

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 842 (Third Edition)

SHORT TITLE: Business Entity Changes

SPONSOR(S): Senator Clodfelter

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<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					
New LLLP					No estimate available – potential revenue gain
Exempt PLLC					No fiscal impact
Additional fees					No estimate available – potential revenue gain
Highway Trust Fund					
LLC use tax minimum					No estimate available – potential revenue loss
EXPENDITURES					
General Fund					
LLC notification					see ASSUMPTIONS AND METHODOLOGY
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State; Division of Motor Vehicles					
EFFECTIVE DATE: 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.

Section 151 limits the highway use tax paid by a business entity to the minimum \$40 when the vehicle title is transferred to an entity that is not a separate entity from its owner or whose separate entity is disregarded for tax purposes under the Internal Revenue Code. Since the Division of Motor Vehicles has no information on the number of vehicles that are affected by this section, there is no estimate of the fiscal impact this might have on the Highway Trust Fund. (Highway use taxes are deposited into the Highway Trust Fund.) Setting the tax at the minimum would be expected to produce a revenue loss.

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. This section also states that the Secretary of State must notify limited liability companies of the annual report filing requirement. There are currently 47,218 active LLCs registered with the Secretary of State that are subject to the annual report requirements. The Secretary of State estimates that LLC notification will cost the Department \$40,783 for printing and postage. The Secretary of State argues that this is a new expense because a previous notification requirement was deleted in 1997 by section 6.7 of Senate Bill 727 (S.L. 1997, chapter 475). Actually the 1997 legislation only deleted the requirement to mail annual report forms to LLCs, not the obligation to notify LLCs about the annual report.

The Secretary of State has quoted the cost of mailing a notice, but the provision on notification does not specify the method to be used. The Secretary of State could use email, fax, or automated phone calls as lower cost alternatives. The Appropriations Committee should review the method and cost of LLC notification. It should be noted that when the 1997 General Assembly deleted the mailing of annual report forms, it did not delete \$77,000 in postage, printing, and data processing charges related to the annual report. The Department also did not delete a cash management position that the Secretary of State asked

to reassign to other duties mandated by the 1997 legislation. The General Assembly did cut \$40,559 in data processing and office supplies in the 2000 session that might have been deemed surplus funds due to the 1997 change. Even with these cuts, it can be argued that the Corporations Division still has \$36,441 left in its savings from the 1997 change that can be applied to the resumption of the notification.

The Appropriations Committee also needs to review the future costs of notifying LLCs given the tremendous growth in LLC formations. 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 Registered	Cumulative # of LLC Filings
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

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:

FISCAL RESEARCH DIVISION 733-4910

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