

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1151
Economic Matters

(Delegate Feldman)

Judicial Proceedings

**Corporations and Associations - Name Requirements for Benefit Corporations
and Limited Liability Companies - Election to Be a Benefit Limited Liability
Company**

This bill authorizes a Maryland limited liability company (LLC) to elect to be a benefit LLC by including in its articles of organization a statement that the LLC is a benefit LLC. The bill establishes provisions for benefit LLCs that are comparable to Maryland's current law regarding the transformation of a corporation into a benefit corporation. Thus, the benefit LLC's purpose must be to create a general public benefit, and the benefit LLC must adhere to annual for-benefit reporting requirements. The bill also establishes a requirement that the name of a benefit corporation or benefit LLC must include the words "benefit corporation" or "benefit LLC" or a similar indication of the entity's legal organization.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from filings by LLCs that elect to change their status beginning in FY 2011. Additionally, any current Maryland benefit corporation which does not meet the bill's name requirements must refile. The State Department of Assessments and Taxation estimates there are approximately 50 benefit corporations. The filing fee is \$100. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law:

Benefit Corporation: 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. Under Chapters 97 and 98 of 2010, only such corporations may elect to become a benefit corporation recognized under Maryland General Corporation Law.

A “general public benefit” is defined as 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, “specific public benefit” means 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.

A corporation may 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. A benefit corporation may also 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, a benefit corporation director retains standard personal immunity for his or her actions as a benefit corporation director.

A benefit corporation is required 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 website, if any exists.

Name of Corporation or LLC: The name of a corporation or LLC must include specific language indicating the legal organization of the entity.

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. In 2010, Maryland became the first state to pass benefit corporation legislation. Vermont passed similar legislation in 2010, followed by New Jersey and Virginia in 2011.

Additional Information

Prior Introductions: None relating to LLCs.

Cross File: SB 595 (Senator Raskin, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - March 7, 2011
ncs/ljm Revised - House Third Reader/Updated Information - March 31,
2011
Revised - Enrolled Bill - April 29, 2011

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510