



DENISE MERRILL

SECRETARY OF THE STATE
CONNECTICUT

**GAE Committee
Public Hearing Testimony
March 7, 2011**

- Good morning, Chairman Slossberg, Chairman Morin, and Committee Members. My name is James Spallone and I am Deputy Secretary of the State.
- Unfortunately, Secretary Merrill could not be here today. Thank you for the opportunity to testify before you.
- Today's hearing covers several bills, let me address that which is most relevant to the Secretary of the State's office.

SB 561

“An Act Concerning The Registration of Businesses”

- The Secretary of the State's office does not support passage of SB 561 “An Act Concerning The Registration of Businesses.”

- The Secretary recognizes Senator McLachlan's laudable purpose in attempting to safeguard registered business names through this bill.
- However, there are many specific reasons why the Commercial Recording Division within the Secretary of the State's Office will not be able to comply with the provisions of the bill.
- As you may know, the Commercial Recording Division, or "CRD," is responsible for maintaining the public record of business entities registered with the Secretary of the State.
- A small division of 40 staff members, the CRD works hard to maintain a workflow that permits new businesses to form or to register to transact business in Connecticut very quickly.
- If the company formation process is slowed, that bottleneck could have serious negative consequences for the flow of commerce in our state.
- Currently a new domestic entity can be formed within two business days, and we have the same turnaround time on granting authority to foreign entities seeking to register before transacting in Connecticut.
- We also have plans to eventually permit online formation and registration, which could reduce the turnaround time even further.
- As part of our formation and registration process, the CONCORD application utilized by the CRD automatically

checks requested entity names against its own database, to ensure that the same name is not already indexed on the state's record.

- This is because Connecticut General Statutes §34-102 and other similar naming statutes already require that the name of an entity “shall be such as to distinguish it upon the records of the Secretary of the State [from the name of any other entity so registered].”
- It is important to note that not all businesses are required to register with the SOTS. Sole Proprietors and General Partnerships, for example, are not required to register.
- Further, any business, registered or not, may also register a fictitious trade name – commonly called a “d/b/a” – at any municipality in the state.
- Fictitious trade names are administered at the local level in Connecticut, and regulated by Title 35 of the General Statutes, rather than Title 34.
- A complicating factor is that the legal standard for naming conventions employed under Title 34 is different than the legal standard employed under Title 35.
- If SB 561 were to pass, it could take several weeks to form a new domestic entity or to register a foreign entity. This is because the CRD would be required to check with each of the 169 municipalities in the state to determine if any of them have

a business operating under a similar fictitious name registered in their town.

- We do not currently have automated systems in place to run a computerized check with all the towns, and many of the towns may not even have their fictitious name registries computerized to a database.
- So the first reason the Secretary opposes SB 561 is because it would be untenably time-consuming to cross-reference every formation or registration application against each of the 169 town registries in the state to ensure that a name has not been registered elsewhere.
- A second reason the Secretary opposes this bill is because the varying naming standards between Title 34 and Title 35 do not provide adequate instruction for a review staff member to assess the verisimilitude of a requested name to an existing name.
- The legislature provides civil judicial recourse on name use disputes specifically because such disputes involve complex issues of fact that are better left to a factfinder than to a document reviewer whose determination cannot be appealed.
- The third reason the Secretary opposes this bill is because it would be prohibitively expensive to develop the automated capacity, in conjunction with all 169 municipalities, to cross-reference entity names and fictitious trade names.
- A fourth reason the Secretary opposes this bill is because it unwisely expands the ministerial function of the CRD in such a

way as to further stem the flow of commerce at a time when the state needs to spur economic development.

- The legislature explicitly sets a ministerial review standard so the CRD can act quickly to register and form business entities WITHOUT having to expend time verifying information.
- Requiring the CRD to search each town's d/b/a records upon each formation or registration review would severely hamper our agile company formation process; choking down the flow of commerce and undermining economic recovery.
- In the final analysis, the Commercial Recording Division lacks the resources to comply with the provisions of SB 561, as well, but even if resources were available, the reasons stated earlier make passage of this law an unwise option.
- With great respect for the bill's sponsor and the laudable purpose sought to be achieved, Secretary Merrill and this office nonetheless urge the Committee not to support SB 561.
- Thank you and I would be happy to answer any questions.