

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1616

**PRINTER'S NO.** 3330

**AMOUNT**

No Additional Fiscal Impact

**FUND**

General  
Corporation Bureau Restricted Account

**DATE INTRODUCED**

June 2, 2012

**PRIME SPONSOR**

Representative Denlinger

**HISTORY OF BILL**

Referred to JUDICIARY, June 2, 2011

Reported with request to re-refer to COMMERCE, June 14, 2011

Re-referred to COMMERCE, June 14, 2011

Reported as amended, April 2, 2012

First consideration, April 2, 2012

Laid on the table, April 2, 2012

Removed from table, April 30, 2012

Second consideration, May 1, 2012

Re-committed to APPROPRIATIONS, May 1, 2012

Re-reported as committed, May 2, 2012

Third consideration and final passage, May 2, 2012 (182-0)

(Remarks see House Journal Page 738), May 2, 2012

In the Senate

Referred to JUDICIARY, May 11, 2012

Reported as committed, Sept. 25, 2012

First consideration, Sept. 25, 2012

Second consideration, Oct. 1, 2012

Re-referred to APPROPRIATIONS, Oct. 1, 2012

Re-reported as committed, Oct. 15, 2012

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 1616 amends Title 15 (Corporations and Unincorporated Associations) to establish a new Chapter authorizing the creation of benefit corporations. Benefit corporations are established for the purpose of creating a general public benefit, which is defined to be a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation. Benefit corporations must be generally formed in accordance with provisions relating to domestic business corporation but its articles must also state that it is a benefit corporation. The articles may be amended to change the identification of a specific public benefit.

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In addressing the accountability of benefit corporations, the bill allows the establishment of directors, officers, a benefit director and benefit officer, and authorizes their actions consistent with their responsibilities. It establishes a standard of conduct for directors by expanding their fiduciary duty to require consideration of the interests of shareholders, workers, community and the environment. The benefit director shall be designated by 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.

To address the transparency of benefit corporations, the bill requires that an annual report be made on its performance during the previous year, and be made publicly available to its employees, customers and shareholders. The 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. This will allow the public 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 the 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 company website, if any. Certain information from the benefit company's report may be withheld from the website posting, such as officer compensation or proprietary information. Failure to file a report for two years will result in a forfeiture of status as a benefit corporation, although reinstatement may be automatic with the subsequent filing of such a report. If a shareholder or a director does not think the corporation is pursuing its benefit purpose, either may bring a lawsuit to try to 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.

The act will take effect in 90 days.

### **FISCAL IMPACT:**

According to the Department of State, the filing fees for the annual benefit reports, the articles of incorporations and the amendment to elect benefit corporation status, will provide additional revenue to the Corporation Bureau as a result of the passage of the legislation. The Bureau retains 30% of revenue from the corporate filing fees and the remaining 70% is deposited into the General Fund. Because it is unknown how many corporations will elect the status of "benefit corporation," the amount of additional revenue to be realized is indeterminable.

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

The department believes that expenses from the passage of this legislation will be minimal. Some additional costs for staff and attorney time to revise forms and Bureau information will be incurred. Also, should a forfeiture of a benefit corporation status occur, staff and attorney time would be needed to process it. All of these costs are expected to be fully offset by the additional revenue received from the fees.