

Regulatory Analysis

**TITLE 75 Secretary of State
LSA Document # 25-155
OMB 2024-73R**

I. Description of Rule

With the advent of the Secretary of State’s office “Business One Stop” and “INBiz” initiatives (circa 2011) the agency was charged with developing and maintaining a state of the art, highly automated on-line business registration hub, which other state agencies could easily interface with (i.e. DOR, IDWD, IPLA), that provided 24-7 self-service access to millions of imaged and digital business records administered by the agency. The agency’s array of IT applications, which the public and other state agencies depend on, exists in a state of nearly constant revision and reinvention – to keep with the pace of IT evolution. The statutory framework for the agency’s Business Services Division calls for its IT infrastructure to be entirely transaction funded from “enhanced access” transaction fees. The fee structure (contentiously developed by previous administrations) appears to have struck a reasonable balance between low filing and transaction fees (Indiana ranks among the 10% lowest in the nation for low-cost business registration costs) and costs of hosting, sustaining and advancing the necessary IT infrastructure for the array of business services the agency is charged with providing.

In keeping with HEA 1623’s directives and intent, the agency will be promulgating administrative rules for its Enhanced Access transaction fee-based Business Entity registration and service department.

In general, and pursuant to the Indiana Business Organization Code (Title 23) the Secretary of State Business Services Division administers over 100 separate types of online corporate and business entity filings and 4 types of commercial bulk data file upload subscription services. In addition to collecting designated statutory filing fees, pursuant to IC 4-5-10-2 the agency collects fees for electronic, expedited, and enhanced public and commercial access to information maintained by the Secretary of State. “Enhanced Access” fees collected by the agency for online business organization filings range from \$30 to \$1 for 25 filing types. No “Enhanced Access: fee is collected for 78 filing types.

Secretary of State Business Services Division “Enhanced Access” filing fees:

1. Foreign For-Profit Business Registration	\$30.00
2. Articles of Incorporation	\$20.00
3. Domestic LLP Registration	\$20.00
4. Domestic Limited Partnership Cert.	\$20.00
5. Domestic LLC Articles of Organization	\$20.00
6. Foreign Non-Profit Business Registration	\$20.00
7. Foreign LLC Registration	\$15.00
8. Domestic Master LLC Articles of Organization	\$15.00
9. Agricultural Co-op Reinstatement	\$11.00
10. Certificate of Existence	\$11.00
11. Biennial Business Entity Report	\$11.00
12. N/P Biennial Business Entity Report	\$11.00
13. Application for Reinstatement	\$11.00

14. N/P Domestic Articles of Incorporation	\$10.00
15. Series LLC Articles of Organization	\$5.00
16. Commercial Registered Agent Change of	\$1.00
17. Change of Registered Agent Address	\$1.00
18. Registered Agent Resignation	\$1.00
19. Reserved Name Cancellation	\$1.00
20. Assumed Name Cancellation	\$1.00
21. Change of Governing Person	\$1.00
22. Change of Principle Address	\$1.00
23. Change of Business Email Address	\$1.00
24. Domestic and Foreign Trust Biennial Report	\$1.00
25. Foreign Entity Assumed Name Cancellation	\$1.00

IC 4-5-10-2 authorizes the Secretary of State to establish and modify fees to provide electronic, expedited, and enhanced access to information maintained by the Secretary of State.

Pursuant to IC 4-5-10-5 agency enhanced online access fees are deposited into the “Electronic and Enhanced Access Fund”, a dedicated, non-reverting fund.

The purpose of the “Electronic and Enhanced Access Fund is the development, maintenance, and improvement of technology infrastructure to provide perpetual maintenance and 24-7 access to agency records and services.

No changes in the business organization filing fees are requested currently.

Historically, these EA fees have been set by policy; HEA 1623-2023 requires that all fees be set by rule. The proposed rules add Divisions fees and clarifies rejections per HEA 1623-2023

II. Fiscal Impact Analysis

The anticipated effective date of the rule is July 1, 2025. These fees were created by IC 4-5-10 in 1997 and amended in 2011 & 2019 and have funded a continuous path towards data migration to new formats that interacted with improved computer programs resulting in our current INBiz system. The details of legislative statute and rules below, and the subsequent rules meet the new HEA-1623-2023 requirements. Our EA fees have not changed for the past 10 years.

