

Senate Study Bill 1181 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
ECONOMIC GROWTH BILL BY
CHAIRPERSON SODDERS)

A BILL FOR

1 An Act providing for benefit corporations, and providing for
2 fees.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SUBCHAPTER I

PRELIMINARY PROVISIONS

Section 1. NEW SECTION. 490B.101 Short title.

This chapter shall be known and may be cited as the "*Iowa Benefit Corporation Act*".

Sec. 2. NEW SECTION. 490B.102 Definitions.

Except as otherwise provided in this chapter, or unless the context otherwise requires, the words and phrases used in this chapter shall have the same meaning as the words and phrases used in chapter 490, including but not limited to the words and phrases used in section 490.140. In addition, all of the following shall apply:

1. "*Benefit corporation*" means a business corporation, if all of the following apply:

- a. It has elected to become subject to this chapter.
- b. Its status as a benefit corporation has not been terminated.

2. "*Benefit director*" means any of the following:

- a. A director designated as the benefit director of a benefit corporation under section 490B.302.
- b. A person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the articles of incorporation, bylaws, or a shareholder agreement under section 490B.302, subsection 6.

3. "*Benefit enforcement proceeding*" means a claim or action relating to any of the following:

- a. The failure of a benefit corporation to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation.
- b. A violation of any obligation, duty, or standard of conduct provided under this chapter.

4. "*Benefit officer*" means an individual designated as the benefit officer of a benefit corporation under section 490B.304.

5. "*Business corporation*" means a corporation formed as a

1 domestic corporation under chapter 490.

2 6. "*Entity*" means a person formed under the laws of
3 this state including but not limited to a limited liability
4 company under chapter 489; a corporation under chapter 490;
5 a nonprofit corporation under chapter 504; a partnership,
6 limited partnership, limited liability partnership, or limited
7 liability limited partnership under chapter 486A or 488; or a
8 cooperative association or other cooperative organized under
9 chapter 497, 498, 499, 501, or 501A.

10 7. "*General public benefit*" means a material positive impact
11 on society or the environment, taken as a whole, assessed
12 against a third-party standard, which results from the business
13 and operations of a benefit corporation.

14 8. "*Independent*" means having no material relationship
15 with a benefit corporation or a subsidiary of the benefit
16 corporation as provided in section 490B.304A.

17 9. "*Minimum status vote*" means any of the following:

18 a. In the case of a business corporation, in addition to any
19 other required approval or vote required under chapter 490, the
20 satisfaction of all of the following conditions:

21 (1) The shareholders of every class or series are
22 entitled to vote as a separate voting group on the corporate
23 action regardless of a limitation stated in the articles of
24 incorporation or bylaws regarding the voting rights of any
25 class or series.

26 (2) The corporate action is approved by vote of the
27 shareholders of each class or series entitled to cast at least
28 two-thirds of the votes that all shareholders of the class or
29 series are entitled to cast on the action.

30 b. In the case of an entity other than a business
31 corporation, in addition to any other required approval, vote,
32 or consent, the satisfaction of all the following conditions:

33 (1) The holders of every class or series of equity interest
34 in the entity that are entitled to receive a distribution of
35 any kind from the entity are entitled to vote on or consent to

1 the action regardless of any otherwise applicable limitation on
2 the voting or consent rights of any class or series.

3 (2) The action is approved by vote or consent of the
4 holders described in subparagraph (1) entitled to cast at least
5 two-thirds of the votes or consents that all of those holders
6 are entitled to cast on the action.

7 10. "*Specific public benefit*" means any of the following:

- 8 a. Providing low-income or underserved individuals or
9 communities with beneficial products or services.
- 10 b. Promoting economic opportunity for individuals or
11 communities beyond the creation of jobs in the normal course
12 of business.
- 13 c. Protecting or restoring the environment.
- 14 d. Improving human health.
- 15 e. Promoting the arts, sciences, or advancement of
16 knowledge.
- 17 f. Increasing the flow of capital to entities with a purpose
18 to benefit society or the environment.
- 19 g. Conferring any other particular benefit on society or the
20 environment.

