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Committee on Commerce

AGENCY SUNSET REVIEW OF THE DIVISION OF CORPORATIONS OF THE DEPARTMENT OF STATE

Statement of the Issue

Under the Florida Government Accountability Act, most state agencies are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, the Legislature will review the Departments of Children and Families, Community Affairs, Management Services, and State. The Senate Commerce Committee is the primary sunset review committee for the Division of Corporations (division) of the Department of State (department), with assistance from the Senate Transportation and Economic Development Appropriations Committee.

The objective of this Issue Brief is to provide background information to assist in the preliminary examination of the division. This research may be useful for guiding the discussion in the 2009 Legislative Session and identifying areas for further research.

It is anticipated that a related Interim Project in 2009 will provide additional information, findings related to the division’s effectiveness and efficiency, and recommendations on the necessity of continuing the duties and responsibilities assigned to the division.

Discussion

BACKGROUND

Sections 11.901-.920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;

- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees¹ must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submissions, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The review process for the Departments of Children and Families, Community Affairs, Management Services, and State began in July, 2008, when the departments submitted their respective statutorily mandated agency reports.

The Senate Commerce Committee is the primary sunset review committee for review of the Division of Corporations within the Department of State. The Senate Transportation and Economic Development Appropriation Committee is assisting in this review.

¹ Senate Committees include: Children, Families, and Elder Affairs; Commerce; Community Affairs; Ethics and Elections; Governmental Operations; and Military Affairs and Domestic Security, together with their respective Appropriations Committee.

EVALUATION METHOD

Based upon statutory directives and a review of previous sunset reports, Senate staff has developed the following guidelines to be used in a preliminary and subsequent review of the agencies, their programs, and their advisory committees. Guidelines include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?²
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?³
- What initiatives has the agency undertaken to increase program efficiency?
- Are there management tools in place to appropriately measure program performance?

Guidelines for Agency Advisory Committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency if the advisory body were abolished?⁴
- Is the advisory body representative of the public and stakeholders impacted by their actions?

This Issue Brief will address the issues identified in the guidelines and provide an overview of the agency and its programs.

DIVISION MISSION / PROGRAM DESCRIPTIONS

Section 20.10, F.S., creates the Department of State (department). The head of the Department of State is the Secretary of State, who is appointed by the Governor, subject to confirmation by the Senate. The Secretary of State is the chief election officer of the state,⁵ Florida's Chief Cultural Officer,⁶ and as head of the department, is the custodian of specified state records.⁷

The department states that the mission of the Department of State is:

To enhance the quality of life for every Floridian and its communities by preserving and promoting Florida's rich historical and cultural heritage; by supporting our local libraries and providing access to information through our state library and archives; by ensuring fair and accurate elections; and by ensuring the integrity of Florida's business community by recording entity creations and certain financial transactions.⁸

² This issue will not be addressed in this Issue Brief, but rather in a subsequent report related to the Sunset Review, which may include findings and recommendations.

³ This issue will not be addressed in this Issue Brief, but rather in a subsequent report related to the Sunset Review, which may include findings and recommendations.

⁴ This issue will not be addressed in this Issue Brief, but rather in a subsequent report related to the Sunset Review, which may include findings and recommendations.

⁵ Section 97.012, F.S.

⁶ Section 15.18, F.S.

⁷ Chapter 15.01 F.S.

⁸ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page I-7.

The department is divided into six divisions:

- The Division of Elections;
- The Division of Historical Resources;
- The Division of Library and Information Services;
- The Division of Cultural Affairs;
- The Division of Administration; and
- The Division of Corporations.

The Division of Corporations (division), is

“...the state’s central repository for the filing of business entities, trade and service marks, judgment liens, fictitious names, notary commissions, cable franchises, and lien registrations. Additionally, the Division provides a statewide registry that certifies/authenticates records and documents and serves as an information resource for virtually all business activities in Florida. The Division has no regulatory responsibilities. In the performance of its duties, the Division functions in a strictly ministerial capacity.”⁹

The Division of Corporations maintains in excess of eight million records and annually files over one million commercial documents to protect the public...Its Web site (www.sunbiz.org) receives over 12.5 million hits per week, providing users with easy access to filing information and data, free of charge.¹⁰

Public information about corporate and other business entity filing activity protects consumers and businesses and ensures that commerce is conducted by properly registered business entities. This public information database serves as a deterrent to unscrupulous business practices and is used by law enforcement, the business community and citizens as a resource to locate businesses operating in Florida.¹¹

The department reports that the repository and registry services provided by the division “are essential state government functions that contribute to the stability of the business environment and thus the state’s economy.”¹²

In 2000, OPPAGA published a Justification Review of the Division of Corporations, finding the repository and registry services provided by the division serve a “public benefit of ensuring accountability and preventing misrepresentation within Florida’s business environment.”¹³

There are five bureaus within the Division of Corporations. The Bureaus of Commercial Information Services and Commercial Recordings provide filing and informational services. The Bureaus of

⁹ *Id.*, Page IV-59. As a ministerial filing agency, the division is not required or authorized by law to verify the accuracy of information submitted by business entities and individuals. The division staff accepts and processes the documents that meet statutory requirements and are accompanied by the proper fee. The division has no regulatory function. Also see: http://www.sunbiz.org/corp_div.html

¹⁰ *Id.*, Page I-8.

