

2/24/76

Memorandum 76-26

Subject: Study 77.150, 77.160, 77.170 - Nonprofit Corporations (Records and Reports; Rights of Inspection; Service of Process)

This memorandum and the attached draft of statutory provisions relates to three related areas of nonprofit corporation law. The comparable provisions of the business corporations law are:

- Chapter 15. Records and Reports
- Chapter 16. Rights of Inspection
- Chapter 17. Service of Process

Many provisions in the portion of the new statute relating to foreign nonprofit corporations also will be related to the subject matter of this memorandum, but the subject of foreign nonprofit corporations will be considered later in a separate memorandum.

Attached to this memorandum is a draft of statutory provisions relating to the three chapters listed above (green pages). Following the draft of the three chapters, various additional and conforming provisions are set out (yellow pages). The material is arranged in this order because the staff recommends that we consider the material on the green pages first. We have not duplicated the comparable provisions of the business corporations law. We have sent you a copy of Chapter 182 of the Statutes of 1975 (the new business corporations law); you should refer to that chapter for the text of the new business corporations law. You will find references in the Comments to the proposed sections of the nonprofit corporation law to the comparable provisions of the new business corporations law.

The provisions included in the attached draft statute are important ones. The requirements concerning books and records, annual reports, filing an annual informational statement with the Secretary of State, right of inspection of books and records, procedures for obtaining membership lists, designation of agent for process, and others are needed, the staff believes, to protect members of nonprofit corporations. It should be kept in mind that there are many types of nonprofit corporations, and members may have substantial property rights in their memberships that require protection.

The following is a section-by-section discussion of the draft of the attached statutory provisions.

GREEN PAGES

§ 6510. Books and records

As the Comment indicates, this section is based on Section 1500.

The "membership book" requirement. The existing nonprofit corporation law requires a "membership book." Section 9606 provides:

9606. Every nonprofit corporation shall keep a membership book containing the name and address of each member. Termination of any member shall be recorded in the book, together with the date on which the membership ceased.

This provision apparently contemplates a book in which entries will be entered by hand. In order that a person can examine the book and ascertain the current members, it is necessary to provide in the statute that the date of termination of memberships be entered in the book. The concept of a membership book is an obsolete one in modern times when data processing equipment can be used to store and reproduce membership lists. Accordingly, the staff has not continued the concept of the membership book in Section 6510. Instead, we have adopted the provision of the business corporations law that the books and records (other than minutes) may be kept in written form or in any other form capable of being converted into written form. See subdivision (b) of Section 6510. Nothing in the proposed staff section will prevent a nonprofit corporation from continuing to keep a membership book if it so desires. However, in order to comply with other provisions, it will be necessary that the membership records (whether kept in a membership book or otherwise) be in a form which will permit determination of current members.

Record of date member became holder of record. This requirement is set out in proposed Section 6510 because it is found in the New York provision. The comparable provision of the new business corporations law--Section 1500(a)--does not require this information to be included in the record of shareholders. No such requirement is found in the applicable provision of the existing nonprofit corporation law--Section 9606--set out above. The staff recommends deletion of the provision.

Record of terminated memberships. The staff recommends that the second sentence of paragraph (3) of subdivision (a) of proposed Section 6510 be omitted. The only use such a provision might have would be in connection with distribution of assets upon dissolution. One provision

in another state has been found that gives a member whose membership was involuntarily terminated within five years of dissolution certain rights to share in the distribution of the assets. If such a provision were adopted, there would be a need to require a record of terminated memberships; absent such a provision, the staff sees no need for such a statutorily imposed recordkeeping requirement for terminated memberships. A former provision--found in Section 3002--which required retention of a record of the number and date of cancellation of each share certificate surrendered for cancellation was not continued in the new business corporations law.

Classes of members. Since a nonprofit corporation may have various classes of members, proposed Section 6510 requires that a record of the class of membership held be kept. This may be significant in determining voting rights and other matters.

§ 6511. Information to assessor

This section is the same as Section 1506 of the business corporations law. Section 1506 continues the substance of former Section 3001.1, which apparently applied to nonprofit corporations. Since some property of some nonprofit corporations will be subject to local assessment, the staff recommends that the section be included.

§ 6512. Liability for false reports, records, or entries

This section is the same in substance as Section 1507 except for changes made to reflect the fact that a nonprofit corporation does not issue shares of stock. The language of subdivision (a) of Section 1507 has been revised as indicated below:

(a) Make, issue, deliver, or publish any ~~prospectus~~, report, circular, certificate, financial statement, balance sheet, public notice, or document respecting the nonprofit corporation or its ~~shares~~ memberships, assets, liabilities, capital, ~~dividends~~, ~~business~~, earnings, activities, revenues, receipts, or accounts, which is false in any material respect, knowing it to be false, or participate in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

Section 1507 continues the substance of former Section 3018, which apparently applied to nonprofit corporations.

§ 6520. Annual report required unless waived in bylaws

Section 6520 requires an annual report unless this requirement is expressly waived in the bylaws. Under existing law (Section 9402), a nonprofit corporation may provide in the bylaws for the making of annual reports and financial statements to members, but this is not a mandatory requirement. Section 6520 adopts the policy reflected in Section 1501 of the business corporations law, which continued a requirement found in former Section 3006. However, the annual report requirement can be dispensed with in the bylaws of any nonprofit corporation, whereas the business corporations law requirement can be dispensed with only for small business corporations (those with less than 100 holders of record of its shares).

The New York Not-for-Profit Corporation Law requires an annual report and makes no provision for waiver of this requirement in the bylaws.

The business corporations law (Section 1501) requires that the annual report be sent to the shareholders. Section 6502 follows the New York scheme which provides that the annual report shall be presented at the annual meeting of members and a copy filed in the records of the corporation and either a copy or abstract thereof entered in the minutes. This scheme is recommended because it avoids the expense of reproducing and mailing a copy to each member. However, it should be noted that, unless the requirement of an annual report is waived in the bylaws, a member is entitled by Section 6523 to receive by mail a copy of the annual report upon his written request for one. The staff believes that this is a flexible and practical scheme that can be adapted by an appropriate bylaw for use by both small and large nonprofit corporations.

When this matter was previously discussed by the Commission, it was suggested that the nonprofit corporation should not be required to prepare two reports--one for the Attorney General under the Uniform Supervision of Trustees for Charitable Purposes Act and one under the general nonprofit corporation statute. Subdivision (b) is designed to implement this decision. It should be noted that a particular corporation may hold a small amount of its assets on trust but the vast majority of its property and its revenue and disbursements may be unrestricted

to trust purposes. Accordingly, the mere fact that the corporation makes a report to the Attorney General does not necessarily mean that the information required in the annual report is otherwise available to the members. The staff believes that subdivision (b) should be deleted. If the report prepared for the Attorney General contains all the information required by Sections 6521 and 6522, the same report can be used as the annual report under Section 6520, and no provision is needed to so provide. Accordingly, we believe that subdivision (b) is unnecessary. We recommend that, if the subdivision is deleted, the Comment contain a statement that nothing in this article relieves a nonprofit corporation from the requirements of the Uniform Supervision of Trustees for Charitable Purposes Act.

§ 6521. Annual report; financial and membership information; place where records kept

Section 6521 is substantially the same as Section 519 of the New York statute (attached as Exhibit I). The Pennsylvania Corporation Not-for-profit Code, Section 7555, is the same in substance as the New York provision. Subdivision (a)(6) is added in accordance with a previously made Commission decision that this information should be included in some annual report or statement. Note that Section 6524(e)(1) permits a member to obtain the same information upon written request. We included the requirement in the annual report because a comparable requirement is included in subdivision (a)(5) for the address where the current membership list is kept.

The information included in Section 6521 is a minimum, and the staff does not recommend that any additional information be required.

The listing of information in paragraphs (1), (2), (3), and (4) (qualified by the introductory language "in appropriate detail") is the substantial equivalent of the information required in Section 1501 except that Section 1501 appears to contemplate a profit-making enterprise and does not contain the "in appropriate detail" language. The language used in Section 6521, on the other hand, adopts the New York language which appears more appropriate for a nonprofit corporation. The status of the membership--paragraph (5) of subdivision (a)--appears

to be important information in the case of a nonprofit corporation, and the staff recommends that this information be required.

If an issue arises as to whether sufficient detail is provided in the annual report, Section 6525 provides a procedural method of resolving the issue.

