

Secretary of State's Response to Senate Oversight Report Recommendations of  
December 2017 updated February 2019

Business Filings

*Legislative Recommendation: SC Code of Laws §33-1-220(c)(1) and (2) should be amended to allow the Secretary of State's Office to provide either certified or uncertified copies of business filings to consumers.*

Pursuant to SC Code of Laws §33-1-220(c), the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) for copying, one dollar for the first page and fifty cents for each additional page; and
- (2) two dollars for the certificate.

The legislative recommendation that §33-1-220(c) be amended is unnecessary because the Secretary of State's Office currently provides copies of both certified and uncertified copies of business filings to customers. For example, when a customer files online in the new corporate web-based online application, the customer receives an uncertified filed copy via email. All copies printed from the existing filed documents are certified by application design.

Furthermore, the provision of certified copies provides many benefits to customers as well as to the general public. When a copy of a document is requested from the Secretary of State's official records, the document should be certified as a true copy of the original filing. Individuals need certified copies for real estate closings, opening bank accounts, court hearings, etc. Recipients of these records need to know that the record is true copy of the filing that is on file in the Secretary of State's official database. Another reason this is important is the prevention of falsification of records. An uncertified copy does not provide the added security that the document has been certified as a true copy of the filing that is part of the Secretary of State's official records. Additionally, certified copies receive date stamps indicating the date of the request whereas uncertified copies do not.

Finally, the statutory fee for certifying business filings is \$3.00 (\$1.00 for first page and \$2.00 for certification), and \$.50 for each additional page. As with other statutory fees, it has not been updated in many years. While this \$3.00 fee is nominal, it is retained by the office to support its operations. Elimination of this fee would result in a fiscal impact on the operations of the agency and would require additional appropriations from the General Assembly to maintain the agency's current level of funding. Out of the total office budget in Fiscal Year 2017-2018 of \$3,245,746, only \$1,143,160 was received in state appropriations. Copy fees for business filings compensate for this discrepancy in funding, and support an agency which returned \$7,660,345 to the State General Fund in Fiscal Year 2017-2018.

*Agency Recommendation: The Secretary of State's Office should ensure they are in compliance with §1-5-50 of the SC Code of Laws regarding fees charged to persons requesting records.*

*Agency Recommendation: The Secretary of State's Office should explore the feasibility of providing free access to business filings to consumers using the online system recently implemented.*

The Secretary of State's Office prides itself in providing responsive customer service to the citizens of South Carolina. In January 2017, the Secretary of State's Office launched its corporate web-based online application, which provides customers the opportunity to file business documents 24 hours a day, seven days per week. The online business entity document request system, which was launched in July 2015 as the first phase of our comprehensive business filings system, allows customers to request certified copies of documents online and receive those copies via email within 24 hours. This new system has streamlined the previous process of receiving document requests via mail or by facsimile. Staff ensures that the documents emailed to the customer represent a complete and accurate record of what is requested. Some business filings, such as old articles of incorporation, may be in archives and require staff to request the record from the South Carolina Department of Archives and History. A filing recently digitized from microfilm may require staff to ensure that the complete record has been transferred to the database. As part of our excellent customer service, we routinely answer inquiries from customers who are unsure what documents they need to request, and assist them in determining what documents they may need.

In addition, the Secretary of State's Office provides some information online at no cost, including the name, entity type, status, state of incorporation, registered agent name and address, and list of available filings. This same information was available online before the launch of the new business filings system.

The Senate Oversight Report's comparison of what the South Carolina Secretary of State offers its customers compared to other states is misleading in that it does not take into account the higher filing fees and expedited fees other states charge their customers. Specifically, the report notes six states that provide free access to corporate documents. These states are North Carolina, Georgia, Florida, Virginia, Maryland, and Kentucky. However, these states charge much higher fees in other areas. Please refer to the attached filing fee report for comparison. For example, in Virginia, the Secretary of State charges an additional \$200.00 for same day filing and additional \$100.00 for next day filings. North Carolina charges \$200.00 for filing by the end of the same business day of a document received by noon, and \$100.00 for filing within 24 hours after receipt, excluding weekends and holidays. The state of Georgia charges up to \$1,000.00 for expedited service. Delaware charges \$1,000.00 for expedited one-hour filing and \$500.00 for two-hour expedited service. Additionally, Delaware charges between \$250.00 - \$500.00 for document preclearance. The Secretary of State's Office does not charge for document preclearance. A certificate of existence in Delaware costs up to \$175.00 compared to only \$10 in South Carolina.

