HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1616 **PRINTERS NO.** 3330 **PRIME SPONSOR**: **Denlinger**

COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund	**$0**	**See Fiscal Impact**
Corporation Bureau Restricted Account	**$0**	**See Fiscal Impact**

SUMMARY: Amends Title 15 (Corporations and Unincorporated Associations) to establish a new Chapter providing for benefit corporations. This legislation would take effect in 90 days.

ANALYSIS: This legislation would amend Title 15 by allowing for the establishment of benefit corporations, best described as a corporation organized to provide a general public benefit. A benefit corporation has a purpose to benefit society and the environment, while having a traditional purpose of making a profit for its shareholders.

Purpose of Benefit Corporations:

- Have a corporate purpose to create a general public benefit.
- May identify one or more specific public benefits.
- "General public benefit" is defined as a material positive impact on society and the environment.
- May amend its articles to change the identification of a specific public benefit.

Accountability for Benefit Corporations:

- Allows the establishment of directors and officers, a benefit director, and benefit officer, and authorizes all to take certain actions consistent with their responsibilities.
- Establishes a standard of conduct for directors by expanding fiduciary duty for directors to require consideration of the interests of shareholders, workers, community and the environment.
- A benefit director shall be designated from the board of directors.
- The interests of one group or person shall not take priority over another unless called for in the general purpose articles.
- A director is not held personally liable for monetary damages for any action taken as a director if acting in good faith
- The duties of directors and officers, and any specific public benefit, can only be enforced in a benefit enforcement proceeding. Parties with standing include shareholders and directors.

Transparency of Benefit Corporations:

- Requires an annual report on its performance during the previous year, and makes that report publicly available to its employees, customers, shareholders. This report must contain a variety of information on how the corporation has met or failed to meet its public benefit goals, and the societal and environmental impact of its actions.
- The public will be able to evaluate the corporation's performance on overall social and environmental general public benefit against a comprehensive, credible, independent and transparent third party standard.
- The report must contain the names of directors, as well as an address to receive written communication, be delivered to the shareholders within 120 days of the end of the fiscal year, and be posted on the corporate website, if any.
- As many benefit corporations are private corporations, certain information may be withheld from a website benefit report posting, such as officer compensation or proprietary information.
- Failure to file a benefit report for two years will result in a forfeiture of status as a benefit corporation, although reinstatement may be had automatically with the subsequent filing of such a report.
- If a shareholder or a director does not think the corporation is pursuing its benefit purpose, the shareholder or director may bring a lawsuit to the correct the situation.

An existing business may voluntarily elect to become a benefit corporation by a two-thirds vote of its shareholders. Terminating the benefit corporation status or changing the type of public benefit to be created by the corporation similarly requires a two-thirds vote.

FISCAL IMPACT: According to the Department of State, the filing fees for annual benefit reports, articles of incorporation, and amendment to elect benefit corporation status, will be additional revenue for the Corporation Bureau. The Bureau retains 30% of revenues from corporate filings and the remaining 70% is deposited into the General Fund. That revenue is indeterminable at this point as the number of corporations electing the status of "benefit corporation" is unpredictable.

The department indicates that the expenses from this legislation will be minimal, which would include some additional staff and attorney time to revise forms and Bureau information. In the event of forfeiture of status as a benefit corporation, this will also require staff and attorney time to implement. It is anticipated that any costs would be fully offset by the fees aforementioned.

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House Appropriations Committee (R)

DATE: May 1, 2012

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.