21 11. "*Subsidiary*" means, in relation to a person, an entity
22 in which the person holds beneficially or of record fifty
23 percent or more of the outstanding equity interests.

24 12. "*Third-party standard*" means a recognized standard
25 for defining, reporting, and assessing corporate social or
26 environmental performance that is all of the following:

- 27 a. Comprehensive because the standard assesses the effect of
28 the business and its operations upon the interests listed in
29 section 490B.301, subsection 1, paragraphs "b" through "e".
- 30 b. Developed by an entity that is not controlled by the
31 benefit corporation.
- 32 c. Credible because the standard is developed by an entity
33 that meets all of the following conditions:

34 (1) Has access to necessary expertise to assess overall
35 corporate social or environmental performance.

1 (2) Uses a balanced multiple stakeholder approach to
2 develop the standard, including a reasonable public comment
3 period.

4 d. Transparent because the following information is made
5 publicly available:

6 (1) A description of the standard that includes all of the
7 following:

8 (a) Criteria considered when measuring the overall social
9 or environmental performance of a business corporation.

10 (b) The relative weightings, if any, of the criteria
11 described in subparagraph division (a).

12 (2) A description of the development and revision of the
13 standard which includes all of the following:

14 (a) The identity of the directors, officers, material
15 owners, and the governing body of the entity that developed and
16 controls revisions to the standard.

17 (b) The process by which revisions to the standard and
18 changes to the membership of the governing body are made.

19 (c) An accounting of the revenue and sources of financial
20 support for the entity, with sufficient detail to disclose any
21 relationship that could reasonably be considered to present a
22 potential conflict of interest.

23 Sec. 3. NEW SECTION. 490B.103 **Application and effect of**
24 **chapter.**

25 1. This chapter applies to all benefit corporations.

26 2. The existence of a provision of this chapter shall not
27 of itself create an implication that a contrary or different
28 rule of law is applicable to a business corporation that is not
29 a benefit corporation. This chapter shall not affect a statute
30 or rule of law that is applicable to a business corporation
31 that is not a benefit corporation.

32 3. Chapter 490 shall be construed as part of this chapter
33 and shall apply to benefit corporations, including but not
34 limited to their formation or organization, reports, fees,
35 authority, powers, rights, and the regulation and conduct of

1 their affairs.

2 4. A benefit corporation may be subject simultaneously to
3 this chapter and one or more other chapters of this title,
4 including chapter 496C. In such event, the provisions of
5 this chapter shall take precedence with respect to a benefit
6 corporation.

7 5. A provision of the articles of incorporation or bylaws of
8 a benefit corporation shall not limit, be inconsistent with, or
9 supersede a provision of this chapter.

10 Sec. 4. NEW SECTION. 490B.104 Incorporation of benefit
11 corporation.

12 A benefit corporation shall be incorporated in accordance
13 with chapter 490, division II. The articles of incorporation
14 of a benefit corporation must also state that it is a benefit
15 corporation.

16 Sec. 5. NEW SECTION. 490B.105 Election of benefit
17 corporation status.

18 1. An existing business corporation may become a benefit
19 corporation under this chapter by amending its articles of
20 incorporation so that the articles contain, in addition to
21 the requirements of chapter 490, division II, a statement
22 that the corporation is a benefit corporation. In order to
23 be effective, the amendment must be adopted by at least the
24 minimum status vote.

25 2. *a.* An entity that is not a benefit corporation may
26 become a benefit corporation pursuant to subsection 1 if all
27 of the following apply:

28 (1) The entity is one of the following:

29 (a) A party to a merger or conversion.

30 (b) An exchanging entity in a share exchange.

31 (2) The surviving, new, or resulting entity in the merger,
32 conversion, or share exchange is to be a benefit corporation.

33 *b.* In order to be effective, a plan of merger, conversion,
34 or share exchange subject to paragraph "a" must be adopted by at
35 least the minimum status vote.