§ 6522. Additional required information in annual report

This section is reserved for later consideration when the matter of conflict of interest, indemnification of directors and officers, and related matters are considered.

§ 6523. Providing member with copy of annual report

This requirement is a reasonable one, especially when the requirements of Section 6524 are considered. We do not believe that provision should be made for charging for a copy of the report. The report required by Section 6520 can be a fairly concise report, similar to the annual report of a business corporation.

§ 6524. Member's right to obtain information

The staff believes that members of nonprofit corporations should have available the same basic methods of obtaining fiscal information that members of business corporations are given by Section 1501. A member of a country club, labor union, nonprofit housing corporation, and the like may have concern that the operation is not being properly conducted. Section 6524 provides the means to obtain necessary information if five percent or more of the members share this belief. The fact that this protection and procedure is provided does not mean that it will necessarily often be used. In fact, the availability of the procedure will encourage the nonprofit corporation voluntarily to prepare and submit annual reports to the annual meeting of members. If the Commission has concern about including this section, the staff suggests that it be included and comments solicited on it. Otherwise, it will be difficult to determine the benefits and detriments that would be likely to result from the enactment of such a provision.

The provision is adapted from provisions of Section 1501 and is the same in substance as the comparable provisions of the business corpora-

tions law. Some changes have been made to conform to the different requirements concerning the content of the annual report.

Section 6524 will make an important change in prior law. The provision from which Section 1501 was drawn--Section 3011--contained an express statement that the section did not apply to nonprofit corporations. We will note this change in existing law in the Comment to Section 6524 if the section is approved.

§ 6525. Judicial enforcement

This section is the same in substance as the comparable provision of the business corporations law. It is essential to the statutory scheme.

§ 6526. Application of article

This provision, the same in substance as the comparable provision of the business corporations law, is necessary to make clear the scope of the application of the article.

§ 6531. Statement identifying officers, principal office, and principal activity

Section 6531 is the same in substance as subdivision (a) of Section 1502. Section 1502 expanded the information required to be included in the annual statement to provide the public with appropriate and relatively current information. Subdivision (f) is comparable to paragraph (6) of subdivision (a) of Section 1502. The staff believes that this is a useful provision. Are the examples good ones? Compare the examples given in Section 1502. Section 1502 replaces former Section 3301 (Exhibit II).

Section 6531 adopts the annual filing scheme provided by Section 1502. That section continues the annual filing scheme formerly applicable to business corporations but not applicable to nonprofit corporations. Nonprofit corporations were subject to the requirement that they file a statement similar to that required by Section 1502, but a special provision was included in former Section 3301: "In the case of a nonprofit corporation the statement shall be filed every time there is any change of officers and every fifth year in accordance with regulations

of the Secretary of State rather than every year." Accordingly, assuming compliance with this requirement, the following changes could take place without a new statement being required: The number of directors could change, the addresses of the directors could change (although directors are not listed as "officers" under Section 3301; if they are to be considered "officers," a new statement would need to be filed if new directors are elected), the address of the chief executive officer or other officers could change, the address of the office of the corporation could change. Accordingly, the information in the office of the Secretary of State with respect to many nonprofit corporations probably will not be accurate in many respects. Moreover, it is not unlikely that many nonprofit corporations will overlook the requirement that a new statement be filed every time there is any change of officers so even this information will not necessarily be accurate. The annual filing system, on the other hand, eliminates the need to file a new statement each time there is a change in officers and instead substitutes a systematic method of keeping the records in the office of the Secretary of State accurate. The Secretary of State sends out a form for compliance each year in time to permit its completion and filing by the nonprofit corporation before the end of the filing period. It should be noted in connection with the filing requirement that existing Section 3301 provides that the statement shall be filed without fee if the corporation is a nonprofit corporation.

The Model Nonprofit Corporation Act requires the filing of an annual report with the Secretary of State which contains information comparable to proposed Section 6531. See Sections 81 and 82 of the Model Act (Exhibit III).

§ 6532. Designation of agent for service

Section 6532 is the same in substance as Section 1502(b). A significant change made in the new business corporations law is that the designation of an agent for service of process is now mandatory. Formerly, such a designation was permissive. The proposed section makes designation of an agent for service by a nonprofit corporation mandatory. In this connection, it should be noted that Sections 3 and 10 of the Model Nonprofit Corporation Act require that a nonprofit corporation

designate an agent for service of process. The Illinois General Not for Profit Corporation Act (Section 10) includes a similar requirement. Designation of an agent for service of process is permissive in New York. See New York Not-for-Profit Corporation Law § 305.

Since the proposed section permits designation of a natural person as an agent for service of process, the requirement that an agent for service be designated does not appear to be unduly burdensome. This is especially true if the annual statement of the nonprofit corporation is to be filed annually as is proposed in proposed Section 6531.

The apparent reason that the designation of an agent for service of process was made mandatory in the new business corporations law is that the "principal office" of the corporation, which may change from time to time, is no longer required to be specified in the articles. Instead, the name and address of the initial agent in this state for service is specified in the articles, and this designation is superseded by the designation made in the annual statement.

§ 6538. Providing public with copies of statements

The new business corporations law does not contain a provision comparable to subdivision (a) of Section 6538. However, the former section, Section 3301, did contain the substance of this provision. The staff believes that the subdivision is useful in giving notice that the statements may be obtained and necessary to provide the fee. Accordingly, we recommend the subdivision for approval.

§ 6539. No fee required

A fee of \$5 is imposed for filing a statement by a stock corporation. No fee is imposed for filing a statement by a nonstock corporation or by a nonprofit corporation. This means, for example, that an organization such as the California State Automobile Association pays no fee for filing the statement. Note that the statement permits (and as proposed will require) the designation of an agent for service of process. If the organization--such as a labor union--is unincorporated, it must pay a fee of \$15 to designate an agent for service of process. See Govt. Code § 12185. The staff is unable to see any reason why the taxpayers generally should subsidize nonprofit corporations in the cost

of administering the filing requirement. The cost will become more significant to the Secretary of State if the proposed annual filing with the sending of renewal forms by the Secretary of State is adopted. For these reasons, the staff recommends that a fee of \$5 be provided for the filing of the annual statement.

§ 6540. Procedure upon failure to file statement

The business corporations law section--Section 2204--from which Section 6540 is taken had no counterpart in former law. However, the provision is a very desirable one.

Chapter 16--Right of Inspection

This chapter follows closely the comparable provisions of the new business corporations law. The staff believes that the rights of inspection and the procedural means provided to administer those rights are important to nonprofit corporation members and directors. Cf., Mooney v. Bartenders Union Local 284, 43 Cal.2d 841, 313 P.2d 857 (1957) (courts will act in a proper case for the purpose of protecting the property rights of a member of an unincorporated association and will enforce, sofar as applicable, the rules applied to incorporated bodies of the same character, applying rules relating to right of shareholders to inspect corporate records).

§ 6620. Right of five percent of membership to obtain membership list

Section 6620 is based on subdivision (a) of Section 1600. This is a new provision in the new business corporations law and deals with a problem that can exist in the case of a nonprofit corporation--the problem of obtaining a list of the members and their addresses in case of a proxy contest with respect to the election of directors. For the purpose of discouraging a corporation from contesting as a matter of course the attempt to obtain the membership list, Section 6621 permits a member to obtain an order from the court postponing any membership meeting previously noticed until the corporation complies with this request. To discourage a corporation from refusing in bad faith to comply with a member's right of inspection, Section 6651 permits the court to award the member his reasonable expenses (including attorney's

fees) incurred in an action to enforce compliance with the statute upon a finding that the corporation's refusal to comply was not justified. This statutory scheme, taken directly from new provisions found in the new business corporations law, provide an effective means whereby members can obtain information necessary to protect their rights.

An important policy issues is presented by subdivision (b) of Section 6620. The staff believes that subdivision (b) is important. It avoids the need to go in and copy the record of the member's name and address. We do not believe that the "usual charges of the transfer agent" provision would work for many nonprofit corporations. Accordingly, we have provided a flat charge. The five-cent charge is an arbitrary one. We recommend that amount based on what we estimate it would cost to type a list from a record. Perhaps the amount is high.

§ 6621. Order postponing meeting

This is a new provision in the business corporations law, there being no comparable provision in the former law.

