

**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 Commerce and Tourism

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BILL: SB 1698

INTRODUCER: Senator Baxley

SUBJECT: Annual Corporate Reports and Fees

DATE: March 23, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	<b>Favorable</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 1698 permits domestic and foreign corporations to file either an annual or a biennial report with the Florida Department of State. Currently, those corporations must file an annual report and remit related fees each year.

**II. Present Situation:**

The Florida Department of State (Department) consists of six divisions: the Division of Elections; Division of Historical Resources; Division of Library and Information Services; Division of Cultural Affairs; Division of Administration; and Division of Corporations.<sup>1</sup>

The Division of Corporations (Division) maintains a registry for recording and retrieving commercial information that is filed or registered with the Department. In total, the Division maintains more than eight million records, including a variety of business entity filings such as annual reports, articles of incorporation or other forms of business entity organization, trade and service mark registrations, judgment lien filings, and fictitious name registrations.<sup>2</sup> The Division determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its database of records. In fiscal year 2015-2016, the Division received and processed 1,649,335 total annual reports from domestic, foreign, not-for-profit corporations, and various other business entities.<sup>3</sup>

Chapter 607, F.S., the “Florida Business Corporation Act,” requires all for-profit and foreign corporations that are authorized to transact business in Florida to file an annual report with the

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<sup>1</sup> Section 20.10, F.S.

<sup>2</sup> Florida Department of State, *Overview of the Division of Corporations*, (Dec. 2016), (on file with the Committee on Commerce and Tourism).

<sup>3</sup> Conversation with Department of State employee (Mar. 17, 2017).

Department between January 1 and May 1 of each year.<sup>4,5</sup> A domestic or foreign corporation is subject to a \$61.25 annual report filing fee,<sup>6</sup> in addition to an \$88.75 supplemental corporate fee<sup>7</sup> (for a total fee of \$150 each year). Over the past 5 years, the Department has collected an average of \$82 million in annual report fees; \$114 million in corporate supplemental fees; and \$37 million in late fees each year.<sup>8</sup>

The corporation's annual report must include the following information regarding the corporation:<sup>9</sup>

- Its name, and the state or country in which it is incorporated;
- When it was incorporated, or admitted to do business in Florida;
- Its principal office and mailing addresses;
- Its federal employer identification number (FEIN), or if it does not have one, a statement of whether or not an FEIN has been requested;
- Its directors' and principal officers' names and business addresses;
- Its registered agent's name, and the street address of the registered office at which the agent is located; and
- Any additional information the Department may deem necessary.

A corporation's failure to file an annual report by May 1 results in a \$400 late filing fee, in addition to the underlying report and supplemental corporate fees.<sup>10</sup> Alternately, if a corporation fails to file an annual report by the close of business on the third Friday in September, the Department may institute proceedings to administratively dissolve the domestic corporation, or revoke a foreign corporation's authority to transact business in the state.<sup>11</sup> In calendar year 2016, the Department administratively dissolved 281,544 corporations and business entities out of a total of 2,033,115 active business entities registered with the Department.<sup>12</sup>

### III. Effect of Proposed Changes:

**Section 2** amends s. 607.1622, F.S., to permit the Department to prescribe the form of an annual and biennial report. This section further requires all domestic and foreign corporations to file either an annual or a biennial report.

**Section 1** amends s. 607.0122, F.S., to make conforming changes to the document filing fee schedule applied to corporations. Specifically, the bill amends the schedule to add a biennial

<sup>4</sup> Section 607.1622, F.S.; Florida Department of State, *File Annual Report*, available at: <http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/> (last visited Mar. 21, 2017).

<sup>5</sup> Not-for-profit corporations are required to file an annual report under s. 617.1622, F.S. and partnerships and other related business entities are required to file an annual report under s. 620.1210, F.S. Their filing fees are \$61.25 and \$411.25 respectively. *See* ss. 617.0122(17), and 620.1109(7), F.S.

<sup>6</sup> Section 607.0122(17), F.S.

<sup>7</sup> Sections 607.0122(23), 607.193, F.S.

<sup>8</sup> Florida Department of State, *SB 1698 Agency Analysis*, p. 3 (Mar. 21, 2017) (on file with the Committee on Commerce and Tourism).

<sup>9</sup> Section 607.1622, F.S.

<sup>10</sup> Section 607.193(2)(b), F.S.

<sup>11</sup> Sections 607.1420-.1421; 607.1530-.1531; 607.1622(8) F.S.

<sup>12</sup> Conversation with Department of State representative (Mar. 17, 2017); Florida Department of State, *Yearly Statistics*, available at: <http://dos.myflorida.com/sunbiz/about-us/yearly-statistics/> (last visited Mar. 21, 2017).

report filing fee of \$122.50 (double the current annual report filing fee), and a biennial supplemental corporate fee of \$177.50 (double the current annual supplemental corporate fee).

**Sections 3 through 18** amend ss. 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193, F.S., to make conforming, technical changes throughout ch. 607, F.S.

**Section 19** provides an effective date of January 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may allow for a more efficient report filing process for corporations, which will be able to submit required reports every other year instead of annually. Corporations that opt to file biennially will also be subject to fewer possible late filing fees.

C. Government Sector Impact:

The Department may be required to amend certain forms to reflect a corporation's ability to file its annual report either annually or biennially. Overall, however, the ability for corporations to file biennial reports may result in a reduction of workload for the Department's employees.

The Department cites a need for "significant financial support" to re-design multiple platforms to accommodate the biennial filing option, including its:

- Information technology systems;
- Physical annual report filing documents (paperwork);
- Administrative dissolution and revocation process;
- Certification process; and

- Late fees and reinstatement fees for filing of annual or biennial reports.<sup>13</sup>

Additionally, the Department states that biennial filings will negatively affect the state's annual revenue stream by reducing the number of late fees that it may collect.<sup>14</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

Biennial reporting may potentially result in a greater lapse in time between when a corporation ceases to be active and the Department's detection of the corporation's inactivity and resulting administrative dissolution. The Department also states that biennial reporting will affect the validity of information relating to corporations that it maintains on sunbiz.org.<sup>15</sup> This may impact the public's ability to find valid information on corporations, as well as the Department's ability to make legally required notifications to corporations.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 607.0122, 607.1622, 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193.

#### **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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<sup>13</sup> Florida Department of State, *SB 1698 Agency Analysis* (Mar. 21, 2017) (on file with the Committee on Commerce and Tourism).

<sup>14</sup> *Id.*

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