

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

CHARLES E. SUMMERS, JR.
SECRETARY OF STATE

March 1, 2012

Honorable Douglas A. Thomas, Senate Chair
Honorable H. David Cotta, House Chair
Members of the Joint Standing Committee on State and Local Government
2 State House State
Augusta, ME 04333-0002

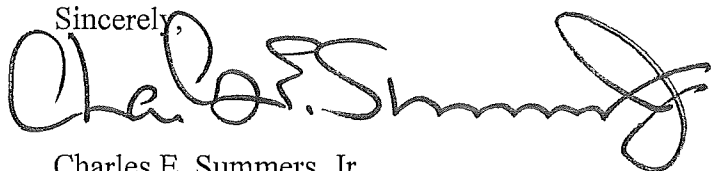
Dear Senator Thomas, Representative Cotta, and Members of the Joint Standing Committee on State and Local Government:

I am pleased to submit the Paperwork Reduction Group Report required by Part K of Public Law 2011, Chapter 304, *An Act to Ensure Regulatory Fairness and Reform*, enacted in the 1st Session of the 125th Legislature.

Among the many reforms included in the law is the requirement that the Secretary of State convene a working group to examine opportunities for reducing the paperwork associated with the filing of forms with the Office of the Secretary of State.

The Paperwork Reduction Working Group, comprised of representatives of state agencies, small businesses recommended by the Maine chapter of the National Federation of Independent Business, and other interested parties met twice in January 2012 to review the paperwork associated with the filing of forms with the Office of the Secretary of State and to make recommendations. Group membership is provided in Appendix A of this report.

I look forward to working with you as you consider this report. As always, if I can be of assistance to you, please do not hesitate to call on me.

Sincerely,


Charles E. Summers, Jr.
Secretary of State



INTRODUCTION

During the debate on LD 1, “An Act to Ensure Regulatory Fairness and Reform”, now Public Law 2011 Chapter 304, comments were received regarding the number of different business filings required by state agencies. Part K of the bill targets only filings required by the Secretary of State which is much narrower than the original proposal to address business filings of all state agencies. The scope of this working group encompassed a review to identify, reduce, and consolidate corporate filing forms and report other recommendations the group believed would effectively address small business issues. The group met twice in January 2012. The deadline for reporting back on this legislation was Feb 1st. A one month extension was authorized by the committee of jurisdiction. For a list of group members, please see Appendix A.

CORPORATE FORMS REVIEW

Prior to the first meeting, staff at the Bureau of Corporations, Elections and Commissions (CEC) performed a preliminary review of all corporate forms and presented the group with an explanation of the current design of business organization forms and recommendations for combining certain forms (see Appendix B).

There are approximately 200 forms listed on the CEC website and combining similar forms into one would result in paperwork reduction of approximately 30%. While this would not reduce the number of filings required, it would reduce the number of forms being returned to businesses because they used the wrong type of form.

The types of corporate filings are:

- Corporation
- Limited Liability Company
- Limited Partnership
- Limited Liability Partnership
- Nonprofit Corporation

The most frequently used forms are:

- Formation
- Amendment
- Change of Clerk or Registered Agent

These forms are fillable PDF forms, completed by the user, printed and mailed to CEC with a check or credit card voucher.

Annual report filings may be filed online. This service achieves a successful 96% adoption rate.

New formation filings cannot be filed online at this time because the online filing processes have not yet been developed. The Bureau plans to offer this type of filing online but is currently focused on upgrading the back-end system of the application and database to capture and maintain the required corporate data. Issues to be resolved include the appropriate signature requirements and whether a digital signature may be used. Additional online filing services will include name availability and name reservation.

ONLINE RESOURCES

As a result of LD 1, the Department of Economic and Community Development (DECD) compiled a list of all 988 business licenses and permit forms required by state agencies. DECD updated the Business Answers website and licensing assistant, and added a new license/permit directory. This is the first phase of achieving the state's goal to establish a one-stop online filing system for businesses. Further collaboration and additional resources will be necessary as this project moves forward.

The group viewed the CEC website, the online corporate name search service, and other corporate online services available. One member commented that the site is intimidating.

The Department is beginning work on an upgrade to its website and will consider in this process:

- Evaluating current page usage
- Adjusting content style and format
- Creating a form directory similar to the Business Answers site so information could be presented in multiple ways
- Offering business owners additional guidance, such as a checklist and other useful tools

BUSINESS INFORMATION

CEC receives calls from businesses that express frustration when they start at their town office, are not directed to the state, and therefore never learn of available resources. The state could participate in the Maine Municipal Conference to provide information on state resources that are available to businesses.

Many business owners and managers opt to complete their own start-up licensing and permitting processes rather than hiring attorneys. A pamphlet with a checklist of the basic steps to starting a business and a list of key resources would be very helpful to them.

CEC sends a filing requirement reminder to all new business entities after the initial filing and an email reminder of the annual filing requirement. Some businesses report not receiving the email reminders. This occurs when an email address has changed or a spam filter captures the email reminder.

