

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1345 Limited Liability Companies

SPONSOR(S): Jacques

TIED BILLS: **IDEN./SIM. BILLS:** SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 2 N	Mawn	Jones
2) Commerce Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A limited liability company (“LLC”) is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act (“LLC Act”). Benefits to forming a business as an LLC include a flexible tax structure and a “vertical liability shield,” which limits the personal liability of the LLC’s members and managers for company obligations.

In 1996, Delaware enacted legislation providing for the formation of a “protected series limited liability company” (“protected series LLC”), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC. In other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of any other protected series of the LLC. Since then, 18 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act (“UPSA”) in 2017, intended as a model law that could be inserted into a state’s existing LLC statutes. The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC’s operating agreement; and rules for applying certain provisions of a state’s existing LLC act to a protected series.

A protected series LLC formed in another state (a “foreign series LLC”) is currently authorized to do business in Florida if it meets all applicable statutory requirements for an LLC formed under the laws of another jurisdiction wishing to do business in Florida. However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes. In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force (“Task Force”) to analyze the UPSA and consider its adoption in Florida. The Task Force ultimately proposed that the LLC Act be modified to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.

HB 1345 adopts the Task Force’s recommendations, creating ss. 605.2101-605.2802, F.S., to allow for the formation of a protected series LLC under Florida law. Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law; will recognize the structure of existing protected series LLCs wishing to do business in Florida; and will provide clarity for lawyers and judges engaging with a business organized as a protected series LLC.

The bill may have an indeterminate fiscal impact on state government but does not appear to have a fiscal impact on local governments. The bill provides an effective date of July 1, 2023, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Limited Liability Companies

A limited liability company (“LLC”) is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act (“LLC Act”). Benefits to forming a business as an LLC include a flexible tax structure¹ and a “vertical liability shield,” which limits the personal liability of the LLC’s members² and managers³ for company obligations.⁴

Forming a Florida LLC

To form an LLC in Florida, the authorized representatives⁵ must first choose a name, which name must be distinguishable from the names of all other business entity names in the records of the Department of State (“DOS”) and include the words “limited liability company” or the abbreviation “LLC” or “L.L.C.”⁶ The authorized representatives must also designate a registered agent to accept legal notices and service of process on behalf of the LLC at a registered office located in Florida.⁷

Once these steps are completed, the authorized representatives must sign and deliver to the DOS for filing articles of organization stating the LLC’s name; the street and mailing addresses of the LLC’s principal office; and the name, street address in Florida, and written acceptance of the LLC’s registered agent.⁸ An LLC is formed when the LLC’s articles of organization become effective⁹ and when at least one person becomes a member at the time the articles of organization become effective.¹⁰

Once formed, the members of the LLC may establish an operating agreement to lay the groundwork for the company, which agreement governs the:

- Relations among the members as members and between the members and the LLC;
- Rights and duties of a person serving in the capacity of manager;
- LLC’s activities and affairs; and

¹ Depending on elections made by an LLC’s members, the IRS will treat an LLC as either a corporation, a partnership, or a disregarded entity. This last option allows for what is known as “pass-through taxation,” in which the LLC’s members claim the LLC’s profits or losses as part of their personal taxes, alleviating the LLC of needing to file its own tax return and preventing the profits and losses from being taxed twice. IRS, *Limited Liability Company (LLC)*, <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc> (last visited April 4, 2023).

² “Member” means a person who: (a) is a member of an LLC under s. 605.0401, F.S., or was a member in a company when the company became subject to the Act; and (b) has not dissociated from the LLC under s. 605.0602, F.S. S. 605.0102(40), F.S.

³ “Manager” means a person who, under the operating agreement of a manager-managed LLC, is responsible, alone or in concert with others, for performing the management functions stated in ss. 605.0407(3) and 605.04073(2), F.S.

⁴ Exceptions to the liability shield include a member’s or manager’s written consent to be liable for an obligation; a statutory claw-back provision for improper distributions; provisions in agreements signed before the LLC’s organization; a member’s or manager’s tortious conduct; a member’s or manager’s action or inaction that results in a violation of criminal law or improper personal gain; liability arising under federal tax laws of the Florida sales and use tax laws; and a violation of fiduciary duties to creditors. S. 605.0304, F.S. Daniel S. Kleinberger, *Limited Liability Limited* (Aug. 28, 2019),

https://www.americanbar.org/groups/business_law/publications/blt/2019/09/limited-liability/ (last visited April 4, 2023).

⁵ One or more persons may act as authorized representatives to form an LLC. S. 605.0201, F.S.

⁶ S. 605.0112, F.S.

⁷ The registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office; another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or a foreign entity authorized to transact business in Florida that is an authorized entity and whose business address is identical to the address of the registered office. S. 605.0113, F.S.

⁸ The articles of organization may contain statements on additional matters as specified in statute. S. 605.0201, F.S.

⁹ Except as otherwise provided, any document delivered to the DOS for filing under the LLC Act may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within five business days before the date of filing. If the record does not specify an effective time or a prior or delayed effective date, the record is effective on the date and at the time the record is accepted, as evidenced by the DOS’s endorsement of the date and time on the filing. S. 605.0207, F.S.

¹⁰ S. 605.0201, F.S.