1 Sec. 6. NEW SECTION. **490B.106 Termination of benefit**
2 **corporation status.**

3 1. A benefit corporation may terminate its status as
4 such and cease to be subject to this chapter by amending its
5 articles of incorporation to delete the provision required by
6 section 490B.104 or 490B.105 to be stated in the articles of a
7 benefit corporation. In order to be effective, the amendment
8 must be adopted by at least the minimum status vote.

9 2. If a plan of merger, conversion, or share exchange
10 would have the effect of terminating the status of a business
11 corporation as a benefit corporation, the plan must be adopted
12 by at least the minimum status vote in order to be effective.
13 Any sale, lease, exchange, or other disposition of all or
14 substantially all of the assets of a benefit corporation,
15 unless the transaction is in the usual and regular course of
16 business, shall not be effective unless the transaction is
17 approved by at least the minimum status vote.

18 SUBCHAPTER II

19 CORPORATE PURPOSES

20 Sec. 7. NEW SECTION. **490B.201 Corporate purposes.**

21 1. A benefit corporation shall have a purpose of creating
22 a general public benefit. This purpose is in addition to its
23 purpose under section 490.301.

24 2. The articles of incorporation of a benefit corporation
25 may identify one or more specific public benefits to be created
26 as a purpose in addition to any purpose provided in section
27 490.301 or subsection 1. The identification of a specific
28 public benefit under this subsection does not limit the
29 obligation of a benefit corporation under subsection 1.

30 3. The creation of a general public benefit as described
31 in subsection 1 and a specific public benefit as described
32 in subsection 2 must be in the best interests of the benefit
33 corporation.

34 4. A benefit corporation may amend its articles of
35 incorporation to add, amend, or delete the identification of a

1 specific public benefit that it is the purpose of the benefit
2 corporation to create. In order to be effective, the amendment
3 must be adopted by at least the minimum status vote.

4 5. A professional corporation that is a benefit corporation
5 does not violate section 496C.4 by having the purpose to create
6 a general public benefit as provided in subsection 1 or a
7 specific public benefit as provided in subsection 2.

8 SUBCHAPTER III
9 ACCOUNTABILITY

10 Sec. 8. NEW SECTION. 490B.301 Standard of conduct for
11 directors.

12 1. In discharging the duties of their respective positions
13 and in considering the best interests of the benefit
14 corporation, a benefit corporation's board of directors,
15 committees, and individual directors shall consider the effects
16 of any action or inaction upon all of the following:

17 a. The shareholders of the benefit corporation.

18 b. The employees and workforce of the benefit corporation,
19 its subsidiaries, and its suppliers.

20 c. The interests of customers as beneficiaries of the
21 general public benefit or specific public benefit of the
22 benefit corporation as provided in section 490B.201.

23 d. Community or societal factors, including those of
24 each community in which offices or facilities of the benefit
25 corporation, its subsidiaries, or its suppliers are located.

26 e. The local and global environment.

27 f. The short-term and long-term interests of the benefit
28 corporation, including but not limited to benefits that may
29 accrue to the benefit corporation from its long-term plans and
30 the possibility that these interests may be best served by the
31 continued independence of the benefit corporation.

32 g. The ability of the benefit corporation to create its
33 general public benefit or any specific public benefit as
34 provided in section 490B.201.

35 2. In discharging the duties of their respective positions

1 and in considering the best interests of the benefit
2 corporation, a benefit corporation's board of directors,
3 committees, and individual directors may consider any of the
4 following:

5 *a.* The interests referred to in section 490.1108A.

6 *b.* Any other pertinent factor or the interest of any other
7 person or group of persons deemed appropriate.

8 3. In discharging the duties of their respective positions
9 and in considering the best interests of the benefit
10 corporation, a benefit corporation's board of directors,
11 committees, and individual directors need not give priority to
12 the interest of a particular person referred to in subsection 1
13 or 2 over the interests of any other person unless the benefit
14 corporation's articles of incorporation state the benefit
15 corporation's intention to give priority to a certain interest
16 related to a general public benefit or a specific public
17 benefit as provided in section 490B.201.

