

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3011-02
Bill No.: SB 624
Subject: Corporations; Fees; Secretary of State
Type: Original
Date: February 11, 2020

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 2021	FY 2022	FY 2023
General Revenue	\$2,650	\$4,566	\$5,805
Total Estimated Net Effect on General Revenue	\$2,650	\$4,566	\$5,805

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Technology Trust Fund (0266)	(\$34,750)	\$610	\$970
Total Estimated Net Effect on <u>Other</u> State Funds	(\$34,750)	\$610	\$970

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** state they are a silo IT department. All changes to software would require working with a third party vendor and/or the Information Technology department.

The SOS would have to conduct a business analysis in order to change the automated processes performed by our business software. The IT department would need to create new tables, reports, and software application process to allow "Benefit Corporations" to be a filing type for creation 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 to change the current software operated by the Business Services Division.

SOS also assumes the proposal would create a new type of entity that a corporation can operate as under chapter 351 RSMo. (1400-1435)

It is estimated that, on average, 60 new entities will choose to operate as a benefit corporation with a growth rate of 1 additional a month in FY22 and 3 per year (75% decrease in growth) in FY23. Most fees and administration functions will revert to \$351.010 to \$351.720. It is assumed that a company will incorporate with the minimum of 30,000 shares at a \$1.00 par value making their stated capital \$30,000, representing the lowest cost possible to incorporate. 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 YRL	60		GR	Tech Fee
	FY		\$53	\$5
Creations	2021	50	\$2,650	\$250
	2022	72	\$3,816	\$360
	2023	75	\$3,975	\$360
Chapter 351.120 Report	Filed Online		\$15	\$5
	2021	50		
	2022	72	\$750	\$250
	2023	75	\$1,830	\$610
		FY21	FY22	FY23
General Revenue		\$2,650	\$4,566	\$5,805
Tech Fee		\$250	\$610	\$970
Total Revenue		\$2,900	\$5,176	\$6,775

SOS will absorb the cost of sending notices and certain forms to new entities.

The Secretary of State 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 FY21, \$4,566 to the General Revenue Fund and \$610 to the Technology Trust Fund in FY22, and \$5,805 to the General Revenue Fund and \$970 to the Technology Trust Fund in FY23 as a result of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE			
<u>Revenue - SOS</u> Filing Fees	<u>\$2,650</u>	<u>\$4,566</u>	<u>\$5,805</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$2,650</u>	<u>\$4,566</u>	<u>\$5,805</u>
TECHNOLOGY TRUST FUND			
<u>Revenue - SOS</u> Filing Fees	\$250	\$610	\$970
<u>Cost - 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>\$610</u>	<u>\$970</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<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, 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.

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.

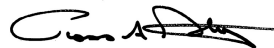
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State



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February 11, 2020



Ross Strobe
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February 11, 2020