

#77.150

3/27/76

Memorandum 76-36

Subject: Study 77.150 - Nonprofit Corporations (Records and Reports)

Attached to this memorandum is a draft of Chapter 15 of the Nonprofit Corporation Law. The Commission covered the first two articles of this chapter at the last meeting and these articles have been revised to reflect the policy decisions made at that meeting. The Commission considered the first two sections of the third article at the last meeting, but the meeting concluded before any additional sections could be considered. The third article is set out just as it was in the material prepared for the last meeting.

In the comments below, we note for your attention various matters with reference to the first two articles and provide background information concerning the third article.

§ 6510. Required books and records

The substance of this section was tentatively approved. However, the wording of subdivisions (c), (d), and (e) should be reviewed by the Commission.

§ 6511. Form of records; place where kept

Subdivision (a) was previously approved. Subdivision (b) was not included in the prior draft but is consistent with Section 1500.

Article 2--Annual Report; Financial Statements

This article has been completely rewritten to conform to the decisions made at the last meeting. The sections have been reorganized and renumbered.

§ 6520. Annual report required unless bylaws otherwise provide

The introductory clause would permit the bylaws to require additional information or to require less information, to require that the report be mailed to each of the members, or to dispense with the report entirely. This is in conformity with the decisions made at the last meeting.

§ 6522. Annual report; financial information

This section has been revised in accordance with the decisions made at the last meeting; the wording of the section should be reviewed by the Commission.

§ 6527. Members' right to obtain fiscal information

This section has been completely rewritten. It has been conformed to the decisions made at the last meeting concerning the Annual Report and the right to obtain fiscal information. However, there are a number of policy decisions made by the staff in redrafting the section that should be reviewed by the Commission. The entire section should be reviewed for substance and wording at the meeting.

§ 6529. Judicial enforcement

This section has been completely rewritten in accord with the decisions made at the last meeting. The redrafting of the section required various minor policy decisions. The entire section should be carefully reviewed for substance and wording.

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

This article is set forth exactly as it was set forth in the memorandum prepared for the last meeting. At the last meeting, the Commission started to consider this article but considered only the first two sections. We have not redrafted the article, primarily because we do not have the resources to have it retyped in time for the meeting. Moreover, the staff strongly believes that the original annual filing recommendation is sound and that the content of the statement should be consistent with that required for business corporations. Accordingly, we request that the Commission reconsider its decision to require a filing only once every three years (and to dispense with the existing requirement of a new filing each time there is a change in officers) and to eliminate everything from the statement except the name and address of the chief executive officer, secretary, and chief financial officer and the address of the corporation. We set out the reasons below under the discussion of Section 6531.

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

Section 9300 requires that the articles of a nonprofit corporation set forth certain items including (1) the specific and primary purposes for which it is formed, (2) the county in this state where the principal

office for the transaction of the business of the corporation is located, and (3) the names and addresses of the original directors, and the number of directors so named constitutes the number of directors of the corporation until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. There is also authority to have an indefinite number of directors authorized in the bylaws, the precise number to be changed or fixed by a bylaw unless the articles provide otherwise. The old General Corporation Law contained comparable provisions. These requirements were deleted from the articles in the new General Corporation Law and the Commission has determined not to continue them in the new Nonprofit Corporation Law. The new General Corporation Law continues the substance of the requirements in the annual statement the corporation is required to file with the Secretary of State. This avoids the need to amend the articles to change the corporate purposes, the address of the principal office, or the number of directors. At the same time, the information which was formerly available from the articles is now available in the annual statement on file in the office of the Secretary of State. The annual statement also contains the name and complete business or residence address of each of its incumbent directors. This would be very useful information, for example, if a member seeks a writ of mandamus to compel inspection of the corporate records. It is doubtful that any court would hold a member of the board of directors in contempt for violation of a court order unless it is shown that the member has been personally served. The information as to the directors names and addresses will greatly facilitate such service.

Section 6531 is the same in substance as subdivision (a) of 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 non-profit 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).

Although the filing of the annual statement might be considered burdensome, the staff believes that the filing of a statement less frequently is more likely to cause confusion. First, even if a renewal form is to be sent by the Secretary of State, it becomes less likely that it will actually be received if the filing period is three years. The corporation may move its office and the postoffice will retain the forwarding record only for a limited time. If a natural person is designated as an agent for service of process, his address may change or he may die or become an inappropriate agent for process. However, the

nonprofit corporation may fail to file a new designation. The annual filing requirement tends to protect against this possibility since the agent is reviewed annually when the new statement is filed. The personnel of the nonprofit corporation, usually volunteers, frequently turns over, and a requirement that must be satisfied only once every three years is likely to cause confusion because the persons who were aware of the previous filing requirement are no longer connected with the nonprofit corporation. In this connection, the article attached as Exhibit IV, noting the confusion caused by the five-year filing requirement under the fictitious business name statute may be of interest. On balance, the staff is of the view that there is just as much, if not more, justification for an annual filing requirement in the case of nonprofit corporations as there is in the case of business corporations.