§§ 6630, 6640, and 6650--Right of inspection

The staff's study of these sections, which are the same in substance as the comparable provisions of the business corporations law, reveals an ambiguity. The sections are very similar to their counterparts under the former law--Sections 3303, 3304, and 3305. However, in the new business corporations law provision relating to the right of a member to inspect (which is codified for nonprofit corporations in proposed Section 6630), the right to inspect books and records applies to a foreign nonprofit corporation keeping any such records in this state or having its principal executive office in this state. The emphasized language is not found in the former law, and no comparable language was included in the provisions of the new business corporations law, which have their counterparts in Sections 6640 and 6650. As a result, a member, under Section 6630, appears to have a broad right of inspection--one extending to a foreign corporation having its principal executive office in this state--even where the records are not kept in this state; otherwise, the additional phrase would have no meaning. The director, under Section 6640, has a right limited to records of a foreign corporation that "are actually or customarily located in this

state" and, under Section 6650, the enforcement of the right of inspection appears to be limited to records which are located in this state. For further discussion, see the letter to the chairperson of the State Bar Committee (attached buff pages).

The staff believes the matter should be made clear. It would seem that the intent is that, if the foreign corporation has its principal executive office in this state, all its records, either within or without the state, should be subject to inspection. In other words, for the purposes of record inspection, the corporation is treated like a domestic corporation. We believe that this is a significant ambiguity in the new business corporations statute. We have not attempted to resolve the issue because the Commission may decide to eliminate the phrase "or having its principal executive office in this state" from Section 6630. If the decision is to retain this language in Section 6630, then Section 6640 should have comparable language, and Section 6650 should have a provision that, if the foreign nonprofit corporation has its principal executive office in this state but does not maintain its records in this state, then the superior court of the county in which the foreign nonprofit corporation's principal executive office is located may make the appropriate order.

§ 6651. Recovery of reasonable expenses of member

No comparable provision was included in the repealed business corporation law.

Chapter 17--Service of Process

This chapter is the same in substance as the comparable provisions of the new business corporations law except that some technical corrections proposed to be made in that law by a corrective bill introduced by Assemblyman Knox have been made in the attached draft.

YELLOW PAGES

ADDITIONAL AND CONFORMING PROVISIONS

§ 5113. Mailing

A needed definition.

§ 5114. Financial statements to be prepared in accordance with generally accepted accounting principles

This is a new provision, not found in the repealed business corporations law. The definition may be useful, but the staff is concerned that it may be too complex. It should be kept in mind, however, that a nonprofit corporation may be the major stockholder in a business corporation.

§ 5115. Independent accountant

A needed definition.

§ 5149. Acknowledged

A needed definition. The corrective bill would revise the last portion of subdivision (b) to read: ". . . instrument is the act and deed of the ~~corporation~~ person or ~~of the persons~~ executing the same ; ~~as the case may be .~~" Should this change be included in Section 5149? Note that the first portion of subdivision (b) refers only to "persons" and does not include "person" only.

§ 5167. Domestic nonprofit corporation

A needed definition. We will need later to draft a definition of foreign nonprofit corporation. Also, we will need to check each section where either domestic nonprofit corporation or foreign nonprofit corporation is used to be sure the terms are used in the defined sense.

§ 5177. Proper county

A needed definition.

§ 5189. Subsidiary

The staff has some concern whether this definition is needed. The term is used in connection with financial statements and the like.

§ 5250. Required contents of articles

This provision should be included if the principal office is omitted and designation of an agent for process is mandatory.

Chapter 21.5--Enforcement by Attorney General

Section 1503 of the new business corporations law is taken from former Section 2240, which applied to sections that clearly applied to nonprofit corporations. Note that the section does not deal with the problem of the case where no answer at all is received. Perhaps the failure to answer would be embraced in the phrase "if the answer is not satisfactory."

§ 7200. Failure to keep records or submit financial statements

Section 2200 of the new business corporations law continues the substance of former Section 3015, which apparently applied to nonprofit corporations.

§ 7212. Additional remedies not affected; remission of penalty

Section 2202 of the new business corporations law continues the substance of former Section 3017, which apparently applied to nonprofit corporations.

§ 7254. False report or statement; refusal to keep book or post notice; criminal penalty

Section 2254 of the new business corporations law continues the substance of former Section 3019, which apparently applied to nonprofit corporations.

§ 7255. Fraudulent records; criminal penalty

Section 2255 of the new business corporations law continues the substance of former Section 3020, which apparently applied to nonprofit corporations. The Code Commission Note to Section 3020 notes that "shareholder" was substituted for "member" and stated: "Presumably 'member' is intended to include a shareholder of a stock corporation, since the purpose of the provision applies equally to both."

Code of Civil Procedure § 416.10 (technical amendment)

The amendments are technical. Additional conforming amendments will be required in this section.

Revenue & Taxation Code § 25936 (technical amendment)

This is a technical amendment to a new section added to the Revenue and Taxation Code by the bill that enacted the new business corporations law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

NEW YORK NOT-FOR-PROFIT CORPORATION LAW § 519

§ 519. Annual report of directors

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report of directors shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

(c) The board of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board a report in accordance with paragraph (a), but omitting the requirement of subparagraph (5). This report shall be filed with the minutes of the annual meeting of the board.

FORMER CORPORATIONS CODE SECTION 3301

§ 3301. Designation of agent for service of process; service on agent; corporate officers and officers; statement of identification; filing; fee; nonprofit corporations.

* * * (a) A domestic corporation, if desired, * * * may designate, as the agent of such corporation for the purpose of service of process, any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated. If a natural person is designated, the statement shall set forth his complete business or residence address. If a corporate agent is designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Sections 3301.5, 3301.6, 6403.5 or 6403.6.

In the event of any change in the location or address of its principal office or the stated address of a natural person whom it has designated as such agent or the city, town or village wherein it may be served by delivery of a copy of any process to a corporate agent, a domestic corporation shall forthwith file with the Secretary of State a statement of such new location or address * * * or such new city, town or village, which statement shall also include the names and addresses of the then officers, the names and addresses of whom are required above to be stated.

A corporation may at any time file a new statement wherein a new agent for service of process is designated or a prior designation of agent is expressly revoked without designating a new agent, and such filing shall be deemed to revoke any prior designation of agent.

Delivery by hand of a copy of any process against the corporation (a) to any natural person designated by it as agent, or (b) if the corporation has designated a corporate agent, at the office of such corporate agent in the city, town or village named in the statement filed by the corporation pursuant to this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5, if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.5 or 6403.6, shall constitute valid service on the corporation.

(b) Every domestic corporation shall within 60 days after the filing of its articles of incorporation with the Secretary of State, and every domestic corporation (other than a corporation which has already filed such a statement during the preceding three calendar months and there is no change in the information therein) shall during the period commencing on April 1st and ending on June 30th in each year, file with the Secretary of State, on a form prescribed by him, a statement of the names and complete business or residence addresses of its president, vice president, secretary, and treasurer, together with a statement of the location and address of its principal office.

The Secretary of State shall establish by regulation a fee to be charged and collected for filing a statement of the names and addresses of officers and the location and address of the principal office of the corporation as provided in this section. The filing fee shall approximate the estimated cost of such filing, and in any event shall not exceed three dollars (\$3) for each filing. * * * The information filed by a corporation pursuant to this section shall be made available to the public upon request. For furnishing a copy of any such statement the Secretary of State shall charge and collect a fee of one dollar (\$1). This section shall not be construed to place any person dealing with such corporation on notice of, or on duty or obligation to inquire about the existence or content of any such statement.

In the case of a nonprofit corporation the statement shall be filed every time there is any change of officers and every fifth year in accordance with regulations of the Secretary of State rather than each year. However, a nonprofit corporation may file a statement more frequently than every fifth year. The statement of a nonprofit corporation shall be filed without fee.

For the purpose of this section, a "nonprofit corporation" is a domestic corporation organized or existing pursuant to Part 1 (commencing with Section 5000), Part 2 (commencing with Section 10000), Part 3 (commencing with Section 10200), or Part 4 (commencing with Section 10400) of Division 2 of Title 1 of the Corporations Code, or organized or existing without authority to issue shares of stock pursuant to Division 21 (commencing with Section 29000) of the Education Code.

MODEL NONPROFIT CORPORATION ACT §§ 81, 82**SECTION 81. ANNUAL REPORT OF DOMESTIC
AND FOREIGN CORPORATIONS**

Each domestic corporation, and each foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this Act, an annual report setting forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State.

