Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**November 26, 2012**
SUBJECT:	**Fiscal Impact Statement – "Benefit Corporation Act of 2011"**
REFERENCE:	**Bill 19-584 – Draft Committee Print as Shared with the Office of Revenue Analysis on November 26, 2012**

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill establishes a new legal class of corporations called benefit corporations, intended for businesses seeking to simultaneously pursue profit as well as specific societal benefits. The bill outlines the standards and requirements for this type of corporation under District law.

Similar legislation establishing benefit corporations has been enacted in 12 states[1] since 2010. This new type of business entity maintains many characteristics of standard corporations,[2] and is subject to the same taxes. The bill lists several characteristics that separate benefit corporations from standard corporations:

1) Officers and board members have an expanded fiduciary duty to consider non-financial consequences of decisions on societal goals or stakeholders;[3]

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[1] http://www.benefitcorp.net/state-by-state-legislative-status
[2] As established under D.C. Official Code, Title 29, Chapter 3.
[3] The bill lists the following specific considerations: the environment, long term interest of the corporation, community factors, customers, workers and shareholders – in no particular order of priority (unless the business's articles of incorporation state a priority).

2) An independent[4] Benefit Director who must prepare an annual opinion letter on whether the corporation's directors and officers have acted in accordance with its general and specific public benefit purposes; and
3) The corporation must publicly file annual reports, to include the annual opinion letter from the Benefit Director, assessing its public benefit performance against independent, third-party standards.[5]

Although benefit corporations are not entitled to any special tax benefits, several reasons exist why a business may choose to become a benefit corporation:

1) It is a way to formalize a business's commitment to certain philosophical values, while retaining the ability to achieve private gains;
2) The designation can be a marketing tool for potential like-minded customers;
3) Because the designation explicitly allows for decisions to be made based on non-financial priorities, it may help protect benefit corporation directors and officers from liability if they take actions that do not maximize shareholder interests. There is debate on this point, however. Some argue that current law doesn't preclude actions by corporations from considering non-financial goals or interests;[6]
4) In the event of a merger or a shareholder takeover between a benefit corporation and a standard corporation, the surviving entity must be a benefit corporation;[7] and
5) Some proponents are hoping that benefit corporations are granted certain advantages in the future.[8]

Lastly, the bill directs fees collected from benefit corporation filings to the Department of Consumer and Regulatory Affairs (DCRA) Corporate Recordation Fund, the same fund to which any other corporate filing fees are deposited.[9]

Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

DCRA has indicated it can absorb the additional administrative costs of this bill within its current Corporate Recordation Fund special purpose revenue collections. The agency intends to hire an additional FTE based on revenues in the fund.

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[4] The bill defines "independent" as having no material relationship with the benefit corporation or a subsidiary of the benefit corporation.
[5] The bill defines a "third-party standard" as one that is developed by an organization independent of the benefit corporation, and discloses all of its financial support. The standard must be credibly developed by persons with relevant expertise, and be publicly transparent about the development of its criteria and any revisions.
[6] Underberg, Mark A., "Benefit Corporations vs. 'Regular' Corporations: A Harmful Dichotomy," The Harvard Law School Forum on Corporate Governance and Financial Regulation, May 13, 2012, http://blogs.law.harvard.edu/corpgov/2012/05/13/benefit-corporations-vs-regular-corporations-a-harmful-dichotomy/
[7] This will preserve the mission requirements of the benefit corporation, even amidst a hostile takeover.
[8] One Maryland benefit corporation owner interviewed expressed a hope that in the future, priority may be given to benefit corporations for procurements by the State of Maryland.
[9] D.C. Official Code § 29-102.13.