

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION Office of the Clerk

October 22, 2020

The Honorable Richard L. Saslaw
Chair, Senate Committee on Commerce and Labor
P.O. Box 1856
Springfield, Virginia 22151-0856

The Honorable Bryce E. Reeves
Member, Senate of Virginia
P.O. Box 7021
Fredericksburg, Virginia 22404

Susan Clarke Schaar
Clerk of the Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

Re: Senate Bill 1006 (2020)

Dear Sirs and Madam:

This correspondence provides the background and results of a study requested by the Senate Committee on Commerce and Labor ("Commerce & Labor"). The study was performed by the Staff of the State Corporation Commission ("Commission").

Background

By letter dated April 8, 2020, the Clerk of the Senate advised Commissioner Mark C. Christie that Commerce & Labor referred the subject matter contained in Senate Bill 1006 ("SB 1006") to the Commission for study. The letter also includes a request for a written report by November 1, 2020.

As introduced by Senator Reeves, SB 1006 permits any domestic or foreign stock corporation having 5,000 or fewer authorized shares to prepay up to five years of its annual registration fee. If the number of authorized shares increases during the prepaid period, any additional registration fee must be paid annually. The bill further allows domestic and foreign nonstock corporations and limited liability companies ("LLCs") to prepay their annual registration fee.

The Staff's Study Process

The Staff first compiled data about the number of business entities embraced by the legislation. Staff also queried the filing offices in other jurisdictions as to their prepay practices and experiences concerning comparable fees.

Next, Staff estimated both the number of eligible entities that might choose to prepay their annual registration fees and the impact prepayments would have on the amount of registration fees collected annually by the Office of the Clerk of the Commission. The Staff then gathered information about the modifications to the Clerk's Office computer system (the Clerk's Information System, referred to as "CIS") that would be needed to implement the legislation, and the costs associated therewith.

The Results of the Study and Analysis

As of June 30, 2020, the CIS contained records for about 116,000 active domestic and foreign stock corporations with 5,000 or fewer authorized shares, 50,000 active domestic and foreign nonstock corporations, and 445,200 active domestic and foreign LLCs.

Following a nationwide inquiry of state filing offices with duties comparable to those of the Clerk's Office of the Commission, Staff received information from 12 jurisdictions about their practices of allowing business entities to prepay annual registration, or similar, fees. None of these jurisdictions had a prepayment program - although Delaware, which does not have a formal prepayment procedure, will retain an entity's overpayment and credit it against the amount due the following year. One of the 12 respondent jurisdictions noted that it had a prepayment program at one time but discontinued it years ago because of the costs associated with administering those types of accounts.

The Staff anticipates that few eligible corporations, perhaps 5%, would opt to prepay annual registration fees. In regard to LLCs, Staff estimates that up to 10% would choose to prepay. Note that these estimates are essentially educated guesses since neither the Commission nor responding jurisdictions have actual relevant experiences upon which to draw.

The estimated low percentage of corporations is based, in part, on the fact that every corporation is required by statute to file with the Commission each year an annual report. This report provides information such as the corporation's principal office address and the names of its directors and principal officers as of the date of the report. Consequently, even if a corporation opted to prepay registration fees, it would still have to file an annual report each year.

Another reason corporations and LLCs may choose not to prepay is the fact that annual registration fees which have been paid are not refundable. Thus, a business entity that prepaid its annual fees, but was later terminated or canceled during the prepay period, would not receive a refund of the prepaid fees.

Setting aside the reasons why only a small percentage of business entities may opt to pay in advance, prepayment of annual registration fees also raises questions concerning the Clerk's accounting for and collection of such fees over multiple years.

Under present law, the annual registration fee assessed against a corporation with 5,000 or fewer authorized shares is \$100 (this amount is established by a provision in the Budget Bill currently under consideration in the 2020 Special Session (“Budget Bill”), which supersedes the \$50 fee set forth in § 13.1-775.1 A of the Code of Virginia). The annual registration fee assessed against each nonstock corporation is \$25 (§ 13.1-936.1 A of the Code), and the registration fee assessed against a limited liability company is \$50 (§ 13.1-1062 A of the Code).

Corporate and LLC annual registration fees (and certain other fees) collected by the Commission are set aside as a special fund (SF) to be used by the Commission to defray the costs of operating the Office of the Clerk. The registration fees paid by corporations and LLCs comprise about 80% of the SF. As directed in the Budget Bill, 75% of these receipts are transferred to the general fund (GF) semiannually and the remaining 25% of the revenues are used for the appropriation to operate the Clerk’s Office. The amount transferred from the SF to the GF in fiscal year 2020 was approximately \$52,370,000 and the amount transferred in fiscal year 2019 was about \$51,850,000.

The Commission would account for prepaid fees on a cash basis - that is, the fees will be deposited into the SF in the year received. This accounting presumably will result in an increase in SF revenues collected in the first-year prepayments are permitted. As there is no reliable way to determine how many entities may prepay in each subsequent year, however, revenue collections in those years will be unpredictable and irregular. Such irregular revenue collections will impact the amounts that are transferred semiannually from the SF to the GF as well as the amount available to fund the operations of the Clerk’s Office.

SB 1006 permits prepayments for up to five years. Thus, some corporations and LLCs may pay one year in advance, some may pay two years in advance, and so forth. The possibility of such varied prepayments also will contribute to uneven collection of registration fees.

The bill also addresses the situation when a stock corporation increases its number of authorized shares during the prepaid period by a large enough number that an additional registration fee is owed. It, however, does not account for the situation arising from a possible legislative change to the amount of registration fees assessed against corporations or LLCs, either upward or downward, during that period.

In the months ahead, the Clerk’s Office will modify its business practices and the CIS to prepare for the administration of two major legislative enactments from earlier General Assembly sessions that take effect on July 1, 2021. The CIS and Clerk’s Office business practices will require additional modifications to implement the provisions of SB 1006 at an estimated cost of \$150,000. Consequently, if SB 1006, in its current or amended form becomes law, the Commission would request that the bill include a delayed effective date of no earlier than July 1, 2022, to allow the Clerk’s Office ample time to modify the CIS and its office practices.

The Commission appreciates the opportunity to provide this report on SB 1006. Please let us know if you have any questions concerning this matter.

Respectfully submitted,
Bernard J Logan
Bernard J. Logan
Interim Clerk of the Commission