a statement of change if the name/address of the registered agent differs from the information in the records of the department. If a corporation submits multiple annual reports for a calendar year, the first shall be considered the annual report and subsequent filings considered amended annual reports. As a condition of merger, conversion, or domestication, the corporation must be active and current in filings its annual reports in the records of the department through December 31 of the calendar year in which the articles of merger/conversion/domestication are submitted.

### ***Domestication (Sections 108-112)***

Domestication is the process for a foreign corporation to become a domestic corporation in Florida by filing certain documents with the department.<sup>33</sup> **Section 108** creates s. 617.180301, F.S., establishing that a foreign corporation may become a domestic corporation if it is permitted by the organic law of the foreign corporation. The corporation must enter into a plan of domestication, which must include:

- The name of the domesticating corporation;
- The name and governing jurisdiction of the domesticated corporation;
- The manner and basis of cancelling or converting the eligible interests<sup>34</sup> or other rights of the domesticated corporation;
- The proposed organic rules of the domesticated corporation, which must be in writing; and
- The other terms and conditions of domestication.

Moreover, if a protected agreement<sup>35</sup> of a domesticating corporation contains a provision applying to a merger of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger, until the provision is amended.

### ***Plan of Domestication***

**Section 109** creates s. 617.18031, F.S., prescribing plans of domestication be adopted as follows:

- The plan must first be adopted by the board of directors.
  - The board may set conditions for approval or effectiveness of the plan.
  - If the board does not recommend the plan, it must include its basis for doing so.
- If the corporation has members, the plan must be approved by the members upon recommendation and with notice by the board.
  - The bill provides voting requirements, specifically that quorum of the voting group exists at a meeting to vote on domestication.

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<sup>33</sup> Section 617.1803, F.S.

<sup>34</sup> “Eligible interest” means: (a) A share; (b) A membership; or (c) Either or both of the following rights under the organic rules governing the entity: 1. The right to receive distributions from the entity either in the ordinary course of business or upon liquidation. 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business, activities, or affairs.

<sup>35</sup> “Protected agreement” means any of the following: (a) A document evidencing indebtedness of a domestic corporation or eligible entity and any related agreement in effect immediately before July 1, 2026. (b) An agreement that is binding on a domestic corporation or eligible entity immediately before July 1, 2026. (c) The articles of incorporation or bylaws of a domestic corporation or the organic rules of a domestic eligible entity, in each case in effect immediately before July 1, 2026. (d) An agreement that is binding on any of the interest holders, directors, or other governors of a domestic corporation or eligible entity, in their capacities as such, immediately before July 1, 2026.

- The articles of incorporation may expressly limit or eliminate separate voting rights, except in specific circumstances.
- If a member would become subject to interest holder liability via the domestication, approval of the plan requires that member to sign a written consent.
- The plan of domestication must be approved in writing by any person whose approval is required under the articles of incorporation or bylaws.

### *Articles of Domestication*

**Section 110** creates s. 617.18032, F.S., specifying that articles of domestication must be signed by the domesticating corporation after (1) a plan of domestication has been adopted/approved and (2) a foreign corporation that is the domesticating corporation has approved the domestication pursuant to ch. 617, F.S., and the foreign corporation's organic laws.

The bill requires articles of domestication to include the names and governing jurisdictions of the domesticating and domesticated corporations, alongside a statement that the plan was approved in accordance with either this chapter or the foreign corporation's organic law. The bill further sets out:

- If the domesticated corporation is to be a domestic corporation, articles of incorporation must be attached to the articles of domestication.
- The articles of domestication must be delivered to the department of filing and take effect on a date pursuant to s. 617.0123, F.S. The bill also details domestication dates.
- If the domesticating corporation is a foreign corporation authorized to do business in Florida, its certificate of authority is automatically canceled when the domestication becomes effective.
- A copy of the articles of domestication may be filed in the official records of any county in Florida in which the domesticating corporation holds an interest in real property.

### *Amendment to a Plan of Domestication*

**Section 111** creates s. 617.18033, F.S., permitting a plan of domestication to be amended either (1) in the same manner as the plan of domestication was approved or (2) in the manner provided in the plan of domestication. However, an interest holder who was entitled to vote on/consent to approval of the plan is entitled to vote on/consent to any amendment to the plan which will change:

- The amount or kind of eligible interests or other rights, obligations, rights to acquire eligible interests, cash, or other property to be received by any of the interest holders of the domesticating corporation under the plan;
- The organic rules of the domesticated corporation that are to be in writing and that will be in effect immediately after the domestication becomes effective; or
- Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material aspect.