RECOMMENDATIONS

Forms: Combine the following forms, which are similar for each type of business, and add a check-off for the type of entity:

- Application for Reservation of Name
- Transfer of Reserved Name
- Application for Registration of Name
- Consent Terminating Name Registration
- Statement of Appointment or Change of Commercial Registered Agent
- Statement of Appointment or Change of Noncommercial Registered Agent
- Statement of Resignation of Noncommercial Registered Agent
- Statement of Intention to Do Business Under an Assumed or Fictitious Name
- Termination of Statement of Intention to Do Business Under and Assumed or Fictitious Name
- Amended Annual Report
- Certificate of Excuse
- Certificate of Resumption
- Application for the Use of an Indistinguishable Name
- Articles of Correction

Corporate Website Redesign; Implement the following suggestions:

- Priority should be the ease of use for the consumer
- Provide a one or two sentence “plain English” description of each form
- Equip the Business Answers tool to search CEC's forms and/or to walk users through their steps and locate needed forms. "Bundle" and display the relevant forms by the type of business
- Work with DECD to determine if CEC forms should be added to the Business Answers forms directory, or add text to the licensing assistant to direct people to CEC forms
- Utilize the “What’s New Tool”, a free service provided by InforME, to allow customers to search by form number or name

ADDITIONAL INFORMATION

Questions and/or comments by group members:

- Should the SOS be the repository for all forms regulated businesses must complete? Can efficiencies be achieved electronically?
- Should new businesses start at SOS or DECD? This varies depending on the type of business.
- There are six licenses needed by a grocery store; with liquor & beer sales licenses the most difficult to obtain.

Expedited filings:

In 2011, the Bureau processed 16,157 corporate filings (excluding annual reports). The Bureau expedited 3,809 of those filings (24%).

- 3,234 were 24 hour turn-arounds at \$50 per filing
- 575 were immediate issue at \$100 per filing

Maine's corporate fees are statutory and close to average among the New England states.

LD 1695:

On January 29, 2012, the Joint Standing Committee on Labor, Commerce, Research and Economic Development voted "ought to pass as amended", LD 1695, *An Act To Provide Additional In-store Space for Maine's Businesses by Removing License and Permit Posting Requirements*. This law would allow convenience stores to discontinue displaying all of their licenses, with the requirement that they be filed on premise.

The bill summary follows:

This bill eliminates the administrative burden of publicly displaying certain permits and licenses and the use of space for the display of those licenses and permits that could be otherwise used, including sales tax registration certificates, retail tobacco licenses, including those required to be displayed on tobacco vending machines, retail food establishment licenses, licenses for the sale of liquor and any license or permit issued by a municipality. Instead of displaying the license or permit, a licensee or permittee must make the license or permit available on demand at the premises or at the licensee's or permittee's primary place of business.

The State of Washington issues a Master License on a single piece of paper with all business licenses listed on it. Individual agencies still complete their own reviews.

In closing, the Department will work to implement the recommendations in this report and continue to explore other options to assist businesses that choose to incorporate in Maine.



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**Explanation of Current Design of Business Organization Forms
Prepared by the Office of the Secretary of State, January 13, 2012
For the Paperwork Reduction Working Group pursuant to PL 2011, Chapter 304**

Background on the Prescribed Forms

The Secretary of State, through the Bureau of Corporations, Elections and Commissions, has the statutory responsibility for filing forms and documents related to the establishment and maintenance of four business entity types: Business Corporations, Limited Liability Companies, Limited Partnerships and Limited Liability Partnerships, as well as Nonprofit Corporations and trade and service marks.

The Secretary of State has ministerial authority over the filing program, which means that it accepts completed filings so long as they are tendered with the correct form and filing fees, with required information provided on the form. This office does not have the authority to investigate or validate the accuracy of the information provided by the filer; instead, it creates a searchable public record so that citizens can acquire basic information on the entities that have filed with this office. This office has no authority over the “internal governance” matters such as whether an entity is following its bylaws or holding shareholder meetings as required.

The Secretary of State has statutory authority to prescribe and furnish all forms for entity filings, and the use of these forms is mandatory. The prescribed forms achieve the following:

- Enable most filers to complete the forms without requiring an attorney; and
- Enable the ministerial review of the documents by mid-level clerical staff of the Bureau.

Some other benefits of the forms include:

- Separate and specific forms have been created for each type of filing and each entity type, so that filers and corporate staff alike can concentrate on the filing requirements for that entity type;
- Similar information is in the same place on all forms, allowing the staff to determine the completeness of the filing easily;
- Statutory references are provided for the basic filing requirement for each type of form as well as for the main items of information that must be supplied; and
- Each form prescribed includes the information required by law for that filing, with limited exceptions for information the statute designates as optional.

Recommendation for Combining Certain Forms

Though there are other filing forms that will require review and discussion by this group to determine if consolidation is appropriate, the following forms can easily be combined since the requirements are very similar:

- Application for Reservation of Name
- Transfer of Reserved Name
- Application for Registration of Name
- Consent Terminating Name Registration
- Statement of Appointment or Change of Commercial Registered Agent
- Statement of Appointment or Change of Noncommercial Registered Agent
- Statement of Resignation of Noncommercial Registered Agent
- Statement of Intention to do Business under an Assumed or Fictitious Name
- Termination of Statement of Intention to do Business under and Assumed or Fictitious Name
- Amended Annual Report
- Certificate of Excuse
- Certificate of Resumption
- Application for the Use of an Indistinguishable Name
- Articles of Correction