The South Carolina Secretary of State's Office does not charge expedited fees for any business filing. A customer can walk into the office and file a business filing while they wait at no extra charge. Likewise, there is no expedited filing fee for online filings—the customer receives confirmation of the filing by the next day with very few exceptions. In addition to the expediency of online filing, most paper filings received by mail are filed within 3 days with no additional charge. The goal of the Secretary of State's Office is to provide excellent customer service and efficient filing without requiring customers to pay extra fees for expedited services.

Furthermore, other states charge higher filing fees for corporate filings, and have annual report fees in addition to one-time filing fees that the Secretary of State's Office does not charge. For example, in Florida, there is an annual report fee up to \$900.00. Businesses are not required to remit annual report fees to the South Carolina Secretary of State. Moreover, business filing fees in South Carolina have not increased in many years, and comprise a significant portion of the \$7,660,345 remitted to the State General Fund in FY 2018-2019.

The Secretary of State's Office continuously looks for ways to provide our statutorily-mandated services while saving taxpayer money. The Secretary of State did not make a multi-million dollar capital project request to the General Assembly to fund the new online business filing system because of our partnership with South Carolina Interactive (SCI). By using SCI as our partner in the development of our online business filings system, we were able to provide our customers this service without requesting additional state funds. The estimated cost avoidance for the agency in providing services with the Secretary of State's partnership with SCI is over \$3,077,245.00. No other state has a business filing system like the project we developed with SCI. The Secretary of State's partnership with SCI is an example of how the office works to fulfill the mission of providing innovative technology to our customers while providing services at the lowest possible cost. Additionally we partnered with the SCI to provide our Uniform Commercial Code online system and are in the process of launching a new agency website with SCI. The agency could not be providing online services at a lower cost than what we currently provide. States are funded differently and may receive adequate state funding or retain the higher fees charged to support their operations.

Finally, the Secretary of State's Office is in compliance with SC Code of Laws §1-5-50. Copy and print services are provided at the lowest possible cost to the customer. The office does not retain filing fees, charge expedited fees, or ask for millions of dollars in capital project funding to pay for the online services provided to business filings customers. Elimination of copy fees for business filings would result in a fiscal impact on the operations of the agency and would require additional appropriations from the General Assembly to maintain the agency's current level of funding. Out of the total office budget in FY 2018-2019 of \$3.2 million, only \$1,143,160 was received in state appropriations. Copy fees for business filings compensate for this discrepancy in funding, and support an agency which returned \$7,660,345 to the State General Fund in FY 2018-2019. In order to implement these recommendations, the General Assembly would need to adequately increase state appropriations enough to support the agency in fulfilling all the statutory duties of the office, and/or allow the agency to retain additional revenue that currently

is submitted to the State General Fund, as there is a cost to providing services. Additionally, the General Assembly would need to fund information technology projects.

### Boards and Commissions

*Agency Recommendation: The Secretary of State's Office should contact agencies, preferably by email, related to boards or commissions with vacancies or members serving in expired terms. These agencies can, in turn, request the appointing authority to appoint, reappoint or elect appropriate persons to those seats.*

*Agency Recommendation: Any boards or commissions determined by the Secretary of State's Office to be non-operational or defunct, should be removed from the database.*

Based upon the recommendation of the December 2017 report, the Secretary will consider asking for an additional staff person in FY 2020-2021 in order to send written notifications to all boards and commissions when vacancies occur, or when there are members serving in expired terms. In addition, the staff person could remove defunct boards or commissions from the database when identified as nonoperational as a result of notification by the appointing authority or by legislative action to sunset a board or commission. However, SC Code §1-1-1310 requires that each state board or commission send written notification to the Secretary of State's Office of any appointment, election, resignation, or vacancy in the membership. If the Secretary does not receive a response to the notification, there are no statutory provisions to enforce compliance.

According to SC Code §1-5-40(B), the public record required to be kept must include "information about the memberships received from state boards and commissions pursuant to Section 1-1-1310..." The Secretary of State's Office is required to keep an "up-to-date compilation of the membership of the boards and commissions in subsection (a)." The office maintains an updated listing of the makeup of each board as defined by statute. Through our website, a member of the public can determine how many members a particular board has, who appoints those members, and what type of positions there are on that board.

SC Code §1-1-1310 puts the burden of reporting on the boards themselves when it states "each state board and commission ***must*** send written notification to the Secretary of State...". It is the boards who are required to send written notice of membership changes so that the Secretary of State can provide that information to the public.

The report indicates that the Secretary of State should contact agencies that relate to particular boards or commissions with vacancies or expired terms. However, boards and appointing authorities are not required to include information as to the agency related to each board. While some are obvious, in order to determine which agency would be best to contact about particular boards and commissions, staff would have to review the statutes for each board and make a determination of which agency would be most appropriate to contact. Furthermore, not every board may have a particular state agency to which it reports. Lastly, boards and commissions are not required to report email contact information to our office, so staff would also have to find the appropriate contact to send requests for information.