IC 4-5-10-5 Electronic and enhanced access fund

Sec. 5. (a) The electronic and enhanced access fund is established to do the following:

- (1) Improve and enhance the technology necessary and desirable to fulfill the duties of the secretary of state and state agencies as provided in section 1 of this chapter.
- (2) Improve service to customers of the secretary of state and state agencies as provided in section 1 of this chapter.
- (3) Provide the public electronic and other enhanced access to information maintained by:
 - (A) the secretary of state under IC 23, IC 24, IC 26, or IC 33; and
 - (B) the secretary of state and state agencies as provided in section 1 of this chapter.
- (4) Allow the public to conduct business electronically with the secretary of state and state agencies as provided in section 1 of this chapter.

- (5) Acquire and finance technology necessary or desirable to accomplish the purposes stated in subdivisions (1) through (4), including the purchase or lease of hardware, software, and other appropriate goods and services.

The secretary of state may enter one (1) or more agreements in furtherance of the purposes of this chapter.

(b) The fund consists solely of the following:

- (1) Electronic and enhanced access fees established and collected by the secretary of state under section 2 of this chapter.
- (2) Other money specifically provided to the fund by law.

Fees collected by the secretary of state under IC 23, IC 24, IC 26, or IC 33 may not be deposited into the fund.

(c) The secretary of state shall administer the funds.

(d) The expenses of administering the fund shall be paid from money in the fund.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) The secretary of state may use money in the fund to pay expenses related to the purposes of the fund as set forth in section 5 of the chapter, to make payments under any agreement authorized by subsection (a) or authorized by law and directly relating to the purpose of the fund, and monies in the fund are continuously appropriated for the purposes set forth in this chapter.

(g) Money in the fund not currently needed to meet the obligations of the fund may be invested by either of the following:

- (1) The treasurer of state in the same manner as other public funds may be invested.
- (2) A financial institution designated by trust agreement with the secretary of state.

Interest that accrues from investment of money in the fund shall be deposited into the fund.

As added by P.L.260-1997(ss), SEC.38. Amended by P.L.114-2011, SEC.2; P.L.177-2019, SEC.2.

IC 4-5-10 “Technology Enhancement and Service Improvement” authorizing the Secretary of State to provide transaction fee supported enhanced online access infrastructure for public and commercial users, and multiple state agencies, was enacted in 1997 and amended in 2011 and 2019. Sources and uses of funds for the transaction fee based “Business One Stop/INBiz system are detailed in IC 5-5-10-3 “Electronic and Enhanced Access Fund.

The agency has not changed the structure or amounts of enhanced access filing fees during the past 10 years. Indiana has received public commendation for being among the lowest corporate filing fee states in the nation. See: <https://fox59.com/indiana-news/indiana-is-the-second-best-state-to-start-a-business-in-2024/>

Enhanced Access Fund revenues for 103 types of corporation filings administered by the Business Services Division: FY20 \$3,351,219 for 318,488 filings; FY21 \$4,523,634 for 403,351 filings; for FY22 \$4,508,907 for 390,258 filings; FY23 \$5,079,211 for 445,706 filings; FY24 (8 months) \$3,169,397 for 278,924 filings. From FY20 through February 2024 the average filing revenue for 1,836,724 filing transactions was \$11.24

Pursuant to IC 4-5-10-5 all corporate filing enhanced access filing fees are deposited into the agency Enhanced Access Fund (46070) and are dedicated to maintaining the IT infrastructure necessary for accepting, payment processing, permanent archiving, 24-7 public, self-serve accessibility, and multi-agency access to millions of business records entrusted to the agency

Enhanced Access Fund expenses for administration of the filing and IT system to support and develop the agency’s duties with respect to corporate records filing, archiving, and public access responsibilities: (estimated at 70% of the agency’s Business One Stop/INBiz program costs): FY20 \$3,641,774; FY21 \$2,990,038; FY22 \$3,692,320; FY23 \$4,390,940 FY24 (8 months) \$3,343,783.

The rule changes do not change or increase fees as explained below but are added for clarity and per requirements of HEA-1623-2023

Same as above in a table format

Fiscal Year	Enhanced Access Revenues	Number of transactions	Enhanced Access Fund Expenses (70%) of Agency's costs
FY 20	\$ 3,351,219	318,488	\$ 3,641,774
FY 21	\$ 4,523,634	403,351	\$ 2,990,038
FY 22	\$ 4,508,907	390,258	\$ 3,692,320
FY 23	\$ 5,079,211	445,706	\$ 4,390,940
FY 24 (8 months)	\$ 3,169,397	278,924	\$ 3,343,783
Average per transaction	\$ 11.24		

III. Impacted Parties

At the end of 2023 there were 658,059 active businesses registered with the Business Service division of the Secretary of State. Our division had completed and recorded almost a half million filings with 98+% of them flowing through the INBiz portal and completed by the BSD staff of 10 people including directors.