¹¹ *Id.*, Page I-8.

¹² *Id.*, Page IV-59, quoting OPPAGA Justification Review: Corporations Program Operates Well; Its Fee System Needs Streamlining. Report No. 00-10, p. 2.

¹³ OPPAGA Justification Review: Corporations Program Operates Well; Its Fee System Needs Streamlining, Report No. 00-10, September 2000, p.2.

Corporate Applications and System Support, Departmental Applications, and Departmental Operations and System Support provide support to the division and the department as a whole.¹⁴

The division is responsible, through these respective bureaus, for registering or authenticating documents related to the following:¹⁵

- Business Entities, since 1868;
- The Uniform Commercial Code (UCC), since 1965;
- Fictitious Names, since 1991;
- Public and Civil-Law Notary Commissions, since 1845;¹⁶
- Judgment Liens, since 2001;
- Apostilles, since 1845;¹⁷
- Federal Tax Lien Registrations, since 1993;
- Substitute Service of Process, since 1967;
- Trademarks and Service Marks, since 1868; and
- Cable Franchises, since 2007.

The department reports that the Secretaries of State for the other 49 states are assigned many similar functions.¹⁸ Notable exceptions include New Jersey, which requires most of these registrations or authentications be accomplished through the Division of Revenue, Business Support Services; and Maryland, which requires corporation UCC filings be done through the State Department of Assessments and Taxation. In addition, some states require liens be filed with county courts.

The following is a brief description of the types of information registered or authenticated by the division, or other assigned responsibilities of the division.

Business Entities

The division is a repository for the following Florida businesses and foreign businesses operating in Florida:¹⁹

- For-Profit Corporations (ch. 607, F.S.);
- Limited Liability Companies (ch. 608, F.S.);
- Not-For-Profit Corporations (ch. 617, F.S.);
- Limited Partnerships (Part 1, ch. 620, F.S.);
- Partnerships (Part II, ch. 620, F.S.);
- Agricultural Cooperative Marketing Associations (ch. 618, F.S.);
- Non-Profit Cooperative Associations (ch. 619, F.S.);
- Professional Service Corporations and LLCs (ch. 621, F.S.); and
- Common Law Declaration of Trusts (ch. 609, F.S.).

These chapters regulate the formation, operation, merger, conversion, and dissolution of businesses. These businesses are required to register with the division and file annual reports.²⁰ The registrations and reports identify officers, managers, managing members, registered agents, or partners.

¹⁴ http://www.sunbiz.org/corp_div.html

¹⁵ Unless otherwise noted, the department was the state entity initially assigned this responsibility. Information provided by the department, July 18, 2008, and August 20, 2008, and September 8, 2008. Documents on file with the committee.

¹⁶ This responsibility was housed in the Executive Office of the Governor between 2002 and 2003.

¹⁷ This responsibility was housed in the Executive Office of the Governor between 1998 and 2001.

¹⁸ Documents on file with the committee. Also see www.nass.org, Last visited July 11, 2008, and <http://www.iaca.org>

¹⁹ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-64-66.

The division reported that in FY 2007-8, over 271,000 registrations were filed.²¹ In addition, over 1.7 million amendments, updates, administrative dissolution or revocations, and disclosures were filed.²²

*Uniform Commercial Code (UCC) Financing Statement Filings*²³

The Uniform Commercial Code (UCC) is a model state code that comprises 11 substantive articles. Article 9 of the UCC provides a statutory framework governing secured transactions. Each state, including Florida, has enacted Article 9 as the state's secured transaction statute.²⁴ A "secured transaction" is a business arrangement in which a debtor pledges personal property to a creditor to guarantee payment of an obligation.²⁵ Secured transactions are executed through security agreements. If a debtor defaults under the terms of the security agreement, the creditor may take possession of the debtor's personal property, known as collateral, and sell the collateral to satisfy the obligation. The creditor's interest in the debtor's property is called a security interest.

There are two key events in the creation of a security interest: attachment and perfection.²⁶ Attachment occurs when the security interest becomes effective between the creditor and the debtor as specified in the security agreement. Perfection occurs when the creditor establishes his or her priority in relation to other creditors of the debtor in the same collateral. The creditor with priority may use the collateral, before other creditors subsequent in priority, to satisfy the debtor's obligation when the debtor defaults. Perfection occurs when a financing statement is filed as a public record. Generally, creditors have priority in the order they filed the financing statements.

