

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

SPONSOR(S): State Affairs Committee and Constitutional Rights, Rule of Law & Government Operations Subcommittee, McFarland, LaMarca, and others

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

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 909 passed the House on April 26, 2023, as SB 948.

The Department of State (DOS) is the central location for filing a number of documents as required by statute, such as service of process for legal proceedings, articles of incorporation, and registration of fictitious names. In receiving and filing required records under 15 different statutory chapters, DOS may accept submission of such documents electronically.

The bill authorizes DOS to implement a password-protected system for the electronic filing of certain records and request those using the password-protected system to verify their identity. If DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division of Corporations within DOS on January 1, 2024, a code to participate in the system.

The bill may have a negative fiscal impact on state government, but does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on May 11, 2023, ch. 2023-53, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

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,¹ articles of incorporation,² or registration of fictitious names.³ In receiving and filing required records under 15 different statutory chapters, DOS may accept submission of such documents electronically.⁴ 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;
- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;
- 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;
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;
- 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;
- 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;
- 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;
- 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 as well as an annual report, among other documents. General partnerships must file a partnership registration statement and an annual report, among other documents;
- 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;
- 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;"
- 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; and,

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

² S. 607.0203, F.S.

³ S. 865.09, F.S.

⁴ S. 15.16(3), F.S.

- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations (Division) within DOS.

Division of Corporations

The Division collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.⁵ The Division also serves as the State's central filing location for filing:

- Business entities;
- Trade and service marks;
- Fictitious name registrations;
- Judgment and federal tax liens;
- Uniform commercial code financing statements; and
- Notary commissions and apostilles.⁶

Sunbiz

All files maintained electronically by the Division may be accessed through its website — Sunbiz.⁷ Records available through Sunbiz are easily accessible and searchable, including the filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. Corporations file and upload their records and pay fees through Sunbiz.⁸ All information filed electronically with the Division may be readily changed. If the submitted document meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by the Division without further inquiry.⁹

Effect of the Bill

The bill authorizes DOS to implement a password-protected system for the electronic filing of certain records and require filers to produce supplemental materials to use the password-protected system, including, but not limited to, an original signature of the filer and verification of credentials. If DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division on January 1, 2024, a code to participate in the system. DOS is authorized to require verification of the identity of an authorized account holder prior to allowing the account holder to electronically file a record with DOS.

⁵ Florida Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/>, (last visited March 16, 2023).

⁶ *Id.*

⁷ Florida Department of State, *Search Records: Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks*, <https://dos.myflorida.com/sunbiz/search/> (last visited March 10, 2023).

⁸ Florida Department of State, *Start E-Filing*, <https://www.dos.myflorida.com/sunbiz/start-business/efile/> (last visited March 10, 2023);

⁹ Florida Department of State, *Florida Department of State's Duties and Records*, <https://dos.myflorida.com/sunbiz/manage-business/mind-your-sunbizness/sunbizness-identity-theft-resource-guide/florida-department-of-state-s-duties-and-records/>, (last visited March 10, 2023); see also Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, *Herald-Tribune* (Feb. 22, 2023), www.heraldtribune.com (last visited March 2, 2023).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.