§ 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 8 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.

Respectfully submitted,

John H. DeMouly
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 proceeding 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.

TAXIMR 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 3408.5 and whose capacity to act as such agent has not terminated. If a natural person be designated, the statement shall set forth his complete business or residence address. If a corporate agent be 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 its 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, 3408.5 or 3408.6.

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 3408.5, if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 3408.6, shall constitute valid service on the corporation.

(b) Every domestic corporation shall within 30 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 0000), 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 20001) of the Education Code.

MINNESOTA 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.

New Fictitious Name Filing Law Causes Confusion

A new requirement that business owners resile their fictitious business name statements every five years with their local county clerk has resulted in hundreds of improper filings in Los Angeles County, and has forced the Los Angeles County Clerk to establish procedure to return these improper filings to businesses throughout Los Angeles County.

The new five-year resiling requirement became effective in 1976. All businesses which filed a fictitious name statement in 1971 must resile this year and every five years thereafter. The resiling fee is \$10, and businesses may accomplish the necessary resiling by mailing their \$10 check together with the proper set of forms directly to the Los Angeles County Clerk.

At least one private firm has contacted affected business owners by mail, however, and offered to perform the necessary resiling for a total fee of \$15. Many of the businesses contacted mistakenly assumed they had been contacted by the county clerk and mailed \$15 instead of the required \$10 to the county clerk's office. All such overpayments must be returned to these businesses with the request that a \$10 check be prepared and returned to the county clerk.

Another problem has been caused by businesses which have not furnished the county clerk with the proper number of copies of the resiling forms. Many businesses have provided only a single copy of the form. The county clerks must have three copies in order to process the resiling correctly. Multipart forms are available from the county clerk's corporation department at no charge. Most newspapers also provide these manifold forms free as a service to local businesses.

OUTLINE

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Substance Tentatively Approved
March 1976

CHAPTER 15. RECORDS AND REPORTS

Article 1. Books and Records Generally

§ 6510. Required books and records

Each nonprofit corporation shall keep:

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

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

(c) A record of its members, which shall include (1) the name and address of each member, (2) where a member may hold more than one membership, the number of memberships held by each member, (3) where there is more than one class of memberships, the class of each membership held by each member, and (4) the date when the holder became a holder of record of each membership.

(d) A record of the termination of each membership, together with the date of termination, so long as such a record is necessary to determine those members entitled to vote or otherwise to participate in the affairs

(e) A record of the holders of capital certificates, which shall include (1) the name and address of each holder, (2) the number and amount of capital certificates held by each holder, and (3) the date when the holder became a holder of record of each capital certificate.

Comment. Section 6510 is comparable to the first sentence of Section 1500.

Subdivision (c) is drawn from Section 1500 and from Section 621(a) of the New York Not-for-Profit Corporation Law. Subdivision (c)(4),

which requires that the record of members show the date when the member became the holder of record of the membership, is taken from the New York section; this is a new requirement for nonprofit corporations, and no comparable requirement is found in Section 1500.

Subdivision (d), which requires that a record of termination of memberships be retained so long as such a record is needed for the purposes of the nonprofit corporation, is drawn from former Section 9606 which applied to nonprofit corporations. However, Section 9606 apparently required that the record of termination of memberships be retained forever.

The record of the date when a member became a holder of record and the record of termination of memberships are required primarily so that the record of members will be sufficient to determine the members as of any relevant record date. See Section [provision comparable to Section 701 of the General Corporation Law].

Subdivision (e) is new. For the provisions relating to capital certificates, see Sections [to be supplied later].

Policy Issues:

- (1) Should the record of termination of memberships, and date of termination, be continued as provided in subdivision (d)? Decision: Yes.
- (2) Should the section impose a new requirement that the record indicate the date when each member became a holder of record? Decision: Yes.

Background: Memorandum 76-26

Cross-Reference:

Bylaws, place where kept, § 5213

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.

Tentatively Approved

March 1976

§ 6511 - subdivision (b)

Staff draft - not previously
considered

§ 6511. Form of records; place where kept

6511. (a) The minutes shall be kept in written form. The other books and records required by Section 6510 shall be kept either in written form or in any other form capable of being converted into written form.

