

HOUSE OF REPRESENTATIVES

Olympia, Washington

Bil Analysis

Bil No. HB 2192

Prevent incorporation from entering into certain contracts with the state when certain types of misfeasance, malfeasance or nonfeasance have been committed.

Brief title

Hearing Date 3/2/99

Reps Clements
Sponsor(s)

Staff Steve Aundin
State Government Committee
Phone 786-7127

BACKGROUND:

Various types of corporations may incorporate in this state by filing articles of incorporation with the Secretary of State including for-profit corporations and non-profit corporations. All such corporations incorporate with the Secretary of State whenever a corporation incorporates.

A foreign corporation may only transact business in this state if it obtains a certificate of authority from the Secretary of State.

SUMMARY:

State agencies are required to apply to the Secretary of State for the administrative review of a non-profit corporation or a foreign non-profit corporation's certificate of incorporation if the agency establishes that the corporation meets any of the criteria developed by the Director of the Office of Financial Management describing misfeasance, malfeasance or nonfeasance by the corporation. The performance of a person's service contract with the state agency. Criteria established to describe misfeasance, malfeasance or nonfeasance are not limited to:

- Failure to meet reporting requirements;
- Fraud;
- Misuse of funds;
- Failure to comply with a court order, repeated violation of a corrective plan;

- Material breach of contract;
- Default in performance of material terms of the contract;
- Significant overpayments;
- Significant unbilled.

The Secretary of State must issue a certificate of suspension for a state agency if an application for a certificate of incorporation is filed and the certificate is not issued. Once the certificate of suspension is filed, the corporation may not enter into personal services contracts with the state and within three months the state agency is required to determine if the corporation is in violation of the provisions of the certificate of suspension.

The Department of Licensing is notified of the filing of the certificate of suspension which enters this information into the electronic records containing business identifiers.

The corporation may file a request with the Secretary of State for an adjudicative proceeding. The filing of the certificate of suspension is not a prerequisite for the filing of the request. The Secretary of State may not suspend the certificate of incorporation unless an adjudicative proceeding results in a finding that the corporation meets any of these criteria.

The corporation may petition the Secretary of State for reinstatement of the certificate of incorporation. An agency that applied for the suspension of the certificate of incorporation must recommend that the certificate of incorporation be reinstated if the corporation has remedied the infeasance, malfeasance, or nonfeasance that was the subject of the application and has taken sufficient corrective action to prevent a recurrence.

The Secretary of State shall cancel the certificate of suspension and reinstate the certificate of incorporation if the corporation has remedied the infeasance, malfeasance, or nonfeasance that led to the suspension and has taken sufficient corrective action to prevent a recurrence. A court of competent jurisdiction or an administrative law judge may order the reinstatement of the certificate of incorporation. The Department of Licensing is notified of the suspension.

FISCANOTE: Not requested.

EFFECTIVE DATE: August, 1999.