

COMMITTEE BILL ANALYSIS

Bill: House Bill 1616

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Sponsor: Rep. Denlinger

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Synopsis: This bill amends the Associations Code, Title 15 of the Pennsylvania Consolidated Statutes, authorizing the creation of benefit corporations to provide for the general public benefit and to possibly provide for specific public benefits.

Summary: A benefit corporation is established with the purpose of creating general public benefit. "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.

Formation

A benefit corporation must be formed in accordance with the provisions relating to domestic business corporations generally but its articles must also state that it is a benefit corporation. An existing business corporation may become a benefit corporation by amending its articles so that they contain a statement that the corporation is a benefit corporation. The amendment must be adopted by at least the minimum status vote.

"Minimum status vote" is defined for business corporations as entitling the shareholders of every class to vote; and the corporate action must be approved by the shareholders of each class entitled to cast at least two-thirds of the votes that all shareholders of the class are entitled to cast. For other types of domestic associations (a professional corporation, for example), 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.

Termination

A benefit corporation may terminate its status as a benefit corporation by amending its articles. The termination must be adopted by a minimum status vote. Regarding the termination of a benefit corporation, 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.

Articles

In addition to providing for the general public benefit, the articles of a benefit corporation may designate one or more specific public benefits that it is the purpose of the benefit corporation to create. As a result, the general public benefit and specific public benefit are considered in the best interests of the benefit corporation. A benefit corporation may amend its articles to add, amend or delete the identification of specific public benefits.

A professional corporation that is a benefit corporation does not violate the law by having the purpose to create a general public benefit or a specific public benefit.

Accountability

In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, its committees and individual members shall consider the effects of any action upon the shareholders and employees of the benefit corporation; the interests of customers as beneficiaries of the general public benefit or specific public benefit; community and social factors; the environment; the short-term and long-term interests of the benefit corporation; and the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

The consideration of these varied interests and factors shall not constitute a violation relating to the board's standard of care. A director is not personally liable for failure of the benefit corporation to create general public benefit or a specific public benefit.

Benefit director and officer

The board of directors shall include a director who shall be designated as the benefit director. The definition of "benefit director" includes 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 the bylaws. The bill further provides for qualifications of a person exercising the powers and duties of a benefit director.

The benefit director may also serve as the benefit officer. The benefit director shall prepare an annual compliance statement describing whether the benefit corporation acted in accordance with the general public benefit purpose and any specific public benefit purpose.

A benefit corporation may have an officer designated as the benefit officer. The benefit officer shall have the powers and duties relating to the creation of general public benefit and any specific public benefit and prepare the annual benefit report.

Right of action

The duties of directors and officers of a benefit corporation, and the general public benefit purpose and any specific public benefit purpose, may be enforced in a benefit enforcement proceeding. A benefit enforcement proceeding may be commenced or maintained only directly by the benefit corporation; or derivatively by a shareholder, a director, a person that owns 5% or more of the equity interest in an association, or other persons specified in the articles or bylaws.

A "benefit enforcement proceeding" is a claim or action for failure to pursue or create the general public benefit purpose or a specific public benefit purpose; or a violation of a duty or standard of conduct under this law.

Except in a benefit enforcement proceeding, 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 any obligation, 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.

Report

A benefit corporation shall prepare an annual benefit report including a narrative description of the ways in which the benefit corporation pursued the general public benefit during the year and the ways in which the benefit corporation pursued any specific public benefit. The report shall include an assessment of the overall societal and environmental performance of the benefit corporation. The assessment shall be prepared against a third-party standard.

“Third-party standard” is a standard for defining, reporting and assessing overall corporate social and environmental performance which is comprehensive; developed by an organization that is independent of the benefit corporation; credible because the standard is developed by a person who has access to the necessary expertise and uses a balanced multi-stakeholder approach including a public comment period; and is transparent.

In addition, the report shall include the name of and contact information for the benefit director and benefit officer; the compensation paid by the benefit corporation to each director; the name of each person who owns 5% or more of the outstanding shares of the benefit corporation; and the benefit director’s annual compliance statement.

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.

Effective date

This act takes effect in 90 days.

Background: The House of Representatives passed House Bill 1616 on May 2, 2012 by a vote of 182 to 0.

Benefit corporations allow companies that see value in making positive social and environmental impact on their communities to make those for benefit operations part of their corporate mission. Other corporation classes do not allow the directors to take non-monetary benefits into account. They must legally maximize their shareholder profit and defend their decisions against only that measure. Benefit corporations can choose to expand that duty to shareholders to create a positive impact and would not be held liable for lost monetary value as a result.

The process of becoming a benefit corporation is entirely voluntary and based on shareholder desire. The changes required to the governing documents establish a benefit director and require yearly disclosure to shareholders of the public benefit efforts the company has undertaken.

Several states have enacted or are considering this legislation.

Title 15/Business Associations Committee

The Title 15/Business Associations Committee of the Section on Business Law of the Pennsylvania Bar Association provided “committee comments” to accompany the enactment of this legislation.

Legislative history

On October 25, 2011 the Senate Judiciary Committee reported from committee similar legislation, Senate Bill 433. The Senate tabled the bill.