

SENATE BILL REPORT

SB 5387

As Amended by House, April 8, 2015

Title: An act relating to uniformity in common provisions governing business organizations and other entities.

Brief Description: Creating uniformity in common provisions governing business organizations and other entities.

Sponsors: Senators Pedersen and O'Ban; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 2/03/15, 2/10/15 [DP].

Passed Senate: 3/02/15, 47-0.

Passed House: 4/08/15, 97-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Melissa Burke-Cain (786-7755)

Background: Washington's business entity laws divide the most common entities by type: for-profit corporations, nonprofit and mutual corporations, partnerships and limited partnerships, limited liability companies (LLCs), employee cooperatives, cooperative associations, corporation sole – church and religious societies, fraternal societies and their building corporations, and granges. Structurally these laws contain all of the legal requirements pertaining to each entity type in its own provision.

The national Uniform Law Commission recommends a more integrated legal framework for states stemming from its long-term Harmonization of Business Entity Acts Drafting Project. The Uniform Business Organizations Code (UBOC) uses a hub-and-spoke model, putting the legal requirements common to all entities in one provision. The individual entity acts remain as spokes containing all entity-specific requirements.

UBOC's recently completed Article 1 contains its recommended common hub provisions. Using UBOC's structure, a recently completed project in Washington identifies these

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common hub provisions throughout Washington's business entity laws for possible inclusion in a new Washington business hub provision.

Summary of Bill: A new section in Title 23 RCW adopts the 2013 UBOC Article 1 common provisions for the Secretary of State's oversight of for-profit corporations, nonprofit and mutual corporations, partnerships and limited partnerships, limited liability companies, employee cooperatives, cooperative associations, corporation sole – church and religious societies, fraternal societies and their building corporations, and granges. The common legal requirements for these business entities also include reservation and registration of entity names, registered agents, foreign entities doing business in Washington, and entity dissolution and reinstatement.

The Secretary of State retains its current regulatory authority over business entities including rulemaking authority and authority to set and collect fees from regulated business entities. Each business entity retains its separate law containing its entity-specific legal requirements. The entity specific sections are amended as necessary to remove redundant provisions which move to the new common provisions section in Title 23. January 1, 2016, is the effective date for all parts of the proposal except for Part VII pertaining to LLCs. LLCs are not included in the effective date because there is a separate legislative proposal pending for LLCs – SSB 5030.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill represents best practices and simplifies the administrative processes for forming, maintaining, and dissolving business entities. The substantive administrative functions in the bill mesh well with the related individual entity laws. Whether a business entity is very small or very large, the revisions in the bill streamline and simplify processes. The Secretary of State's office is developing a new online system that will be compatible with the changes in the law.

Persons Testifying: PRO: Senator Pedersen, prime sponsor; Pam Floyd Office of the Secretary of State; Garth Jacobson, CT Corporation; John Reed, WA State Bar Assn. Business Law Section.

House Amendment(s):

- Clarifies that the effective date and time of an entity filing is first determined by whether the entity filing specifies an effective time or a delayed effective date, and if not, then the effective date is the date and time of filing by the Secretary of State (SOS).
- Provides that a statement of withdrawal of a filed record must be executed by a person acting in a valid representative capacity, rather than a person to whom authority has been properly delegated and not revoked under the entity's organic law.

- Provides that a filed record may be corrected if it contained an inaccurate statement at the time of filing, rather than if it was incorrect, inaccurate, or defective.
- Provides that the SOS is an agent of an entity for service of process if service of process cannot be made under any of the methods for service on the registered agent or entity.
- Provides that a registered foreign entity that files an amendment to its foreign registration statement must do so promptly.
- In provisions amending laws governing business corporations and nonprofit corporations, changes the definition of "registered office" to mean the address of the entity's registered agent, and deletes amendatory sections that are no longer necessary due to the change in the definition.
- Amends a section of current law establishing name requirements for professional service corporations by moving the substantive name requirements to the new chapter containing such common legal requirements for all business entities.
- Makes a variety of housekeeping amendments for clarity and consistency, and to correct inaccurate cross references.