# FISCAL NOTE

**TENNESSEE GENERAL ASSEMBLY**
**FISCAL REVIEW COMMITTEE**

## HB 767 - SB 972

March 15, 2015

**SUMMARY OF BILL:** Enacts the "For-Profit Benefit Corporation Act" for the purpose of regulating all for-profit benefit corporations and establishing the organizational structure within Tennessee such that all for-profit benefit corporations may file articles of incorporation with the Secretary of State. Specifies that unless otherwise provided in this bill, the Tennessee Business Corporation Act (TBCA) will generally be applicable to all for-profit benefit corporations. A for-profit benefit corporation may be subject simultaneously to the provisions of the bill and the TBCA. The provisions of this bill will take precedent over the TBCA and the Tennessee Professional Corporation Act. States that no provision of the articles of incorporation or bylaws of a for-profit benefit corporation may limit, be inconsistent with, or supersede the provisions of this bill. Delineates requirements and provisions that will govern for-profit benefit corporations.

## ESTIMATED FISCAL IMPACT:

**Increase State Revenue - Exceeds $5,000/General Fund/Recurring**
**$900/Department of State/One-Time**
**$200/Department of State/Recurring**

**Increase State Expenditures - $75,300/General Fund/One-Time**

Assumptions:

- The Department of Revenue (DOR) reports that any for-profit benefit corporation (B-corp) will be subject to franchise and excise taxes without exception.
- DOR indicates a B-corp will likely have a lower average tax liability when compared to other for-profit businesses due to a B-corp not being motivated exclusively by profits.
- DOR reports the average F&E tax liability in TN to be approximately $10,571; this is based on approximately $1,850,000,000 in annual F&E tax collections for approximately 175,000 taxpayers.
- The estimated F&E tax liability for a B-corp is estimated to be approximately $5,000 per entity.
- It is not known how many companies will relocate to, or will originate in, Tennessee as a direct result of this bill.
- Given the organizational framework provided by this bill, at least one entity will elect to either move to Tennessee, or originate in Tennessee, as a B-corp as a direct result of the

bill. Such entity is presumed not to organize in Tennessee in the absence of the bill. Therefore, a recurring increase in franchise and excise tax revenue exceeding $5,000 per year.

- Other businesses that elect to form as a B-corp are assumed to be existing businesses with other organizational structures that will amend their articles of incorporation to form as a B-corp. These entities are presumed to continue paying their current franchise and excise tax liabilities. Therefore, no other change in F&E tax collections relative to these entities.
- The Department of State (SOS) reports a one-time increase in state expenditures will be required to modify the Tennessee Business Entity Annual Report (TNBEAR) system, which is the computer system used to process business entity filings and annual reports.
- Based on the information provided by the department, the one-time increase in state expenditures is estimated to be $60,000; such estimate is based on 100 hours of programming and coding modifications at $100 per hour paid to a third party vendor.
- SOS indicates additional business computer system analysis and testing will be required by the vendor to effectuate all system modifications. The additional one-time increase in state expenditures is estimated to be $15,300; such estimate is based on 180 hours of testing at $85 per hour paid to the third party vendor.
- The Department of State will require an appropriation for such expenses; therefore, the total one-time increase in state expenditures from the General Fund is estimated to be $75,300 ($60,000 x $15,300).
- SOS estimates nine entities will form as B-corps as result of the bill; one either moving to or originating in Tennessee, and eight that will be existing Tennessee entities that amend their articles of incorporation and undergo an organizational restructuring to become a B-corp. SOS reports a formation fee of $100; thus, a one-time increase in state revenue of $900 (9 entities x $100).
- Pursuant to provisions contained in the bill, the SOS may charge a fee for filing an annual benefit report. The fee is estimated to be $20 per year; thus, a recurring increase in state revenue of $180 (9 entities x $20).

## IMPACT TO COMMERCE:

**Increase Business Revenue – $75,300/One-Time**
**Exceeds $10,000/Recurring**

**Increase Business Expenditures – $900/One-Time**
**Exceeds $5,200/Recurring**

**Jobs Impact – Positive but unknown**

Assumptions:

- Current Tennessee companies that elect to reorganize to become a B-corp entity are not anticipated to create any additional impact to commerce.

- A one-time increase in business expenditures of $900 as a result of paying formation fees.
- A recurring increase in business expenditures exceeding $5,000 per year as one new market entrant pays their franchise and excise tax liability.
- A recurring increase in business expenditures of $200 as a result of paying annual filing fees for benefit reports.
- The total recurring increase in business expenditures is estimated to be $5,200 ($5,000 + $200)
- A recurring increase in business revenue for B-corps reasonably estimated to exceed $10,000 per year; such estimate presumes that B-corps will be solvent entities; will earn revenue greater than expenses incurred; and will be profitable entities.
- The SOS will pay the third party vendor a sum total of $75,300 for computer system modifications and testing; thus, a one-time increase in business revenue of $75,300 to the third party vendor.
- To the extent one or more businesses elect to move to, or originate in Tennessee as a result of the bill, there will be a positive impact to the economy as new job opportunities will be created. The extent of any job creation is dependent upon unknown factors and cannot be reasonably quantified.

## CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Jeffrey L. Spalding, Executive Director

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