Article 9 relies upon financing statements, filed as public records, as the means for creditors to determine if any security interests precede theirs. Thus, financing statements function as notice to creditors. Consequently, a subsequent secured creditor cannot claim that his or her extension of credit was made in ignorance of prior security interests found in a public record. Moreover, because financing statements are public records, a secured creditor cannot complain of the priority of prior interests. Although the terms of security agreements and the courts ultimately determine the settlements of loan defaults and bankruptcies, having secured transaction information available to other potential lenders assists in preventing the same collateral from unknowingly being used to secure multiple loans.

Section 679.5011, F.S., requires most financing statements²⁷ be filed with the Florida Secured Transaction Registry, which is established in s. 679.527, F.S., as a central database for filing all documents related to secured transactions.²⁸ The Department of State is required to contract with a

²⁰ For-Profit Corporations, s. 607.0120, F.S.; Limited Liability Companies, s. 608.405, F.S.; Not-For-Profit Corporations, s. 617.01201, F.S.; Limited Partnerships, s. 620.1201(1), F.S.; Partnerships s. 620.8105(3)(a), F.S.; Agricultural Cooperative Marketing Associations, s. 618.04(8)(b), F.S.; Non-Profit Cooperative Associations, s. 619.04, F.S.; Professional Service Corporations and LLCs, s. 621.05 & 051, F.S.; and Common Law Declaration of Trusts, s. 609.02, F.S.

²¹ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

²² *Id.*

²³ This information was adapted from the bill analysis for CS/SB 386 (April 11, 2001), Senate Commerce Committee, which was adapted from information provided by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Also See <http://www.nccusl.org>

²⁴ Chapter 679, F.S.

²⁵ *Black's Law Dictionary* 1357 (7th ed. 1999).

²⁶ See National Conf. of Comm'rs on Uniform State Laws, *Summary of Unif. Commercial Code, Revised Article 9, Secured Transactions*, at http://www.nccusl.org/uniformact_summaries/uniformacts-s-uccra9st1999.htm (last visited Apr. 8, 2001).

²⁷ See s. 679.5011(1)(a), F.S., for the limited exceptions.

²⁸ See s. 679.527, F.S. Previous to the creation of the Registry, s. 679.401(1)(c) & (5), F.S., which was repealed by ch. 2001.198, L.O.F., required the department to maintain a statewide central registry for filing UCC filing statements.

private vendor to conduct the administrative and operational aspects of this registry, which includes collecting filing fees.²⁹

The division reported that in FY 2007-8, a total of 249,639 UCC filings were recorded.³⁰

Fictitious Names

Section 865.09(2)(a), F.S., defines a fictitious name as “any name under which a person transacts business in this state, other than the person's legal name.” Businesses or individuals that wish to use a fictitious name must register this information with the department.³¹ The purpose of registration is to provide a public record of the identity of the fictitious name.³²

The division reported that in FY 2007-08, a total of 134,794 fictitious names filings were recorded.³³

Notaries Public and Civil Law Notaries

A notary public is a

“public officer whose function it is to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgements of deeds and other conveyances, and certify them, and to perform certain official acts, chiefly in commercial matters.”³⁴

Simply stated, a notary public verifies the identities of individuals involved in legal transactions. In Florida, there are two types of notaries: Notaries Public and Civil Law Notaries.

Chapter 117, F.S., provides for the appointment or certification of Notaries Public. The division and the Executive Office of the Governor have overlapping responsibilities regarding the administration of the program. The Executive Office of the Governor appoints, investigates complaints, and suspends notary publics. The division issues notary public commissions and certifications of notary publics' status, records the results of actions taken by the Executive Office of the Governor against a notary public, and approves and records the required bond. The department notes that “(c)oordination between the Division and the Governor’s Office is essential in carrying out the duties and responsibilities of the notary public program.”³⁵

Chapter 118.10, F.S., provides for the appointment of Civil-Law Notaries. A civil-law notary is a person who is a member in good standing of The Florida Bar, who has practiced law for at least 5 years, and who is appointed by the Secretary of State as a civil-law notary.³⁶ A civil-law notary is authorized to “authenticate or certify any document, transaction, event, condition, or occurrence”³⁷ and has “all the

²⁹ See ch. 2001-200 and 2001-198, L.O.F.

³⁰ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

³¹ Section 865.09(3), F.S.

³² Section 865.09(8), F.S.

³³ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

³⁴ 66 C.J.S. *Notaries* s. 2 (2007); see also *Commercial Union Ins. Co. of New York v. Burt Thomas-Aitken Const. Co.*, 230 A.2d 498, 499 (N.J. 1967). The dictionary defines a notary public as a “person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments.” BLACK’S LAW DICTIONARY (8th ed. 2004).

³⁵ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-68.

³⁶ Section 118.10(1)(b), F.S.

