A BILL FOR

1 An Act allowing the formation of certain for-profit
2 corporations as benefit corporations authorized to do
3 business in this state under certain conditions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. Section 490.1302, subsection 1, Code 2017, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Consummation of a transaction requiring at least a ninety percent vote under section 490.1803.

Sec. 2. NEW SECTION. 490.1801 Definitions.

As used in this division:
1. "Benefit corporation" means a for-profit corporation intended to operate in a responsible and sustainable manner, to produce a public benefit or benefits as set forth in a public benefit provision, and to otherwise operate in a manner that considers the best interests of those materially affected by its conduct.
2. "Public benefit" means a positive effect, or reduction of a negative effect, on the environment or on one or more communities or categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature.
3. "Public benefit provision" means a provision in the articles of incorporation that establishes one or more public benefits to be promoted by the corporation.

Sec. 3. NEW SECTION. 490.1802 Name.

1. The name of a benefit corporation shall contain the words "benefit corporation", or the abbreviation "B.C.", or the designation "BC", any of which shall be deemed to satisfy the requirements of section 490.401, subsection 1.
2. Notwithstanding subsection 1, the corporate name of a benefit corporation that is also a professional corporation or foreign professional corporation under chapter 496C shall contain the words "professional benefit corporation" or the abbreviation "P.B.C." or "PBC", any of which shall be deemed to satisfy the requirements of section 490.401, subsection 1.

Sec. 4. NEW SECTION. 490.1803 Certain amendments, mergers, and share exchanges — votes required.

1. Notwithstanding any other provisions of this chapter,
1 a corporation that is not a benefit corporation shall not,
2 without the approval of at least ninety percent of the voting
3 power of each class and series of the outstanding shares of the
4 corporation, in each case whether voting or nonvoting, do any
5 of the following:
6   a. Amend its articles of incorporation in accordance with
7      section 490.1003 to include a public benefit provision.
8   b. Merge with or into or enter into a share exchange
9      with another entity if, as a result of such merger or share
10     exchange, the shares in such corporation would become, or be
11     converted into or exchanged for the right to receive, shares in
12     a domestic benefit corporation, foreign benefit corporation,
13     or similar corporation.
14 2. Notwithstanding any other provisions of this chapter, a
15    benefit corporation shall not, without the approval of at least
16    two-thirds of the outstanding shares entitled to vote thereon,
17    do any of the following:
18   a. Amend or eliminate its public benefit provisions in
19      accordance with section 490.1003.
20   b. Merge with or into or agree to any share exchange with
21      any entity, unless no vote of shareholders of the corporation
22      would be required pursuant to section 490.1104, subsection 7.
23   c. Become an unincorporated entity by conversion.
24 Sec. 5. NEW SECTION. 490.1804 Stock certificates.
25 Any stock certificate issued by a benefit corporation
26 shall note conspicuously that the corporation is a benefit
27 corporation.
28 Sec. 6. NEW SECTION. 490.1805 Duties of directors.
29 1. In managing or directing the management of the
30 business and affairs of the benefit corporation, directors
31 shall consider the public benefit or benefits specified in
32 its articles of incorporation, the best interests of those
33 materially affected by the conduct of the corporation, and the
34 pecuniary interests of the corporation and its shareholders.
35 2. Directors of a benefit corporation shall not have any
duty to a person on account of any interest of such person in
the public benefit or public benefits specified in the articles
of incorporation or on account of any interest materially
affected by the conduct of the corporation in such person's
capacity as such a beneficiary.

3. Unless otherwise provided in the articles of
incorporation, any failure to consider the interests of those
materially affected by the conduct of the corporation, the
public benefit or benefits, or the pecuniary interests of the
shareholders shall not constitute an intentional infliction of
harm on the corporation or the shareholders for the purposes of
section 490.202, subsection 2, paragraph “d”, subparagraph (1),
subparagraph division (b), or section 490.202, subsection 2,
paragraph “e”, subparagraph (2).

Sec. 7. NEW SECTION. 490.1806 Periodic statements and
reports.

1. A benefit corporation shall include in every notice of a
meeting of shareholders a statement to the effect that it is
a benefit corporation.

2. A benefit corporation shall, no less than biennially,
provide its shareholders with a report addressing the public
benefit or benefits specified in the articles of incorporation,
and the interests of those materially affected by its conduct.
The report shall include all of the following:

a. The objectives the board of directors has established to
address such public benefit or public benefits and interests.

b. The standards the board of directors has adopted to
measure the corporation’s progress in addressing such public
benefit or public benefits and interests.

c. Factual information based on those standards regarding
the corporation’s success in meeting the objectives for
addressing such public benefit or public benefits and
interests.

d. An assessment of the corporation’s success in meeting
the objectives and addressing such public benefit or public

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1 benefits and interests.
2 3. The articles of incorporation of a benefit corporation
3 may require that the corporation do any of the following:
4   a. Provide its report more frequently than biennially.
5   b. Make the report described in subsection 2 available to
6   the public.
7   c. Use a third-party standard in connection with or
8   attain a periodic third-party certification addressing the
9   public benefit or public benefits identified in the public
10   benefit provision in the articles of incorporation or the best
11   interests of those materially affected by the corporation's
12   conduct.
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14 Sec. 8. NEW SECTION. 490.1807 Derivative suits.
15 1. In any derivative suit instituted by a shareholder of a
16 benefit corporation to enforce the public benefit requirements
17 set forth in section 490.1805, subsection 1, the complaint must
18 state all of the following:
19   a. Each plaintiff was a shareholder of the corporation at
20 the time the complaint states the directors failed to properly
21 perform their obligations, or that such plaintiff's stock
22 thereafter devolved upon such plaintiff by operation of law,
23 and thereafter remained a shareholder of the corporation until
24 the lawsuit was commenced.
25   b. At the time the lawsuit was commenced, the plaintiff
26 individually or the plaintiffs collectively owned at least five
27 percent of any class of the corporation's shares.
28 2. The complaint shall also allege with particularity the
29 efforts, if any, made by the plaintiff to obtain the action the
30 plaintiff desires from the directors or comparable authority
31 and the reasons for the plaintiff's failure to obtain the
32 action or for not making the effort.
33 3. No such derivative suit may be maintained by any
34 plaintiff who fails to continue as a shareholder during the
35 pendency thereof or if the plaintiff individually or the
36 plaintiffs collectively fail to continue to own at least five
percent of any class of the corporation's shares.

