



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #301

### Foreign Corporation Filing Fees (Financial Institutions)

[LFB 2005-07 Budget Summary: Page 167, #8]

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#### **CURRENT LAW**

State law defines a foreign corporation as a for-profit corporation incorporated under a law other than the law of this state. However, a foreign corporation does not include a railroad corporation, an association created solely for religious or charitable purposes, an insurer or motor club, a savings and loan association, a savings bank, or a common law trust.

A foreign corporation is not permitted to transact business in this state until it obtains a certificate of authority from the Department of Financial Institutions (DFI). The filing fee to obtain such a certificate is \$100 plus \$2 for every \$1,000 of a foreign corporation's capital exceeding \$60,000 employed, or to be employed, in this state. Once a foreign corporation has obtained a certificate of authority, the corporation is required to file an annual report with DFI along with a filing fee of \$80 (\$65 for reports filed electronically) plus \$2 for each \$1,000 of excess capital on which the fee on capital employed in the state in excess of \$60,000 has not previously been paid.

A foreign corporation authorized to transact business in Wisconsin may not withdraw from the state until it obtains a certificate of withdrawal. The current fee for such a certificate is \$40 plus \$2 for each \$1,000 of excess capital on which the fee on capital employed in the state in excess of \$60,000 has not previously been paid.

#### **GOVERNOR**

Increase the foreign corporation fees for capital in excess of the amount of capital on which a fee has previously been paid from \$2 per \$1,000 to \$3 per \$1,000. The increase would apply with respect to annual reports as well as to certificates of withdrawal. The administration

estimates additional program revenue from these provisions of \$1,978,900 annually. [These estimates differ from the projected revenues of \$1,500,000 annually that were included in the Legislative Fiscal Bureau's summary of the Governor's budget. The estimates included in the summary document were DFI's original projections, which were reflected in the agency's budget request. However, prior to the introduction of the bill, the administration revised the estimates to \$1,978,900 per year. The higher estimates are reflected in the bill as part of the agency's total program revenue and GPR-Earned estimates.]

Specify that the increase in the foreign corporation filing fee for annual reports would first apply to such reports due on the day after publication of the bill. The increase in the fee for certificates of withdrawal would first apply to applications for such certificates filed on the day after publication.

## **DISCUSSION POINTS**

1. According to DFI, fees have been imposed on foreign corporations doing business in the state since the early 1900s. The fee on capital representation has been \$2 per \$1,000 on capital in excess of \$60,000 since 1991.

2. The number of foreign corporations registered to do business in Wisconsin has increased slightly in each of the last few years: in 2001, there were 13,198 foreign corporations registered with DFI; in 2002, the figure increased to 13,261; in 2003, there were 13,550 registered foreign corporations; and currently 13,575 foreign corporations are registered. During this period, the program revenue generated from fees for excess capital of foreign corporations has averaged \$4 million annually.

3. Under the bill, the fee on excess capital of foreign corporations would be increased by 50%, from \$2 per \$1,000 or excess capital to \$3 per \$1,000 of excess capital. The administration has estimated increased program revenue under the proposal of \$1,978,900 in each year. It is difficult to project revenues from the fees with precision, as actual amounts paid per year fluctuate. However, based on the average annual fees referred to above, the estimates included in the bill appear to be reasonable.

4. The Department has recently completed the first phase of development of an on-line application for the filing of foreign corporation annual reports. By filing on-line, foreign corporations will be able to pay a reduced filing fee of \$65, rather than the \$80 fee that applies to paper reports (this is the part of the annual filing fee that all foreign corporations pay, regardless of whether there is an additional amount owed related to excess capital representation). The Department has stated that the proposed increase in the fee for excess capital representation would help cover the cost of the first phase of development of the on-line application process as well as planned upgrades to the database used for administering the foreign corporation program. However, the agency budget has not been adjusted to reflect any additional costs associated with the Department's responsibilities relative to foreign corporations.

5. On an annual basis, DFI lapses to the general fund as GPR-Earned most of the program revenues that have been received in excess of expenditures. Under the bill, the lapses to the general fund for the 2005-07 biennium are estimated at \$27,758,700 in first year and \$27,814,600 in the second year. The estimated lapses include the \$1,978,900 in each year projected as additional program revenue from the proposed increase in fees on excess capital of foreign corporations. Therefore, while the fee increase would be associated with program revenue, the revenue generated from the proposed fee increases would result in dollar-for-dollar increases in the end-of-the-year transfers to the general fund.

6. The bill would increase the filing fee on excess capital of foreign corporations but would not change the initial fee on capital representation paid when a foreign corporation applies for a certificate of authority. The initial fee would remain at \$2 per \$1,000 of capital in excess of \$60,000. The discrepancy between the fees could provide an incentive for foreign corporations anticipating growth in capital representation in the state to initially overstate capital in order to avoid paying the higher fee at a later date.

7. One option that would avoid providing inconsistency in the treatment of capital representation in the state of foreign corporations would be to maintain the fees as provided under current law. Under this alternative, estimated program revenues, as compared to the bill, would be reduced by \$1,978,900 in each year, or \$3,957,800 for the 2005-07 biennium. This option would result in a reduction in GPR-Earned by the same amounts.

8. Another alternative would be to increase the fees, as provided under the bill, but to also increase the initial fee on capital representation to \$3 per \$1,000. The administration has requested this modification to the bill. Based on information provided by DFI, it is estimated that increasing the initial fee to \$3 per \$1,000 of capital in excess of \$60,000 would increase program revenues by approximately \$400,000 per year. These figures would be in addition to the estimated \$1,978,900 per year estimated under the bill. Under this alternative, it is also estimated that GPR-Earned would increase by \$400,000 per year as compared to the estimates included in the bill.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to increase the foreign corporation fees for capital in excess of the amount of capital on which a fee has previously been paid from \$2 per \$1,000 to \$3 per \$1,000 of such capital. Under this alternative, there would be no change to the estimates provided under the bill.

2. Approve the Governor's recommendation. In addition, increase the filing fee on capital representation of a foreign corporation paid at the time of applying for a certificate of authority from \$2 per \$1,000 of capital in excess of \$60,000 to \$3 per \$1,000 of capital in excess of \$60,000. As compared to the bill, this alternative would increase program revenues by an estimated \$400,000 per year. In addition, DFI's estimated year-end lapses to the general fund would also be increased by the same amounts.

<u>Alternative 2</u>	<u>GPR-REV</u>	<u>PR-REV</u>
<b>2005-07 REVENUE</b> (Change to Bill)	\$800,000	\$800,000

3. Delete provision. Reduce program revenue by \$1,978,900 in each year. In addition, compared to the bill, reduce the estimated year-end lapses to the general fund by the same amounts in each year.

<u>Alternative 3</u>	<u>GPR-REV</u>	<u>PR-REV</u>
<b>2005-07 REVENUE</b> (Change to Bill)	- \$3,957,800	- \$3,957,800

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