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SECRETARY OF THE STATE
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Judiciary Committee Public Hearing March 13, 2013 Testimony

Good Afternoon to the Judiciary Committee – Chairman Coleman, Chairman Fox, and members. For the record, my name is Denise Merrill and I am Secretary of the State of Connecticut. I would like to testify this afternoon about one bill that involves my office and the administration of business registration: House Bill 6586, “AN ACT ELIMINATING THE FILING FEES ASSOCIATED WITH THE TERMINATION OR DISSOLUTION OF CERTAIN BUSINESS ENTITIES.”

Since the title is self-explanatory, let me start with some background: Current law requires entities registered with the state to file annual reports and it also requires them to file paperwork when they dissolve their businesses. The filing of a dissolution constitutes legal proof that a business no longer exists, so it doesn't face continuing tax liability and it can no longer perform official business transactions. In layman's terms, when you go out of business, you must file paperwork with the Secretary of the State's office.

Now as I mentioned, businesses registered with our office are also required to file annual reports that give the state and the public the latest contact information for that business, if there is ever the need for service of process (lawsuit). For many years, the Secretary of the State's office was authorized by statute to administratively dissolve business entities that were delinquent in filing their annual reports. In fact, the law stated that if a company failed to file annual reports for a period of three years or more, then my office would send that business a letter warning that the company would be administratively dissolved if it did not get current with the filing of annual reports. After 90 days, if there was no response, we had the authority to administratively dissolve these companies, and it was done from time to time.

In 1994 (effective 1995), the legislature repealed the tool of administrative dissolution, which was the only proactive tool in the Secretary's arsenal to enforce compliance with annual report filing. That tool served a dual function in that it also allowed the Secretary to catch and dissolve defunct companies so that they were removed from the record from time to time. In that way, administrative dissolution maintained the accuracy of the record in two distinct ways: as enforcement against noncompliant active companies and as a broom to sweep defunct entities from the record from time to time.

Since 1995, without this tool, there has been a buildup of noncompliant nonfilers. Not to make this sound like a horror movie, but there are also what we at the Secretary of the State's Office call "zombie" entities that roam the record as "active" entities by virtue of the fact that they never filed dissolution paperwork, but their corresponding companies have long since gone out of business.

The role of the Secretary is ministerial, meaning we are the repository of all of these business files. We take what business owners file with us and keep a record of it. Without the ministerial administrative dissolution tool at our disposal, there is no active way to maintain the accuracy of the public record. We are simply not permitted to take any proactive steps to dissolve businesses. Our maintenance of the public record is subject to the vagaries of voluntary compliance with statutory requirements for the breach of which there are no sanctions.

There are some passive ways to encourage compliance. For example, if an active entity is seeking a commercial loan, the bank will require a Certificate of Legal Existence, which we cannot issue unless the entity is current with its annual reports. Also, with the formations of Limited Liability Companies (LLCs), we now have an admonition built right into the form, reminding entrepreneurs of their responsibility to file annual reports.

We have also found that the business entity tax (BET) has encouraged many business owners to comply with dissolving their businesses once they cease operations because, without legally dissolving your business, that business is still on the hook for yearly BET payments, no matter if you are transacting business or not. You are technically still on the books so you owe BET revenue. Thus, the BET has probably already encouraged many delinquent entities to hasten their belated dissolution filings. We also added an admonition to the LLC formation form informing customers about their BET liability and the need to file a dissolution if/when they cease transacting in CT.

We have considered many ways to more actively improve annual report compliance and dissolution filing compliance. One of those under consideration is requesting that the legislature to restore the tool of administrative dissolutions, but before we take that step, we are attempting an interim measure in the form of this bill. We recognize that many entities that are going out of business either lack the money or otherwise find it distasteful to file dissolution paperwork announcing that their business has failed. For those that lack the money, we feel that waiving or repealing the fee for dissolution filings will make it much easier for these failed companies to comply with their dissolution filing requirement, to the benefit of the public record.

This would help businesses in our state avoid unnecessary tax liability and we believe it would also help us make our database of commercial records more accurate. A more accurate public record would save the state time and money expended in pursuing entities that have gone out of business and would better serve the public by providing accurate information. The General Assembly has also directed my office to build a data collection center, harnessing our agency's frequent contact with businesses to collect important economic development data. To the extent our database is more accurate, the information gathered and maintained will be more useful.

For those reasons, I support this bill and I urge passage of this legislation.