³⁷ Section 118.10(3), F.S.

power of a notary public under any law of this state.”³⁸ The Secretary of State is prohibited from regulating and disciplining “any civil-law notary for, or with regard to, any action or conduct that would constitute the practice of law in this state, except by agreement with The Florida Bar.”³⁹

The division reported that in FY 2007-08, a total of 111,961 Public Notary Commissions (111,852) and Civil Law Notary Commissions (109) were issued.⁴⁰

Judgment Liens

Pursuant to s. 55.202, F.S., a judgment lien securing the unpaid amount of any money judgment may be acquired by the holder of a judgment on a judgment debtor’s interest in all personal property in this state other than fixtures, money, negotiable instruments, and mortgages. A judgment lien is acquired by filing a judgment lien certificate with the division, and paying the required filing fee.⁴¹ This filing establishes priority from which proceeds from the sale of the debtor’s property will be distributed to pay all creditors. The division reviews each filing for statutory compliance and maintains the liens in a database.⁴²

Judgment liens have been maintained by the division since 2001. Before the division established the lien database, liens were established by docketing with each of the 67 sheriffs in Florida.⁴³

The division reported that in FY 2007-08, a total of 62,295 judgment liens were filed.⁴⁴

Apostilles

Section 15.16(8), F.S., authorizes the department to issue apostilles, which are certifications that documents are legal for international use. Documents which have been notarized by a notary public (or civil-law notary) and subsequently certified with a conformant apostille are accepted for legal use in countries that have signed the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 1961.⁴⁵ For countries that are not part of the Hague Convention, a similar certificate is issued which is referred to as a Certificate of Notarial Authority.⁴⁶

The division issues Apostilles for notarized documents relating to a foreign court adoption, birth certificates, and death certificates bearing the original signature of the state registrar; marriage certificates, divorce decrees, and vehicle titles certified by the Department of Highway Safety and Motor Vehicles; corporation documents bearing the signature of the Secretary of State; diplomas issued by universities; and documents certified by any Clerk of the Court for any county in Florida.⁴⁷ The department has the sole authority in Florida to establish requirements and procedures for the issuance of apostilles.⁴⁸

The division reported that in FY 2007-08, a total of 56,996 apostilles were issued.⁴⁹

³⁸ Section 118.10(7), F.S.

³⁹ Section 118.10(6), F.S.

⁴⁰ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

⁴¹ Section 55.202(2)(a), F.S.

⁴² Section 55.203(4), F.S.

⁴³ Information submitted by the department, July 18, 2008, on file with the committee.

⁴⁴ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

⁴⁵ Adapted from Encyclopædia Britannica *Eleventh Edition*.

⁴⁶ Section 117.03, F.S.

⁴⁷ Section 118.12, F.S.; Information submitted by the department, July 18, 2008.

⁴⁸ Section 15.16(8), F.S.

⁴⁹ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

Federal Government Lien Registrations

Pursuant to s. 713.901, F.S., notices of Federal Government liens (tax or otherwise) must be filed with the Secretary of State. Government liens are imposed upon personal property of a corporation or a partnership whose principal executive office is in this state, a trust, or the estate of a decedent.

The division reported that in FY 2007-08, a total of 8,348 Federal Tax Liens were registered.⁵⁰

Substitute Service of Process

Section 48.151(5), F.S., designates the Secretary of State as the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process as required under s. 212.151, F.S., for violations of ch. 212, L.O.F., relating to the state sales and use tax.

The division reported that in FY 2007-08, a total of 7,957 Substitute Services of Process were registered.⁵¹

Trade and Service Marks

Generally, trademarks⁵² and service marks⁵³ are registered with the federal government. Federal trademark registration on the Principal Register provides the following:⁵⁴

- Constructive notice to the public of the registrant's claim of ownership of the mark;
- A legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration;
- The ability to bring an action concerning the mark in federal court;
- The use of the U.S registration as a basis to obtain registration in foreign countries; and
- The ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.

The federal government does not determine the "right" to use a mark. Once a registration is issued, it is up to the owner of a mark to enforce its rights in the mark based on ownership of a federal registration.⁵⁵

Pursuant to ch. 495, F.S., a trademark or service mark may also be registered with the State of Florida, through the division. Marks are checked for distinction from other marks that are registered with the division – but marks are not checked for distinction from corporate names, fictitious names, or other entity names registered with the division.⁵⁶ The owner of a registered mark may seek to enjoin the manufacture, use, display, or sale of any counterfeits or imitations.⁵⁷ Marks registered with the division do not replace registrations with the federal government.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² A trademark means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown. Section 495.011(13), F.S.

⁵³ A service mark means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the service of others, and to indicate the source of the services, even if the source is unknown. Section 495.011(11), F.S.

⁵⁴ <http://www.uspto.gov/main/trademarks.htm>, last visited July 18, 2008.

