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FISCAL IMPACT STATEMENT

LS 6134

BILL NUMBER: SB 62

NOTE PREPARED: Jan 19, 2012

BILL AMENDED: Jan 18, 2012

SUBJECT: Securities and Flexible Purpose Corporations.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR:

BILL STATUS: As Introduced

**FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL**

IMPACT: State

Summary of Legislation: This bill exempts the offering or sale of certain securities from the registration, notice, and prospectus requirements of the Indiana Uniform Securities Act if the aggregate amount of the securities sold annually does not exceed \$1,000,000 and the aggregate amount sold annually to any one investor does not exceed \$10,000. It requires that certain information must be disclosed and certain warnings be given to the purchaser by the issuer or by the intermediary through whom the exempt securities are sold. The bill requires that the intermediary through whom these exempt securities may be sold must be registered as a broker-dealer or as a funding portal. It defines "funding portal".

The bill also places certain restrictions on the transfer of these securities by the purchaser for one year after purchase. It allows the Securities Commissioner to establish rules by which potential issuers of these exempt securities would be disqualified from issuing the exempt securities.

It also permits a corporation to be established as a flexible-purpose corporation, and provides that a flexible-purpose corporation has as its corporate purpose the provision of public benefits. The bill defines a "public benefit" to include: (1) a material, positive impact on society or the environment as a whole; or (2) furthering public welfare, religious, charitable, scientific, literary, or educational purposes beyond the strict interest of the corporation's shareholders. It also requires a flexible-purpose corporation to consider the public in taking actions, and specifies that a flexible-purpose corporation acts in the flexible-purpose corporation's best interest when the flexible-purpose corporation provides a public benefit. It grants civil immunity to an officer of a flexible-purpose corporation who takes a good faith action to further the public benefit if the action meets certain requirements. It also requires a flexible-purpose corporation to issue an annual report. It makes a conforming amendment.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Secretary of State (SOS):* This bill exempts the offering or sale of certain securities from the registration, notice, and prospectus requirements of the Indiana Uniform Securities Act. The bill provides that the exemption applies if the aggregate amount of the securities issued annually does not exceed \$1,000,000, the aggregate amount issued annually to any one investor does not exceed \$10,000, and the issuer complies with certain procedures set forth in the bill. The bill also provides that the Securities Commissioner may by rule establish disqualification provisions under which an issuer is not eligible to use this exemption. The SOS's current level of resources is sufficient to implement the provisions of this bill.

Explanation of State Revenues: *Filing Fees:* This bill exempts certain securities from registration and filing fees under the Indiana Uniform Securities Act if the aggregate amount of the securities issued annually does not exceed \$1 M and other conditions are met. The Secretary of State reports that there are currently no issuers with aggregate amount of securities below \$1 M due to the costly legal fees involved. This bill also permits an existing corporation to become a flexible corporation by amending the corporation's articles of incorporation. A \$20 fee is imposed for amendments of articles of incorporations. Fees are deposited in the state General Fund.

Background Information

Flexible-Purpose Corporations: This bill permits a corporation to be established as a flexible-purpose corporation and provides that the corporation must have as one of its corporate purposes the provision of public benefits. Public benefits, as defined in the bill, includes benefits that serves one or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the flexible-purpose corporation, including:

- (1) providing low-income or underserved individuals or communities with beneficial products or services;
- (2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) preserving or improving the environment;
- (4) improving human health;
- (5) promoting the arts, sciences, or advancement of knowledge;
- (6) increasing the flow of capital to entities with a public benefit purpose; and
- (7) conferring any other particular benefit on society or the environment.

The bill requires the flexible-purpose corporation to prepare an annual report that includes all the following:

- (1) A narrative description of the manner in which the flexible-purpose corporation provided or attempted to provide the public benefit set forth in the flexible-purpose corporation's articles of incorporation, the flexible-purpose corporation's bylaws, or resolution adopted by the flexible-purpose corporation's board of directors.
- (2) The extent to which the public benefit was actually provided.
- (3) Any particular circumstances that hindered the flexible-purpose corporation in providing the public benefit.

On January 1, 2012, new laws regulating Flexible-Purpose Corporations and Benefit Corporations became effective in California. Six other states (New York, Vermont, Hawaii, Virginia, Maryland, and New Jersey) already have Benefit Corporation legislation in place. The fundamental concept behind a Flexible-Purpose

Corporation and Benefit Corporation is to give the board of directors the possibility to pursue socially beneficial objectives in addition to shareholder profit maximization.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: SOS.

Local Agencies Affected:

Information Sources: Chris Naylor, Securities Commissioner, 317-232-6531; Jerry Bonnet, Deputy Secretary of State, 317-232-6532; Jeff Bush, Chief Deputy Securities Commissioner, 317-234-274; Flexible Purpose Corporation and Benefit Corporations, <http://www.thecorporateattorneys.com/Articles/Corporate/Flexible-Purpose-Corporations-Benefit-Corporations.html>.

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