

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 842 (Second Edition)

SHORT TITLE: Business Entity Changes

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
REVENUES					
General Fund					
Processing Fee	(\$300,000)	(\$165,000)	(\$180,000)	(\$195,000)	(\$210,000)
New LLLP		No estimate available – potential revenue gain			
Exempt PLLC		No fiscal impact			
Additional fees		No estimate available – potential revenue gain			
LLC Processing Acct.	\$300,000	\$165,000	\$180,000	\$195,000	\$210,000
EXPENDITURES					
LLC Processing Acct.	\$300,000	\$165,000	\$180,000	\$195,000	\$210,000
POSITIONS: Secretary of State to hire temporaries					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State					
EFFECTIVE DATE: Section 54A(a) (Sec. of State retains \$6 of LLC fee) of this act is effective when this act becomes law and expires June 30, 2002. Section 54A(b) (Sec. of State retains \$3 of LLC fee) becomes effective July 1, 2002. Sections 59 and 59A (LLC annual report) becomes effective September 1, 2001. The remainder of this act becomes effective January 1, 2002.					

BILL SUMMARY: This bill makes numerous changes to the North Carolina Business Corporation Act, the North Carolina Nonprofit Corporation Act, the North Carolina Limited Liability Company Act, and the law governing partnerships.

ASSUMPTIONS AND METHODOLOGY:

Revenue

Section 127 of the bill allows the Secretary of State to register a new business entity called a limited liability limited partnership (LLLP). This new entity will allow general partners in a limited partnership the ability to avoid personal liability for the partnership's obligations. The liability protection of this new business entity may prove attractive to the 10,925 current and active limited partnerships (LPs) in North Carolina. Each registration of a LP as a LLLP will generate General Fund revenue because limited partnerships are currently not subject to fees imposed by the Secretary of State nor are they required to file annual reports. If a limited partnership opts to register as a LLLP, it will become subject to registration fees imposed by Section 149 of the bill. Each LLLP will also file an annual report and pay a \$200 annual fee similar to that paid by a LLC. Unfortunately there is no estimate of the number of limited partnerships that will choose to become a LLLP and thus no estimate of the General Fund revenue gain.

Sections 2, 54, and 104 impose a new \$50 fee for articles of conversion. The Secretary of State has no estimate for the number of business entities that will pay this fee each year, but the Department does not anticipate the revenue gain to be significant. Section 104 also creates a number of other fees for limited liability partnerships, but again the Secretary of State has no estimate of the revenue gained.

Section 59 exempts professional limited liability companies (PLLC) from filing an annual report and paying the \$200 annual filing fee. This section has no revenue impact because it conforms the statute to current administrative practice. The Secretary of State has always interpreted legislative intent was to exempt PLLCs from filing requirements.

Expenditure

Section 59A changes the due date for filing an LLC annual report to April 15 to correspond to the generally recognized tax filing deadline for individuals. There are currently 47,218 active LLCs registered with the Secretary of State that are subject to the annual report requirements. Section 54A mandates the Secretary of State to retain \$6 in FY 2001-02 and \$3 each fiscal year thereafter from the \$200 LLC annual report filing fee. These funds are to be used "for the purpose of notifying limited liability companies of the annual report requirement and for carrying out the requirements of this section (processing annual reports that are delivered for filing)." Based on the current number of registrants, the Secretary of State estimates spending \$138,634 in postage, printing, and personnel to notify the LLCs about the annual report filing deadline and to process the annual reports when returned. This budget equals \$2.94 per annual report. (see budget below)

Personnel

6 temporary Data Control Clerks, Pay grade 59 for 6 months	
\$73,388.28	
2 temporary Data Processing Assistant IV, Pay grade 59 for 6 months	<u>24,462.76</u>
Subtotal	\$97,851.04

Printing/Mailing Expenses

29 cases of 8 ½ x 11 bond paper (approx \$25.00/case)	\$725.00
#11 window envelopes (.37 ea.)	17,470.66
#10 envelopes (.02 ea.)	944.36
Print set up	300.00
Print notice/annual report (3 pages)	6,138.44
Fold	472.18
Insert #11 envelope	944.36
Meter	236.09
Sort and Barcode	944.36
First Class 3 digit Auto Postage (one ounce)	<u>12,607.21</u>
Subtotal	\$40,782.66

Estimated Cost (rounded to nearest dollar) \$138,634.00

(Estimated cost per annual report = \$2.94)

The number of LLCs has grown from 350 in 1993 when this business entity type was created by the General Assembly to 47,218 today. The chart below shows the number of LLC filings each year. The cumulative LLC amount is greater than the number of currently active LLCs due to dissolution, withdrawal or revocation of business entities.

	# of new LLCs <u>Registered</u>	Cumulative <u># of LLC Filings</u>
1993	350	350
1994	2,286	2,636
1995	3,177	5,813
1996	4,406	10,219
1997	5,883	16,102
1998	8,023	24,125
1999	10,220	34,345
2000	11,463	45,808
2001	5,584	51,392

Since it is difficult to estimate the number of LLCs in North Carolina over the next five years, this fiscal note will assume 50,000 LLCs in FY 2001-02 and a net gain of 5,000 LLCs each fiscal year until FY 2005-06. The Secretary of State will retain \$6 of the annual report fee paid by 50,000 LLCs in FY 2001-02 or \$300,000. Beginning in FY 2002-03, the amount retained is \$3 for each annual report. This money will be placed in a nonreverting account. Every dollar retained by the Secretary of State is a dollar reduction in revenue deposited into the General Fund.

	# of LLCs <u>Registered</u>	Fee retained by <u>Sec. of State</u>
FY 2001-02	50,000	\$300,000
FY 2002-03	55,000	\$165,000
FY 2003-04	60,000	\$180,000
FY 2004-05	65,000	\$195,000
FY 2005-06	70,000	\$210,000

Numerous sections of the bill refer to the Secretary of State sending copies “by registered or certified mail, return receipt requested”. Secretary of State officials said this method of mailing is standard practice. The bill also refers to the Secretary of State keeping records of all processes, notices, and demands served upon the office. This again is the standard practice of the Secretary of State.

TECHNICAL CONSIDERATIONS: Section 54A (a) and (b) do not permit the Secretary of State to retain funds from the annual report fees of the new LLLPs in order to notify these business entities of filing dates and to process the annual reports.

FISCAL RESEARCH DIVISION 733-4910

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