- Means and conditions for amending the operating agreement.¹¹

An LLC must also deliver to the DOS for filing an annual report stating:

- The LLC's name;
- The LLC's principal office and mailing addresses;
- The date of the LLC's organization;
- The LLC's federal employer identification number¹² or, if none exists, whether one has been applied for;
- The name, title or capacity, and address of at least one person with the authority to manage the LLC; and
- Any additional information that is necessary or appropriate to enable the DOS to carry out the LCC Act.¹³

Foreign LLCs Doing Business in Florida

An entity organized as an LLC under the laws of another jurisdiction (a "foreign LLC") that wishes to do business in Florida must, through an authorized representative, first apply for a certificate of authority to transact business in Florida by delivering an application for such a certificate to the DOS, which application must contain:

- The foreign LLC's name;
- The name of the foreign LLC's jurisdiction of formation;
- The foreign LLC's principal office and mailing addresses;
- The name and street address in Florida of, and the written acceptance by, the foreign LLC's initial registered agent in Florida;
- The name, title or capacity, and address of at least one person with the authority to manage the foreign LLC; and
- Additional information as may be necessary or appropriate in order to enable the DOS to determine whether the foreign LLC is entitled to file an application for a certificate of authority and to determine and assess applicable fees.¹⁴

Unless the DOS determines that such an application does not comply with the LLC Act's filing requirements, the DOS must, upon the payment of all filing fees, file the certificate of authority application.¹⁵ The filing of the application means the foreign LLC has obtained a certificate of authority and is authorized to do business in Florida.¹⁶ Such an LLC must file annual reports as required of a domestic LLC, which reports must include additional information pertinent to a foreign LLC as specified in the LLC Act.¹⁷

Protected Series Limited Liability Companies

In 1996, Delaware enacted legislation providing for the formation of a "protected series limited liability company" ("protected series LLC"), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC; in other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of

¹¹ S. 605.0105, F.S.

¹² The federal employer identification number, also known as a federal tax identification number, is issued by the IRS and used to identify a business for federal tax purposes. IRS, *Employer ID Numbers*, <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers> (last visited April 4, 2023)

¹³ S. 605.0212, F.S.

¹⁴ S. 605.0903, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 605.0212, F.S.

any other protected series of the LLC.¹⁸ Since then, 18 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.¹⁹

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act (“UPSA”) in 2017, intended as a model law that could be inserted into a state’s existing LLC statutes.²⁰ The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC’s operating agreement; and rules for applying certain provisions of a state’s existing LLC act to a protected series.²¹

Florida

A protected series LLC formed in another state (a “foreign series LLC”) is currently authorized to do business in Florida if it meets all applicable statutory requirements for a foreign LLC and registers with the DOS.²² However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes.²³

In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force (“Task Force”) to analyze the UPSA and consider its adoption in Florida.²⁴ The Task Force ultimately proposed that new sections be added to the LLC Act to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.²⁵

Effect of Proposed Changes

HB 1345 adopts the Business Law Section Task Force’s recommendations, creating ss. 605.2101-605.2802, F.S., within the LLC Act to allow for the formation of a protected series LLC under Florida law. The bill refers to a protected series LLC as a “series LLC” and defines the term to mean an LLC with at least one protected series established under s. 605.2201, F.S.

Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law. The bill recognizes the structure of existing protected series LLCs wishing to do business in Florida and provides clarity for lawyers and judges engaging with a business organized as a protected series LLC.

¹⁸ Protected Series LLC Task Force of the Florida Bar Business Law Section, *White Paper: Analysis of Proposed Revisions to Chapter 605* (Jan. 13, 2023), <https://flabizlaw.org/wp-content/uploads/2023/01/White-Paper-of-Proposed-Revisions-to-Chapter-605-for-Protected-Series-LLC-1-13-23-1.pdf> (last visited April 4, 2023).

¹⁹ These states are Wisconsin, Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, Virginia, and Ohio. Puerto Rico also recognizes a protected series LLC.

²⁰ Uniform Law Commission, *The Uniform Protected Series Act*, https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/36953c44-f8c8-04e4-33b4-7217f4c94aa1_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1680018971&Signature=sTvqf2axyQzxEO16hsFUBH9KNgc%3D (last visited April 4, 2023).

²¹ *Id.*

²² See Business Law Section, *supra* note 18.

²³ *Id.*; See s. 605.0902, F.S., authorizing the DOS to require each individual series of a foreign series LLC to make a separate application for a certificate of authority, and to make such other filings as maybe required for purposes of complying with the requirements of the LLC Act as if such series was a separate foreign LLC.

²⁴ See Business Law Section, *supra* note 18.

²⁵ *Id.*

Series LLC Formation

The bill specifies that the provisions of the LLC Act applicable to the formation of an LLC generally also apply to the formation of a series LLC or protected series, except as otherwise provided. The bill also establishes provisions specific to the formation of a series LLC or protected series.

Designation of Protected Series

The bill creates s. 605.2201, F.S., to provide that, with the affirmative vote or consent of all members of an LLC, the LLC may establish a protected series. To establish a protected series after such a vote, the bill requires an LLC to deliver to the DOS for filing a protected series designation, signed by the LLC, stating the names of the LLC and of the protected series to be established, and any other information the DOS requires for filing.

