

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 909 Electronic Filing of Records with the Department of State

**SPONSOR(S):** Constitutional Rights, Rule of Law & Government Operations Subcommittee, McFarland

**TIED BILLS:** CS/HB 911 **IDEN./SIM. BILLS:** SB 948

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

### SUMMARY ANALYSIS

The Florida Department of State (DOS) is the central location for filing a number of documents required by statute, including substitute service of process, filing creation documents and annual reports required of corporations and other business entities, fictitious names, and secured transaction financing statements. DOS is authorized to establish and maintain an electronic filing system for such documents and may authorize the filing of certain documents electronically. For example, the Division of Corporations serves as the informational database and resource for certain statewide business activities.

The bill amends section 15.16(3), F.S., to permit the DOS to implement a password protected system for the electronic filing of certain records, providing greater security as required documents are filed and maintained for public access.

The bill may have a negative fiscal impact on state government. See Fiscal Comments.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Documents Filed with Department of State

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

- Chapter 48, Process and service of process: substitute service of process on general partnerships, limited liability companies, and non-residents doing business in Florida;<sup>5</sup>
- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;<sup>6</sup>
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;<sup>7</sup>
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;<sup>8</sup>
- 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;<sup>9</sup>
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;<sup>10</sup>
- 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;<sup>11</sup>
- 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;<sup>12</sup>

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<sup>1</sup> See, e.g., ss. 48.061, 48.062, 48.181, F.S.

<sup>2</sup> S. 607.0203, F.S.

<sup>3</sup> S. 865.09, F.S.

<sup>4</sup> S. 15.16(3), F.S.

<sup>5</sup> Ss 48.061(2), 48.062(3), 48.081(1), 48.181, F.S.

<sup>6</sup> S. 55.202(2)(a), F.S.

<sup>7</sup> Ss. 117.01(2), 117.05(1), 117.225(4), F.S. See also s. 118.10, F.S.

<sup>8</sup> S. 495.031(2), F.S.

<sup>9</sup> Ss. 605.0112(5), 605.113(4), and 605.113(5), F.S. See s. 605.0206, F.S.

<sup>10</sup> Ss. 606.04(1)(a) and 606.04(1)(c), F.S.

<sup>11</sup> Ss. 607.0203, F.S., 607.0502, 607.1622, F.S. See 607.0120(9), F.S.

<sup>12</sup> Ss. 610.102, 610.104(2), F.S.

- 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;<sup>13</sup>
- Chapter 620, Partnership laws: limited partnerships must file a certificate of limited partnership with DOS containing the name of the limited partnership, the address, and the business address of each general partner<sup>14</sup> as well as an annual report, among other documents.<sup>15</sup> General partnerships must file a partnership registration statement and an annual report, among other documents;<sup>16</sup>
- 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;<sup>17</sup>
- 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;”<sup>18</sup>
- 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;<sup>19</sup> and,
- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations within DOS (Division).<sup>20</sup>

#### Public Access to Department of State Filing Data

All files maintained electronically by the Division may be accessed through its website.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> Information submitted in proper form through DOS’s website is accepted without further inquiry. 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.<sup>24</sup>

<sup>13</sup> Ss. 617.0203, 617.0502, 617.1622, F.S.

<sup>14</sup> Ss. 620.1109, 620.1201(1)(a)–(e), F.S.

<sup>15</sup> S. 620.1210, F.S.

<sup>16</sup> Ss. 620.8105, 620.9003, F.S.

<sup>17</sup> S. 621.13(3), F.S.

<sup>18</sup> Ss. 679.5011, 679.527(3), F. S.

<sup>19</sup> See 713.901(5), F.S.

<sup>20</sup> S. 865.09, F.S.

<sup>21</sup> [www.dos.myflorida.com/sunbiz](http://www.dos.myflorida.com/sunbiz) (last visited March 13, 2023).

<sup>22</sup> <https://www.floridaucc.com/uccweb/> (last visited March 13, 2023).

<sup>23</sup> [www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms](http://www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms) (last visited March 13, 2023).

<sup>24</sup> Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, Herald-Tribune (Feb. 22, 2023), [www.heraldtribune.com](http://www.heraldtribune.com) (last visited March 14, 2023).

## Effect of the Bill

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

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

### B. SECTION DIRECTORY:

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

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Not Applicable.

#### 2. Expenditures:

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

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

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

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2023 the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The technical amendment conformed the bill to current statutory language.

This analysis is drawn to the bill as amended by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.