(d) The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

**SECTION 82. FILING OF ANNUAL REPORT OF
DOMESTIC AND FOREIGN CORPORATIONS**

Such annual report of a domestic or foreign corporation shall be delivered to the Secretary of State between the first day of January and the first day of March of each

year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Secretary of State. Proof to the satisfaction of the Secretary of State that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Secretary of State finds that such report conforms to the requirements of this Act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State within thirty days from the date on which it was mailed to the corporation by the Secretary of State.

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL

STANFORD, CALIFORNIA 94305

(415) 497-1731



February 24, 1976

Mr. Walter Olson, Chairperson
State Bar Committee on Corporations
600 Montgomery Street
San Francisco, Ca. 94111

Dear Mr. Olson:

I have noted what appears to be an inconsistency concerning the extent to which records of a foreign corporation may be examined under the new General Corporation Law.

The right of inspection of a shareholder under Section 1600 applies to "any foreign corporation keeping its record of shareholders or a duplicate thereof in this state or having its principal executive office in this state." The underscored language apparently can be given meaning only if it applies to the records of shareholders outside the state since records of shareholders kept in the state are covered by the immediately preceding language.

Section 1601 permits a shareholder to inspect records and minutes of "any foreign corporation keeping any such records in this state or having its principal executive office in this state." Here again, the underscored language can be given meaning only if it applies to records kept outside the state since records kept in the state are covered by the immediately preceding language.

Section 1602, which relates to the right of a director to inspect and copy records, is more limited; with respect to foreign corporations, the right to inspect and copy "extends only to such books, records, documents, and properties of such corporation as are actually or customarily located in this state." The language found in Sections 1600 and 1601--"or having its principal executive office in this state"--is not found in Section 1602, thus apparently giving the director a narrower power to inspect out-of-state records than is given to a shareholder.

Section 1603 provides for judicial enforcement of the right of inspection but is limited in case of a foreign corporation to records kept in this state even though, as previously noted, Section 1601 would appear to authorize a shareholder to inspect out-of-state records of a foreign corporation having its principal executive office in this state.

It appears to me that the policy decision reflected in Sections 1600 and 1601 is to treat a foreign corporation having its principal executive office in this state the same as a domestic corporation. This would, I assume, authorize inspection of out-of-state records. However, this policy decision was not carried over into Sections 1602 and 1603.

I am not aware of the background concerning Chapter 17 of the new General Corporation Law. I may fail to understand the relationship of the sections in this chapter and the purpose of the inclusion of the phrase "having its principal executive office in this state" in some but not all of the sections in the chapter. On the other hand, you may conclude that the State Bar Committee on Corporations should review this matter to determine whether any technical revisions are needed in Chapter 17.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

cc: Robert McMahon

OUTLINE

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CHAPTER 15. RECORDS AND REPORTS

Article 1. Books and Records Generally§ 6510. Books and records

6510. (a) Each nonprofit corporation shall keep:

(1) Adequate and correct books and records of account.

(2) Minutes of the proceedings of its members, board, and committees of the board.

(3) A record of its members, giving the name and address of each member, the class or classes of membership or capital certificates, and the number of capital certificates held by each, and the dates when they respectively became holders of record thereof. Termination of any membership shall be entered in the record, together with the date on which the membership ceased.

(b) The minutes shall be kept in written form. The other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Comment. Section 6510 is based on Section 1500. Paragraph (3) of subdivision (a) is comparable to the provision of Section 1500 relating to the record of shareholders. The language of the paragraph is drawn from Section 1500 and from Section 621(a) of New York's Not-for-Profit Corporation Law. Subdivision (a)(3) supersedes former Section 9606. The requirement that termination of a membership be entered in the record, together with the date on which the membership ceased, is continued from former Section 9606 which applied to nonprofit corporations.

Note. The provision relating to capital certificates will be retained only if the Commission determines to provide for capital certificates. This matter has not yet been considered.

Policy Issues:

Should the record of termination of memberships, and date of termination, be continued? Recommendation: No.

Should the statute require that the record indicate the date when each member became a holder of record? Recommendation: No.

Background: Memorandum 76-26.

Cross-Reference: § 5213--Bylaws, place where to be kept; § 6612--Duty to convert records into written form.

406/460

§ 6511

§ 6511. Information to assessor

6511. Upon request of an assessor, a domestic or foreign nonprofit corporation owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available the nonprofit corporation's principal office in California or at a place mutually acceptable to the assessor and the nonprofit corporation a true copy of the records relevant to the amount, cost, and value of all property that it owns, claims, possesses, or controls within the county.

Comment. Section 6511 is the same in substance as Section 1506.

Policy Issue:

Is this section needed for nonprofit corporations? Recommendation: Yes.

Background: Memorandum 76-26.

406/465

§ 6512

§ 6512. Liability for false reports, records, or entries

6512. Any officers, directors, employees, or agents of a nonprofit corporation who do any of the following are liable jointly and severally

for all the damages resulting therefrom to the nonprofit corporation or to any person injured thereby who relied thereon or to both:

(a) Make, issue, deliver, or publish any report, circular, certificate, financial statement, balance sheet, public notice, or document respecting the nonprofit corporation or its memberships, assets, liabilities, capital, activities, revenues, receipts, or accounts which is false in any material respect, knowing it to be false, or participate in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

(b) Make or cause to be made in the books, minutes, records, or accounts of a nonprofit corporation any entry which is false in any material particular knowing such entry is false.

(c) Remove, erase, alter, or cancel any entry in any books or records of the nonprofit corporation, with intent to deceive.

Comment. Section 6512 is the same in substance as Section 1507 except for changes made to reflect the fact that a nonprofit corporation does not issue shares of stock.

Background: Memorandum 76-26.

Article 2. Annual Report§ 6520. Annual report required unless waived in bylaws

6520. (a) Unless this requirement is expressly waived in the bylaws, the board shall prepare and present at the annual meeting of members an annual report containing the information required by Sections 6521 and 6522.

(b) Nothing in this article relieves a nonprofit corporation from the requirements of Section 12586 of the Government Code. If the report sent to the Attorney General in compliance with the requirements of Section 12586 of the Government Code includes the information required by Sections 6521 and 6522, that report shall be deemed to satisfy the requirements of subdivision (a).

(c) The annual report shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

Comment. Section 6520 requires an annual report unless expressly waived in the bylaws. As to the application of this article to foreign nonprofit corporations, see Section 6526.

Former Section 9402 of the Corporations Code (General Nonprofit Corporation Law) provided that the bylaws of a nonprofit corporation might make provision for the making of annual reports and financial statements to the members, but this was not a mandatory requirement. Charitable corporations and those which hold property in trust or accept property to be used for a charitable purpose are required by the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code § 12580 et seq.) to file annual and other reports as prescribed by the Attorney General. Subdivision (a) of Section 6520 requires an annual report unless this requirement is expressly waived in the bylaws. This provision is comparable to subdivision (a) of Section 1501, which applies

to business corporations, but the provision authorizing waiver of the annual report requirement for business corporations is limited to a corporation with less than 100 holders of record of its shares and no comparable limitation is included in Section 6520.

Subdivision (a) requires that the annual report be presented at the annual meeting of members, and subdivision (c) provides that the annual report shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members. These requirements are drawn from Section 519 of the New York Not-for-Profit Corporation Law. The requirement of Section 1501 that a copy of the annual report of a business corporation be sent to each shareholder is not carried over into the nonprofit corporation law in order to avoid the expense of duplicating and mailing copies of the annual reports to all the members of the nonprofit corporation. However, nothing in this article prevents the nonprofit corporation from sending each member a copy of its annual report; and, if the nonprofit corporation prepares and presents an annual report at the annual meeting of members, the nonprofit corporation is required by Section 6523 to send a copy to any member who makes a written request for one. In addition, even if the bylaws dispense with the requirement of an annual report, other provisions of this article provide means whereby five percent or more of the members may obtain comparable information. See Sections 6524-6525.

Subdivision (b) of Section 6520 makes clear the relationship of the requirements of Section 6520 and the requirement imposed by Government Code Section 12586 that reports be made to the Attorney General by charitable corporations and those which hold property in trust or accept property to be used for a charitable purpose. Nothing in this article relieves such a corporation from complying with the requirement imposed by Government Code Section 12586 that the corporation make the reports required by the Attorney General. However, if the report made by such a corporation to the Attorney General includes the information required by this article, a separate report need not be prepared in order to comply with subdivision (a) of Section 6520.

