



DENISE W. MERRILL

SECRETARY OF THE STATE

CONNECTICUT

Judiciary Committee Public Hearing Testimony March 17, 2014

Good morning to the Judiciary Committee – Chairman Coleman, Chairman Fox, Sen. Kissel, Rep. Reimbass and members. For the record, my name is Denise Merrill and I am Secretary of the State of Connecticut. There are many bills on your agenda today. I wanted to address just a few bills today, and I will be happy to take questions afterwards.

H.B. No. 5489 AN ACT CONCERNING THE INTEGRITY OF THE BUSINESS REGISTRY

As you know, the Secretary of the State maintains the registration list of all business entities in the state. A primary purpose of this list is to protect consumers. For example, if you are victim of a bad business – like a home improvement contractor that does substandard work on your home – you look that company up in our business registration list to find out whom to sue. Right now there are an estimated 400,000 registered businesses in Connecticut.

Maintaining the accuracy of the list depends largely on the businesses fulfilling their obligation to file annual reports and update their agents of service/principals and contact information as they change at the company. If a business wishes to dissolve or stop doing business in the state, currently the law—in general—only allows for the individual business to dissolve itself. My office cannot remove them from the list for failure to keep up with annual reports.

Of course, many businesses fail or relocate to another state and neglect to file the dissolution papers at our office. Now we have a bloated list and we know that that some significant percentage of that list is inaccurate. The inaccuracy of this list has grown since the legislature repealed the law that allowed for administrative dissolution twenty years ago. Administrative dissolution is a process by which the state can dissolve a business that it has reason to believe no longer exists. There is also a process by which a business can be restored if, in fact, the state is wrong.

Prior to 1995, the Secretary of the State's office had the ability to administratively dissolve corporations or other entities – a process that many states still use. Under the old law, if your business was dissolved you had three years to correct your record and be reinstated, and beyond that time you could only be reinstated by special act of the legislature. Our proposal today improves upon the old process.

Of those 400,000 businesses on file there is a pool of roughly 150,000 that concern me. That is because I have no way of knowing if the businesses in that group are defunct or if they are simply chronically non-compliant. It is frustrating to know that the registry has significant inaccuracies and that I am incapable of correcting them.

It is also a significant expense to my office to continue to mail to companies that are either defunct or have moved to another location. Each year we receive hundreds of returned mailings from such entities, yet we must by law continue to mail to all entities on our list. I am also concerned that these inaccuracies could be an opportunity for occurrences of business identity theft should bad actors utilize dormant companies.

Over the last few years I have tried to improve the list with the tools we have. For example, this year we sent 120,000 default notices to the principals of non-compliant entities at their residential addresses on record. Normally those notices are sent to their business address. This project sparked tens of thousands of entities to correct their records by catching up with their annual report filings or by filing their dissolution. In other cases we were able to confirm that the principal no longer resides at the address on file.

As the caretaker of the list I recognize the problem and I am suggesting the following solution. First, we should remove the fee to dissolve a company. The need to correct the list is important. There should be no barriers to someone's ability to comply. Second, we should reinstate the power of administrative dissolution, but this time we should pass a law that does not have a defined window of time for a business to restore its good standing. Instead, there would be no time limit at all, therefore eliminating the need for special acts of the legislature and the barrier of a deadline by which to correct their status. We would be aligned with many other states in having no deadline.

I should also explain that there are two categories of businesses in our statute: domestic or foreign. Domestic businesses are those that are formed under Connecticut law. Foreign business entities are those formed under a different state law who then get authorization to conduct business in Connecticut. In my proposal, as in current law, these two groups are treated slightly differently. Also of course there are several types of business entities, including LLC, Corporate stock or corporate nonstock, and LLPs.

Here is how it would work for domestic entities. My office would be able to utilize the administrative dissolution of an entity whenever it is more than one year in default of filing its annual report. For non-stock corporations, it would be more than two years in default. The timeline is longer for non-stock corporations because this is the category used by most non-profits and since many of them have minimal staff, if any, I wanted to give them a little extra leeway.

After being out of compliance for this amount of time, my office may notify such a corporation by certified mail that it is to be administratively dissolved. So, unless the corporation within three months of the mailing of such notice files such annual report, my office shall prepare and file a certificate of administrative dissolution. My office then sends an additional mailing to inform the business that it has been dissolved.

For foreign entities my office could commence a proceeding to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the foreign corporation has failed to file its annual report with my office. If the foreign corporation does not correct each ground for revocation within ninety days after mailing of the notice, the foreign corporation's certificate of authority may be revoked.