⁵⁵ *Id.*

⁵⁶ dbaFlorida, A Reference Guide for Doing Business in Florida, p.59, by Florida Small Business and the Florida Department of State, Division of Corporations, published in Florida Trend's Florida Small Business, 2008.

⁵⁷ Section 495.141, F.S.

The division reported that in FY 2007-08, a total of 1,650 trademarks or service marks were registered.⁵⁸

Allowing for registration of trademarks and service marks in Florida has certain advantages: federal registration may take years to complete, while registration with the division takes an average of 5 days;⁵⁹ and registration with Florida allows a state registrant the option to challenge infringements upon trademarks and service marks in state courts. Infringements upon federal registrations may only be challenged in federal courts.

Cable Franchises

Section 610.102, F.S., provides that the department is the franchising authority for a state-issued franchise for the provision of cable or video service. In 2007, the Legislature preempted local government authority to negotiate cable service franchises and established “an application procedure” for a state-issued certificate of franchise authority by the department.⁶⁰ The department is limited to functioning “in a ministerial capacity” in granting the franchise.⁶¹

A cable or video service provider must register with the division the type of service and service area prior to commencement of service.⁶² Changes in service must also be registered with the division.⁶³ Applications and amendments are examined for statutory compliance and made part of the division’s database.⁶⁴ The division began issuing franchises in July 2007.

The division reported that in FY 2007-08, a total of 34 Cable or Video Franchises were registered.⁶⁵

Sunbiz™

Through Sunbiz, the division offers an on-line program to allow search of and access to filed information for corporations, limited liability companies, limited partnerships, general partnerships, trademarks, fictitious name registrations, judgment liens, federal liens, and cable franchises. Images of most filed documents can be downloaded at no charge.⁶⁶

Sunbiz™ also offers several methods for information to be submitted to the division for filing. In addition to Sunbiz™ E-filing (electronic fax filings), the division offers on-line document filing for Fictitious Name Registration, Annual Report, Reinstatement, profit and nonprofit corporation, limited

⁵⁸ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

⁵⁹ Information regarding Florida registration of trademarks and service marks provided by staff of DOS, August 20, 2008. The US Patent and Trademark Office offers the following in regards to registration of a trademark: “It is difficult to predict exactly how long it will take an application to mature into a registration, because there are so many factors that can affect the process. Generally, an applicant will receive a filing receipt approximately three weeks after filing, which will include the serial number of the application. All future correspondence with the USPTO must include this serial number. You should receive a response from the Office within six to seven months from filing the application. However, the total time for an application to be processed may be anywhere from almost a year to several years, depending on the basis for filing, and the legal issues which may arise in the examination of the application.” <http://www.uspto.gov/main/faq/>, last visited August 21, 2008.

⁶⁰ Chapter 2007-29, L.O.F.

⁶¹ Section 610.104(10), F.S. Pursuant to s. 610.108(3), F.S., the Department of Agriculture and Consumer Services is required to receive and process consumer complaints related to the franchisee. Pursuant to s. 501.2079, F.S., enforcement of restrictions relating to discrimination in the provision of video services by the franchisee are assigned to the appropriate State Attorney or the Attorney General, under the Florida Deceptive and Unfair Trade Practices Act.

⁶² Section 610.104, F.S.; Information submitted by the department, July 18, 2008.

⁶³ *Id.*

⁶⁴ Information submitted by the department, July 18, 2008.

⁶⁵ Division of Corporations Activity Statistics for FY 2007-8, as submitted by the department, July 18, 2008.

⁶⁶ See http://www.sunbiz.org/ucc_info.html. UCC filings may be accessed and processed at www.floridaucc.com.

liability company, limited partnership, and judgment lien filings. Electronic certification is also available.⁶⁷ The most recent tally shows that

- 49 percent of filings were done on-line, and 17 percent were a combination of on-line and manual filings.
- 34.5 percent of certifications were done on-line, and 21 percent were a combination of on-line and manual certifications.⁶⁸

Also, access to information related to notary publics, apostilles, and filing for cable franchises is available through Sunbiz™.⁶⁹

AGENCY FUNDING

Table 1 shows that the division is funded by General Revenue, declining from \$12.4 million in FY 2004/05 to \$11.6 million in FY 2008/09. In addition, division positions have declined from 161 to 141 over this same period.

Table 1

Department of State						
Division of Corporations						
Funding: FYs 2004 to 2008						
Funds	FY 2004/05	FY 2005/06	FY 2006/07 ⁷⁰	FY 2007/08	FY 2008/09	% of Change
General Revenue Fund	\$12,409,970	\$12,489,393	\$12,672,070	\$12,419,591	\$11,567,645	-6.79%
Positions (FTEs)	161	160	154	151	141	-12.42%

Source: Provided on July 15, 2008, by the Senate Transportation and Economic Development Appropriations Committee, as taken from the LAS/PBS appropriation ledger and the position and rate ledger applicable to each fiscal year.