18 4. The consideration of an interest or factor in the manner
19 required by subsections 1 through 3 shall not constitute a
20 violation of section 490.830.

21 5. Except as provided in the articles of incorporation or
22 bylaws of a benefit corporation, a director is not personally
23 liable for monetary damages for any of the following:

24 *a.* An action or inaction in the course of performing the
25 duties of a director under subsections 1 through 3 if the
26 director performed the duties of office in compliance with this
27 section and section 490.830.

28 *b.* The failure of the benefit corporation to pursue or
29 create a general public benefit or a specific public benefit as
30 provided in section 490B.201.

31 6. A director of a benefit corporation does not have a duty
32 to a person who is a beneficiary of the general public benefit
33 or a specific public benefit of the benefit corporation as
34 provided in section 490B.201, arising from the status of the
35 person as a beneficiary.

1 7. A director of a benefit corporation who makes a business
2 judgment in good faith fulfills the duty under this section if
3 all of the following apply:

4 a. The director is not interested in the subject of the
5 business judgment.

6 b. The director is informed with respect to the subject of
7 the business judgment to the extent the director reasonably
8 believes to be appropriate under the circumstances.

9 c. The director rationally believes that the business
10 judgment is in the best interests of the benefit corporation.

11 Sec. 9. NEW SECTION. **490B.302 Benefit director.**

12 1. The board of directors of a benefit corporation that is
13 a publicly traded corporation shall, and the board of any other
14 benefit corporation may, include a director who is designated
15 the benefit director. Such director shall have, in addition
16 to the powers, duties, rights, and immunities of the other
17 directors of the benefit corporation, the powers, duties,
18 rights, and immunities provided in this subchapter.

19 2. a. A benefit director shall be elected, and may be
20 removed, in the manner provided by chapter 490, division VIII,
21 part A. Except as provided in subsection 6, the benefit
22 director shall be an individual who is independent. The
23 benefit director may serve as the benefit officer at the
24 same time as serving as the benefit director. The articles
25 of incorporation or bylaws of a benefit corporation may
26 prescribe additional qualifications of the benefit director not
27 inconsistent with this paragraph.

28 b. Notwithstanding paragraph "a", a benefit director of
29 a professional corporation subject to chapter 496C is not
30 required to be independent.

31 3. The benefit director shall prepare, and the benefit
32 corporation shall include in the annual benefit report to
33 shareholders required by section 490B.401, the opinion of the
34 benefit director regarding all of the following:

35 a. Whether the benefit corporation acted in accordance with

1 its general public benefit and any specific public benefit as
2 provided in section 490B.201 in all material respects during
3 the period covered by the report.

4 *b.* Whether the directors and officers complied with section
5 490B.301, subsection 1, and section 490B.303, subsection 1,
6 respectively.

7 *c.* If, in the opinion of the benefit director, the benefit
8 corporation's directors or officers failed to comply with
9 paragraph "b", a description of the ways in which the benefit
10 corporation's directors or officers failed to comply.

11 4. An act or inaction of an individual in the capacity of a
12 benefit director shall constitute for all purposes an act or
13 inaction of that individual in the capacity of a director of
14 the benefit corporation.

15 5. Regardless of whether the articles of incorporation or
16 bylaws of a benefit corporation include a provision eliminating
17 or limiting the personal liability of a director authorized by
18 section 490.202, a benefit director is not personally liable
19 for an act or omission in the director's capacity as a benefit
20 director unless the act or omission constitutes self-dealing,
21 willful misconduct, or a knowing violation of law.

22 6. *a.* The articles of incorporation, bylaws, or a
23 shareholder agreement under section 490.732 of a benefit
24 corporation shall provide that the persons who perform the
25 duties of the board of directors include a person with the
26 powers, duties, rights, and immunities of a benefit director if
27 the articles of incorporation, bylaws, or shareholder agreement
28 provides that the powers and duties conferred or imposed upon
29 the board of directors may be exercised or performed by a
30 person other than the directors.