It would be unduly burdensome to require current staff to contact agencies or boards regarding board membership on a regular basis, especially when this division also processes the thousands of notary applications that come into the office as well as requests for authentication of documents. During the creation and implementation of the boards and commissions database a few years ago, staff went through and cleaned up the data on file after importing it into the new database. Staff did this by reviewing statutes for possible sunset provisions and reaching out to individual boards and commissions. This process of updating our data was extremely arduous and time consuming. It would take up excessive amounts of staff time to attempt to repeat this process on a regular basis. In order to take on these additional duties, an additional staff person would be needed.

As far as removing defunct boards from the database, it is difficult for the Secretary of State's Office to ascertain with certainty that a state board or commission is no longer operational absent a repeal of the statute(s) that govern the board or a clearly defined sunset provision. The office does make efforts to keep these changes up-to-date and the boards and commissions database has a mechanism to enter sunset provisions so that a board will automatically be inactivated on that date. However, the Secretary of State has not removed boards and commissions from the database that are still in statute, even if it is unclear if the board is still operational.

In addition, state law does not require county boards and commissions to report to the Secretary of State's Office. When a county board or commission does report membership information, the Secretary of State's Office records that information. However, we cannot require county boards to provide updated information by law.

In conclusion, the Secretary of State's Office does makes every effort to ensure that the information and structure for each board matches the statute that governs each board and updates membership information when we receive it. However, it would be unduly burdensome and beyond what is set forth in statute to require the Secretary of State's Office to determine which agencies relate to which boards, gather appropriate contact information for those agencies, and to email all the appropriate agencies regarding reporting requirements for boards and commissions.

### Investigations

*Agency Recommendation: The Office of the Secretary of State should implement a tracking system for the case of its investigations division.*

Based upon the recommendation in the September Senate Judiciary Oversight Subcommittee report, the Secretary of State's Office launched a new Investigations System in March 2018. With a reprioritization of projects, the Secretary worked to create a new investigations tracking system that benefits staff and allows users to easily view the entire investigative history in one system.

Investigative staff have scanners linked directly to the investigations database, which facilitates the storage of documents electronically without the need of maintaining additional paper information. The report functionality provides data regarding the number of opened cases, closed cases, violation types and outcomes. All cases referred for investigation are maintained in this centralized case management system. Information in the system is searchable by case number or case name. Legal staff has immediate access to the electronically stored case information.

The database has been beneficial in streamlining the record keeping process for the Investigations Division. The investigations database keeps everything centralized and makes for easy accessibility to all reports, supporting documents, and images regarding current and previous cases. Please see attached screenshots of the application.

Once login is completed, the main page for the database appears. At that point, there are four options to choose from: Complaint, Case, Reports, and Administration (Image 1). When the complaint option is chosen, a search engine appears (Image 2). At that point, the complaint type (Charity, Raffle, Trademark, etc.), and organization name or an individual's name will need to be entered. The investigations database is linked to the charities database, and if an organization is already in the charities database, the information for the organization will automatically be imported into the investigations database. If a complaint is entered for an organization that is not currently in our database, the information is put in manually (Image 3).

All complaints regarding an organization are kept in one location. This is an extremely useful tool (Image 4) and makes historical tracking very easy. Once all the information is entered for a complaint, an action is chosen. The four types of actions are pending, case opened, deferred, and no action required. Choosing no action required and deferred will immediately close a complaint.

If a case is opened, the database creates a case number and a folder for that particular investigation. Steps taken during an open investigation are entered into the system (Image 5). A log for each individual action is created (Image 6). For each individual action, a supplemental report is created and can be printed. All supporting images and documents are easily scanned in to the case file through individual scanners linked directly to the database. When the "case closed" step is selected, an investigative report listing all previous actions and reason for closure is completed. Previous actions are imported onto the report by the database, and investigators enter the resolutions leading to the case closure.

The new system also has the ability to quickly retrieve statistics such as how many complaints have been entered, what type of complaints they were, how many cases are currently opened, how many cases have been closed, and how many of a specific type of case are opened or closed. All of these inquiries are date range specific.

By entering a date range, whether a case is opened, closed, or both, and complaint type, the investigator can quickly access a report showing the current case status. (Image 7). The same information can be accessed for complaints that are received in the office. (Image 8). Finally, the investigators have the ability to create an accountability report that lists cases opened, cases closed, types of cases, number of existing complaints, and complaint type received during a particular time frame. Please see attachments that include a report for the month of December 2018 as an example (Image 9).

The implementation of the database has benefited Investigations staff with improved efficiency and the ability to produce reports more easily.