Policy Issues:

Should the requirement of the annual report be one that can be expressly waived in the bylaws? Recommendation: Yes.

Should the waiver be restricted to "small" nonprofit corporations--such as ones with less than 100 members? Recommendation: No.

Should subdivision (b) be included? Recommendation: No.

Background: Memorandum 76-26.

Comparable Provision: Section 1501(a).

Cross-Reference: § 6521(c)--Corporation having no members.

968/916

§ 6521

§ 6521. Annual report; financial and membership information; place where records kept

6521. (a) The annual report shall show in appropriate detail all of the following:

(1) The assets and liabilities, including the trust funds, of the nonprofit corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to the annual meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the nonprofit corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the nonprofit corporation, for both general and unrestricted purposes, during the year immediately preceding the date of the report.

(5) The number of members of the nonprofit corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the address where the names and places of residence of the current members are kept.

(6) The address where the books, records, and minutes referred to in Section 6510 are kept.

(b) The statements required by subdivision (a) shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the nonprofit corporation that such statements were prepared without audit from the books and records of the nonprofit corporation.

(c) The board of a nonprofit corporation having no members shall direct the chief executive officer and chief fiscal officer to present at the annual meeting of the board a report in accordance with subdivision (a) but omitting the requirement of paragraph (5) of that subdivision. This report shall be filed with the minutes of the annual meeting of the board.

Comment. Section 6521 is based largely on Section 519 of the New York Not-for-Profit Corporation Law. Paragraphs (1), (2), (3), (4), and (5) of subdivision (a) and subdivision (c) adopt provisions from Section 519 of the New York statute with no substantive change. Paragraph (6) of subdivision (a) is new. This paragraph is necessary to provide members with information concerning the location of the books, records, and minutes of the nonprofit corporation. Subdivision (b) is the same in substance as the last portion of subdivision (a) of Section 1501.

Note. The Commission at a prior meeting determined that the information required by subdivision (a)(6) should by some means be made available to the members.

Policy Issues:

Should the information required by subdivision (a)(6) be included in the annual statement required by Section 6531 rather than in the annual report? Recommendation: None.

Is the New York language appropriate for use in Section 6521? Recommendation: Yes.

Background: Memorandum 76-26.

Comparable Provision: Section 1501(a).

968/918

§ 6522

§ 6522. Additional required information in annual report

6522. In addition to the information required by Section 6521, the annual report shall also include:

[Note. This section will contain provisions comparable to subdivision (b) of Section 1500 if such provisions are determined to be appropriate after the subject matter of those provisions has been considered.]

968/923

§ 6523

§ 6523. Providing member with copy of annual report

6523. If an annual report was prepared and presented to the immediately preceding annual meeting of members, the nonprofit corporation shall mail a copy of the annual report to any member who makes a written request for one.

Comment. Section 6523 reflects the same policy as subdivision (d) of Section 1501.

Policy Issue:

Should the corporation be permitted to make a charge for sending the copy of the annual report? Recommendation: No.

Background: Memorandum 76-26.

968/924

§ 6524

§ 6524. Member's right to obtain information

6524. (a) As used in this section:

(1) "Annual informational statement" means a statement containing all the information required by subdivision (a) of Section 6521.

(2) "Fiscal statement" means a statement showing in appropriate detail the revenue or receipts and expenses or disbursements of the nonprofit corporation for the specified period and a balance sheet of the nonprofit corporation as of the end of such period.

(b) A member authorized in writing by not less than five percent of the membership may make a written request to the nonprofit corporation for either or both of the following:

(1) A fiscal statement for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request.

(2) If no annual report was prepared and presented to the immediately preceding annual meeting of members, an informational statement for the last fiscal year ended more than 30 days prior to the date of the request.

(c) The statement or statements referred to in subdivision (b) shall be delivered or mailed to the member making the request within 30 days after the request is received by the nonprofit corporation.

(d) A copy of the statements prepared pursuant to subdivision (b) shall be kept on file in the principal office of the nonprofit corporation for 12 months, and they shall be exhibited at all reasonable times to any member demanding an examination of them or a copy shall be mailed to such member.

(e) Upon written request of a member, the nonprofit corporation shall mail to the member all of the following:

(1) A statement of the address where the books, records, and minutes referred to in Section 6510 are kept.

(2) A copy of the last annual informational statement, if any, referred to in subdivision (d).

(3) A copy of the last semiannual or quarterly fiscal statement, if any, referred to in subdivision (d).

(f) The annual informational statement and the fiscal statements referred to in this section shall be accompanied by the report thereon, if any, by any independent accountants engaged by the nonprofit corporation or the certificate of an authorized officer of the nonprofit corporation that such statements were prepared without audit from the books and records of the nonprofit corporation.

Comment. Section 6524 is based on subdivisions (c), (d), and (e) of Section 1501. Subdivisions (b), (c), and (d) of Section 6524 are substantially equivalent to subdivision (c) of Section 1501. Subdivision (e) of Section 6524 is based on subdivision (d) of Section 1501, but a provision has been added to permit a single member to obtain a statement of the address where the books, records, and minutes referred to in Section 6510 are kept. Subdivision (f) of Section 6524 is the same in substance as subdivision (e) of Section 1501.

Policy Issues:

Do members of nonprofit corporations need the same methods of obtaining fiscal information that members of business corporations are given by Section 1501? Recommendation: Yes.

Is the five-percent-of-members-authorization requirement appropriate as a condition for requiring the nonprofit corporation to prepare the necessary fiscal statements? Recommendation: Yes.

Background: Memorandum 76-26.

968/982

§ 6525

§ 6525. Judicial enforcement

6525. (a) In addition to the penalties provided for in Section 7200, the superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by this article and, for good cause shown, may extend the time therefor.

(b) In any action or proceeding under this article, if the court finds the failure of the nonprofit corporation to comply with the requirements of this article to have been without justification, the court may award an amount sufficient to reimburse the member for the reasonable expenses incurred by the member, including attorney's fees, in connection with such action or proceeding.

Comment. Section 6525 is the same in substance as subdivisions (f) and (g) of Section 1501.

§ 6526. Application of article

6526. This article applies to any domestic nonprofit corporation and also to a foreign nonprofit corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

Comment. Section 6526 is the same in substance as subdivision (h) of Section 1501.

Article 3. Statement Identifying Corporate Officers and
Offices; Designation of Agent for Service

§ 6530. Applicable filing period defined

6530. For the purposes of this article, the applicable filing period for a nonprofit corporation is the calendar quarter during which its original articles were filed and the immediately preceding calendar quarter.

Comment. Section 6530 is the same as the first sentence of Section 1502(c).

Note. Former Section 3301 (last paragraph) contains a definition of "nonprofit corporation" that may include some nonprofit corporations that will not be covered by the new statute. This matter will need to be reviewed when the scope of the statute has been determined and a broader definition of "nonprofit corporation" provided here so that the scope of the existing statute will be retained.

§ 6531. Statement identifying officers, principal office, and principal activity

6531. Within 90 days after the filing of its original articles and annually thereafter during the applicable filing period each year, every nonprofit corporation shall file, on a form prescribed by the Secretary of State, a statement containing all of the following:

- (a) The presently authorized number of its directors.
- (b) The name and complete business or residence address of each of its incumbent directors.
- (c) The name and complete business or residence address of its chief executive officer, secretary, and chief financial officer.
- (d) The street address of its principal executive office.
- (e) If the address of its principal executive office is not in this state, the street address of its principal office in this state, if any.
- (f) A statement of the general type of activity which constitutes the principal activity of the nonprofit corporation (for example, church, country club, trade association, higher educational institution, airplane club).

Comment. Section 6531 is the same in substance as Section 1502(a). Revisions have been made to reflect the fact that the corporation is a nonprofit corporation.

Section 6531, like Section 1502, requires that the statement be filed annually rather than each five years as was the case under former Section 3301. Although former Section 3301 required a filing only once every five years, it also required a filing of a new statement every time there was any change of officers. Under Section 6531, although the statement must be filed annually, the additional requirement that a new statement be filed each time there is any change in officers has not been continued. This additional requirement was one that easily could

be overlooked by the nonprofit corporation. The annual filing requirement is a more effective method of assuring that accurate information concerning the corporation is on file with the Secretary of State. The possibility that the annual filing requirement will be overlooked by the nonprofit corporation is minimized because Section 6536 requires that the Secretary of State mail the necessary form for compliance to the nonprofit corporation approximately three months prior to the close of the filing period.

