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House Bills 4512 and 4537 as passed by the House
Second Analysis (8-8-95)

Sponsor: Rep. Gary L. Randall
House Committee: Commerce
Senate Committee: Financial Services

THE APPARENT PROBLEM:

At present, both for-profit and nonprofit corporations must file with the Corporation and Securities Bureau an annual report containing identifying information about each entity. Among other things, the annual report submitted by for-profits must include financial information such as a company's assets and liabilities as of the previous calendar (or the company's fiscal) year. For nonprofit corporations, disclosure is required of any funds paid to members or shareholders for a given year, as well as of financial transactions made by the entity to its officers, directors, members, or shareholders that are not "ordinary and usual." Some people feel requiring this information to be filed not only burdens corporations with tremendous paperwork but also puts them at a competitive disadvantage as other companies may use the report to cull otherwise privileged data on a corporation.

THE CONTENT OF THE BILLS:

The bills would amend the acts that regulate for-profit and nonprofit corporations to delete the requirement for certain financial information to be included in the annual report they must submit to the Corporations and Securities Bureau.

House Bill 4512 would amend the Business Corporation Act (MCL 450.1911) to delete from the act the requirement that corporations file in the annual report the nature and book value of property owned and used, both within and outside of the state, by the corporation. The bill also would make it no longer necessary for a corporation to file an annual statement (or balance sheet information) showing all of the corporation's assets and liabilities as of December 31 of the previous calendar year or the end of its latest fiscal year. Instead, the bill would specifically state that the report could not require the inclusion of such information.

House Bill 4537 would amend the Nonprofit Corporation Act (MCL 450.2911) to delete the requirement for nonprofit corporations to disclose the amount of funds distributed to any shareholders, either individually or corporately, during the year covered by a report. (Disclosure of amounts distributed to members, however, would still be required.) The bill also would make it no longer necessary for an entity to file a statement detailing the aggregate amount of any loans, advances, overdrafts, or withdrawals and repayments made to or by the entity's officers, directors, members, or shareholders in other than the ordinary and usual course of business or terms of payment and security. In place of these provisions, the bill would include a provision stating that the report could not require the inclusion of information regarding the nature and value of property owned and used by a corporation, or information concerning its assets and liabilities. Further, the bill would add language specifying that a nonprofit organization would not have to file a report in its first year of operation, if its date of incorporation was between January 1 and October 1 of the year that would otherwise be covered by the report.

FISCAL IMPLICATIONS:

The Corporations and Securities Bureau, within the Department of Commerce, says neither bill would affect state or local budget expenditures. (8-2-95)

ARGUMENTS:

For:

The bill would delete provisions from the Business Corporation Act and Nonprofit Corporation Act that require certain financial information to be included with the annual report submitted by for-profit and nonprofit corporations. This requirement serves no purpose other than to burden these types of businesses with unnecessary, and costly, paperwork and record-keeping. In addition, once a corporation submits data related to its assets and liabilities, or about financial transactions by its officers, directors, members, or shareholders, it gives competitors access to inside information that can be used to improve their own position in the marketplace at the disclosing corporation's expense.

Against:
As passed by the House, House Bill 4537 would require a nonprofit corporation to disclose any distribution of funds made to one of its "members" but would delete this requirement as it applies to "shareholders." According to a spokesman with the Corporation and Securities Bureau, nonprofits may be organized in such a way that members and shareholders perform similar functions. Thus, as passed by the House the bill could unfairly require disclosure of funds distribution made to members but not to shareholders. For the sake of consistency, the spokesman recommends amending the bill either to require funds distribution disclosure by both nonprofit members and shareholders (which would simply maintain current law) or, as the version reported from the House Commerce Committee specifies, by neither.

Against:
Some have expressed concerns that removing the requirement for corporations to disclose such financial information could enable the company's officers or directors to hide unethical or illegal activities, particularly in the case of the data required of nonprofits. Such concerns seem reasonable in light of alleged misuse of funds by the director of at least one prominent national nonprofit group in recent years.

POSITIONS:

The National Federation of Independent Business supports the bills. (8-8-95)