

HOUSE BILL REPORT

HB 2576

As Reported by House Committee On:

Judiciary
Ways & Means

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: Representatives Kenney, Liias, Moeller, Pedersen and Armstrong; by request of Secretary of State.

Brief History:

Committee Activity:

Judiciary: 1/20/10, 1/21/10 [DPS];

Ways & Means: 2/3/10, 2/27/10 [DP2S(w/o sub JUDI)].

Brief Summary of Second Substitute Bill

- Revises various fee provisions in statutes governing corporations and other programs administered by the Office of the Secretary of State (OSOS).
- Raises various fees for registrations under the Charitable Organizations Act and directs the increased fee revenue to be deposited in the Charitable Organization Education Account.
- Expands the purposes for which the Secretary of State's Revolving Fund (Fund) may be used and directs additional fee revenue into the Fund.
- Allows the OSOS to cancel a certificate of registration of a trademark that was issued in error.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Flannigan, Kirby, Ormsby and Roberts.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley and Ross.

Staff: Edie Adams (786-7180).

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 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.

Statutes governing business entities, nonprofit corporations, and other organizations require certain documents to be filed with the OSOS. Some of these statutes set filing-fee-specific amounts, while others provide that fees may be established by the OSOS by 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 to be 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 by rule, fees 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 used to defray the costs of carrying out the functions of the OSOS under specifically listed chapters.

In 2007 the Legislature passed a bill authorizing the OSOS to establish additional fees on 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 (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 Substitute Bill:

The fee for a corporation's annual license is raised 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 (\$10);
- 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).

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) under the charitable organizations chapter, fees for service of process filings and for preparing, printing, and distributing publications; and (2) under the limited partnership statute, fees for service of process filings, expedited services, and providing copies, certified copies, or certificates.

The provision of law authorizing the OSOS to establish fees to support a charitable organization education program is re-enacted.

The Limited Liability Company Act is amended to provide that the OSOS may allow electronic filing of the company's initial report.

The Trademark Registration Act is amended to provide that the Secretary of State (Secretary) 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.

Substitute Bill Compared to Original Bill:

The original bill eliminated the following specific fees set in the business corporations statute and required the OSOS to establish these fees by rule: filing articles of incorporation; annual license renewal; and application for a certificate of authority for a foreign corporation.

Appropriation: None.

Fiscal Note: Revised received 1/21/10.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The OSOS Corporations and Charities Division (Division) has an important role in the state's economy. Budget cuts have prevented the OSOS from hiring the staff needed to meet the needs of the business community. In 2009 the Division was operating with a 12-week backlog of filings. This needs to be addressed because the sooner businesses can complete their filings, the sooner they can start creating jobs and paying taxes.

The fee restructure proposed by the OSOS will allow the Division to be self sustaining. The Division will no longer need General Fund appropriations but will continue to generate revenue for the General Fund. Washington businesses will have their filings handled in a more consistent and timely manner and the charities registration program will be able to provide needed training to charitable organizations.

(Opposed) None.

Persons Testifying: Representative Kenney, prime sponsor; Pam Floyd, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

Staff: Steve Smith (786-7178).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Judiciary:

The second substitute bill provides that the \$10 fee increase for a corporation's annual renewal is deposited in the Secretary of State's Revolving Fund, rather than the State General Fund, and restores references to two other fees that are deposited in the Revolving Fund. The

second substitute bill raises the following fees for registrations under the Charitable Organization Act, establishes these fees in statute (rather than rule), and directs that the increased fee revenue be deposited into the Charitable Organization Education Account;

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

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Office of the Secretary of State (OSOS) Corporation and Charities Division (Division) plays an important role in the state's economy, and the fact that the Division has not had a fee increase for over 20 years has prohibited the staff from meeting the needs of the general community. In 2009 the OSOS was operating with a backlog of 12 weeks in filings, and the sooner that businesses can complete their filings, the sooner they can begin creating jobs and paying taxes. The bill that was presented, along with the amendment, will allow the Division to become self-supporting while still contributing to the general fund. Washington businesses will have their filings handled in a more consistent and timely fashion and the charities registration program will be able to provide needed training to charitable organizations. This bill is an agency bill from the OSOS, which had four objectives:

1. to continue to generate approximately \$52,000,000;
2. to allow the Division to be self-supporting, and to fund itself 100 percent out of the revolving account;
3. to eliminate the back log that is the result of budget and staff cuts; and
4. to have the charities fee needed to institute the education program go into effect.

The bill is referred to as a fee restructuring bill and the OSOS is doing away with a number of \$10 fees, and then raising the annual fee by \$10, so that it is very neutral to businesses and the OSOS has heard no adverse testimony from them.

(Opposed) None.

Persons Testifying: Representative Kenney, prime sponsor; and Linda Shea, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.