Under the bill, a protected series is established when the protected series designation takes effect. To amend such a designation, a series LLC must deliver to the DOS for filing a statement of designation change, signed by the company, that sets forth:

- The names of the series LLC and of the protected series to which the designation applies;
- Each change to the protected series designation; and
- A statement that the change was approved by the affirmative vote or consent of the members of the series LLC required to make the designated change.

The amendment takes effect when the statement of designation change takes effect.

Protected Series Name

The bill creates s. 605.2202, F.S., to specify that the name of a protected series generally must meet the statutory requirements for LLC names. However, under the bill, the name of a protected series must also:

- Begin with the series LLC's name, including any word or abbreviation required by the LLC Act; and
- Contain the phrase "protected series" or the abbreviation "P.S." or "PS."

If a series LLC changes its name, the LLC must deliver to the department for filing a statement of designation change for each of the LLC's protected series, changing the name of each such series to comply with this section.

Nature of a Protected Series

The bill creates s. 605.2103, F.S. to provide that a protected series is a person²⁶ distinct from all of the following:

- The series LLC, generally.
- Another protected series of the series LLC.
- A member of the series LLC, regardless of whether the member is an associated member²⁷ of the protected series.
- A protected-series transferee²⁸ of a protected series of the series LLC.
- A transferee of a transferrable interest²⁹ of the series LLC.

Powers and Duties of a Protected Series

²⁶ "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, LLC, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

²⁷ An "associated member" is a member of a series LLC that meets statutory requirements and is associated with a protected series.

²⁸ "Protected-series transferee" means a person to which all or part of a protected-series transferable interest of a protected series has been transferred, other than the series LLC company, and includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.

²⁹ "Protected series transferrable interest" means a right to receive a distribution from a protected series.

The bill creates s. 605.2104, F.S., to provide that a protected series:

- Can sue and be sued in its own name.
- Has the same powers and purposes as the series LLC.
- Ceases to exist not later than when the series LLC completes its winding up.
- May not:
 - Be a member of the series LLC;
 - Establish a protected series; or
 - Except as authorized by Florida law other than the LLC Act, have a purpose or power, or take an action, that Florida law other than the LLC Act prohibits an LLC from having or taking.

Liability Limitations

The bill recognizes both the traditional, vertical liability shield of an LLC and the new, horizontal liability shield of a protected series LLC, and establishes the limitations of such shields as they apply to a protected series LLC.

Liability Shield

The bill creates s. 605.2401, F.S., to provide that the following concepts generally apply:

- A series LLC's debt, obligation, or other liability is solely the debt, obligation, or liability of the series LLC.
- A protected series' debt, obligation, or other liability is solely the debt, obligation, or liability of the protected series.
- A series LLC is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of its protected series solely by reason of the protected series being a protected series of the series LLC, or the series LLC:
 - Being or acting as a protected-series manager of the protected series;
 - Having the protected series manage the series LLC; or
 - Owning a protected-series transferrable interest of the protected series.
- A protected series is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the series LLC or another protected series of the series LLC, solely by reason of:
 - Being a protected series of the series LLC;
 - Being or acting as a manager of the series LLC or a protected-series manager of another protected series of the company; or
 - Having the series LLC or another protected series of the company be or act as a protected-series manager of the protected series.

Further, the bill specifies that a person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

- A protected series of a series LLC solely by reason of being or acting as:
 - An associated member, protected-series manager, or protected-series transferee of the protected series; or
 - A member, manager, or a transferee of the series LLC.
- A series LLC solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the such LLC.

Claim Seeking to Disregard Liability Limitation

The bill creates s. 605.2402, F.S., to provide that a claim seeking to disregard a liability limitation pertaining to a series LLC, a protected series, or persons connected thereto, including a principal providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another

person, is governed by the principles of law and equity which would apply if each protected series were an LLC formed separately from the series LLC and distinct from the series LLC and any other protected series of such LLC. The bill also specifies that:

- Failure of an LLC or a protected series to observe the formalities of its activities and affairs is not grounds to disregard a limitation in s. 605.2401(1), F.S., relating to the liability of persons acting in specified roles, but may be grounds to disregard a limitation in s. 605.2101(2), F.S., relating to the liability of a protected series or series LLC.
- This section applies to a claim seeking to disregard a liability limitation applicable to a foreign series LLC³⁰ or a foreign protected series³¹ and comparable to a limitation stated in s. 605.2401, F.S., if:
 - The claimant is a resident of Florida, transacting business in Florida, or authorized to transact business in Florida; or
 - The claim is to establish or enforce a liability arising under Florida law other than the LLC Act or from an act or omission in Florida.

Remedies of Certain Judgment Creditors

The bill creates s. 605.2403, F.S., to specify that the provisions of s. 605.0503, F.S., which provide or restrict remedies available to a judgment creditor³² of a member or transferee of an LLC, apply to a judgment creditor of:

- An associated member or protected-series transferee of a protected series; and
- A series LLC, to the extent the company owns a protected-series transferable interest of a protected series.