Just to review, the timeline for administrative dissolution under the old system was three years. This system was eliminated by an amendment on the floor of the House of Representatives. From time to time an entity would be dissolved and there would be resulting constituent bills with a list of entities to be reinstated.

But the world was a different place even 20 years ago. Now with email communication it is easier to keep in touch with a business which may have moved its physical address. This is also an easier and no-cost way of reminding them to file before they are out of compliance.

If your business has been administratively dissolved, it can be reinstated by complying with the requirements of the pertinent reinstatement statutes (e.g., 33-892 and 33-1183 for business and non-stock corporations, respectively, and 34-216 for limited liability companies). You are required to update any past due annual reports and provide documentation from the Department of Revenue Services that your taxes as well as any penalties are paid.

I would estimate that the cost of revenue loss for eliminating the fee to dissolve a business entity would be \$500,000 annually to the state, but it is important to remember that this calculation is

the lost revenue from entities who are correctly complying with the law, and it does not account for the expenses related to attempting to get noncompliant entities to correctly comply with the law.

I urge passage. This bill will clean up our business registry and not subject as many defunct businesses to being charged the business entity tax long after they have shut their doors.

H.B. No. 5568: AN ACT CONCERNING ATTEMPTED FRAUDULENT VOTING

First, this is nearly identical to a bill in the Government Administration and Elections Committee, which I support completely. In an effort to streamline our legislative process and since this bill has already been heard in front of the Government Administration and Elections Committee and will very likely come before you soon, I will refer you to my comments in support of that bill, which is HB 5478.

A copy of that testimony is attached. Briefly, this bill would make the ATTEMPT to vote twice a criminal offense. Currently, only the ACTUAL act of voting twice is an offense. Thank you and at this point I would be happy to answer any questions you might have.

Please see the below testimony from the March 10 GAE public hearing on HB 5478, attached on the following page.



DENISE W. MERRILL

SECRETARY OF THE STATE

CONNECTICUT

Government Administrations and Elections Committee Public Hearing Testimony March 10, 2014

Good morning once again to the GAE Committee—Chairman Musto, Chairman Jutila, and members. For the record, my name is Denise Merrill and I am the Secretary of the State of Connecticut. There are many bills on your agenda today, and many bills that affect the conduct and administration of elections in our state. I will make some brief comments on a few bills before you today and I will be happy to take questions afterwards.

H.B. No. 5478 AN ACT CONCERNING ATTEMPTED ILLEGAL VOTING

This bill would make it a crime to attempt to vote more than once on Election Day. Currently, Connecticut General Statutes 9-360 makes it a felony punishable by a fine of up to \$500 and two years imprisonment for someone to vote twice in elections, primaries or referenda. It is also a felony to attempt to vote fraudulently by impersonating another voter, but you may be surprised to learn that there is currently no prohibition on the books against a voter who attempts to vote more than once in different voting districts or municipalities. This should be corrected and a penalty should be in place to serve as an effective deterrent against those who might attempt to game the system and vote twice.

This issue came to our attention from the registrars of voters in New Britain and Berlin, who reported an incident to the State Elections Enforcement Commission (SEEC) shortly following the municipal elections in November 2013. The local election officials reported to SEEC that an individual came to New Britain City Hall on Election Day 2013 and presented themselves as a voter who just moved to town from Berlin. The voter presented the required materials to become a registered voter and cast a ballot. As required by law, the New Britain registrar had also called Berlin then removed that person's name from their eligible voter list and informed the moderator at the appropriate polling location.

However, the registrars in Berlin reported that this same individual later in the day showed up at their old polling place and presented himself to the checker to vote. The checker then found the person's name and saw that it was removed from the list and informed the voter of this. According to the registrars of voters in Berlin, the individual then left the polling place. So we can see that the human system of checks and balances *worked*. According to this account, the security system we have in place prevented this individual from voting in two different municipalities on Election Day. That is a good thing.

On November 29, 2013, the Registrar of Voters in Berlin reported these events to the State Elections Enforcement Commission in the form of a complaint, seeking a penalty against the individual for attempting to vote twice on Election Day. The SEEC responded about 10 days later in the form of a letter saying they would take no action on the matter, pointing out that the complaint does not allege a violation of the law. In the letter, an attorney with the SEEC wrote that while the law prohibits an individual from voting twice, there is no such prohibition against an attempt to vote twice.

So, as I stated earlier, I think we should change the law to fix this discrepancy and tighten the rules for attempting to vote twice. Let's give the State Elections Enforcement Commission the tools they need to hold voters accountable for potentially fraudulent activities on Election Day. In my opinion, this strengthened penalty would serve as an effective deterrent against such behavior in the future, and I urge passage.