

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 2180 (Brown) – As Introduced: February 20, 2014

SUBJECT: Business filings: statement of information.

SUMMARY: Changes the filing period when a corporation, a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, a consumer cooperative corporation a limited liability company, foreign limited liability company, and a credit union files a statement of information (SOI) with the Secretary of State (SOS). Specifically, this bill:

- 1) Requires the filing date to be at the same time the corporations listed above, file tax returns, excluding extensions, rather than file in the calendar month in which the original statement was filed.
- 2) Provides that if a nonprofit public benefit corporation does not file a tax return with the Franchise Tax Board (FTB) then the filing period is May 15 and the preceding five calendar months.

EXISTING LAW

- 1) Requires every corporation to file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the SOS, a statement. Specifies the filing period for a corporation shall be the calendar month which its original articles were filed and the immediately preceding five calendar months. The SOS provides a notice to each corporation to comply with this section approximately three months prior to the close of the applicable filing period. [Corporations Code, Section 1502]
- 2) Requires every nonprofit public benefit corporation, nonprofit mutual benefit corporation, limited liability company and foreign limited liability company to within 90 days after the filing of its original articles and biennially thereafter during the applicable filing period to file with the SOS. [Corporations Code, Sections 6210, 8210, and 17702.09]
- 3) Requires every consumer cooperative corporation and credit union to file within 90 days after its original articles and annually thereafter during the applicable filing period each year a form prescribed by the SOS. [Corporations Code, Section 12570 and Financial Code, Section 14101.6]

FISCAL EFFECT: Unknown.

COMMENTS:

This measure requires nonprofit public benefit corporations, nonprofit mutual benefit corporations, consumer cooperatives, limited liability companies, foreign limited liability companies, and credit unions to file their annual or biennially SOI with the SOS during the calendar month of their tax filing with the FTB. For nonprofit public benefit corporations, if the corporation does not have to file with the FTB then that corporation is required to file its

statement of information by May 15th or within the preceding 5 months. Currently these businesses file the SOI annually or biennially from the date the original articles were filed with the SOS. As of April 2014, the SOS has almost a million active corporations and over 600,000 active LLCs. Depending on whether the entity is required to file annually or biennially, this measure will require well over a million SOI to be filed in one period rather than spreading out the filing through the course of a year. The exact need for this change especially when California Business Connect (CBC) is impending is not clear. By potentially depending on a tax professional to let a business know the SOI is also due at the same time taxes are filed may allow tax professionals to charge a business an additional fee to file an SOI, whether or not this is a concern by the entities affected by the measure is not clear.

CBC

By June 30, 2016, the SOS must launch CBC. CBC will:

- Automate paper-based processes and allow businesses to file and request copies of records online 24 hours a day.
- Provide access to SOS records for the public and government agencies to perform functions in a more efficient manner.
- Allow fee payments to be processed within one business day.

CBC is a six-year project that aims to increase efficiency by eliminating paper-based manual transactions and associated risk of loss to vital state records. CBC will also minimize processing delays through the creation of a uniform data entry platform. Businesses that use CBC will be able to do many of their transactions online, without delay and without paying an additional fee.

According to the author," the date and timing for statement of information filings vary between entities because the date is tied to the specific date that a corporation is formed. Reminders to file from the SOS appear as junk mail and are often missed. As a result, many businesses miss filing their statement of information and become non-compliant and penalized; sometimes without the business' knowledge. A business that fails to file its SOI becomes a suspended entity with the SOS and FTB. In addition to the suspension, the FTB levies a \$250 penalty on the business. Once this occurs, the legal protections provided to these businesses cease to function and all contracts become null and void. In addition, any contracts entered into during a period of suspension are null and void. Approximately 141,000 entities were assessed a penalty for not filing their annual SOI between 2010 and 2011. Of these businesses, 25,000 were suspended."

Arguments in support

The sponsor of the measure, the California Society of Enrolled Agents, states, "AB 2180 addresses the problem by changing the filing time to coincide with the entities tax filing with the FTB. All businesses, except religious corporations, have such an FTB filing requirement, they know about it and when that filing is due. By streamlining the FTB and SOS/SOI filing dates and allowing a five month window to file preceding the due date there will be no confusion as to when the SOI is due. Additionally tax practitioners can remind their clients while working on

their tax filing that the SOI filing is also due. Compliance would increase and businesses would not become suspended or have to suffer the consequences of the suspended status."

Arguments in opposition

According to the SOS, Debra Bowen, "By making every corporation file documents on their tax filing deadline, AB 2180 would effectively collapse 12 months of filings into just few tax deadlines. This is a change that provides no public benefit, will cost millions of dollars to implement and millions more each year on an ongoing basis to staff the "peak and valley" filing system it creates, and makes it more difficult for corporations to file documents in a predictable, timely fashion.

RELATED LEGISLATION

SB 1041 (Jackson) makes various technical, non-substantive, and clarifying changes throughout the Corporations Code in preparation for the SOS automated filing system. These changes include, among other things: requiring that the SOS prescribe forms for the resignation of agents for service of process; harmonizing statutes relating to the resignation of agents for service of process to provide consistency across different types of business entities; authorizing the SOS to remove and destroy records relating to agent resignations if a new agent for service of process is designated, as specified; clarifying the necessary signatures for various business filings; clarifying when foreign limited liability company registration cancellations are effective; clarifying situations wherein a penalty for otherwise delinquent annual statements would not be applied; striking requirements for the provision of additional copies of specified filings; and correcting various internal cross references. Pending in Senate Appropriations, set for hearing on April 28, 2014.

PREVIOUS LEGISLATION

SB 1532 (Pavley, Ch. 494, Stats. 2012) was enacted to implement changes necessary for the California Business Connect automated system. Specifically, the bill specified that the required address information in business filings is the street address and required business entities to provide a mailing address if not the same as the street address. SB 1532 also revised requirements with respect to the maintenance of forms filed with the SOS, revised provisions relating to the assignment of filing dates and fees by the SOS, repealed specified provisions relating to special purpose corporations, and made other technical changes.

RECOMMENDED AMENDMENTS:

- 1) On page 5, delete line 22, delete, "If the"
- 2) On page 5, delete lines 23-24
- 3) On page 5, delete "immediately preceding five calendar months."
- 4) On page 8, line 25, strikeout "Part 10.2" and insert "Part 11"
- 5) On page 12, line 33, strikeout "Part 10.2" and insert "Part 11"

REGISTERED SUPPORT / OPPOSITION:

Support

California Society of Enrolled Agents (CSEA) Sponsor
CalChamber

Opposition

California Secretary of State

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081