

# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2017

## Legislative Fiscal Note

**BILL NUMBER:** Senate Bill 114 (First Edition)

**SHORT TITLE:** Annual Report Modernization

**SPONSOR(S):** Senators Wells and Tarte

<b>FISCAL IMPACT</b>					
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No Estimate Available		
State Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
General Fund Revenues:	<b>See Charts 1-3 for detailed explanation (Page 3)</b>				
General Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Secretary of State and Department of Revenue					
<b>EFFECTIVE DATE:</b> Multiple					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**BILL SUMMARY:**

This bill amends existing law to provide that the annual reports required to be submitted by business corporations, Limited Liability Corporations (LLCs), and Limited Liability Partnerships (LLPs) authorized to do business in North Carolina are to be submitted to the Secretary of State. This changes existing law that allows business corporations to file annual reports with either the Department of Revenue or the Secretary of State. There is no change to the existing requirement that LLCs and LLPs file annual reports with the Secretary of State.

In addition, Senate Bill 114 mandates the electronic filing of annual reports for business corporations, LLCs, and LLPs. Existing law allows these reports to be filed either electronically or by paper. The bill amends the information that must be included in the annual report to also include the e-mail address of the registered agent and the physical business addresses of the principal officers and any person who has authority to bind the corporation. It also states that filing certain incomplete or inaccurate information on the report is punishable by a fine of \$250. If the inaccuracy or omission is intentional, this bill clarifies that the person responsible is guilty of a Class 1 misdemeanor.

The annual report filing fees are changed to \$125 for business corporations, LLCs, and LLPs to be consistent among all filers. The table below shows the existing and proposed fee structure:

<b>Type</b>	<b>Existing Fee</b>	<b>Proposed Fee</b>
Business Corporation (paper)	\$25	n/a (may only be filed electronically)
Business Corporation (e-file)	\$18	\$125
LLC	\$200	\$125
LLP	\$200	\$125

The bill directs the State Treasurer to remit \$2 of each fee collected for annual report filings to the Secretary of State to be used pursuant to G.S. 66-58.12(c) (to cover the costs of completing an electronic transaction) and to cover the costs of electronic commerce (e-commerce) initiatives. The Secretary of State is prohibited from charging an additional amount for electronic filing and electronic payment.

Senate Bill 114 provides a new requirement for nonprofits to file the same annual report as referenced above, but there is no fee for filing. Nonprofit corporations, in addition to business corporations, LLCs, and LLPs, that do not file an annual report will not be allowed a refund of sales and use taxes paid under Article 5 of G.S. Chapter 105. The Secretary of State and Department of Revenue are to develop a process for verifying whether an applicant for a refund under G.S. 105-164.14 has submitted all required annual reports, and requires the sharing of relevant information between the two agencies for that purpose.

G.S. 105-232 is amended to increase the fee for the cost of reinstatement by a suspended business corporation or LLC to the Secretary of State from \$25 to \$50. The fee is collected by the Department of Revenue, but the bill directs the Secretary of Revenue to remit \$25 from each fee collected to the Secretary of State to be used to cover its share of the cost of reinstatement. Any funds in excess of the amount needed to cover the Secretary of State’s share of the cost of reinstatement are to revert to the General Fund. The \$25 that the Department of Revenue currently collects for reinstatements is entirely reverted to the General Fund. That procedure would not change under this proposed bill.

Lastly, the bill directs the Joint Legislative Program Evaluation Oversight Committee to amend its 2018-19 Program Evaluation Division work plan to direct the Program Evaluation Division to study the effect implementation of this act will have on the staffing levels and customer service demands of the Secretary of State and Department of Revenue.

**ASSUMPTIONS AND METHODOLOGY:**

Below are the assumptions and methodology for the impact of this bill on the General Fund, Secretary of State, and Department of Revenue.