Enforcement of Claim Against Non-Associated Assets

The bill creates s. 605.2404, F.S., to specify that, if a claim against a series LLC or a protected series of the LLC has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following:

- A judgment against a series LLC may be enforced against an asset³³ of a protected series of the LLC if the asset:
 - Was a non-associated asset³⁴ of the protected series on the incurrence date;³⁵ or
 - Is a non-associated asset of the protected series on the enforcement date.³⁶
- A judgment against a protected series may be enforced against the series LLC if the asset:
 - Was a non-associated asset of the series LLC on the incurrence date; or
 - Is a non-associated asset of the series LLC on the enforcement date.
- A judgment against a protected series may be enforced against an asset of another protected series of the series LLC if the asset:
 - Was a non-associated asset of the other protected series on the incurrence date; or
 - Is a non-associated asset of the other protected series on the enforcement date.

³⁰ A "foreign series LLC" is a foreign LLC that has at least one foreign series or protected series.

³¹ A "foreign protected series" means an arrangement, configuration, or other structure established by a foreign LLC which has attributes comparable to a protected series established under ch. 605, F.S., regardless of whether the law under which such company is organized refers to "series" or "protected series."

³² A "judgment creditor" is a person with the right to demand the payment of monetary damages awarded as part of a judgment rendered in a civil action. Legal Information Institute, *Judgment Creditor*, https://www.law.cornell.edu/wex/judgment_creditor (last visited April 4, 2023).

³³ "Asset" means property: (a) in which a series LLC or a protected series has rights; or (b) as to which the series LLC or protected series has the power to transfer rights.

³⁴ A "non-associated asset" means: (a) an asset of a series LLC which is not an associated asset of such LLC; or (b) an asset of a protected series which is not an associated asset of the protected series. "Associated asset," meanwhile, means an asset that meets the requirements of s. 605.2301, F.S. In other words, associated assets have only one owner (that is, either the series LLC or the protected series), while non-associated assets are available to the creditors of both the series LLC and the protected series.

³⁵ "Incurrence date" means the date on which a series LLC or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under s. 605.2404, F.S.

³⁶ "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series LLC or protected series in an action seeking to enforce a claim against an asset of the LLC or protected series by attachment, levy, or the like under s. 605.2404, F.S.

Further, under the bill:

- If a claim against a series LLC or a protected series has not been reduced to a judgment, and a law other than the LLC Act authorizes a prejudgment remedy by attachment,³⁷ levy,³⁸ or the like, the court may apply the foregoing as a prejudgment remedy.
- The party asserting that an asset is or was an associated asset of a series LLC or a protected series has the burden of proof on the issue.
- Newly-created s. 605.2404, F.S., applies to an asset of a foreign series LLC or foreign protected series under specified circumstances, including that the asset is real or tangible property located in Florida.

Protected Series LLC Operations and Governance

The bill specifies that the provisions of the LLC Act applicable to LLCs in general, and their members and managers, including, but not limited to, provisions relating to LLC operation, existence, and management; court proceedings; and filings with the DOS and other state or local government agencies, generally apply to each series LLC and to each protected series established under s. 605.2201, F.S. The bill also creates provisions of the LLC Act applicable only to the operation and governance of a series LLC and a protected series.

Protected Series Governing Law

The bill creates ss. 605.2105 and 605.2701, F.S., to provide that Florida law governs:

- The internal affairs of a protected series or foreign protected series.
- The relations between a protected series or foreign protected series and specified parties, including the series LLC or foreign series LLC and another protected series of such LLC.
- The liability of a person for a debt, obligation, or other liability of a protected series or foreign protected series arising under specified circumstances.
- The liability of a series LLC or foreign series LLC for a debt, obligation, or other liability of its protected series arising under specified circumstances.
- The liability of a protected series or foreign protected series for a debt, obligation, or other liability of the series LLC or foreign series LLC arising under specified circumstances.

Operating Agreements

The bill creates s. 605.2106, F.S., to provide that a series LLC's operating agreement generally governs the internal affairs of a protected series and relations between a protected series and specified parties. The bill also specifies:

- How such matters are determined if the operating agreement of a series LLC does not provide for such matters in an authorized manner.
- How certain restrictions on operating agreements imposed by the LLC Act or other laws apply.

Further, the bill creates s. 605.2107, F.S., to provide that an operating agreement for a series LLC may not vary the effect of specified provisions of the statutes created by the bill, except to the extent otherwise specified therein. Under the bill, an operating agreement may not unreasonably restrict the duties and rights of a person who is not an associated member of a protected series to information concerning the protected series, but may impose reasonable restrictions on the availability and use of such information, and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on such use.

Registered Agent

³⁷ An "attachment" is a court order directing the freezing or seizure of specific assets belonging to a debtor, pending the outcome of a civil matter involving a creditor who may obtain a judgment in his or her favor that could be satisfied by the sale or application of the assets. Legal Information Institute, *Attachment*, <https://www.law.cornell.edu/wex/attachment> (last visited April 4, 2023).

³⁸ A "levy" is the court-ordered seizure and sale of property to satisfy a delinquent debt or judgment. Legal Information Institute, *Levy*, <https://www.law.cornell.edu/wex/levy> (last visited April 4, 2023).