Furthermore, domestication may be abandoned by the corporation in the same manner the plan was approved after it has been adopted/approved but before the articles of domestication become effective. If domestication is abandoned after the articles of domestication are delivered to the

department, a statement of abandonment signed by the corporation must be delivered to the department before the domestication becomes effective.

### ***Effect of Domestication***

**Section 112** creates s. 617.18034, F.S., detailing the effects of domestication as follows:

- All property, rights, and liabilities become the property/rights/liabilities of the domesticated corporation.
- The name of the domesticated corporation may be substituted for the name of the domesticating corporation in any pending action or proceeding.
- The organic rules of the domesticated corporation become effective.
- The eligible interests or other rights are cancelled or reclassified into eligible interests or other rights according to the terms of the domestication.
- The domesticated corporation is:
  - Incorporated under and subject to the organic law of the domesticated corporation;
  - The same corporation as the domesticating corporation; and
  - Deemed to have been incorporated on the date the domesticating corporation was originally incorporated.
- Regarding the interest holder liability of an interest holder before the domestication becomes effective:
  - The domestication does not discharge that liability.
  - The organic law of the domesticating corporation must continue to apply as if the domestication had not occurred.
  - The interest holder shall have rights of contribution as provided by the organic law of the domesticating corporation.
  - The interest holder may not have liability with respect to liabilities incurred after the domestication becomes effective.
- An interest holder who becomes subject to liability as a result of domestication only holds such liability for liabilities arising after the domestication becomes effective.
- Domestication does not constitute or cause the dissolution of the domesticating corporation.
- Property previously held in trust for a charitable purpose may not be diverted from that original purpose.
- A bequest, device, gift, grant, or promise inures to the domesticated corporation.
- Trust obligations apply to property that is to be transferred to the domesticated corporation.

### **Conversions (Sections 113-119, 175-178)**

Conversion is the process by which a for-profit corporation becomes a nonprofit corporation.

**Sections 175-178** repeal ss. 617.1803 and 617.1805-617.1807, F.S., the existing provisions dealing with conversion of a domestic or foreign for-profit corporation.

**Section 113** creates s. 617.1804, F.S., allowing domestic corporations to become domestic or foreign eligible entities by complying with new requirements in subsequent sections. Domestic and foreign eligible entities may also become domestic corporations.

**Section 114** creates s. 617.18041, F.S., prohibiting a domestic corporation that holds property for a charitable purpose from becoming a domestic eligible entity or a foreign eligible entity, except by domestication to become a foreign corporation.

### *Plan of Conversion*

**Section 115** creates s. 617.18042, F.S., requiring domestic corporations to approve a plan of conversion to become a domestic or foreign eligible entity, which must include:

- The name of the domestic converting corporation.
- The name, governing jurisdiction, and type of entity of the converted eligible entity.
- The manner and basis of canceling or converting the eligible interest or other rights of the domestic corporation into shares, securities, eligible interests, obligations, rights, cash, and other property and rights.
- The other terms and conditions of conversion.
- The full text of the organic rules of the converted eligible entity in writing.

**Section 116** creates s. 617.18043, F.S., prescribing the plan of conversion to be adopted by the board of directors and voted on by the members. The board of directors may set conditions for approval or effectiveness of the plan and must provide a recommendation or reasoning for lack of recommendation to the members. Members must receive sufficient notice of the meeting to vote and there must be a quorum of voting members at such meeting. The plan must also be approved in writing by any person whose approval is required under the articles of incorporation or bylaws. Additionally, the bill expounds on the conversion's effect on interest holder liability and conversion of partnerships and limited partnerships.

### *Articles of Conversion*

**Section 117** creates s. 617.18044, F.S., requiring articles of conversion to be signed by the converting eligible entity and include specific information in the articles. The articles must be delivered to the department for filing and are effective pursuant to s. 617.0123, F.S. The bill also specifies when a conversion is effective, when a certificate of authority is canceled, and when a copy of the articles of conversion may be filed in county records.

### *Amendment to a Plan of Conversion*

**Section 118** creates s. 617.18045, F.S., permitting a plan of conversion to be amended in the same manner as the plan was approved or in a manner provided in the plan. The plan of conversion may be abandoned by a domestic corporation, before the articles of conversion become effective and after the plan of conversion has been adopted, in a manner set out in the plan of conversion or board of directors. If the conversion is abandoned after the articles of conversion have been delivered but before they become effective, a statement of abandonment must be signed by the converting eligible entity and delivered to the department for filing.