Fees related to division activities contributed \$176.4 million in FY 2004/05 to the State's General Revenue Fund, increasing to an estimated \$252.5 million in FY 2008/09.⁷¹

Until 2003, a portion of the fees collected by the division was deposited into the Corporations Trust Fund and used to fund the division responsibilities and department programs. Thereafter, all monies are deposited into the General Revenue Fund. The Corporations Trust Fund was terminated on July 1, 2003.⁷²

⁶⁷ See <https://efile.sunbiz.org/onlmenu.html>

⁶⁸ Information submitted by the department, August 22, 2008. Document on file with the committee.

⁶⁹ See http://www.sunbiz.org/ucc_info.html.

⁷⁰ Department of State Sunset Review Agency Report to the Legislature, July 2008, p. III-47, shows \$50,000 from State – Professional Operating Fees

⁷¹ 2008 Florida Tax Handbook, Florida Senate, page 45.

⁷² See s. 2, ch. 2003-401, L.O.F.

EFFICIENCY INITIATIVES

The department reports it implemented a number of initiatives to increase program efficiency and respond to consumer needs. The division:⁷³

- Pioneered the integration of its databases with in-house automated filing systems, an electronic filing service, and a public access online network entitled Sunbiz™;
- Created the first online public access network in the country which increased public accessibility to division records by 75 percent;
- Initiated the country's first electronic certification and electronic filing services via the division's public access network;
- Initiated the sharing of information with other federal and state municipalities to identify fraudulent activities and foreign business entities conducting business processes and transactions in the State of Florida;
- Reduced the average document processing time by 65 percent through organization specialization, clearly defined organizational functions, and implementation of a paralegal education program for employees; and
- Increased the level of public/private interaction which resulted in the elimination of regional offices.

Other efficiency initiatives include outsourcing of division functions. The department reports that, to date, it has outsourced five functions of the division:⁷⁴

- Updating of business entity records;
- Registration of Fictitious Names;
- UCC filings with the Florida Secured Transaction Registry;⁷⁵
- Filing of judgment liens; and
- Credit card payment processing.

The department reports that it is currently “pursuing a strategic study of its processes and a possible reconstruction of its database and filing system...” and “proposes investing in the division's database redesign (to include a single business identifier)...”⁷⁶ The department stated that it intends to request funding for a feasibility study from the Legislature in 2009.⁷⁷

Florida Business Coordination Act

In March 1996, the Governor created the Single Business Identifier Interagency Workgroup as a subgroup of the Governor's Task Force on Paperwork Reduction. The Working Group was charged with exploring the development of a single business identification numbering system for use by state agencies with the intended goal of reducing the paperwork burden on Florida's business and government entities.⁷⁸

⁷³ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-59.

⁷⁴ *Id.*, Page IV-175.

⁷⁵ In 2001, the department was directed to contract with a third-party contractor to perform the administrative and operational functions of the UCC secured transaction filing system. (Ch. 2001-200, L.O.F.) The department reports that this function is currently semi-privatized. Department of State Sunset Review Agency Report to the Legislature, July 2008. Page V-175.

⁷⁶ Department of State Response to Division of Corporations/Division of General Tax Administration merger Proposal, March 2008, page 5-6. On file with committee.

⁷⁷ Information provided by DOC staff, August 20, 2008.

⁷⁸ Adapted from the Staff Analysis for HB 399, Committee on Business Development and International Trade, Florida House of Representatives, May 8, 1997.

In November 1996, the Governor's Single Business Identifier Interagency Task Force recommended consideration of a program with the following characteristics:

- Single business identifier;
- Mechanism for providing report data and payments to a single agency;
- One form for license application and fee payment;
- Simplified license/registration renewal; and
- Full services provided at field offices across the state.⁷⁹

Further, the task force recommended that if such a system is implemented, it be administered by the Department of State.

In response, the Legislature enacted the Florida Business Coordination Act⁸⁰ which directed the Department of State to create a master business index in which each business is to be assigned a unique single business identifier number (SBIN) for interagency use. The master business index was to be a database which indexes all business entity records maintained by any state government agency. Each agency that registered, granted a license, or regulated business entities was to use the SBIN so that registration or license information could be directly retrieved by the use of the SBIN.⁸¹

The law directed the Secretary of State to conduct a study assessing the need for unified reporting and consolidated licensing and to prepare recommendations for the Legislature based on the findings of the study. The study concluded that the development and deployment of a paper based Uniform Business Report as originally envisioned in the act is not feasible for two reasons: many agency specific requirements will require supplemental forms be submitted, and the high probability of a major maintenance burden required to deploy a consistently current form. The report offered an alternative strategy, which it estimated would cost \$12 million over 3 years to implement.⁸² No funds were appropriated to implement the recommendations.

