

HOUSE BILL REPORT

HB 1547

As Reported By House Committee On:
Judiciary

Title: An act relating to nonprofit corporations.

Brief Description: Changing provisions relating to nonprofit corporations.

Sponsors: Representatives Chappell, Long and Appelwick; by request of Secretary of State.

Brief History:

Reported by House Committee on:
Judiciary, February 16, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: Nonprofit corporations and associations and nonprofit miscellaneous and mutual corporations must comply with regulations governing the corporation's incorporation, registration, annual reports, and dissolution and reinstatement. Nonprofit corporations must file a variety of documents with the secretary of state to comply with registration requirements.

The secretary of state charges fees for its filing and copying services. The amount of the fees is established in statute.

A corporation may reserve the exclusive right to use a corporate name. A person who wants to form a corporation may file an application to reserve a particular name. If the secretary of state finds that the name is available the name may be reserved for the applicant for an initial 180 days. The applicant may renew the reservation for an additional 180-day period.

A foreign corporation may register its corporate name with the secretary of state. The registrant must comply with a number of registration requirements, including providing a statement that the corporation is doing business and a brief statement of the business in which it is engaged.

A corporation may change its registered name or its registered agent by filing a notice of the change of name or address. The corporation must state that the change was authorized by resolution adopted by the corporation's board of directors.

Corporations must file annual reports with the secretary of state.

The annual report must include the corporation's name, address, a statement of the business the corporation is conducting, the names and addresses of the directors and officers, an affirmative indication whether there has been any change in the corporation's purpose and, if so, the nature and reason for the change, a statement whether the corporation has filed an Internal Revenue Service tax return, and the corporation's unified business identifier number.

If a corporation dissolves, the corporation must comply with a number of requirements, including filing articles of dissolution with the secretary of state. If the state Department of Revenue has issued a revenue clearance for the dissolving corporation a copy of the revenue clearance form must be attached to the articles of dissolution. The secretary of state may administratively dissolve a corporation if the corporation fails to file its annual report timely; has failed to appoint a registered agent for 30 days; or has failed to file a notice with the secretary of state within 30 days of changing its registered agent or office. The corporation has 45 days to correct the deficiencies from the date the secretary of state issues notice to the corporation of noncompliance. A domestic corporation that was administratively dissolved may be reinstated within three years following the administrative dissolution if it completes and files all the annual reports which would have been required if it had not been dissolved and complies with some other requirements. A foreign corporation may be reinstated within five years.

The provisions governing dissolution or revocation of a mutual or miscellaneous foreign corporation's authority to conduct business in the state do not contain reinstatement provisions applicable to domestic and foreign nonprofit corporations.

Summary of Substitute Bill: Copying fees will no longer be set by statute. Instead, the secretary of state may establish copying fees by rule.

A person forming a corporation may reserve a corporate name for only one 180-day period. The current additional 180-day reservation period is deleted.

The requirement that a foreign corporation registering its corporate name with the secretary of state must provide a statement that it is carrying on business, and a brief statement describing the business is stricken.

A corporation changing its corporate name or its registered agent no longer has to state that the change was authorized by resolution adopted by the board of directors.

The secretary of state may by rule provide that corporations may file reports biennially rather than annually. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates. The corporation no longer has to indicate affirmatively whether any change has been made in the corporation's purpose, or whether the corporation has filed an Internal Revenue Service tax return. The corporation must still file and include its unified business identifier number. That requirement is also imposed upon nonprofit miscellaneous and mutual corporations act corporations when they file their annual reports.

Dissolving corporations must file, and therefore must obtain, a revenue clearance certificate from the Department of Revenue. A corporation has 60 days rather than 45 days to correct deficiencies that have prompted the secretary of state to notify the corporation that the corporation will be involuntarily dissolved administratively. A dissolved foreign corporation may apply for reinstatement within three years of being administratively dissolved instead of five years. A corporation applying for reinstatement only has to file the current annual report rather than all annual reports issued since the dissolution. The corporation must pay the full amount of all fees that would have been assessed if the corporation had not been dissolved. Similar reinstatement provisions are added to the provisions governing nonprofit miscellaneous and mutual corporations.

A few technical changes are made.

Substitute Bill Compared to Original Bill: The proposed substitute contains four changes to the original bill: (1) current law is restored that sets the amount of filing fees in statute; the amendatory language in the original bill

that allows the secretary of state to set filing fees by rule is deleted; (2) current law is restored concerning the designation "Public Benefits Corporation;" (3) another section is added to amend a corresponding statute, which was inadvertently overlooked in the original bill, to provide that the secretary of state may set copying fees by rule for nonprofit miscellaneous and mutual corporations; and (4) the reinstatement time period for domestic corporations involuntarily dissolved remains at three years. Foreign corporations may also be reinstated in three years instead of five years.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 1993.

Testimony For: The bill improves the secretary of state's administration of nonprofit corporations and will make administration of nonprofit corporations more consistent with the administration of profit corporations. The Efficiency Commission recommends the changes be adopted.

Testimony Against: None.

Witnesses: Rebecca Sisler, Secretary of State Corporations Division (pro); and Don Whiting, Secretary of State (pro).