

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 2057

**PRINTER NO.** 3299

**AMOUNT**

\$3,680,000  
\$930,000

**FUND**

General Fund  
Corporation Bureau Restricted Account

**DATE INTRODUCED**

November 5, 2021

**PRIME SPONSOR**

Representative Roae

**DESCRIPTION**

House Bill 2057 amends Title 15 (Corporations and Unincorporated Associations) and Title 54 (Names) of the Pennsylvania Consolidated Statutes by making comprehensive changes to the statutes, especially with regard to business corporation law.

The legislation amends Title 15 to modernize corporation laws and related provisions. Specifically, the legislation makes the following substantial changes:

**Filings with the Department of State**

- Removes the current decennial filing and replaces it with an annual report. If the entity does not file an annual report, it will be subject to dissolution, and the penalty is losing the right to its name. An entity may refile at any time if it have been dissolved and can regain its right to its name unless the name has been used by another entity during the time of dissolution;
- Establishes fees for annual reports as follows:
  - Annual report by mail for a nonprofit: \$0;
  - Annual report by mail for a corporation: \$7; and
  - Annual report delivered electronically for a corporation: \$7.
- Permits the Department of State (department) to reject a filing when the department reasonably believes the document is being filed fraudulently or may be used to accomplish fraudulent, criminal, or unlawful purposes;
- Establishes that a statement of correction cannot revoke the initial registration of a foreign entity; and
- Clarifies when tax clearance certificates need to be filed.

**Revisions Based on the Model Business Corporations Act**

- Allows for procedures for ratifying problems that are uncovered in the affairs of an entity, such as defects to its charter. Where appropriate, approval of these ratifications will be required by both directors or other management as well as the directors of the entity. This applies to all entities;

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- Provides for procedures for stockholder approval of a transaction in which a corporation agrees to be acquired through a tender offer followed by a merger. This procedure is only available for business corporations;
- Allows for the modernization of provisions regarding how records are maintained by an entity. These records can be maintained via electronic, as well as blockchain, technology;
- Provides for the use of emergency authority of corporations to act when normal management procedures are interrupted (hurricanes, pandemics, etc.);
- Permits a corporation to renounce in advance the requirement that a director or officer offer a corporate opportunity to the corporation before the director or officer takes advantage of the opportunity for personal gain;
- Authorizes a corporation to specify in its articles or bylaws the courts in which that type of litigation may be brought. A court must always be included as part of the forum selection provision, and only internal affairs and federal securities claims may be covered;
- Permits the availability of dissenters' rights to be limited for preferred shares by an appropriate provision on the articles;
- Provides for provisions that protect directors and officers from adverse amendments to provisions in articles or bylaws that provide indemnification or exculpation. In addition, a definition of "recklessness" as defined in Title 18 (Crimes Code) is included;
- Includes provisions that permit directors to resign conditioned and future events;
- Provides for provisions that permit any officer or shareholder to call a special meeting to elect directors when there are no directors in office;
- Permits consent by the board of directors or shareholders to be signed with a delayed effective time. The legislation also permits persons who are not directors or shareholders to sign delayed consents that become effective in accordance with their terms if those persons are directors or shareholders at the time of consent;
- Provides for clarification for when a quorum is present for voting purposes; and
- Permits the board of directors to set different record dates for determining when shareholders are entitled to receive notice of a shareholders meeting and which are entitled at a voting meeting.

### **Revisions Based on PA Supreme Court Rulings**

- Provides for an express statement of the business judgement rule based on the American Law Institute (ALI) Principles;
- Provides for provisions that deal with how the duty of loyalty of directors should apply in the case of both wholly owned and partially owned subsidiaries of a corporation; and

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- Clarifies language on derivative suits.

### **Revisions for Specific Types of Corporations**

- Provides for changes for “registered corporations” relating to shareholder meetings and the qualification of directors and clarification on anti-takeover provisions. These provisions will not affect the substantive operation of anti-takeover provisions; and
- Provides for clarity with benefit corporations relating to basic operations. This clarification does not affect the substantive operation of a benefit corporation.

### **Miscellaneous**

- Modernizes the usefulness of division transactions;
- Clarifies certain provisions and minor changes related to the (new) annual reports for foreign entities;
- Clarifies the binding nature of corporate by-laws and provides that directors, officers and shareholders have the right to receive a copy of the by-laws on demand;
- Conforms wording between the Business Corporation Law and those for nonprofit corporations where they are related; and
- Makes editorial, conforming and other clarifying minor changes.

House Bill 2057 amends Chapter 3 of Title 54 to make minor changes and conform to changes made to Title 15, and Chapter 5 of Title 54 is repealed as a result of the adoption of the annual report system.

The legislation takes effect in 60 days.

### **FISCAL IMPACT:**

According to the Department of State (department), House Bill 2057 will generate additional revenue from the \$7 annual report fee to be paid by all registered entities, generating approximately \$5.25 million per year. The department anticipates year one mailing costs of \$645,000 to mail the annual notice to all registered entities reminding them of the requirements of this legislation. The net revenues as a result of this legislation will be \$4.66 million.

Under current statute, that revenue is allocated 70% to the General Fund and 30% to the Corporation Bureau Restricted Account. Therefore, it is estimated that \$3.68 million will be deposited into the General Fund and \$930,000 will be deposited into the Corporation Bureau Restricted Account net of all mailing costs.

The Department of Revenue provided a fiscal impact analysis to the Senate Finance Committee indicating that it has identified no fiscal impact resulting from House Bill 2057.