



# SENATE BILL 362: Annual Report Standardization.

2019-2020 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 20, 2019
<b>Introduced by:</b>	Sens. Wells, Perry	<b>Prepared by:</b>	Cindy Avrette Staff Attorney
<b>Analysis of:</b>	Third Edition		

**OVERVIEW:** *Senate Bill 362 would make a number of changes to the law governing the filing of annual reports by business entities.*

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

- *Require electronic filing of annual reports by business corporations, limited liability companies, limited partnerships, 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, 2021, for business entities having gross revenues less than \$175,000 in their fiscal year ending in 2018.*
- *Authorize the Secretary of State, until January 1, 2022, to waive the reinstatement fee for a nonprofit corporation seeking reinstatement after being administratively dissolved for delinquent annual report filing.*
- *Allow the Department of Revenue to disclose certain information to the Secretary of State regarding nonprofit entities who receive a refund of sales and use tax.*
- *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 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

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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:** Senate Bill 362 would increase the annual report filing fee, require electronic submission, allow electronic notification, and require nonprofit entities and limited partnerships to file annual reports.

Specifically, Senate Bill 362 would do the following:

- Require nonprofit corporations and LPs to file annual reports electronically with the Secretary of State, just as business corporations, LLCs, and LLPs currently have to file.
- 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 the entity's principal officers.
  - The name, mailing addresses, e-mail addresses, and phone number of an individual who is authorized to provide information regarding persons with the 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.
- 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.
- 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

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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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achieve this purpose; and require any funds received by the Secretary of State in excess of the amount to revert to the General Fund.

- Add enforcement language to the existing statute dealing with the penalty for signing a false document with the Secretary of State.
- Allow the Department of Revenue to disclose to the Secretary of State the following information regarding nonprofit entities who receive a refund of sales and use tax: the entity's name, mailing address, email address, and if applicable, registration number issued by the Secretary of State.

**EFFECTIVE DATE:** For entities having gross revenues of at least \$175,000 for their fiscal year ending in 2018, the electronic filing requirement in Parts I, II and IV of the act become effective January 1, 2020 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 2018, the electronic filing requirement in Parts I, II and IV of the act become effective January 1, 2021 and apply to annual reports due on or after that date. The remainder of Parts I, II, and IV become effective January 1, 2020. Parts III and V of this act become effective January 1, 2021, and apply to annual reports due on or after that date. Part VI of this act becomes effective January 1, 2021, and applies to requests for sales and use tax refunds submitted on or after that date. Part VII of this act is effective when it becomes law and applies to fees collected on or after that date. The amendments to G.S. 55D-18(a) in Part VIII become effective December 1, 2019, and apply to offenses committed on or after that date. Except as otherwise provided, the remainder of this act is effective when it becomes law.

*Amy Darden, counsel to the Senate Commerce and Insurance Committee, substantially contributed to this summary.*