31 *b.* A person that exercises one or more of the powers,
32 duties, or rights of a benefit director under paragraph "a" is
33 subject to all of the following:

34 (1) Is not required to be independent of the benefit
35 corporation.

1 (2) Has the immunities of a benefit director.

2 (3) May share the powers, duties, and rights of a benefit
3 director with one or more other persons.

4 (4) Shall not be subject to the procedures for election or
5 removal of directors as provided in chapter 490, division VIII,
6 part A, unless any of the following applies:

7 (a) The person is also a director of the benefit
8 corporation.

9 (b) The articles of incorporation, bylaws, or a shareholder
10 agreement make those procedures applicable.

11 Sec. 10. NEW SECTION. 490B.303 Standard of conduct for
12 officers.

13 1. Each officer of a benefit corporation shall consider the
14 interests and factors described in section 490B.301, subsection
15 1, in the manner provided in that subsection if all of the
16 following apply:

17 a. The officer has discretion to act with respect to a
18 matter.

19 b. It reasonably appears to the officer that the matter
20 may have a material effect on the creation by the benefit
21 corporation of its general public benefit or a specific public
22 benefit as provided in section 490B.201.

23 2. The consideration of the best interests of the benefit
24 corporation in the manner described in subsection 1 shall not
25 constitute a violation of section 490.842.

26 3. Except as provided in the articles of incorporation or
27 bylaws of a benefit corporation, an officer is not personally
28 liable for monetary damages for any of the following:

29 a. An action or inaction as an officer in the course of
30 performing the duties of an officer under subsection 1 if the
31 officer performed the duties of the position in compliance with
32 section 490.842 and this section.

33 b. The failure of the benefit corporation to pursue or
34 create its general public benefit or a specific public benefit
35 as provided in section 490B.201.

1 4. An officer does not have a duty to a person who is
2 a beneficiary of the general public benefit or a specific
3 public benefit of the benefit corporation, as provided in
4 section 490B.201, arising from the status of the person as a
5 beneficiary.

6 5. An officer who makes a business judgment in good faith
7 fulfills the duty under this section if all of the following
8 apply:

9 a. The officer is not interested in the subject of the
10 business judgment.

11 b. The officer is informed with respect to the subject of
12 the business judgment to the extent the officer reasonably
13 believes to be appropriate under the circumstances.

14 c. The officer rationally believes that the business
15 judgment is in the best interests of the benefit corporation.

16 Sec. 11. NEW SECTION. **490B.304 Benefit officer.**

17 1. A benefit corporation may have an officer designated as
18 the benefit officer.

19 2. a. A benefit officer shall have the powers and duties
20 relating to the purpose of the corporation to create a general
21 public benefit or a specific public benefit as provided in
22 section 490B.201, if authorized by any of the following:

23 (1) The articles of incorporation or bylaws of the benefit
24 corporation.

25 (2) Absent any controlling provisions in the articles
26 of incorporation or bylaws of the benefit corporation, by
27 resolution or order of the benefit corporation's board of
28 directors.

29 b. A benefit officer shall have the duty to prepare the
30 benefit report required by section 490B.401.

31 Sec. 12. NEW SECTION. **490B.304A Benefit officers and**
32 **directors — criteria for independence.**

33 1. Serving as a benefit director or benefit officer
34 shall not alone affect whether an individual is or is not
35 independent.

1 2. A material relationship between an individual and a
2 benefit corporation or any of its subsidiaries is conclusively
3 presumed to exist if any of the following apply:

4 a. The individual is, or has been within the last three
5 years, an employee other than a benefit officer of the benefit
6 corporation or a subsidiary.

7 b. An immediate family member of the individual is, or
8 has been within the last three years, an executive officer
9 other than a benefit officer of the benefit corporation or a
10 subsidiary.

11 c. There is beneficial or record ownership of five percent
12 or more of the outstanding shares of the benefit corporation,
13 calculated as if all outstanding rights to acquire equity
14 interests in the benefit corporation had been exercised, by any
15 of the following:

16 (1) The individual.

