

SENATE BILL REPORT

2SHB 2576

As Reported by Senate Committee On:
Ways & Means, April 11, 2010

Title: An act relating to restructuring and affirming certain fees established by the office of the secretary of state.

Brief Description: Restructuring fees for the division of corporations and affirming authority to establish fees for the charities program of the office of the secretary of state.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kenney, Lias, Moeller, Pedersen and Armstrong; by request of Secretary of State).

Brief History: Passed House: 3/17/10, 54-39.

Committee Activity: Ways & Means: 4/11/10 [DP, DNP, w/oRec].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Fairley, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Pflug and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Brandland.

Staff: Steve Jones (786-7440)

Background: The Corporations and Charities Division of the Office of the Secretary of State (OSOS) is responsible for administering a variety of programs, including the licensing and registration of corporations and other business entities, nonprofit corporations and associations, charitable organizations, and commercial fundraisers. As part of these functions, the OSOS is responsible for accepting and managing a wide variety of documents, providing services to entities and individuals, and preparing and distributing reports and other information.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Statutes governing business entities, nonprofit corporations, and other organizations require certain documents to be filed with the OSOS. Some of these statutes establish specific fee amounts, while others provide that fees may be established by the OSOS by administrative rule. The following fees relating to corporations, partnerships, and cooperative associations are currently set in statute:

- business corporations: articles of incorporation and certificate of authority (\$175) and annual license fee (\$50, \$10 for inactive);
- nonprofit corporations: articles of incorporation and certificate of authority (\$30) and annual report (\$10);
- partnerships: application to become a limited liability partnership (\$175); and
- cooperative associations: articles of incorporation and certificate of authority (\$25).

In contrast, the statutes governing limited partnerships and limited liability companies provide that the fees for these filings are established by the OSOS by rule, using the corporate fee structure as a guide. In addition to these formation and annual renewal fees, the OSOS is authorized to establish fees by rule for a variety of services rendered under the programs it administers. Examples include fees for amendments to corporate documents, changes to a registered agent or office, in-person or expedited services, service of process filings, and providing copies and certified copies of documents.

The initial formation and annual license fees for corporations, other business entities, and charitable registrations are deposited into the state General Fund. Other fees collected by the OSOS are deposited into the Secretary of State's Revolving Fund (Revolving Fund), including fees for in-person and expedited services, providing copies or certified copies of documents, service of process filings, and electronic transmittal of documents. The Revolving Fund is a nonappropriated account used to defray the costs of carrying out the functions of the OSOS under specifically listed chapters.

In 2007 the Legislature authorized the OSOS to establish additional fees for registrations under the Charitable Solicitations Act to provide for a charitable organization education program. The OSOS did not adopt fees for this purpose prior to the passage of Initiative 960, which requires prior legislative approval of any new fee or fee increase.

The OSOS is responsible for administering the state's Trademark Registration Act. The act allows a person who uses a trademark in Washington to register the trademark with the OSOS. Registration of a trademark provides the registered user with exclusive use of that trademark and protects against infringements of trademark rights. A trademark is any word, name, symbol, or device used to identify and distinguish the goods made or sold by a person from goods made or sold by others.

Summary of Bill: The fee for a corporation's annual license is increased to \$60. The following specific fee amounts listed in statute are eliminated and the OSOS is required to establish these fees by rule:

- business corporations: annual license fee for inactive corporations;
- nonprofit corporations: articles of incorporation and certificate of authority and annual report;
- partnerships: application to become a limited liability partnership; and
- cooperative associations: articles of incorporation and certificate of authority.

The purposes for which the Revolving Fund may be used are expanded to include providing registration and information services and other costs of carrying out the functions of the OSOS under a variety of statutes. The following additional fees are specifically designated for deposit in the Revolving Fund: (1) the \$10 fee increase for a corporation's annual renewal; (2) under the charitable organizations chapter, fees for service of process filings and for preparing, printing, and distributing publications; and (3) under the limited partnership statute, fees for service of process filings, expedited services, and providing copies, certified copies, or certificates.

Various fees for registrations under the Charitable Organization Act are established in statute (rather than rule) and the amounts of these fees are increased as follows:

- charitable organization initial registration fee is increased from \$20 to \$60;
- charitable organization annual renewal fee is increased from \$10 to \$40;
- commercial fundraiser initial registration fee is increased from \$250 to \$300;
- commercial fundraiser annual renewal fee is increased from \$175 to \$225; and
- commercial fundraiser service contract registration fee is increased from \$10 to \$20.

Revenue from the increases in these fees is deposited into the Charitable Organization Education Account.

Under the Limited Liability Company Act, the OSOS may allow electronic filing of a company's initial report.

Under the Trademark Registration Act, the Secretary of State may cancel a certificate of registration of trademark if the Secretary determines within 90 days of its issuance that it was issued in error. The Secretary must immediately provide the registrant written notice of the cancellation and the registrant may petition the court for review of the cancellation.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This legislation will (1) improve customer service in the Corporations and Charities Division; (2) make the division self-supported by user fees; and (3) fund the education program for charities that was enacted by the Legislature in 2007. Charitable organizations have asked for this education program to improve transparency and public accountability for charities, improving their credibility with the public. This was the result of an extensive stakeholder outreach process.

Persons Testifying: PRO: Pam Floyd, Office of the Secretary of State.