(b) The records described in subdivisions (c) and (d) of Section 6510 shall be kept by the nonprofit corporation at its principal executive office or at the office of its registrar.

Comment. Subdivision (a) of Section 6511 is the same in substance as the last two sentences of Section 1500. Sections 6510 and 6511 supersede former Section 9606 which required every nonprofit corporation to keep a "membership book." Nothing in this article prevents a nonprofit corporation from continuing to keep its record of members in a membership book. However, Section 6511 permits the membership record to be kept in any other written form or in any other form capable of being converted into written form. Whatever the form of the membership record, the record must be sufficient to determine the information required by subdivisions (c) and (d) of Section 6510 as of any relevant record date. See Section [provision comparable to Section 701 of General Corporation Law].

Subdivision (b) is consistent with Section 1500.

Cross-Reference:

Duty to convert records into written form, § 6612

405/184

§ 6512

Tentatively Approved
March 1976

§ 6512. Information to assessor

6512. 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 at 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 6512 is the same in substance as Section 1506.

Policy Issue: Is this section needed for nonprofit corporations? Decision: Yes

Background: Memorandum 76-26, dated January 1976, indicated that

the proposed section would not conflict with existing law.

The proposed section would not conflict with existing law.

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The proposed section would not conflict with existing law.

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405/183

§ 6513

Tentatively Approved
March 1976

§ 6513. Liability for false report, record, or entry

6513. An officer, director, employee, or agent of a nonprofit corporation who does any of the following is 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) Makes, issues, delivers, or publishes 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 participates in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

(b) Makes or causes 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) Removes, erases, alters, or cancels any entry in any books or records of the nonprofit corporation, with intent to deceive.

Comment. Section 6513 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

Non-Bank Non-Building
Non-Insurance Corporation

Tentatively Approved
March 1976

Article 2. Annual Report; Financial Statements

§ 6520. Annual report required unless bylaws otherwise provide

6520. Except to the extent the bylaws otherwise provide, a nonprofit corporation is subject to the requirements of Sections 6521 to 6526, inclusive.

Comment. Section 6520 makes the provisions of this article relating to annual reports applicable to nonprofit corporations except to the extent the bylaws contain inconsistent provisions. Thus, for example, the bylaws may dispense entirely with the requirement of an annual report or may provide for an annual report that contains different or more or less information than is required by this article. Likewise, the bylaws may require that a copy of the annual report be mailed to each member rather than be presented at the annual meeting of members as required by this article. As to the application of this article to foreign nonprofit corporations, see Section 6530 and Section [2115].

Background: Memorandum 76-26.

Cross-Reference:

Bylaws, provisions concerning annual report, § ____ [provision based on Section 212(b)(8)]

Tentatively Approved
March 1976

§ 6521. Presentation of annual report

6521. The board shall prepare and present at the annual meeting of members an oral or written annual report as provided in this article. The annual report, if written, shall be filed with the records of the nonprofit corporation. Either a copy or a summary of the annual report shall be entered in the minutes of the proceedings of the annual meeting of members.

Comment. Section 6521 requires an annual report unless this requirement is waived in the bylaws. See Section 6520. Section 6521 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 records of its shares. Any nonprofit corporation may waive the requirement of an annual report by an appropriate provision in its bylaws and, unlike the comparable provision of Section 1501, the authority to waive the requirement of an annual report is not limited to nonprofit corporations with less than a specified number of members.

Former Section 9402 (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 members, but this was not a mandatory requirement. As to charitable corporations, see the Comment to Section 6528.

Section 6521 requires the annual report to be presented at the annual meeting of members and, if written, to be filed with the records of the corporation, and either a copy or summary thereof entered in the minutes. These requirements are drawn from Section 519 of the New York Not-for-Profit Corporation Law except that the New York section requires a written annual report whereas Section 6521 permits an oral annual

report as well. 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 a written annual report at the annual meeting of members, the nonprofit corporation is required by Section 6525 to send a copy to any member who makes a written request for one. In addition, even if the bylaws dispense with the requirements of this article, Section 6527 provides a procedure whereby five percent or more of the members may obtain comparable information.

Background: Memorandum 76-26

Cross-References:

Bylaws, provisions concerning annual reports, [provision comparable to § 212(b) (8)] nonprofit corporation without members, § 6526

406/250

§ 6522

**Substance Tentatively Approved
March 1976**

§ 6522. Annual report; financial information

6522. (a) As used in this section, "report date" means a date which is the end of a 12-month fiscal period terminating not more than 12 months prior to the date of the annual meeting.

