

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4688-02
Bill No.: SB 754
Subject: Corporations; Fees; Secretary of State
Type: Original
Date: January 8, 2018

Bill Summary: This proposal creates new provisions allowing for the creation of benefit corporations.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue Fund	\$2,650	\$6,066	\$9,465
Total Estimated Net Effect on General Revenue	\$2,650	\$6,066	\$9,465

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Technology Trust Fund	(\$69,750)	\$610	\$970
Total Estimated Net Effect on <u>Other</u> State Funds	(\$69,750)	\$610	\$970

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume they would have to conduct a business analysis in order to change the automated processes performed by their business software. The software would need to allow "B Corps" to be a filing type for creation, annual reporting, notices, correspondence and amending, change the wording on certain screens through the online application, and update the current merge form. SOS anticipates a one-time cost of \$70,000 from the Technology Trust Fund to change the current software operated by the Business Services Division.

It is unknown how many Benefit Corporations will be created. However, each one created would need to register with SOS at a cost based on share value.

Because this is a new filing type, an estimate of 5 filings per month at an average filing fee of \$58 each. An estimated (without the tech fund fee) of \$2,650 (5 filings x 10 months = 50 filings yearly * \$58 average filing fee) would be deposited into General Revenue. As this new filing type becomes more popular an estimated increase of 20% for FY20 and 25% increase for FY21 from the baseline.

This would be a new entity type and thus require employees to learn a new task. Based on expected use of this entity type SOS would give the new duties to existing employees and increase the base compensation for each the amount of work load increase is equated to a .25 FTE. If the new entity type were to receive more use beyond projections, SOS would ask for a full time person to handle the increase in filings.

Filing Fee breakdown
\$53 for general revenue (GR)
\$5 for technology trust fund (TF)

FY19

\$58 average filing fee
5 filings per month x 10 months = 50 yearly filings

50 (2019) filings x \$53 average filing fee = \$2,650 GR deposit

\$5 Tech Fund Fee per filing x 50 yearly filings = \$250 TF deposit

ASSUMPTION (continued)

FY20

\$58 average filing fee

5 filings per month x 12 months = 60 yearly filings

60 yearly filings x 120% increase = 72 yearly filings (2020 filings)

72 (2020) filings * \$53 average filing fee = \$3,816 GR deposit
Annual Reports 50 (2019) * \$45 = \$2,250
\$6,066

\$5 Tech Fund Fee per filing x 72 yearly filings = \$360 TF deposit

\$5 Tech Fund Fee per filing x 50 yearly filings = \$250 TF deposit
\$610

FY21

\$58 average filing fee

5 filings per month x 12 months = 60 yearly filings

60 yearly filings x 125% increase = 75 yearly filings (2021 filings)

75 (2021) filings * \$53 average filing fee = \$3,975 GR deposit
Annual Reports 122 (2019=50 & 2020=72)* \$45 = \$5,490
= \$9,465

\$5 Tech Fund Fee per filing x 75 yearly filings = \$360 TF deposit

\$5 Tech Fund Fee per filing x 122 yearly filings = \$610 TF deposit
\$970

In summary the Office of the Secretary of State assumes a revenue of \$2,650 to General Revenue Fund and \$250 to the Technology Trust Fund in FY19, \$6,066 to the General Revenue Fund and \$610 to the Technology Trust Fund in FY20, and \$9,465 to the General Revenue Fund and \$970 to the Technology Trust Fund in FY21 as a result of this proposal.

Oversight assumes the SOS could absorb the costs of additional workload related to this proposal. If multiple bills pass which require additional FTE resources, the SOS could request funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
<u>Revenue - SOS</u> Filing Fees	<u>\$2,650</u>	<u>\$6,066</u>	<u>\$9,465</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$2,650</u>	<u>\$6,066</u>	<u>\$9,465</u>
TECHNOLOGY TRUST FUND			
<u>Revenue - SOS</u> Filing Fees	\$250	\$610	\$970
<u>Costs - SOS</u> Software Changes	<u>(\$70,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON TECHNOLOGY TRUST FUND	<u>(\$69,750)</u>	<u>\$610</u>	<u>\$970</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal creates new provisions permitting the creation of benefit corporations.

Under this act, any corporation incorporated under the general corporation laws of Missouri may elect to become a benefit corporation by amending its articles of incorporation to indicate that it is a benefit corporation.

FISCAL DESCRIPTION (continued)

In order to be a benefit corporation, the corporation must create general public benefit, being defined as a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation, assessed taking into account the impacts of the benefit corporation as reported against a third-party standard. Benefit corporations may additionally choose to create specific public benefits.

The members of the board of directors of the benefit corporation or any committee thereof shall consider, among other things, the effects of any action or inaction upon the shareholders of the corporation, the employees of the corporation, and the local and global environment. However, such persons are not required to give priority to any person or group over another person or group unless specifically required by the corporation's articles of incorporation.

Directors and officers of a benefit corporation shall not be personally liable for monetary damages for any action or inaction taken in the course of performing their duties as a director or officer if he or she was not interested with respect to the action or inaction. Further, directors and officers shall not have a duty to any person that is a beneficiary of the general public benefit or special public benefit of the corporation.

Each benefit corporation may have a benefit director who is responsible for preparing an annual report addressing whether the benefit corporation acted in accordance with its general public benefit purpose and any adopted specific public benefit purposes. Additionally, the opinion shall address whether the directors and officers of the corporation acted in accordance with their required statutory roles.

A benefit director shall not be personally liable for an act or omission in his or her capacity as benefit director. Any act or inaction shall only be considered an act or inaction in the person's capacity as benefit director.

Each benefit corporation may have a benefit officer who shall, among other designated responsibilities, prepare an annual benefit report. Each report shall include, among other things, the following information:

- A narrative description of the ways in which the corporation has pursued, created, or has been hindered in the pursuit or creation of the general public benefit purpose or specific public benefit purpose;
- An assessment of the overall social and environmental performance of the benefit corporation against the third-party standard.

FISCAL DESCRIPTION (continued)

Each shareholder of the corporation shall receive the annual benefit report within 120 days of the end of the fiscal year or at the same time that the corporation delivers any other annual report to its shareholders. The report shall also be publicly available on its website. A copy of the report shall additionally be filed with the Secretary of State, which may charge a fee of \$45 for such filing.

The act provides for benefit enforcement proceedings whereby certain entities may make a claim against the benefit corporation for violation of any obligation, duty, or standard required by law, or for failure to pursue or create a general public benefit or specific public benefit. Only the following entities may commence a benefit enforcement proceeding:

- The benefit corporation itself;
- A person or group of persons that owned at least 2% of the total number of shares of a class or series outstanding at the time of the act or inaction;
- A director of the benefit corporation;
- A person or group of persons that owned at least 5% of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or inaction; or
- Any person specified in the articles of incorporation or bylaws of the benefit corporation.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State

Ross Strope



Acting Director
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