

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1149 Business Entity Filing Fees

SPONSOR(S): Finance & Tax Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt	Langston

SUMMARY ANALYSIS

This bill makes a number of changes to the filing fees paid by various business entities to the Division of Corporations within the Department of state. Currently, the fees for filing forms vary widely depending on the type of entity that is filing them. Entity types include corporations for profit, corporations not for profit, limited liability companies, limited partnerships, and general partnerships.

When first registering with the division, each entity (other than general partnerships) must file two forms – articles of incorporation (or similar), and designation of a registered agent. Fees for doing so vary from \$70 for corporations for profit to \$1,000 for limited partnerships. The bill combines the fees for these two documents into one fee and sets the fee at \$70 for all entity types.

Each year, businesses must file an annual report with the division. Corporation for profit, LLCs, and limited partnerships are also subject to a supplemental corporate fee which must be paid annually. Combined, these fees range from \$25 for general partnerships to \$500 for limited partnerships. The bill eliminates the supplemental corporate fee and sets the annual report fee at \$150 for all entity types.

The bill also makes various other fees uniform across entity types. Most fees are set at \$35. There is also a \$400 late fee for remitting the annual report fee late, and a \$400 reinstatement fee if the entity is administratively dissolved.

The Revenue Estimating Conference estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact. Local government revenues are not affected.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

In order to do business under a fictitious name in Florida, a person must either register the fictitious name with the Division of Corporations (division) of the Department of State or be exempt from such requirement¹. In order to be exempt, a business must be organized by a person who is licensed to practice law in the state of Florida, a person who is licensed by the Department of Business & Professional Regulation or the Department of Health to practice his or her profession, or registered with the division as a corporation, partnership, or other commercial entity.

Florida statute requires that certain documents be filed with the division in order for a business to be organized as a corporation, partnership, or other commercial entity. Each registered business must submit an annual report to the division detailing updated contact information, identities of key persons related to the business, etc, along with a fee for filing the annual report. There are additional fees for other filings with the division which must be submitted in some circumstances (e.g. changing a designated agent, dissolving the entity, articles of merger).² There is a great deal of variation in the cost associated with filing these forms depending on the type of entity filing the form. For example, the cost to file a form changing a designated agent costs \$35 for a corporation and \$25 for an LLC. According to the division, there is no additional work or cost associated with processing this form if it comes from a corporation as compared to an LLC.

Corporations for Profit (Chapter 607)

In order to organize as a corporation for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent (recipient of service of process) at a cost of \$35 for a total of \$70 in startup costs. Each year the corporation must file an annual report by May 1. The annual report fee is \$61.25. In addition to the annual report fee, the corporation must annually remit a supplemental corporate fee in the amount of \$88.75.³ The annual fees total \$150. Most other corporation filings cost either \$35. In calendar year 2012, there were 109,107 filings to organize a new corporation, and 634,248 annual filings from existing corporations.⁴

Limited Liability Companies (Chapter 608)

In order to organize as a limited liability company (LLC), the person wishing to organize must file articles of organization at a cost of \$100 and registration of a designated agent at a cost of \$25, for a total of \$125 in startup costs. The cost for the annual report is \$50. The total annual fees, including the supplemental corporate fee, are \$138.75. Most other filings cost \$25. In calendar year 2012, there were 169,450 new LLCs, and 495,418 annual reports filed by existing LLCs.

Corporations Not for Profit (Chapter 617)

In order to organize as a corporation not for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent at a cost of \$35, for a total of \$70 in startup costs. The cost of the annual report is \$61.25. Corporations not for profit are not subject to the supplemental corporate fee. Most other filings cost \$35. In calendar year 2012, there were 12,538 new corporations not for profit, and 137,858 annual reports by existing corporations not for profit.

Limited Partnerships (Chapter 620, Part I)

In order to organize as a limited partnership, the people wishing to organize must file a certificate of limited partnership at a cost of \$965, and designation of a registered agent at a cost of \$35 for total startup costs of \$1,000. The annual report fee is \$411.25. The total annual fee, including the

¹ Section 865.09, F.S.

² Sections 607.0122, 608.452, 617.0122, 620.81055, & 620.1109, F.S.

³ Section 607.193, F.S.

⁴ Figures from Division of Corporations email on file with House Finance & Tax Subcommittee

supplemental corporate fee, is \$500. Most other filings cost \$52.50. In calendar year 2012, there were 1,312 new limited partnerships and 19,308 annual filings by existing limited partnerships.

General Partnerships (Chapter 620, Part II)

In order to organize as a general partnership, the people wishing to organize must file a partnership registration statement at a cost of \$50. They do not need to register a designated agent. In the event that it is organized as a limited liability partnership, it must file an annual report at a cost of \$25. General partnerships are not subject to the supplemental corporate fee. Most other fees are \$25. In calendar year 2012, there were 23 filings for new general partnerships and 3,034 annual filings by existing limited liability partnerships.

Supplemental Corporate Fee, Late Fees, and Disposition of Revenues

When originally created, all of the fees discussed in this analysis were deposited into the Corporations Trust Fund, which was used to fund the operations of the division along with some cultural programs. In 1990, the Legislature added the supplemental corporate fee for some entity types, which was deposited into general revenue. They also increased all filing fees at that time and directed a portion of the filing fees into general revenue. Late fees were also instituted (currently \$400), which were charged in the event that the supplemental corporate fee was not remitted by May 1. In 2003, the Corporations Trust Fund was eliminated, and since then all revenues collected pursuant to these chapters have been deposited into general revenue.

Proposed Changes

The bill makes the fees for various filings uniform across all entity types. It combines the required initial filings (e.g. articles of incorporation and designation of a registered agent) into one fee of \$70 for all entity types. It eliminates the supplemental corporate fee, and sets the annual report fee at \$150 for all entity types. The late fee, which previously only applied to corporations for profit, LLCs, and limited partnerships, would now apply to all entity types at a rate of \$400. The fee for seeking reinstatement after administrative dissolution is standardized at \$400. The fees for certified copies of documents and certificates of status are set at \$8.75, which mirrors the division's current practice (though not current statute, which authorizes higher fees for certified copies). Certificates of domestication for foreign corporations are set at \$50. All other fees are set to \$35.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends 607.1022, F.S. to change filing fees for corporations for profit.

Section 2: Repeals section 607.193, F.S., which authorizes the supplemental corporate fee.

Section 3: Amends 608.452, F.S., to change filing fees for limited liability companies.

Section 4: Amends 617.0122, F.S., to change filing fees for corporations not for profit.

Section 5: Amends 620.1109, F.S., to change filing fees for limited partnerships.

Section 6: Amends 620.81055, F.S., to change filing fees for general partnerships.

Section 7: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on March 8, 2013, and estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill changes fees which must be paid by many businesses in Florida. In some cases the fees are increased, while in other cases the fees are decreased.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES