



# SENATE BILL 114: Annual Reports/Prop. Tax/Recodification Comm.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	June 28, 2017
<b>Introduced by:</b>	Sens. Wells, Tarte	<b>Prepared by:</b>	Cindy Avrette Staff Attorney
<b>Analysis of:</b>	Sixth Edition		

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**OVERVIEW:** *Senate Bill 114 would make a number of changes to the law governing the filing of annual reports by business entities. The House Committee Substitute would exempt from property tax a leasehold interest in exempted real property and create the Criminal Code Recodification Commission within the North Carolina Administrative Office of the Courts.*

*Among other things, the bill would do the following:*

- *Require electronic filing of annual reports by business corporations, limited liability companies, and limited liability partnerships, with a uniform filing fee of \$125.*
- *Require nonprofit corporations to file annual reports electronically, with no filing fee.*
- *Delay the effective date for required electronic filing to January 1, 2019, for business entities having gross revenues less than \$175,000 in their fiscal year ending in 2017.*
- *Authorize the Secretary of State, until January 1, 2021, to waive the reinstatement fee for a nonprofit corporation seeking reinstatement after being administratively dissolved for delinquent annual report filing.*
- *Disallow refunds of paid sales and use taxes for nonprofits that fail to file timely annual reports.*
- *Exempts leasehold interests in exempt property from property tax, effective for taxable years beginning on or after July 1, 2017..*
- *Creates the Criminal Code Recodification Commission within the North Carolina Administrative Office of the Courts.*
- *Make other technical and conforming changes to the law.*

**CURRENT LAW:** Insurance companies, limited liability companies (LLCs), and limited liability partnerships (LLPs) authorized to transact business in North Carolina are required to deliver an annual report to the Secretary of State. Business corporations, other than insurance companies, are given the option either to deliver a paper copy of their annual report to the Secretary of Revenue or to file their annual report electronically with the Secretary of State. Nonprofit corporations have not been required to file annual reports since 1995.

Business corporations pay a filing fee of \$25 if the annual report is filed in paper format and \$18 if it is filed electronically. The filing fee for LLCs and LLPs is \$200, regardless of how the report is filed. LLCs and LLPs generally are not subject to franchise tax. Corporations are subject to franchise tax. Currently, the minimum franchise tax is \$200; thus, the LLC and LLP filing fees equal the minimum corporate franchise tax. All filing fees collected from business corporations are credited to the general

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fund as tax revenue. In addition to the filing fee, the Secretary of State charges a \$2.00 electronic transaction fee for each annual report that is filed electronically.

Annual reports must include the name of the entity's registered agent, the street and mailing address of its registered office, and the business addresses of its principal officers. If the information contained in its most recent annual report has not changed, the entity can certify that fact instead of restating all of that information in the annual report.

The Secretary of State must notify a filing entity in writing if its annual report is missing any required information and return the report to the filing entity for correction. If the report is corrected and resubmitted within 30 days after the notice, it is deemed to be timely filed.

For delinquency in filing its annual report, a business corporation or LLC can be administratively dissolved and the charter of an LLP can be revoked. To be reinstated, the entity must follow procedures set forth in G.S. 55-14-22.<sup>1</sup> An administratively dissolved corporation or LLC must pay a fee of \$25 to the Secretary of Revenue to be reinstated.

**BILL ANALYSIS:** The finance related provisions related to annual reports would do the following:

- Impose a uniform filing fee of \$125 for annual reports submitted by business corporations, LLCs, LPs, and LLPs. There would be no fee required to file a nonprofit corporation annual report.
- Repeal the requirement that fees for filing business corporation annual reports must be credited to the general fund as tax revenue, and delete a cross-reference to the repealed provision.
- Make a nonprofit corporation subject to administrative dissolution for delinquency in filing annual reports, and disqualify it from receiving a refund of sales and use taxes paid unless the delinquent reports are filed within one year after its request for refund has been denied.
- Require the Secretary of State and Secretary of Revenue to develop a process for verifying that all required annual reports have been filed by a nonprofit seeking reinstatement of its eligibility to receive refunds of sales and use taxes paid, and to make this process operational before January 1, 2018.
- Require a business corporation, LLC, nonprofit corporation, LP, or LLP that has been administratively dissolved to pay any penalties, fees, or other payments due before it can be reinstated by the Secretary of State.
- Increase the fee for reinstatement by an administratively dissolved business corporation or LLC from \$25 to \$50; require the Secretary of Revenue to remit \$25 of each fee collected to the Secretary of State to be used solely to cover its share of the cost of reinstatement; appropriate funds received by the Secretary of State under this provision for the maximum amount necessary to achieve this purpose; and require any funds received by the Secretary of State in excess of the amount to revert to the General Fund.

Section 9 would exempt from property tax a leasehold interest in exempt property. North Carolina imposes a property tax on a leasehold interest in real property where the real property is exempt from property tax. The property tax on a leasehold interest in exempt real property applies when a unit of government leases property to a private business and when the payments under the lease are below the

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<sup>1</sup> G.S. 57D-6-06(c) (LLCs) and G.S. 59-84.4(h) (LLPs) incorporate by reference the procedures for reinstatement applicable to business corporations under G.S. 55-14-22.

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value of the interest in the real estate.<sup>2</sup> Most county assessors value these leasehold interests as the difference between the fair market value of the leasehold interest and the rent paid under the lease. For example, if the private tenant is paying market rate for the exempt real property owned by a local government, then the leasehold interest has no value because similar leases can be obtained at the same price. If the tenant is paying a bargain rate under the lease, the leasehold interest has value because a similar lease would cost more.

In addition, Senate Bill 114 would do the following:

- Require business corporations, LLCs, nonprofit corporations, LPs, and LLPs to file annual reports electronically with the Secretary of State.
- Require each entity's annual report to include:
  - The email address for its registered agent and, if different, the entity's email address.
  - The physical business addresses of its principal officers.
  - The names, titles, and physical business addresses of any other person who has actual authority to bind the corporation.
- Authorize the Secretary of State to provide notices to consenting entities by electronic mail, which would be confidential and not be subject to disclosure pursuant to Chapter 132.
- Eliminate the option permitting a business corporation, LLC, LP, or LLP to certify that the information contained in its most recently filed annual report has not changed in lieu of restating that information.
- Require the Program Evaluation Division to study the act's effect on staffing levels and customer service demands at the Office of the Secretary of State and the Department of Revenue, and to report the results of its study to the chairs of the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Oversight Committee on General Government on or before August 1, 2019.
- Create the Criminal Code Recodification Commission within the North Carolina Administrative Office of the Courts which would be tasked with producing a new, streamlined, comprehensive, and principled criminal code, including commentary and other details related to the new code.

**EFFECTIVE DATE:** For entities having gross revenues of at least \$175,000 for their fiscal year ending in 2017, Parts I, II and IV of the act become effective January 1, 2018 and apply to annual reports due on or after that date. For entities having gross revenues of less than \$175,000 for their fiscal year ending in 2017, Parts I, II and IV of the act become effective January 1, 2019 and apply to annual reports due on or after that date. Part III of this act becomes effective January 1, 2019, and applies to annual reports due on or after that date. Section 5.(a) of Part V of this act becomes effective January 1, 2019, and applies to requests for refunds submitted on or after that date. Section 6 of this act is effective when it becomes law and applies to fees collected on or after that date. Part IX of the bill becomes effective for taxes imposed for taxable years beginning on or after July 1, 2017. The remainder of this act is effective when it becomes law.

*\*Amy Darden, Nicholas Giddings, Wendy Ray, and Bill Patterson, Staff Attorneys in the Legislative Analysis Division, substantially contributed to this summary.*

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<sup>2</sup> The only other form of intangible property subject to property tax is certain computer software.