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## Judiciary Committee

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### HB 2576

**Title:** An act relating to restructuring and affirming certain fees established by the office of the secretary of state.

**Brief Description:** Restructuring fees for the division of corporations and affirming authority to establish fees for the charities program of the office of the secretary of state.

**Sponsors:** Representatives Kenney, Liias, Moeller, Pedersen and Armstrong; by request of Secretary of State.

#### Brief Summary of Bill

- Removes specific fee amounts from various corporations and other business entity statutes and requires the Office of the Secretary of State (OSOS) to establish these fees by rule.
- Expands the purposes for which the Secretary of State's Revolving Fund may be used and directs additional fee revenue into the fund.
- Re-enacts authority for the OSOS to establish fees to fund a charitable organization education program.
- Allows the OSOS to cancel a certificate of registration of a trademark that was issued in error.

**Hearing Date:** 1/20/10

**Staff:** Edie Adams (786-7180).

#### Background:

The Corporations Division of the Office of the Secretary of State (OSOS) is responsible for administering a variety of programs, including the licensing and registration of business entities, nonprofit corporations and associations, charitable organizations and commercial fundraisers, and other programs such as trademark registration and state-registered domestic partnerships. As

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part of these functions, the OSOS is responsible for accepting and managing a wide variety of documents, providing services to entities and individuals, and preparing and distributing reports and other information.

Statutes governing business entities, nonprofit corporations, and other organizations require certain documents to be filed with the OSOS, such as articles of incorporation and annual reports. Some of these statutes set specific amounts for various filing fees, while others provide that fees may be established by the OSOS by rule. The following fees relating to corporations, partnerships, and cooperative associations are currently set in statute:

- Business Corporations: articles of incorporation (\$175), certificate of authority for a foreign corporation (\$175), and annual license fee (\$50, \$10 for inactive);
- Nonprofit Corporations: articles of incorporation (\$30), certificate of authority for a foreign corporation (\$30), and annual report (\$10);
- Partnerships: application to become a limited liability partnership (\$175)
- Cooperative Associations: articles of incorporation (\$25) and certificate of authority (\$25).

In contrast, the statutes governing limited partnerships and limited liability companies provide that the fees for these filings are to be established by the OSOS by rule, using the corporate fee structure as a guide. In addition to these formation and annual renewal fees, the OSOS is authorized to establish by rule fees for a variety of services rendered under the programs it administers. Examples include fees for amendments to corporate documents, merger or dissolution documents, changes to a registered agent or office, in-person or expedited services, service of process filings, and providing copies and certified copies of documents.

The initial formation and annual license fees for corporations, other business entities, charitable organizations, and commercial fundraisers are deposited into the state General Fund. Some of the other fees collected by the OSOS are deposited into the Secretary of State's Revolving Fund, including fees for in-person and expedited services, providing copies or certified copies of documents, service of process filings, electronic transmittal of documents and other special service fees. The Revolving Fund is used to defray the costs of printing, reprinting, or distributing printed material, and other costs of carrying out the functions of the OSOS under specifically listed chapters.

In 2007 the Legislature passed a bill authorizing the OSOS to establish additional fees on registrations under the Charitable Organizations chapter to provide for a charitable organization education program. The OSOS did not adopt fees for this purpose prior to the passage of I-960, which requires prior legislative approval of any new fee or fee increase.

The OSOS is responsible for administering the state's Trademark Registration Act (Act). The Act allows a person who uses a trademark in Washington to register the trademark with the OSOS. A trademark is any word, name, symbol, or device adopted or used by a person to identify the goods made or sold by that person and to distinguish them from goods made or sold by others. If the OSOS determines that the trademark meets specified requirements, the OSOS will issue a certificate of registration of trademark, which provides the registered user with exclusive use of that trademark and protects against infringements upon the user's rights.

### **Summary of Bill:**

The specific fee amounts listed in statute for initial formation and annual renewals for business and nonprofit corporations, cooperative associations, and limited liability partnerships are eliminated and the OSOS is required to establish these fees by rule.

The purposes for which the Secretary of State's Revolving Fund may be used are expanded to include providing registration and information services and other costs of carrying out the functions of the OSOS under a variety of statutes. The following additional fees are specifically designated for deposit in the Revolving Fund: (1) under the charitable organizations chapter, fees for service of process filings and for preparing, printing, and distributing publications; and (2) under the limited partnership statute, fees for service of process filings, expedited and special services, and providing copies, certified copies, or certificates.

The provision of law authorizing the OSOS to establish fees to support a charitable organization education program is re-enacted.

The Limited Liability Company Act is amended to provide that the OSOS may allow electronic filing of the company's initial report.

The Trademark Registration Act is amended to provide that the Secretary of State (Secretary) may cancel a certificate of registration of trademark if the secretary determines within 90 days of its issuance that it was issued in error. The Secretary must immediately provide written notice of the cancellation to the registrant and the registrant may petition the Thurston County Superior Court for review of the cancellation within 60 days.

**Appropriation:** None.

**Fiscal Note:** Preliminary received 1/19/10.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.