Chart 1

General Fund Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
<b>Revenues</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>
Annual Report Fee	\$260,211	\$260,211	\$260,211	\$260,211	\$260,211
Business Reinstatement Fee	\$23,255	\$23,255	\$23,255	\$23,255	\$23,255
<b>Expenditures</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>State Positions</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Unappropriated Fund Balance</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>	<b>\$283,466</b>

Chart 2

Secretary of State Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
<b>Revenues</b>	<b>\$276,273</b>	<b>\$276,273</b>	<b>\$276,273</b>	<b>\$276,273</b>	<b>\$276,273</b>
\$2 Credit Card Fee	\$253,678	\$253,678	\$253,678	\$253,678	\$253,678
Business Reinstatement Fee	\$22,595	\$22,595	\$22,595	\$22,595	\$22,595
<b>Expenditures</b>	<b>\$1,343,279</b>	<b>\$1,239,345</b>	<b>\$964,154</b>	<b>\$44,093</b>	<b>\$44,093</b>
Position Costs	\$332,326	\$282,326	\$34,093	\$34,093	\$34,093
Technology	\$50,000	\$10,000	\$10,000	\$10,000	\$10,000
Public Outreach	\$960,953	\$947,019	\$920,061	\$0	\$0
<b>State Positions</b>	<b>5.0</b>	<b>5.0</b>	<b>-1.0</b>	<b>-1.0</b>	<b>-1.0</b>
<b>Net Impact</b>	<b>(\$1,067,006)</b>	<b>(\$963,072)</b>	<b>(\$687,881)</b>	<b>\$232,180</b>	<b>\$232,180</b>

Chart 3

Department of Revenue Impact	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
<b>Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Expenditures</b>	<b>\$97,344</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
IT Expenses	\$97,344	\$0	\$0	\$0	\$0
<b>State Positions</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Net Impact</b>	<b>(\$97,344)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

The charts above detail the fiscal impact of this bill. Chart 1 shows that the new revenues to the General Fund total \$283,446, which represents a slight increase over current levels. The new General Fund balance is unappropriated.

Chart 2 details the changes to the Secretary of State. The listed revenues are appropriated in this bill to the Secretary of State, which total \$276,273. The estimated expenditures exceed revenue levels for the first three fiscal years of implementation but they are not directly appropriated in this bill. In addition, an estimated 5.0 new positions are needed for implementation in the first two fiscal years. A total of 6.0 positions are eliminated beginning in year three, making the net change -1.0 positions.

Chart 3 shows the impact to the Department of Revenue. There are no additional revenues for the Department under this bill. The expenditures total \$97,344 in the first year of implementation for one-time information technology expenses. There is no direct appropriation for this need in the bill. No additional positions are needed for implementation.

### **General Fund**

The chart below shows the anticipated collections based on the number of total annual report filings in FY 2015-16

Chart 4

<b>FY 2015-16 Filings</b>	<b>Business Corporations</b>	<b>LLCs</b>	<b>LLPs</b>	<b>Total</b>
Existing Fee	\$3,809,069	\$42,992,200	\$214,800	<b>\$47,016,069</b>
Proposed Fee	\$20,703,975	\$26,440,203	\$132,102	<b>\$47,276,280</b>
<i>Difference (Proposed-Existing)</i>	<i>\$16,894,906</i>	<i>\$(16,551,997)</i>	<i>\$(82,698)</i>	<i>\$260,211</i>

Fees from the annual report filings for business corporations, LLCs, and LLPs are currently collected by the Secretary of State and Department of Revenue and are transferred to the General Fund. The new requirement that all filings be collected by the Secretary of State should have no impact on the transfer to the General Fund. The changes to the annual report fees as presented in this bill will have a small positive impact on the General Fund. When comparing the last two fiscal years of actual annual report filings, business filings fell by 4% but LLC filings increased by 3%. Total filings of business corporations, LLCs, and LLPs were down by -0.3% year over year. This analysis assumes that the rate of filings will continue at a similar rate. If filings increase slightly in the next fiscal year, the difference between the two fee structures of \$260,211 to be deposited in the General Fund allows room for some growth.

In addition, the \$50 reinstatement fee will have a slight impact on General Fund revenues. The increased fee will average about \$23,255 per year of reversions from the Secretary of State to the General Fund. (See item #1 under Receipts in the Secretary of State description for further detail on this reversion.)

### **Secretary of State**

- **RECEIPTS:** The proposed bill would increase two receipts to the Secretary of State.
  1. \$2 fee that is remitted to the Secretary of State from every annual report filing: These funds are to be used for the cost of credit card charges and e-commerce initiatives within the agency. According to the fee schedule by the Office of State Controller, the direct fees that the Secretary of State will likely pay for each credit card transaction for annual report filings are around \$0.66. This leaves approximately \$1.34 from the remaining \$2 fee for e-commerce initiatives. In the chart below, this receipt is offset by the estimated cost that the Secretary of State will pay for credit card fees.
  2. \$25 reinstatement fee: Of the \$50 fee charged for business reinstatements, \$25 is remitted to the Secretary of State to cover the direct costs of reinstatement. Over the last four fiscal years, an average of 15,690 businesses were suspended by the Department of Revenue and 1,834 were reinstated and paid the \$25 fee. This bill represents no change to what the Secretary of State is required to do for reinstatements but is a new receipt to the agency and therefore there is no offsetting expense. The average cost to the agency for reinstatements is about \$12.32. Assuming the average rate continues at 1,834 reinstatements, the increased receipts for the Secretary of State total \$22,595 per year. This