(b) The annual report shall show all of the following:

(1) The assets and liabilities, including trust funds, of the nonprofit corporation as of the report date.

(2) The major changes in assets and liabilities, including trust funds, during the 12-month period ending on the report date.

(3) The revenue or receipts of the nonprofit corporation, both unrestricted and restricted to particular purposes, for the 12-month period ending on the report date.

(4) The expenses or disbursements of the nonprofit corporation, for both general and restricted purposes, during the 12-month period ending on the report date.

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

Comment. Section 6522 adopts the substance of provisions of Section 519 of the New York Not-for-Profit Corporation Law. Subdivision (c), which is not found in the New Your law, is the same in substance as the last portion of subdivision (a) of Section 1501.

Policy Issue:

Is the New York language appropriate for use in Section 6522? Decision:

Yes. An independent accountant is comparable to Section 115.

Definitions:

Independent accountant, § [comparable to Section 115]

Comparable Provisions:

Section 1501(a)

New York Not-for-Profit Corporation Law § 519

Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

The background of this memorandum is set forth in Memorandum 76-26.

This memorandum discusses the proposed legislation.

The proposed legislation would require that an independent accountant be appointed by the corporation to audit its financial statements.

The proposed legislation would also require that the corporation file a copy of the audit report with the state auditor.

The proposed legislation would also require that the corporation file a copy of the audit report with the state auditor.

406/251

§ 6523

Document 406/251, Section 6523, Nonprofit Corporation Law, 1976

Tentatively Approved
March 1976

§ 6523. Annual report; membership information

6523. The annual report shall include a statement of the number of members of the nonprofit corporation as of a specified date not more than 12 months prior to the date of the annual meeting.

Comment. Section 6523 is drawn from a similar requirement of Section 519 of the New York Not-for-Profit Corporation Law.

Comparable Provisions:

New York Not-for-Profit Corporation Law § 519

Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

406/252

§ 6524

Not Approved

§ 6524. Additional required information

6524. 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.

406/253

§ 6525

Tentatively Approved
March 1976

§ 6525. Providing member with copy of annual report

6525. If a written 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 6525 reflects the same policy as is reflected in subdivision (d) of Section 1501 (business corporation required to mail shareholder copy of fiscal information upon written request).

Tentatively Approved
March 1976

§ 6526. Corporation having no members

6526. 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 this article, but omitting the information required by Section 6523. This report shall be filed with the minutes of the annual meeting of the board.

Comment. Section 6526 is the same in substance as a provision of Section 519 of the New York Not-for-Profit Corporation Law.

Comparable Provisions:

New York Not-for-Profit Corporation Law § 519

Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

Substance Tentatively Approved
March 1976

§ 6527. Members' right to obtain fiscal information

6527. (a) If the nonprofit corporation did not prepare and present a written annual report to the last immediately preceding annual meeting of members in compliance with Sections 6521 to 6524, inclusive, any member authorized in writing by members holding not less than five percent of the voting power may make a written request to the nonprofit corporation for a statement containing the information specified in Section 6522 that would have been included in the annual report if one had been prepared and presented to the immediately preceding annual meeting of members.

(b) Any member authorized in writing by members holding not less than five percent of the voting power may make a written request to the nonprofit corporation for a statement containing information comparable to that specified in Section 6522 for a period specified in the request ending not more than 30 days prior to the date of the request. Unless the nonprofit corporation and the member making the request otherwise agree, the period specified in the request shall commence immediately upon the end of the period covered by the annual report or the report referred to in subdivision (a) and shall be for a period of three months or a multiple of three months.

(c) Except as provided in subdivision (d), the nonprofit corporation shall deliver or mail to the member making the request the statement or statements requested within 30 days after the nonprofit corporation receives the request.

(d) In lieu of providing the requested statements, the nonprofit corporation may, within 10 days after it receives the request, respond to the request by delivering or mailing to the member making the request a statement that the nonprofit corporation elects to open its books and records of account to inspection under Chapter 16 (commencing with Section 6610) of Division 2 of the Corporations Code and that such books and records of account will be made available to the member or his agent or attorney for inspection during usual business hours at an address specified in the statement. This subdivision applies only if the address specified in the statement is in this state.

(e) The statements referred to in subdivisions (a) and (b) shall be accompanied by a report thereon, if any, by an independent accountant 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.

(f) A copy of the statements prepared pursuant to subdivisions (a) and (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. A copy of the statements shall be mailed to any member requesting a copy upon payment by the member of such reasonable charge as the nonprofit corporation may impose to cover the cost of reproducing the copy of the statements and mailing the copy to the member.