The bill creates s. 605.2203, F.S., to provide that the registered agent in Florida for a series LLC is the registered agent in Florida for each protected series of that LLC, but a series LLC must agree with a registered agent that the agent will serve as the registered agent in Florida for the LLC and for each protected series of the LLC before delivering a protected series designation to the DOS for filing. Further, under the bill, a person that ceases to be the registered agent for a:

- Series LLC ceases to be the registered agent for each protected series of such LLC.
- Protected series, other than as a result of the termination of the protected series, ceases to be the registered agent of the series LLC and any other protected series of such LLC.

Finally, the bill provides that, except as otherwise agreed upon by a series LLC and its registered agent, the registered agent is not obligated to distinguish between a process, notice, demand, or other record concerning the series LLC and a process, notice, demand, or other record concerning a protected series of the series LLC.

Service of Process, Notice, Demand, or Other Record

The bill creates s. 605.2204, F.S., to provide that a protected series may be served with a process required or authorized by law by:

- Serving the registered agent of the series LLC or of the protected series; or
- Other means authorized by Florida law other than the LLC Act.

Under the bill, service of a summons and complaint on a:

- Series LLC is notice of such service to each protected series of the series LLC.
- Protected series is notice of such service to the series LLC and any of its other protected series.
- Foreign series LLC is notice of such service to each foreign protected series of such LLC.
- Foreign protected series is notice of such service to the foreign series LLC and any of its other foreign protected series.

Notice to a person as specified above is effective regardless of whether the summons and complaint identifies the person if the summons and complaint name as a party and identify:

- The series LLC or a protected series of the series LLC; or
- The foreign series LLC or a foreign protected series of the foreign series LLC.

However, if a domestic or foreign series LLC or a protected series thereof ceases to have a registered agent, or its registered agent cannot with reasonable diligence be served, process may instead be served in accordance with s. 605.0117(2)-(6), F.S., relating to service of process on an LLC.³⁹ Further:

- Any notice or demand on a domestic or foreign series LLC or a protected series thereof may be given or made in accordance with s. 605.0117(7), F.S.⁴⁰
- This section does not affect the right to serve process, notice, or a demand in any other manner provided by law.

Foreign Series LLCs and Foreign Protected Series

The bill creates s. 605.2703, F.S., to require that an application by a foreign protected series for a certificate of authority to do business in Florida must include specified information, including the name and jurisdiction of formation of the foreign series LLC and the foreign protected series seeking the certificate and, if the foreign series LLC has other foreign protected series, the name, title, capacity, and street and mailing address of at least one person who has the authority to manage the foreign series LLC and who knows specified information about the protected series. The bill also specifies which

³⁹ Under s.605(2)-(6), F.S., if an LLC or registered foreign LLC ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, process may instead be served on a member of a member-managed LLC or registered foreign LLC or on a manager of a manager-managed LLC or registered foreign LLC. Where process cannot be served in this manner, process may instead be served on the secretary of state in a specified manner.

⁴⁰ Under s. 605.0117(7), F.S., any notice or demand on an LLC or registered foreign LLC under the LLC Act may be given or made to any member of a member-managed LLC or registered foreign LLC or to any manager of a manager-managed LLC or registered foreign LLC; to the registered agent of the LLC or registered foreign LLC at the registered office thereof; or to any other address in Florida that is the principal office of the LLC or registered foreign LLC in Florida.

provisions of the LLC Act apply to the application for a certificate of authority by a foreign series LLC, which provisions include the naming requirements and provisions relating to required information.

Further, the bill creates s. 605.2702, F.S., to provide that, in determining whether a foreign series LLC or foreign protected series is transacting business in Florida or is subject to the personal jurisdiction of Florida courts, the activities and affairs of the:

- Foreign series LLC are not attributable to a foreign protected series of such LLC solely by reason of the foreign protected series being a foreign protected series of the LLC.
- Foreign protected series are not attributable to a foreign series LLC or another foreign protected series of the LLC solely by reason of the foreign protected series being a foreign protected series of the foreign series LLC.

Finally, the bill creates s. 605.2704, F.S., to provide that, not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in Florida, or a tribunal of the United States located in Florida:⁴¹

- A foreign series LLC must disclose to each other party:
 - The name and street and mailing address of each of its foreign protected series; and
 - Each foreign protected series manager of and a registered agent for service of process for each foreign protected series.
- A foreign protected series must disclose to each other party:
 - The name and street and mailing address of the foreign series LLC;
 - An agent for service of process for the foreign series LLC;
 - Any other foreign protected series of the foreign series LLC; and
 - Each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

Under the bill, where a foreign series LLC or foreign protected series does not comply with the disclosure requirements under s. 605.2704, F.S., a party to the proceeding may ask the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules or bring a separate proceeding to the court to enforce compliance.

Issuance of Certificate of Status or Authority

The bill creates s. 605.2205, F.S., to provide that, upon the satisfaction of specified requirements, the DOS must issue a certificate of status for a protected series, or a certificate of authority for a foreign protected series, if:

- In the case of a protected series:
 - No statement of dissolution, termination, or relocation pertaining to the series LLC or the protected series has been filed; and
 - The series LLC has delivered to the DOS for filing its most recent annual report, which report includes the name of the protected series, unless an exception applies.
- In the case of a foreign protected series, it is authorized to transact business in this state.