Policy Issue:

Should the annual filing requirement be applied to nonprofit corporations? Recommendation: Yes.

Background: Memorandum 76-26.

§ 6532. Designation of agent for service

6532. The statement required by Section 6531 shall also designate, as the agent of such nonprofit corporation for the purpose of service of process, any natural person residing in this state or a corporation which has complied with Section 1505 and whose capacity to act as such agent has not terminated. If a natural person is designated, the statement shall set forth such person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

Comment. Section 6532 is the same in substance as Section 1502(b). Unlike former Section 3301(a), the designation of an agent for service is mandatory rather than permissive. One of the changes made by the new business corporations law is that the designation of an agent for service is now mandatory; formerly, designation of an agent for service was permissive under former Section 3301(a).

Policy Issue:

Should designation of an agent for service of process be mandatory?
Recommendation: Yes.

Background: Memorandum 76-26.

968/639

§ 6533

§ 6533. Filing new statement when information changes

6533. Whenever any of the information required by Section 6531 changes, the nonprofit corporation may file a current statement containing all of the information required by Sections 6531 and 6532. In order to change its agent for service of process or the address of the agent, the nonprofit corporation shall file a current statement containing all the information required by Sections 6531 and 6532.

Comment. Section 6533 is the same in substance as the first two sentences of Section 1502(d).

986/640

§ 6534

§ 6534. Statement of resignation as agent; notice to corporation

6534. An agent designated for service of process pursuant to this article or [to be supplied later] may file a signed and acknowledged written statement of resignation as such agent. Thereupon, the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the nonprofit corporation addressed to its principal executive office.

Comment. Section 6534 is the same in substance as Section 1503.

Cross-Reference: "Acknowledged" defined, § 5149.

968/641

§ 6535

§ 6535. When designation of new agent required

6535. If a natural person who has been designated agent for service of process pursuant to this article or [to be supplied later] dies or resigns or no longer resides in the state or if the corporate agent for such purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the nonprofit corporation shall forthwith file a designation of a new agent conforming to the requirements of this article or [to be supplied later].

Comment. Section 6535 is the same in substance as Section 1504.

968/642

§ 6536

§ 6536. Renewal forms

6536. The Secretary of State shall mail a form for compliance with this article to each nonprofit corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date of the statement and shall be mailed to the last address of the nonprofit corporation according to the records of the Secretary of State. Neither the failure of the Secretary of State to

mail the form nor the failure of the nonprofit corporation to receive it is an excuse for failure to comply with this article.

Comment. Section 6536 is the same in substance as the last three sentences of Section 1502(c).

968/643

§ 6537

§ 6537. New statement supersedes previous statement; disposal of superseded statement

6537. (a) Whenever the nonprofit corporation files a statement pursuant to this article, it supersedes any previously filed statement and the statement in its articles as to the agent for service of process and the address of the agent.

(b) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this article after it has been superseded by the filing of a new statement.

Comment. Subdivision (a) of Section 6537 is the same in substance as the last sentence of Section 1502(d); subdivision (b) is the same in substance as Section 1502(e).

968/644

§ 6538

§ 6538. Providing public with copies of statements

6538. (a) A copy of the statement filed by a nonprofit corporation pursuant to this article shall be made available to the public upon request. For furnishing a copy of any such statement, the Secretary of State shall charge and collect a fee of one dollar (\$1).

(b) This article shall not be construed to place any person dealing with the nonprofit corporation on notice of, or under any duty to inquire about, the existence or content of any statement filed pursuant to this article.

Comment. Section 6538 continues the substance of the last three sentences of the sixth paragraph of former Section 3301. Only the last of the three sentences referred to was carried over into the new business corporations law. See Section 1502(f). However, subdivision (a) of Section 6538, which continues the substance of the two sentences not carried over into the new business corporations law, is useful in providing notice as to the fact that a copy of the statement may be obtained and is necessary to provide a fee for the furnishing of the copy.

Policy Issue:

Should subdivision (a) be included, this provision having been omitted in the new business corporations law? Recommendation: Yes.

Background: Memorandum 76-26.

968/645

§ 6539

§ 6539. No fee required

6539. The statement filed under this article shall be filed without fee.

Comment. Section 6539 continues the substance of the last sentence of the seventh paragraph of former Section 3301. The policy expressed in the section is consistent with Government Code Section 12210, which was added to the Government Code by the act that enacted the new business corporations law, and provides: "The fee for filing the statement pursuant to Section 1502 of the Corporations Code is five dollars (\$5) for a stock corporation and there is no fee for a nonstock corporation."

Policy Issues:

Should not there be a fee for the filing of a statement by a non-profit corporation? Recommendation: Yes.

Does the fact that an annual filing is to be required justify imposition of a fee? Recommendation: Yes.

Background: Memorandum 76-26.

968/695

§ 6540

§ 6540. Procedure upon failure to file statement

6540. (a) Upon the failure of a nonprofit corporation to file the statement required by this article, the Secretary of State shall mail a notice of such delinquency to the nonprofit corporation. The notice shall also contain information concerning the application of this article and advise the nonprofit corporation of the penalty imposed by Section 25936 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to this article has not been filed by the nonprofit corporation, the Secretary of State shall certify the name of such nonprofit corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the nonprofit corporation a penalty of two hundred fifty dollars (\$250) pursuant to Section 25936 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a nonprofit corporation which on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another corporation.

(d) The penalty herein provided shall not apply to any nonprofit corporation, the corporate powers, rights, and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301 or 23001.5 of the Revenue and Taxation Code more than six months prior to the last day of the filing period pursuant to this article and which the corporate powers, rights, and privileges have not been revived on or prior to the last day of the filing period. The Secretary of State need not mail a form pursuant to Section 6536 nor a notice of delinquency pursuant to this section to a nonprofit corporation whose corporate powers, rights, and privileges have been suspended more than six months prior to the last day of the filing period and which corporate powers, rights, and privileges have not been revived on or prior to such last day of the filing period.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds the required statement was filed before the expiration of the 60-day period after mailing of the notice of delinquency, the Secretary of State shall promptly decertify the name of the nonprofit corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the nonprofit corporation pursuant to Section 25936 of the Revenue and Taxation Code.

Comment. Section 6540 is the same in substance as Section 2204.

CHAPTER 16. RIGHTS OF INSPECTION

Article 1. General Provisions§ 6610. Rights may not be limited by articles or bylaws

6610. The rights provided in this chapter may not be limited by the articles or bylaws.

Comment. Section 6610 is based on comparable provisions in Sections 1600(d) and 1601(b). Although no comparable provision is found in Section 1602, it appears that there was no intent that the rights given directors by that section could be limited by the articles or bylaws. Section 6610 makes clear that the rights of inspection given directors cannot be limited in the articles or bylaws.

§ 6611. Inspection by agent or attorney; right to copy and make extracts

6611. Inspection under this chapter may be made in person or by agent or attorney. The right of inspection includes the right to copy and make extracts.

Comment. Section 6611 is the same as comparable provisions in Sections 1600, 1601, and 1602.

§ 6612. Records to be made available in written form

6612. If any record subject to inspection pursuant to this chapter is not maintained in written form, a request for inspection is not complied with unless and until the nonprofit corporation at its expense makes such record available in written form.

Comment. Section 6612 is the same in substance as Section 1605.

Article 2. Membership Records§ 6620. Right of five percent of membership to obtain membership list

6620. A member having the written authorization of at least five percent of the membership of the nonprofit corporation has the absolute right to do either or both of the following:

(a) Inspect and copy the record of members' names and addresses and classes of memberships during usual business hours upon five business days' prior written demand upon the nonprofit corporation.

(b) Obtain from the nonprofit corporation, upon five business days' prior written demand for such a list and upon tender of an amount equal to [five cents] for each name to be so provided (the amount of which charge shall be stated to the member by the nonprofit corporation upon request), a list of the members' names and addresses, who are entitled to vote for the election of directors, and their class of memberships if there are classes of members, as of the most recent record date for

which it has been compiled or as of a date specified by the member subsequent to the date of the demand.

