

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 995 - HB 1296

March 11, 2019

SUMMARY OF BILL: Enacts the *Tennessee Uniform Protected Series Act* (Act) to establish a framework for the formation and operation of a protected series limited liability company (LLC).

ESTIMATED FISCAL IMPACT:

**Increase State Revenue – \$216,400/FY20-21/General Fund
\$6,700/FY20-21/Secretary of State**

**\$312,800/FY21-22 and Subsequent Years/General Fund
\$9,700/FY21-22 and Subsequent Years/Secretary of State**

Increase State Expenditures - \$185,600/FY19-20/General Fund

Assumptions:

- For administrative and rule make purposes, this Act shall take effect upon becoming law. For all other purposes, this act shall take effect July 1, 2020.
- This Act creates various fees and fee schedules for LLCs designated as series LLCs who elect to be governed under this Act, rather than the Limited Liability Company Act.
- According to the Secretary of State's office (SOS), there are currently 146,802 active LLCs registered with the SOS. Of these:
 - 121,553 are domestic LLCs;
 - 25,249 are foreign LLCs;
 - 2,371 domestic LLCs are designated as series LLCs; and
 - 135 foreign LLCs are designated as series LLCs
- In FY20-21, approximately 25 percent of total LLCs currently designated as a series LLC will elect to be governed under this Act.
- Approximately 627 of current series LLCs will elect to be governed under this Act [(2,371 domestic series LLCs + 135 foreign series LLCs) x 25%].
- In FY20-21 and subsequent years, there will be 75 new LLCs formed which will elect to be governed under this Act.
- There is a one-time \$20 filing fee to amend a series LLC's articles of organization. This applies only to the existing 627 current series LLCs.

- All 627 current series LLCs and all 75 new LLCs electing to be governed under this Act will designate at least one protected series LLC.
- An annual fee of \$300 to file protected series LLC designation.
- Pursuant to Tenn. Code Ann. § 8-21-205, 97 percent of all fees collected by the SOS are remitted to the General Fund and the remaining 3 percent remains with the SOS.
- In FY20-21, an increase in state revenue to the General Fund of \$216,446 $\{[(627 \times \$20) + (627 + 75) \times \$300] \times 97\%$ } and \$6,694 to the SOS $\{[(627 \times \$20) + (627 + 75) \times \$300] \times 3\%$ }.
- In FY21-22 and subsequent years, approximately 1,000 existing series LLCs will file protected series LLC designations.
- In FY21-22 and subsequent years, an increase in state revenue to the General Fund of \$312,825 $[(1,000 \text{ existing} + 75 \text{ new}) \times \$300 \times 97\%]$ and \$9,675 to the SOS $[(1,000 \text{ existing} + 75 \text{ new}) \times \$300 \times 3\%]$.
- According to the SOS, there will be a one-time increase in state expenditures to update the Tennessee Business Entity Annual Report (TN-BEAR) computer system to allow for the filing of documents and amendments related to series LLCs and protected series LLCs for domestic, foreign, and professional LLCs. This is assumed to be performed by a third-party contract vendor.
- A one-time increase in state expenditures of \$185,607 (1,509 coding hours x \$123 per hour). It is assumed this expense will occur in FY19-20 to enable adequate filing access upon this Act's effective date of July 1, 2020, or FY20-21. Therefore, the SOS will require a one-time appropriation of \$185,607 in FY19-20.
- According to information provided by the SOS, the protected series LLC designation is new and is a subsidiary designation, not effecting the need for any current series LLCs to file an annual report and pay the required filing fee.; therefore, this legislation will result in no decrease in current fee revenue received by the SOS.
- According to the Department of Revenue, this Act is not expected to result in any significant impact on franchise and excise tax revenue.

IMPACT TO COMMERCE:

Increase Business Revenue - \$185,600

Increase Business Expenditures – Less than \$185,600

Other Commerce Impact – Due to multiple unknown factors, any additional impact on commerce and jobs in Tennessee cannot be quantified with reasonable certainty, but is generally thought to be positive.

Assumptions:

- An increase in business revenue of \$185,607 in FY19-20 for the third party vendor performing system changes to TN-BEAR.

- It is assumed that any increase in business expenditures will be less than any increase in business revenue in order for the business to remain solvent. Therefore, an increase in business expenditures estimated to be less than \$185,607 in FY19-20.
- The proposed legislation establishes a framework for the formation and operation of protected series LLCs.
- A member of a series LLC may have different levels of equity in different portions of the LLC. Each such portion represents a different protected series and each such protected series has its own assets and operations.
- Any debt, obligation, or liability of a protected series is solely limited to such protected series.
- The extent to which the establishment of this framework for the formation and operation of protected series LLCs will impact commerce and jobs in this state is unknown and cannot be determined with reasonable certainty.
- However, any such impact is generally considered to be positive for business as the proposed legislation incorporates most of the provisions of the Uniform Protected Series Act drafted by the National Conference of Commissioners on Uniform State Laws which was approved and recommended for enactment in all states at its annual conference in July 2017.

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

/jdb