leaves \$12.68 remaining from the \$25 fee to be reverted to the General Fund, averaging about \$23,255 per year. The chart below shows the estimated increase in receipts for the Secretary of State.

Chart 5

<b>Type</b>	<b>Amount</b>
\$2 credit card fee receipts	\$768,720
<i>Credit card expenses</i>	<i>\$(515,042)</i>
\$25 reinstatement receipts	\$22,595
<b>Net Receipts</b>	<b>\$276,273</b>

- POSITIONS:** The Secretary of State has 5.0 full time equivalents (FTE) dedicated to paper processing. The electronic filing requirement of this bill would eliminate the need for paper processing positions. However, due to the change in filing requirements, there will temporarily be a greater demand in the call center. These positions could be moved to the call center to meet anticipated increased demand. These positions would need an additional \$11,543 to bring them to the minimum pay grade of the call center positions. As filers become accustomed to the changes, it is likely that related call volume will decline. Therefore, these positions could become time-limited and eliminated after two years. The current existing cost for these 5 FTE for salaries and benefits is \$174,661.

In addition, the Secretary of State reports the need for the following new positions for the implementation of this bill. The total cost in the first year of implementation for these new positions is \$332,326, which includes \$50,000 nonrecurring for furniture, supplies, and equipment.

- Administrative Officer I – Temporary position (two fiscal years) for education and outreach
- Business Systems Analyst I – For programming the new non-profit annual report interface, enhancing current programming to handle the increase in filings, and programming to supply the Department of Revenue with information about entities that may be due a sales tax refund.
- Accounting Technician – For processing increased electronic payments.
- Operations and Systems Analyst – IT helpdesk for technical issues related to changes to e-filing.
- Processing Assistant V – Front counter position for walk-in support related to changes to e-filing.

- TECHNOLOGY:** Below are the technology needs for implementing this bill:

- Additional server - \$20,000 nonrecurring for a more robust server that can handle the creation of images and increased online demand.
- Electronic commerce kiosk - \$10,000 nonrecurring to allow citizens without internet access to file annual reports in person.
- Load balancer - \$10,000 nonrecurring to handle spikes in web traffic.

4. Additional storage capacity - \$10,000 recurring added to store increased e-filings.

- **PUBLIC OUTREACH:** The Secretary of State would need to inform the impacted stakeholders of these law changes. Below are the requirements for mailings.

Chart 6

<b>TYPE</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Business/LLC/LLP	\$953,453	\$537,376	\$437,376
Nonprofit	\$0	\$402,143	\$482,685

The outreach for business corporations, LLCs, and LLPs includes one bulk mailing, one advertisement per year for two years, one brochure, and a postcard mailing at one per year for three years. This would be sent to approximately 486,000 entities. For the nonprofit mailings, the price includes two bulk mailings, one brochure mailing, and three postcard mailings (one in year one of implementation and two in year two of implementation). These mailings would be sent to approximately 186,000 nonprofit entities. The estimated cost for mailing for each entity is \$0.85 per letter and \$0.45 per postcard.

In addition, the Administrative Officer I who would be hired temporarily for outreach and public education would require funds for travel. Assuming one overnight trip per week at the State Budget Manual subsistence rate, that is \$7,500 per year.

***Department of Revenue***

In order for Department of Revenue (DOR) to withhold sales tax refunds for those who have a delinquent annual report filing, DOR would need to create rules within the tax system to prohibit the release of such a refund. DOR staff estimate that the cost for this project will total \$97,344 in the first year of implementation, which includes a 20% contingency cost of \$16,224. DOR has indicated that they do not have sufficient internal staff to assist with this project and are recommending that the project be outsourced. Since this project is a one-time event and there is no need for the continuation of additional staff, contracting this project to an outside vendor is most cost efficient.

**SOURCES OF DATA:** Secretary of State, Department of Revenue, Office of State Controller

**TECHNICAL CONSIDERATIONS:** None

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