In 1999, the Legislature amended the act to authorize the Department of State to create a uniform business report.⁸³ To the extent that other agencies participated, the business report would be used as a substitute for annual reports and renewals required by certain statutes and would be compiled into the master business index and directory of business activity. The department reports that it has implemented the requirements of the act, but that other agencies have not adopted the department's unique single business identifier.

The law also removed statutory barriers to the use of technology and streamlined practices of the Department of State to allow corporations to file required reports and renewals electronically (i.e., via the Internet). Subsequently, the department expanded SunbizTM to accommodate electronic filing.

Proposed Merger of Division with DOR

In 2003, the Governor's Office of Policy and Budget (OPB) initiated a study to determine the feasibility of merging the division and the Department of Revenue's (DOR) General Tax Administration.⁸⁴ The study concluded that

⁷⁹ Executive Summary, Report of the Single Business Identifier Interagency Task Force, November 1996.

⁸⁰ Chapter 97-15, L.O.F., which created ch. 606, F.S.

⁸¹ Adapted from the Staff Analysis for HB 399, Committee on Business Development and International Trade, Florida House of Representatives, May 8, 1997.

⁸² Single Business Identifier Feasibility Study, Department of State, 1997.

⁸³ Chapter 99-218, L.O.F.

⁸⁴ Proposed Merger of the Division of Corporations with the Department of Revenue, 2008. On file with the committee.

- The division’s “front-end” activities are virtually identical to DOR’s activities of Account Management and Return and Revenue Processing;
- The assumption of corporate filings by DOR would be consistent with legislative intent to create a master business index, as specified in s. 606.01, F.S., and would be a major step toward providing business with “One-Stop Shopping” for their registration and filing requirements;
- DOR’s 25 service centers across the state would provide increased citizen access;
- Integration or merger of functions would increase awareness of tax obligations by corporations; and
- Merging of functions would eliminate unnecessary and expensive duplication of services and equipment, as well as the associated maintenance costs.

In 2008, the department issued an updated response to the study.⁸⁵ The department identified the improvements to its processes since the 2003 study, highlighting the implementation and expansion of Sunbiz™, the department’s official business entity index, and the services available through this on-line registry. In addition, the department offered that:

- Merging the process of business formation and creation into an agency whose mission is taxation and enforcement would account for only a fraction of the interaction the business community has with state government – the division does more than just corporate filings, which were not addressed in the merger discussions;
- Merging of functions would require resources to redesign and adapt DOR’s data processing system;
- The system proposed by DOR would not provide “one-stop shopping” but instead, “one-less-stop shopping” -- businesses will continue to have other interaction with state government other than tax collection and corporate filings;
- Physical service centers are becoming increasingly less important, as reflected in the general trend toward on-line filing of required information;
- DOR has a “closed” database, which does not allow for consumer viewing and proofing of submitted information, as does the department’s system;
- The idea of merging the activities of business regulation and business creation does not foster economic development; and
- The merger of activities has the potential to “dampen the business climate” by moving the activities from a “business friendly environment to a regulatory taxing entity.”

Internal Reviews

The department reports that the last formal comprehensive internal organizational structural review was undertaken by the Department of State in 2003.⁸⁶ During the 2003 regular legislative session, legislation was proposed to reorganize the Department of State and the Department of Community Affairs (DCA) into a new agency. The bills failed to pass. Subsequently, the 2003 Legislature directed the Department of State to assess how the agency could achieve efficiencies in management and operation, improve service delivery to the public, and ensure compliance with state and federal law. The evaluation consisted of two courses of action: an internal evaluation conducted by staff; and an external evaluation provided by constituent groups.

⁸⁵ Department of State Response to Division of Corporations/Division of General Tax Administration merger Proposal, March 2008. On file with committee.

⁸⁶ This information was adapted from Department of State Sunset Review Agency Report to the Legislature, July 2008. Page I-14.

In response, the department issued a report, December 15, 2003, entitled, *Florida Department of State, Creating Opportunities for Quality Communities, Final Report*. The report included five recommendations: reorganizing the department; promoting inclusive visioning and planning; streamlining the grant process; pursuing the merger with DCA; and promoting diversified funding sources for cultural, historical, libraries, and arts programs. The department reports that, with the exception of the merger with DCA, these recommendations were implemented.