17 (2) An entity if any of the following apply:

18 (a) The individual is a director, an officer, or a manager
19 of the entity.

20 (b) The individual owns beneficially or of record five
21 percent or more of the entity's outstanding equity interests,
22 calculated as if all outstanding rights to acquire equity
23 interests in the entity had been exercised.

24 Sec. 13. NEW SECTION. **490B.305 Right of action — benefit**
25 **enforcement proceedings.**

26 1. a. Except in a benefit enforcement proceeding, a person
27 shall not bring an action or assert a claim against a benefit
28 corporation or its directors or officers with respect to any
29 of the following:

30 (1) The failure of the benefit corporation to pursue or
31 create a general public benefit or a specific public benefit
32 as set forth in its articles of incorporation as provided in
33 section 490B.201.

34 (2) A violation of an obligation, duty, or standard of
35 conduct under this chapter.

1 490B.201, to the extent that the specific public benefit is
2 stated in the benefit corporation's articles of incorporation.

3 (3) Any circumstances that have hindered the pursuit or
4 creation of a general public benefit or a specific public
5 benefit as provided in section 490B.201.

6 (4) The process and rationale for selecting or changing the
7 third-party standard used to prepare the benefit report.

8 *b.* An assessment of the overall social or environmental
9 performance of the benefit corporation against a third-party
10 standard that is all of the following:

11 (1) Applied consistently with any application of the
12 third-party standard in prior benefit reports.

13 (2) Accompanied by an explanation of the reasons for any of
14 the following:

15 (a) Inconsistent application.

16 (b) A change to the third-party standard from the standard
17 used in the immediately prior report.

18 *c.* The name of the benefit director and the benefit officer,
19 if any, and the address to which correspondence to each of them
20 may be directed.

21 *d.* The compensation paid by the benefit corporation, during
22 the year, to each director in the capacity of a director.

23 *e.* The opinion of the benefit director described in section
24 490B.302, subsection 3.

25 *f.* A statement of any connection between the organization
26 that established the third-party standard, or its directors,
27 officers, or any holder of five percent or more of the
28 governance interests in the organization, and the benefit
29 corporation or its directors, officers, or any holder of five
30 percent or more of the outstanding shares of the benefit
31 corporation, including any financial or governance relationship
32 which might materially affect the credibility of the use of the
33 third-party standard.

34 *g.* If the benefit corporation has dispensed with, or
35 restricted the discretion or powers of, the board of directors,

1 a description of all of the following:

2 (1) Each person who exercises the powers, duties, and rights
3 of the benefit corporation and who has the immunities of the
4 board of directors.

5 (2) The person who is designated as a benefit director or
6 who exercises the powers and duties of a benefit director as
7 required by section 490B.302.

8 2. If, during the year covered by a benefit report,
9 a benefit director resigned from or refused to stand for
10 reelection to the position of benefit director, or was removed
11 from the position of benefit director, and the benefit director
12 furnished the benefit corporation with written correspondence
13 concerning the circumstances surrounding the resignation,
14 refusal, or removal, the benefit report shall include that
15 correspondence as an exhibit.

16 3. Neither the benefit report nor the assessment of the
17 performance of the benefit corporation in the benefit report
18 required by subsection 1, paragraph "b", is required to be
19 audited or certified by a third party.

20 Sec. 15. NEW SECTION. **490B.402 Availability of annual**
21 **benefit report — filing — fee.**

22 1. A benefit corporation shall send its annual benefit
23 report to each shareholder on the earlier of any of the
24 following:

25 a. One hundred twenty days following the end of the fiscal
26 year of the benefit corporation.

27 b. The date that the benefit corporation delivers any other
28 annual report to its shareholders.

29 2. A benefit corporation shall post all of its benefit
30 reports on the public portion of its internet site, if any.
31 However, the compensation paid to directors and financial or
32 proprietary information included in a benefit report required
33 pursuant to section 490B.401 may be omitted from the benefit
34 reports as posted.