BSD Statistics Page (658,059 Active registered businesses)

Category as of 12-31-23	% completed online
New business	98 %
BER reports	99.48%
Number of total filings	499,587

Since these rules are being promulgated in response to HEA-1623 all the above parties are currently in compliance so we will explain the impact of these fees based on the comparison of fees from other central states that are similar in geography and economic cost of living. We will look at the total cost of the three most frequent registrations LLC formation, Amendments, and annual entity reports. What is difficult to compare is the time required to complete these transactions and the ease of doing so, which reflects the time spent by the public needing to be compliant with statute. Our division and the SOS excel in superior service that is efficient, accessible and quick. Always being responsible for the costs of compliance and our ministerial duties for accurate records. This assures the public and various other business entities that rely on the accuracy of and integrity of our statutory duties.

IV. Changes in Proposed Rule

The provisions of the proposed rules are an entirely new section. They are the promulgation of Enhanced Access fees already permitted to be assessed by the Indiana Code. The following is a table of reasons for rejections, fees, and IC/IAC which sets forth the applicable law:

Online Filing	EA fee	IC Authority	Proposed IAC	Purpose of proposed rule
Articles of Incorporation	\$20	IC 23-0.5-1-5	75 IAC 8-3-1	Document existing enhanced access fee
Articles of incorporation Nonprofit	\$10	IC 23-0.5-1-5	75 IAC 8-3-1	Document existing enhanced access fee
LLP Registration	\$20	IC 23-0.5-1-5	75 IAC 8-3-2	Document existing enhanced access fee
Certificate of LP	\$20	IC 23-0.5-1-5	75 IAC 8-3-3	Document existing enhanced access fee
Articles of Organization	\$20	IC 23-0.5-1-5	75 IAC 8-3-4	Document existing enhanced access fee
Articles of Organization Master LLC	\$10	IC 23-0.5-1-5	75 IAC 8-3-4	Document existing enhanced access fee
Articles of designation	\$5	IC 23-0.5-1-5	75 IAC 8-3-5	Document existing enhanced access fee
Foreign registration	\$30	IC 23-0.5-1-5	75 IAC 8-3-6	Document existing enhanced access fee
Foreign registration nonprofit	\$20	IC 23-0.5-1-5	75 IAC 8-3-6	Document existing enhanced access fee
Foreign registration Master LLC	\$15	IC 23-0.5-1-5	75 IAC 8-3-6	Document existing enhanced access fee
CRA change	\$1	IC 23-0.5-1-5	75 IAC 8-3-7	Document existing enhanced access fee
RA Change	\$1	IC 23-0.5-1-5	75 IAC 8-3-8	Document existing enhanced access fee
RA Resignation	\$1	IC 23-0.5-1-5	75 IAC 8-3-9	Document existing enhanced access fee
Biennial Report	\$11	IC 23-0.5-1-5	75 IAC 8-3-10	Document existing enhanced access fee
Biennial Report Business Trust	\$1	IC 23-0.5-1-5	75 IAC 8-3-10	Document existing enhanced access fee
Name reservation cancellation	\$1	IC 23-0.5-1-5	75 IAC 8-3-11	Document existing enhanced access fee
Assumed name cancellation	\$1	IC 23-0.5-1-5	75 IAC 8-3-12	Document existing enhanced access fee
Application for reinstatement	\$11	IC 23-0.5-1-5	75 IAC 8-3-13	Document existing enhanced access fee
Change of governing person	\$1	IC 23-0.5-1-5	75 IAC 8-3-14	Document existing enhanced access fee
Change of principal office	\$1	IC 23-0.5-1-5	75 IAC 8-3-15	Document existing enhanced access fee
Change of business contact email	\$1	IC 23-0.5-1-5	75 IAC 8-3-16	Document existing enhanced access fee

Certificate of existence	\$11	IC 23-0.5-1-5	75 IAC 8-3-17	Document existing enhanced access fee
Electronic Filings Generally	N/a	IC 23-0.5-1-5	75 IAC 8-2-1	Document and clarify existing procedures for electronic filings
Professional Corporation Shareholder	N/a	IC 23-0.5-2-9.1	75 IAC 8-2-2	Document and clarify existing procedures for determining compliance with IC 23-1.5-2-3
Principal office Address information	N/a	IC 23-0.5-1-5	75 IAC 8-2-3	Document and clarify existing procedures for collection of principal office information
Registered agent information	N/a	IC 23-0.5-1-5	75 IAC 8-2-4	Document and clarify existing procedures for collection of registered agent information
Governing information	N/a	IC 23-0.5-1-5	75 IAC 8-2-5	Document and clarify existing procedures for collection of governing person information
Foreign Certificates of existence	N/a	IC 23-0.5-1-5	75 IAC 8-2-6	Document and clarify existing procedures for accepting foreign certificates of existence
Inactive entity filings	N/a	IC 23-0.5-1-5	75 IAC 8-2-7	Document and clarify existing procedures for accepting filings on entities that have been dissolved or revoked.