A certificate issued under this section must contain specified information, including:

- In the case of a protected series, the name of the protected series, the series LLC's name, and the date the protected series designation took effect.
- In the case of a foreign protected series, that it is authorized to transact business in this state.

Subject to any qualifications stated by the DOS in a certificate issued under this section, the certificate may be relied on as conclusive evidence of the facts stated therein.

Annual Report Information

⁴¹ The disclosure requirements are tolled under the bill if a foreign series LLC or foreign protected series challenges the personal jurisdiction of the tribunal, until the tribunal determines whether it has personal jurisdiction.

The bill creates s. 605.2206, F.S., to require that, in its annual report, a series LLC must include the name of each its protected series:

- For which the series LLC has previously delivered to the DOS for filing a protected series designation; and
- Which has not dissolved and completed winding up.

A series LLC's failure to comply with this requirement with regard to a protected series prevents issuance of a certificate of status pertaining to the protected series, but does not otherwise affect the protected series.

Associated Assets

The bill creates s. 605.2301, F.S., to provide that only an asset of a protected series may be an associated asset of the protected series, while only an asset of a series LLC may be an associated asset of the series LLC. Further, the bill specifies that an asset of a protected series is an associated asset of the protected series, and an asset of a series LLC is an associated asset of the series LLC, only if the protected series or series LLC creates and maintains specified records that state the name of the protected series or series LLC and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to make specified determinations about the asset. Such records may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

Further, under the bill, a series LLC or protected series may, to the extent authorized by law, hold an associated asset directly or indirectly, except that:

- A protected series may not hold an associated asset in the name of the series LLC or another protected series of such LLC; and
- The series LLC may not hold an associated asset in the name of its protected series.

The bill also provides for the effect of a deed or other instrument granting an interest in real property to or from a series LLC or one or more protected series of a series LLC, or any other instrument otherwise affecting an interest in real property held by such entity, in each case to the extent such deed or other instrument is recorded in the office for recording transfers or other matters affecting real property and specified records are maintained.

Associated Member

The bill creates s. 605.2302, F.S., to specify that only a member of a series LLC may be an associated member of a protected series of such LLC. Under the bill, a member of a series LLC becomes an associated member of a protected series of such LLC if the operating agreement or a procedure established by the operating agreement states:

- That the member is an associated member of the protected series;
- The date on which the member became an associated member of the protected series; and
- Any protected-series transferable interest the associated member has in connection with becoming or being an associated member of the protected series.

Further, the bill specifies:

- That if a person that is an associated member of a protected series is dissociated from the series LLC, the person ceases to be an associated member of the protected series.
- The rights of an associated member of a protected series to vote on or consent to an amendment to the series LLC's operating agreement or any other matter being decided by the members or to maintain a derivative action to enforce a right of the LLC.
- An associated member of a protected series is an agent of the protected series with certain powers to bind the protected series.

Protected-Series Transferrable Interest

The bill creates s. 605.2303, F.S., to provide that a protected-series transferrable interest of a protected

series must be owned initially by an associated member of the protected series or the series LLC. Under the bill, if a protected series has no associated members when established, the series LLC owns the protected-series transferable interests in the protected series. A series LLC may also acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

Further, except as otherwise specified, a provision of the:

- LLC Act which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferable interest of the protected series.
- Operating agreement of a series LLC which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferrable interest of the protected series.

Management

The bill creates s. 605.2304, F.S., to specify that a protected series may have more than one protected-series manager and, if a protected series has no associated members, the series LLC is the protected-series manager. The bill also provides for the determination of any duties of a protected-series manager to:

- The protected series;
- Any associated member of the protected series; and
- Any protected-series transferee of the protected series.

However, the bill provides that, solely by reason of being or acting as a protected-series manager, a person owes no duty to:

- The series LLC;
- Another protected series of the series LLC; or
- Another person in that person's capacity as:
 - A member of the series LLC which is not an associated member of the protected series;
 - A protected-series transferee or protected-series manager of another protected series; or
 - A transferee of the series LLC.

Right of Non-Associated Members to Specified Information

The bill creates s. 605.2305, F.S., to specify the rights to information concerning the protected series of a member of a series LLC which is not an associated member of a protected series of such LLC; a person who was formerly an associated member of a protected series; the legal representative of a deceased associated member of a protected series; and a protected-series manager of a protected series. Such rights generally correspond to the current rights of the counterparts of such persons under the LLC Act. The bill also provides that the court-ordered inspection provisions of s. 605.0411, F.S.,⁴² apply to the such information rights.

Entity Transactions

The bill provides for the role of, and in some instance prohibits the participation of, a series LLC or a protected series in certain entity transactions, including conversions,⁴³ domestications,⁴⁴ interest exchanges,⁴⁵ and mergers.⁴⁶

⁴² S. 605.0411, F.S., applies if an LLC does not allow a member, manager, or other person who complies with applicable law to inspect and copy any records required to be available for inspection. Under this section, the circuit court may summarily order inspection and copying of the records demanded under specified circumstances, and may order the LLC to pay the costs, including reasonable attorney fees, incurred by the member, manager, or other person seeking the records to obtain the order and enforce its rights.

⁴³ A "conversion" is a transaction authorized under ss. 605.1041-605.1046, F.S.