35 3. a. Concurrently with the delivery of the benefit report

1 to shareholders under subsection 1, the benefit corporation
2 shall deliver a copy of the benefit report to the secretary
3 of state for filing. However, the compensation paid to
4 directors and financial or proprietary information included in
5 the benefit report may be omitted from the benefit report as
6 delivered to the secretary of state.

7 *b.* The secretary of state may impose and collect a fee of
8 not more than ten dollars for filing a benefit report.

9

EXPLANATION

10 GENERAL. This bill allows a business corporation to
11 incorporate and operate as a benefit corporation, generally
12 subject to the Iowa business corporation Act (Code chapter 490)
13 except as provided in the bill's new Code chapter (Code chapter
14 490B).

15 ELECTION TO ATTAIN OR TERMINATE BENEFIT CORPORATION STATUS.

16 The bill provides that a business corporation attains or
17 terminates its status as a benefit corporation by shareholder
18 election. The election must be by an affirmative vote of
19 at least two-thirds of each of the corporation's classes of
20 shareholders, or a higher vote threshold if required in its
21 articles of incorporation (referred to as a "minimum status
22 vote").

23 ARTICLES OF INCORPORATION. The bill provides that a benefit
24 corporation's articles of incorporation must have as a purpose
25 the creation of a general public benefit which provides some
26 material positive impact on society or the environment as
27 assessed against a third-party standard. The bill provides
28 that a benefit corporation's articles of incorporation may
29 list one or more specific public purposes, including providing
30 low-income or underserved individuals or communities with
31 beneficial products or services, promoting economic opportunity
32 beyond the creation of jobs in the normal course of business,
33 preserving the environment, improving human health, promoting
34 the arts or sciences, or increasing the flow of capital to
35 entities with a public benefit purpose.

1 BOARD ACTION. The bill requires a benefit corporation's
2 board of directors, in addition to its fiduciary duty to make
3 decisions based on financial interests, to also consider
4 factors associated with creating a general public benefit or
5 furthering a specific public benefit, or other beneficial
6 goal. The bill requires the board of directors to consider
7 the effects of its actions upon its shareholders, employees,
8 and workforce; subsidiaries and suppliers; customers as
9 beneficiaries of the general or specific public benefit
10 purposes; the impacts upon the community; the local and global
11 environment; and the short-term and long-term interests of the
12 benefit corporation. The bill limits a director's personal
13 liability due to any failure of the benefit corporation to
14 accomplish a general or specific public benefit purpose.

15 LEGAL ACTIONS. The bill prohibits a person from bringing an
16 action against a benefit corporation or its directors, except
17 in a benefit enforcement proceeding. A benefit enforcement
18 proceeding can only be commenced by the benefit corporation
19 or derivatively by a person or group that holds shares in
20 the corporation or an equity interest in the corporation, by
21 a director, or by any other person or group provided in the
22 articles of incorporation.

23 BENEFIT DIRECTOR AND OFFICER. The bill requires a public
24 corporation's board of directors to include a benefit director.
25 A privately held benefit corporation's board may include
26 such director. Such director must be independent, having
27 no material relationship with the benefit corporation. The
28 bill provides that a benefit corporation may have a benefit
29 officer who is charged with overseeing the creation of the
30 corporation's general public benefit or a specific public
31 benefit.

32 REPORT. The bill requires a benefit corporation to prepare
33 an annual benefit report to its shareholders. The report is
34 to be prepared by its benefit officer, if it has one. The
35 report must include the process and rationale for selecting a

1 third-party standard used to prepare the benefit report, the
2 ways in which the benefit corporation pursued its general and
3 specific public benefits, any circumstances that hindered the
4 creation of a general or specific public benefit, an assessment
5 of the overall social or environmental performance of the
6 benefit corporation prepared in accordance with a third-party
7 standard, and a statement prepared by the benefit director
8 indicating whether the benefit corporation pursued its general
9 or any specific public benefit purpose. The bill also requires
10 the benefit corporation to file the benefit report with the
11 secretary of state and pay the secretary of state a filing fee.