

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0119-01
Bill No.: SB 105
Subject: Corporations; Fees; Secretary of State
Type: Original
Date: February 11, 2019

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue Fund	\$2,650	\$6,816	\$11,295
Total Estimated Net Effect on General Revenue	\$2,650	\$6,816	\$11,295

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Technology Trust Fund (0266)	(\$34,750)	\$860	\$1,580
Total Estimated Net Effect on <u>Other</u> State Funds	(\$34,750)	\$860	\$1,580

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume this proposal would create a new type of entity that a corporation can operate as under chapter 351 RSMo. (1400-1435)

SOS assumes 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 \$35,000 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.

It is estimated that on average 60 new entities will choose to operate as a benefit corporation. Most fees will revert to chapter 351. The only specific fee in this legislation is for the Annual Benefit Report. Benefit Corporations would still be required to comply with the corporation registration report found in 351.120. The lowest cost possible to the company is represented. While there is the potential of other filings, the below represents the mandatory filings required to operate in Missouri, generating the following revenue:

ASSUMPTION (continued)

AVG yearly new	60		GR	Tech fee
	FY	Filings	\$53.00	\$5.00
Creations	2020	50	2,650	250
	2021	72	3,816	360
	2022	75	3,975	360
Annual Benefit Report 1433. 4. (2)			\$45.00	\$5.00
	2020	50		
	2021	72	2,250	250
	2022	75	5,490	610
Chapter 351.120 Report			\$15.00	\$5.00
	2020	50		
	2021	72	750	250
	2022	75	1,830	610
		FY20	FY21	FY22
General Revenue		2,650	6,816	11,295
Tech Fee		250	860	1,580
Total Revenue		2,900	7,676	12,875

SOS reserves the right to offset or request additional resources for estimated fiscal note impacts during the budget process.

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 FY2020, \$6,816 to the General Revenue Fund and \$860 to the Technology Trust Fund in FY2021, and \$11,295 to the General Revenue Fund and \$1,580 to the Technology Trust Fund in FY2022 as a result of this proposal. As this new filing type becomes more popular an estimated increase of 20% for FY21 and 25% increase for FY2022 from the baseline.

Oversight notes the balance of the Secretary of State Technology Trust Fund on January 31, 2019 was \$4,806,390.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Revenue - SOS</u> Filing fees	<u>(\$2,650)</u>	<u>(\$6,816)</u>	<u>(\$11,295)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$2,650)</u>	<u>(\$6,816)</u>	<u>(\$11,295)</u>
TECHNOLOGY TRUST FUND			
<u>Revenue - SOS</u> Filing Fees	\$250	\$860	\$1,580
<u>Costs - SOS</u> Software Changes	<u>(\$35,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON TECHNOLOGY TRUST FUND	<u>(\$34,750)</u>	<u>\$860</u>	<u>\$1,580</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<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 act 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 report 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, if there is one. A copy of the report shall additionally be filed with the Secretary of State, which shall 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

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February 11, 2019



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February 11, 2019