⁴⁴ A "domestication" is a transaction authorized under ss. 605.1051-605.1056, F.S.

⁴⁵ An "interest exchange" is a transaction authorized under ss. 605.1031-605.1036, F.S.

⁴⁶ A "merger" is a transaction authorized under ss. 605.1021-605.1026, F.S.

Entity Transaction Restrictions

The bill creates ss. 605.2602 and 605.2603, F.S., to provide that a protected series and a series LLC, respectively, may not be a party to, be formed, organized, established, or created in, or result from:

- A conversion, domestication, or an interest exchange under the LLC Act or the law of a foreign jurisdiction; or
- A transaction with the same substantive effect as a conversion, domestication, or interest exchange.

The bill also specifies that a:

- Protected series may not be a party to, be formed, organized, established, or created in, or result from a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.
- Series LLC may not, except as otherwise provided by law, be a party to or the surviving company⁴⁷ of a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.

Mergers Authorized

The bill creates s. 605.2604, F.S., to authorize a series LLC to be party to a merger only if:

- Each other party to the merger is an LLC; and
- The surviving company is not created in the merger.

In such a merger, the bill requires that the plan of merger:

- Comply with the requirements for the contents of a plan of merger for an LLC; and
- State specified information in a record, which information depends on whether the protected series is a protected series of a non-surviving company,⁴⁸ a protected series of a surviving company, a relocated protected series,⁴⁹ a continuing protected series,⁵⁰ or a protected series to be established by the surviving company.

Further, the bill creates s. 605.2606, F.S., to require that the articles of merger:

- Comply with the requirements for the articles of merger for an LLC;⁵¹ and
- Include specified attachments, including, as appropriate, a signed statement of designation cancellation and termination; a signed statement of relocation and a statement of protected series designation; or a signed protected series designation.

Effect of Merger

The bill creates s. 605.2607, F.S., to establish the effects of a merger which occur in addition to the effects stated in s. 605.1026, F.S., relating to the merger of an LLC. Under this section:

- As provided in the plan of merger, each protected series of each merging series LLC which was established before the merger is a relocated or continuing protected series or is dissolved, wound up, and terminated.
- Any protected series to be established due to the merger is established.
- Any relocated or continuing protected series is the same person it was before the merger.

⁴⁷ "Surviving company" means a merging company that continues in existence after a merger.

⁴⁸ "Non-surviving company" means a merging company that does not continue in existence after a merger.

⁴⁹ "Relocated protected series" means a protected series of a non-surviving company which, after a merger, continues in uninterrupted existence as a protected series of the surviving company.

⁵⁰ "Continuing protected series" means a protected series of a surviving series LLC which continues in uninterrupted existence after a merger.

⁵¹ Under s. 605.1025, F.S., after a plan of merger is approved, articles of merger must be signed by each merging entity and delivered to the DOS for filing. The articles must also contain specified information, including the merger's effective date and the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity and of each entity that is the surviving entity.

- All property of a relocated or continuing protected series continues to be vested in such protected series.
- All debts, obligations, and other liabilities of a relocated or continuing protected series continue as debts, obligations, and other liabilities of such protected series.
- Except as otherwise provided by law or the plan of merger, all rights, privileges, immunities, powers, and purposes of a relocated or continuing protected series remain in such protected series.

The bill also creates s. 605.2608, F.S., to specify how creditors' rights existing under s. 605.2404, F.S., immediately before a merger may be enforced.

Protected Series Dissolution and Reinstatement

The bill establishes the methods by which a protected series may be voluntarily or is automatically dissolved under the LLC Act.

Events Causing Protected Series Dissolution

The bill creates s. 605.2501, F.S., to provide that a protected series is dissolved, and its activities and affairs must be wound up, upon the occurrence of specified events, including:

- Dissolution of the series LLC;
- Occurrence of an event which the operating agreement states causes dissolution;
- Affirmative vote or consent of all members of the protected series;
- Entry of a court order dissolving the protected series under specified circumstances; and
- The filing of a statement of administrative dissolution⁵² by the DOS.

Winding Up Dissolved Protected Series

The bill creates s. 605.2502, F.S., to provide the manner in which a dissolved protected series must wind up its activities and affairs, including by filing with the DOS articles of protected series dissolution and a statement of designation cancellation, and the extent to which judicial supervision or another judicial remedy is available in such a winding up. Further, the bill specifies that a series LLC has not completed its winding up until each of its protected series has completed its winding up.

Effect of Reinstatement or Voluntary Dismissal Revocation

If a series LLC that has been administratively dissolved is reinstated, or a series LLC that voluntarily dissolved revokes its articles of dissolution, before filing a statement of termination:

- Each protected series of the series LLC ceases winding up; and
- The provisions of s. 605.0708, F.S., relating to revocation of articles of dissolution, apply to the series LLC and to each protected series as specified in law.

Effective Date and Application

The bill creates s. 605.2801, F.S., to provide that s. 605.1102, F.S., relating to the applicability of the Electronic Signatures in Global and National Commerce Act, applies to the sections of the LLC Act created by the bill. The bill also creates s. 605.2802, F.S., to provide that, before July 1, 2024, the sections of Florida law created by the bill govern only:

- A series LLC formed, or a protected series established, on or after July 1, 2023; and
- A domestic LLC formed before July 1, 2024, that becomes a series LLC on or after July 1, 2024, in a specified manner, to permit the filing of one or more protected series designations for one or more protected series.

