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Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Research Analyst - Brooke Brouman
DATE: September 10, 2015
SUBJECT: Secretary of State

IDAPA 34.04.03 - Rules governing benefit corporations - Adoption of Temporary Fee Rule (Docket No. 34-0403-1501)

IDAPA 34.05.01 - Rules governing farm products central filing system - Temporary and Proposed Rule (Docket No. 34-0501-1501)

(1) IDAPA 34.04.03 - Rules governing benefit corporations - Adoption of Temporary Fee Rule (Docket No. 34-0403-1501)

The Office of Secretary of State submits notice of the adoption of a temporary fee rule that: (a) creates a filing fee for annual benefit reports that benefit corporations are required to deliver to the Secretary of State for filing; (b) defines terms; and (c) specifies requirements for filing annual benefit reports with the Secretary of State. Benefit corporations are a new type of corporation that became effective on July 1, 2015, pursuant to the passage of Senate Bill No. 1076, which created the Idaho Benefit Corporation Act found in Chapter 20, Title 30, Idaho Code. The temporary rule became effective on August 6, 2015.

We note only that the adoption of a temporary fee rule is governed by Section 67-5226(2), Idaho Code, which states that "[a] rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge." It does not appear that the Governor has made a finding that the fee imposed in this temporary rule is necessary to avoid immediate danger. We spoke with Jeff Harvey in the Secretary of State's Office about this issue. Mr. Harvey stated that, in light of this information, the fee language will be pulled out of the temporary rule.

Aside from the foregoing comments, the rule appears to be within the scope of authority granted to the Secretary of State in Section 67-903, Idaho Code.

(2) IDAPA 34.05.01 - Rules governing farm products central filing system - Temporary and Proposed Rule (Docket No. 34-0501-1501)

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The Office of Secretary of State submits notice of temporary and proposed rulemaking relating to rules governing the farm products central filing system. The temporary and proposed rule simplifies and reduces the fee schedule for PML subscriptions by creating flat fees based on the technology type, which includes Internet Download, CD-ROM or paper subscription, and provides that new subscriptions purchased at any time after the beginning of a registration period will be prorated. The temporary rule became effective on August 6, 2015.

According to the Secretary of State, the fee change will result in an estimated \$6,490.00 decrease in the State General Fund.

The rule appears to be within the scope of authority granted to the Secretary of State in Section 67-903, Idaho Code.

cc: Secretary of State
Jeff Harvey

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Office of the Secretary of State

Agency Contact: Jeff Harvey, UCC Supervisor Phone: (208) 332-2849

Date: May 26, 2015

IDAPA, Chapter and Title Number and Chapter Name: IDAPA 34.04.03 – Rules Governing Benefit Corporations

Fee Rule Status: ___ Proposed _x_ Temporary

Rulemaking Docket Number: 34-0403-1501

STATEMENT OF ECONOMIC IMPACT:

Beginning on July 1, 2015, a new type of corporation becomes effective—the Benefit Corporation. As with all other business entities, benefit corporations are filed with the Secretary of State. One of the requirements of a benefit corporation is that they file an annual benefit report with the Secretary of State. Pursuant to Section 30-2013(4), Idaho Code, the Secretary of State is charged with setting a fee for filing an annual benefit report, and for setting the fee in rule.

Therefore, this is a new rule providing for the filing of annual benefit reports by benefit corporations. As such, this fee rule is necessary to be compliant with Section 30-2013(4), Idaho Code. At this time, the rule is temporary, as the Secretary of State seeks to move the fee from the administrative rule to the Idaho Code section that governs all other business entity fees – Section 30-21-214, Idaho Code (effective July 1, 2015). The justification for this temporary rule falls under Section 67-5226(1)(b), Idaho Code—compliance with deadlines in amendments to governing law or federal programs.

A fee of thirty dollars (\$30) is set for the filing of an annual benefit report. The amount of this fee is consistent with several other corporation filings, including amendments and reinstatements. Any fiscal impact will be an increase to the General Fund, however, it is uncertain how significant that impact will be.

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Office of the Secretary of State

Agency Contact: Jeff Harvey, UCC Supervisor Phone: (208) 332-2849

Date: May 20, 2015

IDAPA, Chapter and Title Number and Chapter Name: IDAPA 34.05.01 – Rules Governing Farm Products Central Filing System

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 34-0501-1501

STATEMENT OF ECONOMIC IMPACT:

The fees for PML subscriptions were set in 1986. Upon review of the changes in technology and the cost to produce the various PMLs, it became apparent that a fee reduction is in order. To simplify the fee schedule for both the customer and the state, the changes create a flat fee that is lower than all previous fees. Secondly, the changes add County Code 00 – All Idaho Counties. Adopting the temporary rule will allow the Secretary of State to begin the fee change at the start of the fiscal year. Furthermore, the reduced fees are beneficial to the public. No new fees are being imposed, and there are no fee increases. The fiscal impact of the fee change is less than \$10,000 and the fee change will result in an estimated \$6,490 decrease in the General Fund.