

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 908 (Senators Klausmeier and Raskin)
Judicial Proceedings

Maryland Benefit Corporations - Purposes, Duties of Directors, and Liability

This bill (1) alters the definition of “general public benefit” for purposes of a Maryland benefit corporation; (2) alters the required interests and factors a director of a benefit corporation must consider when making a decision; (3) clarifies a director’s scope of duties; and (4) prohibits a person from bringing an action or claim against a benefit corporation, its directors, or its officers under specified circumstances.

Fiscal Summary

State Effect: The bill does not directly affect State operations or finances.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill alters the definition of “general public benefit” to mean a material, positive impact on society and the environment that, taken as a whole and assessed against a third-party standard, results from the business and operations of a benefit corporation.

In making a decision, a director must consider (1) the effects of any action or decision on the short-term and long-term interests of the benefit corporation and (2) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose. The director may not be required to give priority to any particular interest or factor.

The bill also clarifies that a director, in performance of his or her duties, does not have any duty to the benefit corporation's employees/workforce, customers, or the general community or to a person affected by the interests of the benefit corporation, as specified. A director also has no duty to the corporation or the stockholders other than as set forth in specified provisions of law. The bill establishes a presumption that an act of a director satisfies the duties of a director.

A person may not bring an action or claim against a benefit corporation, its directors, or its officers with respect to (1) the failure to pursue or create a general public benefit or specific public benefit set forth in its charter or (2) a violation of an obligation, duty, or standard of conduct. A benefit corporation or a director or an officer of a benefit corporation is not liable for monetary damages for a failure to pursue or create a general public benefit or a specific public benefit. An action or claim may be commenced or maintained only (1) directly by the benefit corporation or (2) derivatively by a director or a person or group of persons with specified ownership interests.

Current Law: Chapters 97 and 98 of 2010 authorized a Maryland corporation to become a benefit corporation provided that the benefit corporation's purpose is to create a general public benefit. A "general public benefit" is defined 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, Chapters 97 and 98 defined 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.

Chapters 97 and 98 allow a corporation to become 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. Chapters 97 and 98 further allow 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.

Background: Benefit corporations incorporate under a state’s 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 charters 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. Maryland was the first state to authorize benefit corporations.

According to the State Department of Assessments and Taxation (SDAT), there are 32 benefit corporations registered with SDAT.

Additional Information

Prior Introductions: SB 978 of 2014 was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Department of Legislative Services

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