Comment. Section 6620 is based on subdivision (a) of Section 1600. Section 6620, however, provides for a flat charge for each name on the list rather than referring to the usual charges of the transfer agent.

Policy Issues:

Should a provision comparable to subdivision (b) be included?
Recommendation: Yes.

Should a charge be specified in the statute? Recommendation: Yes.
If so, what charge should be specified?

Background: Memorandum 76-26.

§ 6621. Order postponing meeting

6621. Any delay by the nonprofit corporation in complying with a demand under Section 6620 beyond the time limits specified in that section shall give the member properly making the demand a right to obtain from the superior court, upon the filing of a verified complaint in the proper county and after a hearing, notice of which shall be given to such persons and in such manner as the court may direct, an order postponing any meeting of the members previously noticed for a period equal to the period of such delay. This right is in addition to any other legal or equitable remedies to which the member may be entitled.

Comment. Section 6621 is the same in substance as subdivision (b) of Section 1600.

§ 6622. Right of individual member to inspect membership records

6622. The record of members is open to inspection and copying by any member at any time during usual business hours upon written demand on the corporation for a purpose reasonably related to such member's interests as a member.

Comment. Section 6622 is the same in substance as subdivision (c) of Section 1600.

§ 6623. Application of article

6623. This article applies to any domestic nonprofit corporation and to any foreign nonprofit corporation keeping its record of members or a duplicate thereof in this state or having its principal executive office in this state.

Comment. Section 6623 is the same in substance as the last sentence of subdivision (d) of Section 1600.

Article 3. Books, Records, and Minutes§ 6630. Inspection of books, records, and minutes

6630. (a) The books and records of account and minutes of proceedings of the members and the board and committees of the board of any domestic nonprofit corporation, and of any foreign nonprofit corporation

keeping any such records in this state or having its principal executive office in this state, shall be open to inspection upon written demand on the nonprofit corporation of any member at any reasonable time during usual business hours for a purpose reasonably relating to such member's interests as a member.

(b) The right of inspection created by this section extends to the records of each subordinate body or subsidiary of a nonprofit corporation subject to this section.

Comment. Section 6630 is the same in substance as subdivision (a) of Section 1601.

Cross Reference: § 5213--Bylaws, right of member to inspect; § 6510--Required books and records.

992/908

§ 6640

Article 4. Director's Rights of Inspection

§ 6640. Director's right to inspect and copy

6640. Every director has the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the nonprofit corporation, domestic or foreign, of which such person is a director and also of its subordinate bodies and subsidiary corporations, domestic or foreign. In the case of a foreign corporation, this right extends only to such books, records, documents, and properties of such nonprofit corporation as are actually or customarily located in this state.

Comment. Section 6640 is the same in substance as Section 1602.

Article 5. Judicial Enforcement§ 6650. Enforcement of right of inspection; appointment of inspectors or accountants

6650. (a) Upon refusal of a lawful demand for inspection, the superior court of the proper county, or in the case of a foreign non-profit corporation the superior court of the county in which the records are located, may enforce the right of inspection with just and proper conditions or may, for good cause shown, appoint one or more competent inspectors or accountants to audit the books and records kept in this state and investigate the property, funds, and affairs of any domestic nonprofit corporation or any foreign nonprofit corporation keeping records in this state and of any subordinate body or subsidiary corporation thereof, domestic or foreign, keeping records in this state and to report thereon in such manner as the court may direct.

(b) All officers and agents of the nonprofit corporation shall produce to the inspectors or accountants so appointed all books and documents in their custody or power under penalty of punishment for contempt of court.

(c) All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the nonprofit corporation.

Comment. Section 6650 is the same in substance as Section 1603.

§ 6651. Recovery of reasonable expenses by member

6651. In any action or proceeding under Article 2 (commencing with Section 6620) or under Section 6630, if the court finds the failure of the nonprofit corporation to comply with a proper demand thereunder was without justification, the court may award an amount sufficient to reimburse the member for the reasonable expenses incurred by such member, including attorney's fees, in connection with such action or proceeding.

Comment. Section 6651 is the same in substance as Section 1604.

CHAPTER 17. SERVICE OF PROCESS

Article 1. Manner of Service Generally§ 6710. Additional method for serving domestic corporation

6710. In addition to the provisions of Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon domestic nonprofit corporations as provided in this chapter.

Comment. Sections 6710 to 6732 are the same in substance as Sections 1700-1702 of the Corporations Code. Section 1702, as proposed to be amended by Assembly Bill 2849 of the 1975-76 Regular Session, has been used in preparing this chapter. The following table shows the source of each section in this chapter.

<u>Section</u>	<u>Source (Corp. Code Sections)</u>
6710	1700
6720	1701
6730	1702(a)
6731	1702(b) (first two sentences)
6732	1702(c)

Background: Memorandum 76-26.

Article 2. Service on Designated Agent§ 6720. Service on designated agent for service

6720. Delivery by hand of a copy of any process against the nonprofit corporation (a) to any natural person designated by it as agent or (b), if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of such corporate agent shall constitute valid service on the nonprofit corporation.

Comment. See the Comment to Section 6710.

Article 3. Service on Secretary of State

§ 6730. Service on Secretary of State

6730. If an agent for the purpose of service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for delivery by hand of the process, and it is shown by affidavit to the satisfaction of the court that process against a domestic nonprofit corporation cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the nonprofit corporation in the manner provided in subdivision (a), (b), or (c) of Section 416.10 or subdivision (a) of Section 416.20 of the Code of Civil Procedure, the court may make an order that the service be made upon the nonprofit corporation by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

Comment. See the Comment to Section 6710.

§ 6731. Notice to corporation

6731. Upon the receipt of any such copy of process, the Secretary of State shall give notice of the service of the process to the nonprofit corporation at its principal executive office, by forwarding to

such office, by registered mail with request for return receipt, the copy of the process or, if the records of the Secretary of State do not disclose an address for its principal executive office, by forwarding such copy in the same manner to the last designated agent for service of process who has not resigned. If the agent for service of process has resigned and has not been replaced and the records of the Secretary of State do not disclose an address for its principal executive office, no action need be taken by the Secretary of State.

Comment. See the Comment to Section 6710.

§ 6732. Record of service; certificate of Secretary of State as evidence

6732. (a) The Secretary of State shall keep a record of all process served upon the Secretary of State under this article and shall record therein the time of service and the Secretary of State's action with reference thereto.

(b) The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the nonprofit corporation, and the forwarding of such process pursuant to this article, shall be competent and prima facie evidence of the matters stated therein.

Comment. See the Comment to Section 6710.

ADDITIONAL AND CONFORMING PROVISIONS§ 5113. Mailing

5113. Any reference in this division to mailing means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

Comment. Section 5113 is the same as Section 113.

§ 5114. Financial statements to be prepared in accordance with generally accepted accounting principles

5114. All references in this division to financial statements, balance sheets, statements of assets and liabilities, and statements of principal changes in assets and liabilities of a nonprofit corporation and all references to assets, liabilities, revenue, receipts, expenses, disbursements, and similar accounting items of a nonprofit corporation mean such financial statements or such items prepared or determined in accordance with generally accepted accounting principles then applicable, and fairly presenting the matters which they purport to present, subject to any specific accounting treatment required by a particular section of this division. Unless otherwise expressly stated, all references in this division to such financial statements mean, in the case of a nonprofit corporation which has subordinate bodies or subsidiaries, consolidated statements of the nonprofit corporation and such of its subordinate bodies or subsidiaries as are required or permitted to be

included in such consolidated statements under generally accepted accounting principles then applicable and all references to such accounting items means such items determined on a consolidated basis in accordance with such consolidated financial statements.

Comment. Section 5114 is the same in substance as Section 114 with revisions to reflect the terminology used in this division with respect to the financial matters of nonprofit corporations. See, e.g., Section 6521.

Policy Issues:

Is this section necessary? Recommendation: Yes.

Should the last sentence be deleted? Recommendation: Yes.

968/703

§ 5115

§ 5115. Independent accountant

5115. As used in this division, independent accountant means a certified public accountant or public accountant who is independent of the nonprofit corporation as determined in accordance with generally accepted auditing standards and who is engaged by the nonprofit corporation to audit its financial statements or perform other accounting services.

Comment. Section 5115 is the same in substance as Section 115.