Comment. Section 6527 is comparable to subdivisions (c), (d), and (e) of Section 1501, but there are significant differences between Section 6527 and the comparable provisions of Section 1501.

Subdivisions (a), (b), and (c) are very similar to the first two sentences of subdivision (c) of Section 1501. No provision similar to

subdivision (d) is found in Section 1501; this subdivision is included in recognition of the fact that a nonprofit corporation frequently will not prepare fiscal statements with the regularity of business corporations.

Subdivision (e) is the same in substance as subdivision (e) of Section 1501. Subdivision (f) is similar to subdivision (d) of Section 1501 except that a nonprofit corporation is permitted to impose a reasonable charge to cover the cost of reproducing and mailing copies of fiscal statements. No charge is authorized, however, under subdivision (c) to cover the cost of providing the member who made the original request with the statement or statements requested. The nonprofit corporation is permitted to impose a charge for subsequent copies of statements so that possible abuse of the right to obtain subsequent copies can be limited. Absent a charge, it is possible that each of the members who give the original written authorization (five percent or more of the voting power) might make such requests, probably in the original written authorization, and thus impose an undue financial burden on the nonprofit corporation.

Policy Issues:

Do members of nonprofit corporations need a method of obtaining fiscal information similar to that provided members of business corporations under Section 1501? Decision: Yes.

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

Should the nonprofit corporation be permitted to elect to open its books and records of account to inspection as an alternative to providing the requested statements? Decision: Yes.

Should this election be limited to cases where the books and records of account are open to examination in California? Staff recommendation: Yes.

Should the nonprofit corporation be permitted to charge members for copies of statements provided pursuant to this section (the member making the original request is not charged for the statement)? Decision: Yes.

Background: Memorandum 76-26

Tentatively Approved
March 1976

§ 6528. Reports to Attorney General not affected

§ 6528. 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 this article, that report shall be deemed to satisfy the requirements of this article if a copy of the report sent to the Attorney General is entered in the minutes of the proceedings of the annual meeting of members.

Comment. Section 6528 makes clear the relationship of the requirements of this article 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 the requirements of this article.

Policy Issue:

Is this section necessary? Decision: Yes.

Substance Tentatively Approved
March 1976

§ 6529. Judicial enforcement.

6529. (a) The superior court of the proper county shall enforce the duty of making the annual report required by this article; but, unless the member seeking to enforce that duty made a written demand to the nonprofit corporation for such compliance not less than 30 days prior to the date of the annual meeting, the court shall enforce the duty of making the annual report by requiring the nonprofit corporation to do both of the following:

(1) Prepare a written report that satisfies the requirements of this article for an annual report for such annual meeting and deliver such report to the member within such time as the court specifies.

(2) Not more than 10 days after delivery of the written report to the member, enter a copy of the report in the minutes of the proceedings of the annual meeting at which the annual report should have been presented.

(b) 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 statements required by Section 6527 and, for good cause shown, may extend the time therefor.

(c) In any action or proceeding under this section, the court may award an amount to reimburse the member for reasonable expenses incurred by the member, including reasonable attorney's fees, in connection with such action or proceeding if the court determines both of the following:

(1) Prior to commencing the action or proceeding, the member made a written demand to the nonprofit corporation that it comply with the requirements of this article, specifying the specific action demanded of the nonprofit corporation.

(2) The nonprofit corporation willfully failed without justification to comply with such demand within a reasonable time.

Comment. Section 6529 is based on subdivisions (f) and (g) of Section 1501.

Subdivision (f) of Section 1501 provides that if a member makes a written demand upon the corporation to take certain action and the corporation fails to do so within a reasonable time, the member may sue the corporation for injunction or other appropriate relief. Subdivision (g) provides that if the corporation fails to take the action demanded by the member, the member may sue the corporation for damages. The purpose of these provisions is to give members a remedy for corporate wrongdoing.

405/966

§ 6529.5

Not Approved

This section is proposed to be included in the Uniform Nonprofit Corporation Act.

§ 6529.5. Application of article

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 6529.5 is the same in substance as subdivision (h) of Section 1501. The application of this article is not limited to the foreign nonprofit corporations described in Section 6529.5. See Section [provision comparable to Section 2115].

Note. The Commission has deferred consideration of this section until the provision comparable to Section 2115 has been considered.

Article 3 (§ 6530 et. seq.)
Not Approved.

Article 3. Statement Identifying Corporate Officers and Principal Office; 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 76-36.

406/468

§ 6532

§ 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 76-36.

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.

§ 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.

§ 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).

§ 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).

§ 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 76-36.

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 76-36.

§ 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 23301.5 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.