



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 142 (Substitute S-5 as reported)
Senate Bill 143 (Substitute S-5 as reported)
Sponsor: Senator Glenn D. Steil
Committee: Financial Services

Date Completed: 3-20-95

RATIONALE

Michigan's Nonprofit Corporation Act and Business Corporation Act both require corporations based or operating in Michigan to file an annual report and pay a filing fee, which is \$10 for nonprofit corporations and \$15 for business corporations. The Acts require the annual reports to include identifying information as well as certain financial information. The Department of Commerce collects all of this information and makes it available to the public via a 900-telephone number. Some people feel that it is inappropriate for the State to collect and disseminate information relating to a corporation's finances; they believe that this is a governmental intrusion on business activity and imposes an unnecessary cost upon corporations.

CONTENT

Senate Bills 142 (S-5) and 143 (S-5) would amend the Nonprofit Corporation Act and the Business Corporation Act, respectively, to revise the information required to be included in a corporation's annual report, exempt from the Freedom of Information Act (FOIA) some information previously required in those annual reports, and specify that a report would not have to be filed by a nonprofit corporation during the year of incorporation.

Senate Bill 142 (S-5)

The Nonprofit Corporation Act requires that each domestic corporation and each foreign corporation authorized to conduct affairs in Michigan file a report with the administrator (the Director of the Department of Commerce) on or before October 1 of each year. The bill would delete all of the

following from the list of information required, under that Act, to be included in a nonprofit corporation's annual report:

- The date of incorporation, term of corporate existence, if other than perpetual, and, if a foreign corporation, the date when authorized to conduct affairs in Michigan.
- The act under which the corporation is incorporated or reincorporated.
- The amount of the corporation's authorized capital stock, if any, and number of shares of each class authorized.
- The value of the property owned by the corporation at the time of the report's filing.
- What, if any, distribution of funds has been made to any members or shareholders during the year covered by the report.
- A statement of the aggregate amount of any loans, advances, overdrafts, or withdrawals and repayments made to or by officers, directors, members, or shareholders of the corporation other than in the ordinary and usual course of business and on the ordinary and usual terms of payment and security.
- Other information as the administrator reasonably requires.

The bill would retain the requirement that an annual report contain all of the following:

- The corporation's name
- The name of the corporation's resident agent and address of its registered office in Michigan.
- The names and residence addresses of the corporation's officers and directors.

- The purposes of the corporation.
- The nature and kind of business in which the corporation has engaged during the year covered by the report.

The bill also would delete a requirement that an annual report be open to reasonable inspection by the public promptly after filing by the corporation. The bill specifies that, except for the information that would continue to be required, information that was previously required would be exempt from disclosure under the FOIA.

In addition, under the bill, an annual report would not have to be filed in the year of incorporation or authorization by a corporation that was formed or authorized to do business on or after January 1 and before October 1 of that year.

Senate Bill 143 (S-5)

The Business Corporation Act requires that each domestic corporation and each foreign corporation file a report with the administrator no later than May 15 of each year. The bill would delete all of the following from the list of information required, under the Act, to be included in a corporation's annual report:

- The state and date of incorporation; term of corporate existence, if other than perpetual; and, if a foreign corporation, the date when authorized to transact business in Michigan.
- The total number of authorized shares.
- The nature and book value of the property owned and used by the corporation listed separately as to property within and outside of Michigan.
- A complete and detailed statement of the corporation's assets and liabilities as shown by its books, at the close of business on December 31 or upon the date of the close of its latest fiscal year.
- Other information as the administrator reasonably requires.

The bill would retain the requirement that an annual report contain all of the following:

- The corporation's name.
- The name of the corporation's resident agent and address of its registered office in Michigan.
- The names and residence addresses of the corporation's president, secretary, treasurer, and directors.

- The general nature and kind of business in which the corporation is engaged.
- For each foreign corporation authorized to transact business in Michigan, the most recent percentage used in computing the tax required by the Single Business Tax Act.

The bill also would delete a requirement that an annual report be open to reasonable inspection by the public promptly after filing by the corporation. The bill specifies that, except for the information that would continue to be required, information that was previously required would be exempt from disclosure under the FOIA.

The Act specifies that a report is not required to be filed in the year of incorporation or authorization by a corporation formed or authorized to do business on or after January 1 and before May 16 of that year.

MCL 450.2911 & 450.2915
450.1911 & 450.1915

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The mandate that corporations file with the State an annual report that requires them to reveal specific financial information for public consumption is intrusive, costly, and unnecessary. Financial information is proprietary and should not have to be handed over to the State for public disclosure. This practice gives competitors an advantage, especially if they do not operate in Michigan and, consequently, do not have to reveal the same information, because they can determine a Michigan-based business's financial condition simply by calling the Department of Commerce. Although the annual filing fee is a small amount, preparing the document for reporting to the State can involve unnecessary accounting and bookkeeping costs, especially for small businesses and nonprofit corporations.

The bills would alleviate some of the burden on businesses and lessen their competitive disadvantage by deleting requirements that their annual reports include financially sensitive information. At the same time, by continuing to require that an annual report include identifying

information, the bills would ensure that the officers behind a corporate entity still could be easily identified and located. For out-of-state corporations, the Business Corporation Act also would continue to require information necessary for determining a business's tax liability under the Single Business Tax Act.

Response: Corporations are creations of the State and incorporation offers certain legal and financial benefits to an organization. The public has a right to oversee the activities of these entities. Asking corporations to report certain financial information is not an unreasonable requirement, given the benefits of incorporation.

Opposing Argument

Allowing citizens access to corporate information is good public policy. The practice of requiring corporate reports dates back to the late 1800s, when government increased efforts to oversee the practices of businesses in order to preclude monopolistic trusts. In addition, government collection and dissemination of information in corporate reports serves a beneficial purpose. A company that offers a contract on a bidding process, for instance, can easily inquire about a bidder's financial status and history. The corporate report offers an objective, third-party source for this type of information that is readily available. Further, according to testimony before the Senate Financial Services Committee, businesses nationwide that include balance sheet information in their corporate reports tend to obtain better trade and credit terms in business transactions. The collection and dissemination of the information required to be in corporate annual reports serves some useful purposes and should continue to be required.

Response: The kind of information that one company needs to know about another before entering into a business agreement can be obtained from commercial entities such as credit reporting agencies. Government should not be involved in making information about one business available to another.

Opposing Argument

Although the bills address some of the most objectionable aspects of filing annual corporate reports, this legislation does not go far enough. The reporting requirement and filing fee should be eliminated entirely. Not only are small businesses burdened by the fee and the cost of preparing the reports, but the revenue gained by the State from the fee is simply a tax on businesses. According to testimony offered by the Department of Commerce before the Senate Financial Services

Committee, the revenue from corporations' annual reporting fees amounts to about \$4.5 million from business corporations and about \$500,000 from nonprofit corporations. Since it costs only about \$2.5 million to administer the reporting program, with the balance being transferred to the General Fund, the fee amounts to a \$2.5 million tax on corporations.

Response: Even if the financial information were no longer required, the identifying information in the annual reports is useful for legal purposes. The report provides a readily available source to identify a corporation's officers and directors for the purpose of service of process against a corporation.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would not have a fiscal impact on the Department of Commerce or on other agencies of State government. No mandated costs would be imposed on local governmental units.

Fiscal Analyst: K. Lindquist

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.