

COMMITTEE AMENDMENT ANALYSIS

Bill: Senate Bill 433

Printer's No.: 478

Amendment No. 05204

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Summary: The amendment makes several changes to Senate Bill 433 relating to the types of associations that may become benefit corporations; the powers and duties of the benefit director; and the contents of the annual report. The definition of “benefit director” is expanded to include a director designated as the benefit director or a person with one or more of the powers, duties or rights of a benefit director under the provisions of this legislation.

The definition of “minimum status vote” is revised to include two definitions; one for a business corporation and one for a domestic association other than a business corporation. For other types of domestic associations, the holders of every class of equity interest in the association that are entitled to receive a distribution of any kind must be entitled to vote. For example, the amendment makes clear that a professional corporation that is a benefit corporation does not violate the law by having the purpose to create general public benefit or a specific public benefit.

Regarding the termination of a benefit corporation, a provision is added that the sale, lease, exchange or other disposition of all the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

The amendment further provides for qualifications of a person exercising the powers and duties of a benefit director. A person that exercises one or more of the powers, duties or rights of a benefit director does not need to be independent of the benefit corporation; shall have the immunities of a benefit director; may share the powers, duties and rights of a benefit director with one or more other persons; and generally shall not be subject to the procedures for election or removal of directors unless the person is also a director or the bylaws provide so.

Except in a benefit enforcement proceeding, the amendment provides that no person may bring an action or assert a claim with respect to the failure to pursue or create general public benefit or a specific public benefit; or violation of a duty or standard of conduct under this law. A benefit corporation shall not be liable for monetary damages under this law for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

The annual report shall include a statement of any connection between the organization that established the third-party standard which might materially affect the credibility of the use of the third-party standard. If the benefit corporation has dispensed with, or restricted the discretion or powers of the board of directors, the annual report shall include the persons who exercise the powers, duties and rights and who have the immunities of the board of directors. The report shall annually be sent to each shareholder.