Sec. 9. NEW SECTION. 490.1808 Other business corporations — application and effect of division.

The existence of a provision in this division shall not of itself create an implication that a contrary or different rule of law is applicable to a corporation that is not a benefit corporation. Unless expressly stated otherwise, this division shall not affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

Sec. 10. Section 496C.5, Code 2017, is amended to read as follows:

496C.5 Corporate name.

1. The corporate name of a professional corporation, the corporate name of a foreign professional corporation or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional corporation or foreign professional corporation shall contain the words “professional corporation” or the abbreviation “P.C.” or “PC”, and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the corporation is authorized to practice.

1A. Notwithstanding subsection 1, the corporate name of a professional corporation that is also a benefit corporation under chapter 490, division VIII, shall comply with section 490.1802.

2. Each regulating board may by rule or regulation adopt additional requirements as to the corporate names and fictitious or trade names of professional corporations and foreign professional corporations which are authorized to practice a profession which is within the jurisdiction of the regulating board.

EXPLANATION

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

GENERAL. This bill amends the "Iowa Business Corporation Act" codified in Code chapter 490, by allowing a for-profit corporation to either incorporate as or become a benefit corporation with the purpose of operating in a responsible and sustainable manner, that promotes one or more public benefits, and that operates in a manner that considers the best interests of persons materially affected by its conduct (new Code section 490.1801(1)). A public benefit may be of an artistic, charitable, cultural, economic, educational, cultural, literary, religious, social, ecological, or scientific nature (new Code section 490.1801(2)). Both the Code chapter and the bill's amendments creating new division XVIII are based on model legislation prepared by the American Bar Association.

DECLARATION. In order to be regarded as a benefit corporation, the corporation's articles of incorporation (articles) must include a public benefit provision that expressly describes the corporation's public benefit (new Code section 490.1801(3)). Moreover, the corporation's benefit status must be identified in its corporate name (new Code section 490.1802). Consequently, a professional corporation which is also a benefit corporation must also identify itself as a form of benefit corporation (amended Code section 496C.5). In addition, stock issued by the benefit corporation must state its benefit status (new Code section 490.1804), as must any shareholder meeting notice (Code section 490.1806(1)).

CHOICE TO FORM AS OR BECOME A BENEFIT ENTITY. A new corporation may choose to form as a benefit corporation at the time of incorporation by filing its articles with the secretary of state, and an existing corporation may choose to become a benefit corporation by amending its filed articles. An existing corporation may also choose to become a benefit corporation by combining through merger or share exchange with a benefit corporation or similar foreign public benefit entity (new Code section 490.1803(1)). In any case, at least
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1 90 percent of the existing corporation's outstanding voting
2 and nonvoting shares of each class and series must approve
3 the choice. Dissenting shareholders are entitled to exercise
4 ordinary appraisal rights (amended Code section 490.1302(1)).
5 However, the approval of at least two-thirds (66 2/3 percent)
6 of a benefit corporation's outstanding shares entitled to vote
7 on the question is required to amend or eliminate a public
8 benefit provision from its articles, or to merge with or agree
9 to a share exchange with a nonbenefit entity (new Code section
10 490.1803(2)).

11 MANAGEMENT. When making a decision affecting the business
12 affairs of a benefit corporation, its board of directors
13 must balance three criteria: its public benefit provision,
14 the best interests of persons materially affected by the
15 benefit corporation's conduct, and the traditional factor
16 of its stockholders' pecuniary interests (new Code section
17 490.1805(1)). A director does not have a duty to account for
18 a business decision (new Code section 490.1805(2)), and a
19 director's failure to consider a factor does not constitute
20 an intentional infliction of harm on the corporation or the
21 shareholders, unless otherwise provided in the corporation's
22 articles (new Code section 490.1805(3)). However, at least
23 5 percent of the corporation's shareholders may institute a
24 derivative suit to enforce compliance with the corporation's
25 public benefit provision, in part by alleging that the
26 directors failed to properly perform their duties (new Code
27 section 490.1807).

28 REPORT. The benefit corporation must prepare and deliver a
29 report to shareholders that addresses how its public benefit
30 provision is being promoted and persons materially affected
31 by the corporation's conduct (new Code section 490.1806(2)).
32 The benefit corporation's directors are responsible for the
33 report's preparation. The corporation's articles may require
34 the involvement by a third party, who may be responsible for
35 certifying how the corporation addressed the public benefit
or the best interests of those materially affected by the corporation's conduct. The report is not required to be disclosed to the public, or delivered more frequently than once every two years, unless otherwise specified in the benefit corporation's articles (new Code section 490.1806(3)).

APPLICATION. The special designation of a corporation as a benefit corporation does not by itself create an implication that different rules apply to nonbenefit corporations. However, a specific provision governing a benefit corporation also does not affect any other provision that applies to a nonbenefit corporation unless otherwise expressly stated (new Code section 490.1808).