V. Benefit Analysis

As referenced in Section I. the enhanced access legislation from 1997 (IC 4-5-10-2) set Indiana through the SOS office on a path to build a highly automated online business registration platform. “With the advent of the Secretary of State’s office “Business One Stop” and “INBiz” initiatives (circa 2011) the agency was charged with developing and maintaining a state of the art, highly automated on-line business registration hub, which other state agencies could easily interface with (i.e. DOR, IDWD, IPLA), that provided 24-7 self-service access to millions of imaged and digital business records administered by the agency.”

Indiana businesses and new people forming businesses are enjoying the rewards of that currently with a 98% online adoption rate. Our division has built a system that delivers on its mandate and has found a good balance of fees to valuable services and required time spent to stay compliant. To date this year (2024) we have had over a million users of INBiz with an average engagement time of less than 4 minutes. People are getting their business completed with our office quickly and efficiently. Indiana was just selected as the number 2 best place to register a new business by Forbes magazine just a couple of points behind number one due to availability of investment capital. Our INBiz portal was a big part of that.

<https://www.forbes.com/advisor/business/best-states-to-start-a-business/>

Overall, both current business, new business and business outside of Indiana can find not only an efficient way to interact with the Secretary of State but many other agencies of state government (DOR, DWD, IPLA, Attorney General, ISBDC and others) Most states listed in the comparison group do not have as high an uptake of online filings and therefore must operate with higher agency staff.

VI. Cost Analysis

Please note these fees may or may not have enhanced access fees included from other states as those are not broken out on many SOS sites as well as most states charge expediting fees which Indiana does not since we are able to process most items very quickly. Many other states charge larger fees for small changes like email and name changes where Indiana only charges a dollar just enough to prevent malicious filings meant to corrupt our records or promote fraudulent information.

Central State Comparison

State	LLC Registration Cost	Entity yearly Report Cost	Amendment Costs
Illinois	\$150	\$75	\$50
Indiana	\$96	\$32	\$21
Kentucky	\$40	\$15	\$40
Michigan	\$50	\$25	\$25
Minnesota	\$155	\$0	\$55
Missouri	\$51	\$0	\$25
Ohio	\$99	\$0	\$50
Wisconsin	\$130	\$25	\$40

*Indiana report is a biennial requirement

Our revenues compared to the cost (Section II) of overall efficient and quick services provide superior interaction for constituents and allow our staff and supporting call center to interact with anyone not able to complete their transactions online to get their business complete. We are also able to maintain the infrastructure and staff to service paper filters. Interested parties and many types of commercial entities have access to millions of records, some dating back to the 18th century.

VII. Sources of Information

- Division Entity Records
- INBiz Google Analytics
- Various SOS websites
- Forbes.com/advisory

VIII. Regulatory Analysis

In summary our INBiz portal and our Business Service team have created tools and processes to meet the enhanced access legislation from 1997 IC-4-5-10-2 but continue to pursue updates, additional agency connectivity, and an overall better business ecosystem. Updates are needed as more constituents move to interact with us through mobile devices (approx. 14% this year) and technology evolves with artificial intelligence changing the interaction within the business marketplace. Fraudulent activity and cybercrime continue to grow threatening the integrity of our state records and funding is needed to build those protections to provide friction to bad actors and maintain the best process for our law-abiding public.

Our analysis contained herein demonstrates the balance that has been created to achieve current realities and future goals. No new fees are proposed, and current fees have not changed in over 10 years.

In keeping with HEA 1623's directives and intent, the agency has promulgated administrative rules contained herein for its enhanced access transaction fees for business entities' creation, maintenance, dissolutions and reinstatements.

IX. Contact Information of Staff to Answer Substantive Questions

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Additional Information for OMB and SBA Review

The following information is required for OMB and State Budget Agency (SBA) review but will not be published along with the regulatory analysis.

X. Redline Draft of Proposed Rules

Please provide a link or attachment to the proposed rule that includes a redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB. This draft can include annotations with other sources of requirements as discussed in Section IV above.

XI. Resubmission Information (if applicable)

Pursuant to IC 4-22-2-22.8(e), if an agency revises a proposed rule after it has been approved by OMB and SBA, the agency must submit the revised proposed rule and a revised regulatory analysis for review. If applicable, this section should include (1) a list of the changes in the revised rule from the previously approved version, (2) an explanation for the reason(s) for the changes, and (3) a description of how those changes impact the regulatory analysis previously submitted.