

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

**BILL NO.** House Bill 2234

**PRINTER'S NO.** 3746

**AMOUNT**

\$82,000 one-time cost

**FUND**

Bureau of Corporations and Charitable Organizations Restricted Account

**DATE INTRODUCED**

May 5, 2014

**PRIME SPONSOR**

Representative Turzai

**DESCRIPTION AND PURPOSE OF BILL**

The current Title 15 contains entity laws governing business corporations, nonprofit corporations, limited liability companies, business trusts, and partnerships. The current entity laws provide the structure to organize an enterprise and generate capital. However, they do not permit certain transactions between entities or the ability to change from one entity form to another. An entity involved in a merger, conversion, division, interest exchange or domestication must first dissolve and eliminate any outstanding debts.

This legislation creates the Associations Transactions Act by amending Title 15 (Corporation and Unincorporated Associations) to create a framework for business entities to change business models to reflect business growth and change and to improve the integration of various Pennsylvania entity laws into a more coherent code, repealing the sections replaced. It makes appropriate changes to Title 54 (Names) to reflect the new language.

The legislation is based on model legislation, the Model Entity Transactions Act (META), which was prepared by the National Conference of Commissioners on Uniform State Laws and the American Bar Association. Additional changes reflect language from the GAA Amendments Act of 1990 (P.L. 834, No. 198) and others are patterned after the Uniform Business Organizations Code of 2011.

House Bill 2234 reorganizes portions of Title 15 to consolidate specific provisions in the preliminary chapters of Title 15, which apply to all types of entities, and to repeal similar provisions in the individual entity laws, which apply to only one type of entity. The bill provides all entity types the ability to engage in five fundamental transactions: mergers, interest exchanges, conversions, divisions, and domestications. The bill allows for these transactions to occur without dissolving an entity first.

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Specifically, the bill allows all entity types, i.e., business corporations, nonprofit corporations, general partnerships, limited partnerships, limited liability companies, unincorporated nonprofit associations, professional associations, and business trusts, to engage in fundamental transactions, in accordance with provisions governing the approval of the transaction by each type of entity and provisions for each specific type of transaction. Also, the bill provides that certain "associations" that were organized under a law other than Title 15 may engage in certain types of transactions. In the bill, the term, "association" includes certain financial institutions, certain insurance licensees, certain foreign businesses, etc.

Because of the differences in governance of the various entity types, each entity type will use its own process for approving transactions. Each type of transaction involves the approval of a plan for the transaction by the interest holders in the entity. After approval, a statement of the transaction (or the plan itself) may be filed with the Department of State to make the transaction a public record. Transactions become effective on the date and time of delivery to the Department, unless the statement specifies a later date and/or time. Additionally, except for nonprofit corporations, or if prohibited by the organic rules for the entity, a unanimous vote or consent of the entity's interest holders satisfies the approval requirement.

The bill defines and delineates the steps for each type of transaction: merger, interest exchange, conversion, division, and domestication.

The bill also consolidates provisions related to the registration of foreign business entities that do business in Pennsylvania. The various provisions for the registration of foreign associations that do business in Pennsylvania are repealed in the individual entity laws and consolidate in a new preliminary Chapter 4. While most provisions are technical or consolidate provisions, the bill does specify that a foreign financial institution that is not an interstate bank will be treated like a foreign association, not a bank, and will be required to register.

The bill sunsets the electric choice provisions applicable to rural electric cooperatives on December 31, 2014. The electric choice provisions of Title 15 have required rural electric cooperatives to notify their members of their ability to choose other electricity suppliers. Because there is a cost associated with this notification and no other suppliers have come into these rural areas to compete, the rural electric cooperatives asked that the electric choice provisions applicable to them be eliminated.

The provisions dealing with entity transactions is effective July 1, 2015.

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### **FISCAL IMPACT:**

The Department of State will need to update and make technical modifications to its current database and online filing system, as well as provide user training and post deployment support, to accommodate the changes required by this legislation. The Department estimates a one-time cost of about \$82,000 and the Bureau of Corporations and Charitable Organizations restricted account can absorb this cost.

The legislation will be able to generate some new but unquantifiable revenue from the delineated fee structure for the four new filing types: statements of abandonment, interest exchange, withdrawal, and transfer of registration. In addition, increasing the engrossed certificate fee from \$70 to \$125 will provide some minimal increase in revenue. In 2013, the Department issued 5 such certificates.