An informal internal organizational structural review was undertaken by the Department of State in 2007. As a result of this review, the department reports that the Division of Administrative Services was reconstituted as a cohesive support services program designed to serve the entire department.⁸⁷

MANAGEMENT TOOLS

The department reports that other than performance based budgeting measures and the I.C.A.R.E. survey program, the department has not formally adopted any additional internal performance measures.⁸⁸

The department uses the performance measures and standards developed through the department's Long Range Program Plan (LRPP), an annually updated 5-year plan describing the functions agencies perform and how those functions will be used to achieve designated outcome.⁸⁹ The LRPP lists five performance measures for the division:

- Percent of clients satisfied with the division's services. (93%)
- Average cost per corporate filing. (\$4.78)
- Average cost per inquiry. (\$0.005)
- Percent of total inquires handled by telephone, mail, walk-in visits. (2%)
- Percent of total inquiries handles by electronic means. (98%)

The department reports that it has exceeded the approved standards for all of the measures for FYs 2005/06 and 2006/07, with the exception of average cost per corporate filing.⁹⁰ The department provided the following explanation:

In fiscal year 2006-2007 the rate of increase in corporate filings was less than in previous fiscal years. The slower growth rate of corporate filings coupled with an increase in the expenditures of the Bureau of Commercial Recordings caused the Division not to meet its standard for the average cost per corporate filing for fiscal year 2006-2007. It is projected that the number of corporate filings will continue to decline in fiscal year 2007-2008.⁹¹

⁸⁷ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page I-14.

⁸⁸ *Id.* Page II-18.

⁸⁹ Section 216.013, F.S., requires state agencies to develop long-range program plans (LRPP) to achieve state goals. These plans are policy based, priority driven, and developed through examination and justification of all agency programs. Included in the long range program plan is information regarding the department's comprehensive performance accountability system and, at a minimum, a list of performance measures and standards. The agency uses these measures and standards for internal management purposes. The performance information includes output measures showing the number of goods and services each program produces. Also included are output measures showing the effect of these goods and services in achieving desired results. The information contains how data is collected, the methodology used to measure a performance indicator, the validity and reliability of a measure, and the appropriateness of a measure. To delete or amend these measures and standards, agencies must obtain approval from the Office of the Governor and the Legislature, as set forth in s. 216.177, F.S.

The LRPP is available at http://www.oppaga.state.fl.us/monitor/reports/pdf/2006-07_Measures.pdf

⁹⁰ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page IV-61.

⁹¹ *Id.* Page IV-63.

In 2007, Governor Crist instructed his agencies to complete a review of customer service practices.⁹² In May 2007, the department issued a report which outlined what it would do to ensure that the needs of its stakeholders were met.⁹³ The department provided the following overview:⁹⁴

The Customer Service Guiding Principles and Standards introduced five core principles that govern customer service and satisfaction at the Department. The acronym describing the five principles, I.C.A.R.E., stands for: Inviting, Courtesy, Accessible, Responsive and Efficient. These five core principles describe employee interactions with the public:

- **Inviting** – employees are open to serving customers, soliciting their feedback, making customers aware of programs and services, and establishing welcoming facilities.
- **Courtesy** - employees act in a polite, helpful and considerate manner towards both customers and team members.
- **Accessible** - the Department’s team members, program information, services and facilities are readily available and open to our customers.
- **Responsive** - employees respond to customers in a timely and accurate manner.
- **Efficiency** - employees provide effective and convenient results.

In accordance with I.C.A.R.E., the Department implemented a Web-based customer survey to solicit feedback on the areas noted above. The Department’s survey Web site was launched in September 2007 and distributed via a link at the bottom of all emails sent out by Department employees, as well as being attached to all Department Web sites. Customers who receive emails from the Department, and who are served by the Department, are asked to participate in the survey. Results from the survey are separated by Division, produced monthly and given to the respective Divisions for assessment. The Divisions analyze the survey results to identify customer service concerns and opportunities to make improvements to benefit public service.

In July 2008, the department reported its survey results. For all five categories, at least 80 percent of respondents rated department services as “Excellent.”⁹⁵ For the division, respondents’ ratings in four categories are as follows:

Table 2

Department of State Customer Survey Results				
(Percent of Response, per category)				
	Excellent	Good	Fair	Poor
Telephone/Personal Interaction	77.56	17.86	2.44	2.14
Speed of Service	80.74	14.94	2.72	1.60
Convenience of Service	79.23	16.41	1.96	2.40
Quality of Service	81.28	14.39	1.81	2.52

ADVISORY COMMITTEES

The department reports that the Division of Corporations has no advisory committees.

⁹² Executive Order 07-01.

⁹³ Department of State’s Report on Agency Review of Customer Service Practices and Actions Taken to Implement Requirements of Executive Order 07-0, May 2007.

⁹⁴ Department of State Sunset Review Agency Report to the Legislature, July 2008. Page II-16.

⁹⁵ DOS Customer Satisfaction Survey Report, Department of State, July 7, 2008. On file with the committee.

RECOMMENDATIONS FOR FURTHER RESEARCH

The committee may wish to consider research related to the following issues:

- Evaluate the efficacy of transferring some or all of the responsibilities of the division to the Department of Revenue;
- Re-evaluate the feasibility, value, and associated costs of implementing a Master Business Index; and
- Evaluate consolidating the responsibilities related to administration of the notary commissioning process.