### *Effect of Conversion*

**Section 119** creates s. 617.18046, F.S., detailing the effects of conversion, which are substantially similar to the effects of domestication listed in s. 617.18034, F.S., in the bill.

## Miscellaneous Provisions

**Sections 120-167** amend ss. 617.2005, 617.2006, 39.8298, 381.00316, 605.1025, 617.0102, 617.0121, 617.0122, 617.0125, 617.02011, 617.0203, 617.0205, 617.0301, 617.0504, 617.0806, 617.0824, 617.0825, 617.0831, 617.0901, 617.1008, 617.1009, 617.1404, 617.1422, 617.1423, 617.1501, 617.1510, 617.1606, 617.1623, 617.1701, 617.1702, 617.1703, 617.1711, 617.1808, 617.1809, 617.1904, 617.1907, 617.1908, 617.2001, 617.2002, 617.2003, 617.2007, 617.2101, 617.221, 620.2108, 620.8918, 628.910, 768.38, and 893.055, F.S., making clarifying changes that do not substantively affect the meaning of the law.

**Sections 180-189** reenact ss. 617.1007, 295.21, 409.987, 718.1265, 719.128, 720.316, 718.3027, 720.3033, 721.13, 718.111, F.S., for the purpose of incorporating the amendments made by this bill.

**Section 190** sets forth an effective date of July 1, 2026.

## 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:

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:**

Indeterminate. There will likely be little impact on the department as it already manages filings of corporations in Florida.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 617.01011, 617.01201, 617.0123, 617.0124, 617.0126, 617.0127, 617.0128, 617.01301, 617.01401, 617.0141, 617.0202, 617.0204, 617.0206, 617.0302, 617.0304, 617.0401, 617.0403, 617.0501, 617.0502, 617.0503, 617.0505, 617.0601, 617.0604, 617.0605, 617.0606, 617.0607, 617.0608, 617.0701, 617.0721, , 617.0742, 617.0803, 617.0808, 617.0809, 617.0820, 617.0821, 617.0823, 617.0830, 617.0832, 617.0834, 617.0835, 617.1001, 617.1002, 617.1006, 617.1101, 617.1102, 617.1103, 617.1105, 617.1106, 617.1107, 617.1202, 617.1401, 617.1402, 617.1403, 617.1405, 617.1406, 617.1407, 617.1408, 617.1420, 617.1421, 617.1430, 617.1431, 617.1432, 617.1433, 617.1440, 617.1502, 617.1503, 617.1504, 617.1505, 617.1506, 617.1507, 617.1508, 617.1509, 617.1520, 617.1530, 617.1532, 617.1601, 617.1602, 617.1603, 617.1604, 617.1605, 617.1622, 617.2005, 617.2006, 39.8298, 381.00316, 605.1025, 617.0102, 617.0121, 617.0122, 617.0125, 617.02011, 617.0203, 617.0205, 617.0301, 617.0504, 617.0806, 617.0824, 617.0825, 617.0831, 617.0901, 617.1008, 617.1009, 617.1404, 617.1422, 617.1423, 617.1501, 617.1510, 617.1606, 617.1623, 617.1701, 617.1702, 617.1703, 617.1711, 617.1808, 617.1809, 617.1904, 617.1907, 617.1908, 617.2001, 617.2002, 617.2003, 617.2007, 617.2101, 617.221, 620.2108, 620.8918, 628.910, 768.38, 893.055, 617.1007, 295.21, 409.987, 718.1265, 719.128, 720.316, 718.3027, 720.3033, 721.13, 718.111.

This bill creates the following sections of the Florida Statutes: 617.0143, 617.05021, 617.05022, 617.0603, 617.0741 617.0743, 617.0744, 617.0745, 617.0746, 617.0747, 617.0804, 617.0805, 617.08091, 617.0844, 617.1104, , 617.1409, 617.14091, 617.1434, 617.1435, 617.15015, 617.15091, 617.1521, 617.1522, 617.1523, 617.15315, 617.16051, 617.180301, 617.18031, 617.18032, 617.18033, 617.18034, 617.1804, 617.18041, 617.18042, 617.18043, 617.18044, 617.18045, 617.18046.

This bill repeals the following sections of the Florida Statutes: 617.07401, 617.0822, 617.1108, 617.1301, 617.1302, 617.1531, 617.1533, 617.1803, 617.1805, 617.1806, 617.1807, 617.2102.

**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.

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

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