



April 20, 2010

NASS Talking Points for Requesting Postponement of Markup for S.569, the Incorporation Transparency and Law Enforcement Assistance Act

NASS is asking Chairman Leiberan to remove S.569 from the Homeland Security and Governmental Affairs Committee (HSGAC) markup schedule for next week. The National Association of Secretaries of State (NASS), led by the 16-member NASS Company Formation Task Force, continues to oppose this legislation and urges postponement of the markup process for the following reasons:

- **States want to wait and see what U.S. Department of Treasury proposes on issues critical to their company ownership formation processes.**

As an alternative to S.569, the U.S. Department of Treasury has submitted its own proposal to the Office of Management and Budget (OMB), but that information has yet to be publicly released. States urge Congress to wait until the Treasury Department's proposal becomes available, so they can determine whether state feedback was incorporated into this work product and review its merit. To date, there is no known legal definition of "beneficial owner" that is acceptable to all stakeholders affected by the bill, something the Treasury Department was tasked with addressing.

- **S.569 places another unfunded mandated on financially overburdened states.**

Restructuring the basic function of state agencies from that of a basic, ministerial role to one of collecting, verifying, processing and investigating ownership information will be an extreme and costly venture. It will require states to collect and vet considerable amounts of additional data at great costs to taxpayers. Furthermore, much of the information the states are being asked to collect in S.569 is already in existence and could be obtained from the IRS and financial institutions. If Congress truly believes that laws need to be changed, they should require those institutions that are already in possession of this information to share it. Instead, they are considering a piece of legislation that will require states to duplicate this work at a significant cost to American taxpayers.

- **S.569 adds new levels of bureaucracy to the company formation process and places additional burdens on U.S. businesses, many of which are struggling economically right now.**

One of the goals of the NASS Company Formation Task Force has been to help avoid any increased financial or paperwork burdens on small businesses, particularly "mom and pop" or family-owned businesses. These entities can be easily identified by their bankers and chambers of commerce as legitimate small business enterprises. Additionally, millions of the entities created under state law consist of owners who are licensed to perform specialized services (i.e. doctors, lawyers, accountants, realtors, etcetera.) Although they are already "vetted," they must renew their licenses on a regular basis. S.569 does not distinguish between filers; consequently, it will burden these groups with huge document filing duties and additional fees during this time of recession.

- **S.569 adds another major funding project to the already overburdened State Homeland Security Program (SHSP).**

The State Homeland Security Program (SHSP), which is part of the Federal Emergency Management Agency (FEMA), would be charged with overseeing the competitive grant program to fund the state mandates in S.569. States would have to apply annually for this money, and SHSP cannot afford to sustain or absorb yet another costly, federal mandate of this magnitude.

- **S.569 places Secretary of State Offices and other corporate oversight entities in direct funding competition with first responders.**

SHSP funding is designed to enhance the capability of first responders, including police, fire, EMT and other emergency personnel. Secretaries of State do NOT want Congress to take away vital funding from programs that prevent and protect against acts of terrorism and other catastrophic events, particularly since S.569 would require states to create information databases of questionable value.

- **In designating SHSP funds as the primary funding source for S.569 implementation, the law's mandates are not financially viable.**

Under SHSP rules, eighty percent of the funds received by each state must be distributed to local and tribal governments. As a result, the states will not retain sufficient funding to implement S.569.

- **FEMA is not the appropriate rulemaking and regulatory agency for the implementation of S.569.**

S.569 would give rulemaking and regulatory authority over aspects of state business filings to the Federal Emergency Management Agency (FEMA), the federal agency charged with coordinating government disaster response plans. This makes no sense.

- **S.569 is unnecessary, as states have made significant progress in addressing Financial Action Task Force (FATF) recommendations and working with law enforcement.**

States have followed the recommendations and advice of the NASS Company Formation Task Force, National Conference of State Legislatures (NCSL), National Conference of Commissioners on Uniform State Law (NCCUSL) and the American Bar Association (ABA) to strengthen their own laws on company formation. Examples include Nevada, Wyoming, and Delaware (three states often referenced in FATF and other reports). This is certainly significant progress that can and should be reported to FATF in 2012. In the meantime, only one nation in the world—Italy—is in full compliance with the Financial Action Task Force's (FATF) recommendation on beneficial ownership.

- **S.569 will undo all progress that states have made regarding their online transactions for business filings.**

Virtually all states have spent millions of dollars in the past few years improving their online transactions in order to make state government responsive to the needs of citizens and businesses. Transactions that used to take substantial time and often required citizens to conduct their business in-person, over-the-counter, or via U.S. mail, may now be carried out swiftly and efficiently with Internet-based technologies. S.569 will turn back the clock and undo the progress and significant investments made by states for such technological advances. Restricting and delaying important and legitimate commercial transactions worth trillions of dollars will undoubtedly have an effect on the competitiveness of the American business community.

- **S.569 fails to protect the privacy of investors and family members conducting business and would make the personal business matters of individuals a matter of public record.**

Information collected by the states is usually classified as a public record. S.569 requires the states to collect information that goes well beyond that which is already required. The legislation does leave it up to the state as to how it would handle the public nature of the record, which simply means the state would be forced to establish and maintain costly parallel systems – one public and one protected.

- **S.569 is ineffective because it burdens states and legitimate businesses while providing would-be lawbreakers with the ability to evade its provisions.**

Establishing an elaborate state system for collecting information on one type of business entity only drives those who would evade the law underground, or into other types of business entities that are not impacted by the proposed federal law.

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