§ 5149. Acknowledged

5149. "Acknowledged" means that an instrument is either:

(a) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division Second of the Civil Code, or

(b) Accompanied by a declaration in writing signed by the persons executing the same that they are such persons and that the instrument is the act and deed of the corporation or of the persons executing the same, as the case may be.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

Comment. Section 5149 is the same as Section 149.

Note. "Acknowledged" is used in Section 6534.

§ 5167. Domestic nonprofit corporation

5167. "Domestic nonprofit corporation" means a nonprofit corporation formed under the laws of this state.

Comment. Section 5167 is the same in substance as Section 167.

§ 5177. Proper county

5177. "Proper county" means the county where the principal executive office of the nonprofit corporation is located or, if the principal executive office of the nonprofit corporation is not located in this state, or the nonprofit corporation has no such office, the County of Sacramento.

Comment. Section 5177 is the same in substance as Section 177.

§ 5189. Subsidiary

5189. "Subsidiary" of a specified nonprofit corporation means a corporation of whose shares those possessing more than 50 percent of the total combined voting power of all classes of shares entitled to vote are owned directly or indirectly through one or more subsidiaries by the specified nonprofit corporation.

Comment. Section 5189 is the same in substance as Section 189.

§ 5250. Required contents of articles

5250. The articles of incorporation shall set forth:

* * * * *

(e) The name and address in this state of the nonprofit corporation's initial agent for service of process in accordance with Section 6532.

Comment. Subdivision (e) of Section 5250 is the same in substance as subdivision (c) of Section 202.

Policy Issue:

Should designation of an agent for service of process be mandatory?
Recommendation: Yes. (This issue is discussed and will be considered in connection with the discussion of proposed Section 6532.)

Background: Memorandum 76-26.

968/721

§ 7150

CHAPTER 21.5. ENFORCEMENT BY ATTORNEY GENERAL

§ 7150. Enforcement by Attorney General

7150. The Attorney General, upon complaint that a corporation is failing to comply with the provisions of Chapter 15 (commencing with Section 6510), Chapter 16 (commencing with Section 6610), Chapter [to be supplied later], may in the name of the people of the State of California, send to the principal executive office of such nonprofit corporation notice of the complaint. If the answer is not satisfactory, the Attorney General may institute, maintain, or intervene in such suits, actions, or proceedings of any type in any court or tribunal of competent jurisdiction or before any administrative agency for such relief by way of injunction, the dissolution of entities, the appointment of receivers, or any other temporary, preliminary, provisional, or final remedies as may be appropriate to protect the rights of members or to undo the consequences of failure to comply with such requirements. In any such action, suit, or proceeding, there may be joined as parties all person and entities responsible for or affected by such activity.

Comment. Section 7150 is the same in substance as Section 1508.

CHAPTER 22. CRIMES AND PENALTIES

§ 7200. Failure to keep records or submit financial statements

7200. (a) Every nonprofit corporation is subject to penalty as provided in this section if the nonprofit corporation neglects, fails, or refuses to do any of the following:

(1) Keep or cause to be kept or maintained books and records of account required by this division to be kept or maintained.

(2) Prepare or cause to be prepared or submitted the annual informational statement or fiscal statement required by Section 6524 or any financial statements required by this division to be prepared or submitted.

(b) The penalty is twenty-five dollars (\$25) for each day that such failure or refusal continues, beginning 30 days after receipt of a written request that the duty be performed from one entitled to make the request, up to a maximum of one thousand five hundred dollars (\$1,500).

(c) The penalty shall be paid to the member or members jointly making the request for performance of the duty and damaged by the neglect, failure, or refusal, if suit therefor is commenced within 90 days after the written request is made; but the maximum daily penalty because of failure to comply with any number of separate requests made on any one day or for the same act is two hundred fifty dollars (\$250).

Comment. Section 7200 is based on Section 2200. Section 7200 is phrased to use the terminology used in the relevant provisions of the nonprofit corporation law.

Cross-Reference: § 7202--Cumulative remedy.

§ 7201. Failure to enter transfer of membership

[Note. This section will be drafted after the transfer of membership provisions have been drafted. The comparable provision of the business corporations law is Section 2201.]

§ 7202. Additional remedies not affected; remission of penalty

7202. (a) Any penalty prescribed by Section 7210 or Section 7211 is in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts or duties enjoined by law upon the nonprofit corporation or its directors or officers.

(b) The court in which an action for any such penalty is brought may reduce, remit, or suspend the penalty on such terms and conditions as it may deem reasonable when it is made to appear that the neglect, failure, or refusal was inadvertent or excusable.

Comment. Section 7202 is the same in substance as Section 2202.

Cross-Reference: §§ 7254, 7255--Criminal liability of directors and officers.

§ 7254. False report or statement; refusal to keep book or post notice; criminal penalty

7254. Every director, officer, or agent of any nonprofit corporation, domestic or foreign, is guilty of a felony if he does any of the following:

(a) Knowingly concurs in making, publishing, or posting either generally or privately to the members or other persons (1) any written report, exhibit, statement of its affairs or pecuniary condition, or notice containing any material statement which is false, or (2) any untrue or willfully or fraudulently exaggerated report, account, or statement of operations, values, activities, revenue or receipts, expenses or disbursements, or prospects, or (3) any other paper or document intended to produce or give, or having a tendency to produce or give, the memberships in such nonprofit corporation a greater value or less apparent value than they really possess.

(b) Refuses to make any book entry or post any notice required by law in the manner required by law.

Comment. Section 7254 is comparable to Section 2254. The language of Section 2254 has been revised to reflect the language used in the nonprofit corporation law.

Background: Memorandum 76-26.

968/988

§ 7255

§ 7255. Fraudulent records; criminal penalty

7255. (a) Every director, officer, or agent of any nonprofit corporation, domestic or foreign, who knowingly receives or acquires possession of any property of the corporation, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the nonprofit corporation is guilty of a public offense.

(b) Every director, officer, agent, or member of any nonprofit corporation, domestic or foreign, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to the nonprofit corporation or makes or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the nonprofit corporation is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment in a state prison for not more than 10 years or by imprisonment in a county jail for not exceeding one year or a fine not exceeding five hundred dollars (\$500) or by both such fine and imprisonment.

Comment. Section 7255 is the same in substance as Section 2255.

968/989

CCP § 416.10

CODE OF CIVIL PROCEDURE

§ 416.10 (technical amendment)

SEC. _____. Section 416.10 of the Code of Civil Procedure is amended to read:

416.10. A summons may be served on a corporation by delivering a copy of the summons and of the complaint:

(a) To the person designated as agent for service of process as provided by any provision in Sections ~~201~~ 202, 1502, 2105 ~~or~~ 2107, 5250, 6532, or 6533 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code

as in effect on December 31, 1976, with respect to corporations to which they remain applicable);

(b) To the president or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the corporation to receive service of process;

(c) If the corporation is a bank, to a cashier or assistant cashier or to a person specified in subdivision (a) or (b); or

(d) When authorized by any provision in Sections 1701, 1702, 2110, or 2111 or Chapter 17 (commencing with Section 6710) of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code as in effect on December 31, 1976, with respect to corporations to which they remain applicable); as provided by such provision.

Comment. The amendments of Section 416.10 are technical. The amendment to subdivision (a) to change "201" to "202" corrects an obvious error in reference. The addition of the references to Sections 5250, 6532 and 6533 in subdivision (a) picks up provisions requiring nonprofit corporations to designate agents for service. The addition of the reference to Chapter 17 (commencing with Section 6710) picks up the chapter relating to service of process on domestic nonprofit corporations. [Additional technical additions will be required to Section 416.10, and the Comment to this section will be expanded accordingly.]

REVENUE & TAXATION CODE

§ 25936 (technical amendment)

SEC. ____ . Section 25936 of the Revenue and Taxation Code is amended to read:

25936. Upon certification by the Secretary of State pursuant to subdivision (a) of Section 2204 or subdivision (a) of Section 6540 of the Corporations Code, the Franchise Tax Board shall assess a penalty of two hundred fifty dollars (\$250). Such penalty shall be a final assessment due and payable at the time of assessment but no interest shall accrue thereon. The assessment shall be collected as other taxes, interest and penalties are collected by the Franchise Tax Board unless the Secretary of State decertifies the name of the corporation as provided in subdivision (e) of Section 2204 or subdivision (e) of Section 6540 of the Corporations Code.

Comment. Section 25936 is amended to insert appropriate references to provisions relating to nonprofit corporations.