⁵² Administrative dissolution is governed by s. 605.0714, F.S.

However, the bill specifies that, on or after July 1, 2024, the LLC Act (including the sections of the LLC Act created by the bill) governs all series LLCs and protected series. Further, until July 1, 2024, ss. 605.2402 and 605.2404, F.S., do not apply to a foreign protected series that was established before July 1, 2023, or a foreign LLC that became a foreign series LLC before July 1, 2023.

The bill provides an effective date of July 1, 2023, except as otherwise provided.

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Creates s. 605.2102, F.S., relating to definitions.

Section 3: Creates s. 605.2103, F.S., relating to nature of protected status.

Section 4: Creates s. 605.2104, F.S., relating to powers and duration of protected series.

Section 5: Creates s. 605.2105, F.S., relating to protected series governing law.

Section 6: Creates s. 605.2106, F.S., relating to relation of operating agreement and the protected series provisions of this chapter.

Section 7: Creates s. 605.2107, F.S., relating to additional limitations on operating agreements.

Section 8: Creates s. 605.2108, F.S., relating to application of this chapter to specified provisions of protected series.

Section 9: Creates s. 605.2201, F.S., relating to protected series designation; amendment.

Section 10: Creates s. 605.2202, F.S., relating to protected series name.

Section 11: Creates s. 605.2203, F.S., relating to registered agent.

Section 12: Creates s. 605.2204, F.S., relating to service of process, notice, demand, or other record.

Section 13: Creates s. 605.2205, F.S., relating to certificate of status for protected series.

Section 14: Creates s. 605.2206, F.S., relating to information required in annual report; effect of failure to provide such information.

Section 15: Creates s. 605.2301, F.S., relating to associated asset.

Section 16: Creates s. 605.2302, F.S., relating to associated member.

Section 17: Creates s. 605.2302, F.S., relating to protected-series transferable interest.

Section 18: Creates s. 605.2304, F.S., relating to management.

Section 19: Creates s. 605.2305, F.S., relating to right of a person who is not an associated member of protected series to information concerning protected series.

Section 20: Creates s. 605.2401, F.S., relating to limitations on liability.

Section 21: Creates s. 604.2402, F.S., relating to claim seeking to disregard limitation of liability.

Section 22: Creates s. 605.2403, F.S., relating to remedies of judgment creditor of associated member or protected-series transferee.

Section 23: Creates s. 605.2404, F.S., relating to enforcement of claim against non-associated asset.

Section 24: Creates s. 605.2501, F.S., relating to events causing dissolution of protected series.

Section 25: Creates s. 605.2502, F.S., relating to winding up dissolved protected series.

Section 26: Creates s. 605.2503, F.S., relating to effect of reinstatement of series limited liability company or revocation of voluntary dismissal.

Section 27: Creates s. 605.2601, F.S., relating to entity transactions involving a series limited liability company or a protected series restricted; definitions.

Section 28: Creates s. 605.2602, F.S., relating to protected series may not be party to entity transaction.

Section 29: Creates s. 605.2603, F.S., relating to restriction on entity transaction involving series limited liability company.

Section 30: Creates s. 605.2604, F.S., relating to merger authorized; parties restricted.

Section 31: Creates s. 605.2605, F.S., relating to plan of merger.

Section 32: Creates s. 605.2606, F.S., relating to articles of merger.

Section 33: Creates s. 605.2607, F.S., relating to effect of merger.

Section 34: Creates s. 605.2608, F.S., relating to application of s. 605.2404 after merger.

Section 35: Creates s. 605.2701, F.S., relating to governing law; foreign series limited liability companies and foreign protected series.

Section 36: Creates s. 605.2702, F.S., relating to no attribution of activities constituting transacting business or for establishing jurisdiction.

Section 37: Creates s. 605.2703, F.S., relating to certificate of authority for a foreign series limited liability company and foreign protected series; amendment of application.

- Section 38:** Creates s. 605.2704, F.S., relating to disclosure required when a foreign series limited liability company or foreign protected series is a party to a proceeding.
- Section 39:** Creates s. 605.2801, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.
- Section 40:** Creates s. 605.2802, F.S., relating to transitional provisions.
- Section 41:** Amends s. 605.0103, F.S., relating to knowledge; notice.
- Section 42:** Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will affect how business entities, both foreign and domestic, may organize or register and do business in the state, which will have an indeterminate economic impact on such entities. To the extent that a business entity obtains a financial benefit from organizing or registering as a series LLC under Florida law, this may be a positive economic impact.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the DOS as it may attract foreign series LLCs, and newly-forming businesses wishing to organize as a series LLC, to register in or organize under Florida law, which, in turn, may increase the workload of the DOS. To the extent that the DOS can absorb any such increase within existing resources, the bill will have no fiscal impact on the DOS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. The bill does not appear to affect county or municipal governments.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

S. 605.0214, F.S., already vests the DOS with the authority reasonably necessary to administer the LLC Act efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter. Thus, additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES