

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1009

(Delegate Feldman)

Economic Matters

Judicial Proceedings

Corporations - Benefit Corporation

This bill authorizes a Maryland corporation to elect to be a benefit corporation provided that the benefit corporation's purpose is to create a general public benefit.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues from filings by corporations that elect to change their status.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a "general public benefit" to mean a material, positive impact on society and the environment, as measured by a third-party standard, through activities that promote a combination of specific public benefits. Likewise, the bill defines a "specific public benefit" to mean providing individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; preserving the environment; improving human health; promoting the arts, sciences, or advancement of knowledge; increasing the flow of capital to entities with a public benefit purpose; or the accomplishment of any other particular benefit for society or the environment.

The bill allows a corporation to elect to be a benefit corporation by amending its charter, or by including a statement in the charter that the corporation is a benefit corporation. An

amendment to be formed as a benefit corporation and the subsequent termination of benefit corporation status must be approved by the stockholders. Reference to the fact that a corporation is a benefit corporation must appear prominently at the head of the benefit corporation's charter document, each subsequent charter document, and all outstanding stock certificates. The bill further allows a benefit corporation to identify and include one or more specific public benefits in its charter.

In determining what the director reasonably believes are in the best interests of the benefit corporation, a director must consider the effects of any action or decision not to act on:

- the benefit corporation's stockholders;
- the benefit corporation's employees and workforce, including the employees and workforce of subsidiaries and suppliers;
- the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;
- community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or the benefit corporation's subsidiaries or suppliers are located; and
- the local and global environment.

The director may consider any other pertinent factors or the interests of any other group, as appropriate. In the reasonable performance of duties in accordance with the standard provided in the bill, a benefit corporation director retains standard personal immunity for his or her actions as a benefit corporation director.

The bill requires a benefit corporation to deliver an annual for-benefit report to all stockholders that includes (1) the ways in which the benefit corporation pursued a general public benefit during the preceding year and the extent to which the general public benefit was created; and (2) the ways in which the benefit corporation pursued any specific public benefit included in its charter and the extent to which that specific public benefit was created. The annual report must also discuss circumstances hindering the benefit corporation's ability to create the public benefit and an assessment of the societal and environmental performance of the benefit corporation. The report must be delivered to stockholders within 120 days of the end of the benefit corporation's fiscal year, and posted on the benefit corporation's public web site, if any exists.

Current Law: Maryland currently recognizes a traditional C corporation that elects to be taxed under Subchapter C of the Internal Revenue Code and an S corporation that elects to be taxed as a small business corporation under Subchapter S of the Internal

Revenue Code. Benefit corporations are not currently recognized under the Maryland General Corporation Law.

Background: Benefit corporations incorporate under states' current corporate statutes and are subject to private-sector tax laws. Unlike traditional C or S corporations, benefit corporations must include a public benefit or social commitment in their corporate charter and corporate governing documents. B Lab, a nonprofit organization, is an impartial third party that certifies and rates benefit corporations on how well they meet a set of social and environmental performance standards. Other states considering benefit corporation legislation include California, Colorado, Delaware, Pennsylvania, Maine, North Carolina, New York, Oregon, and Vermont.

Additional Information

Prior Introductions: None.

Cross File: SB 690 (Senators Raskin and Frosh) - Judicial Proceedings.

Information Source(s): Yale Law & Policy Review, State Department of Assessments and Taxation, Department of Legislative Services

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