

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 433

Printer's No.: 478

Sponsor: Senator Leach

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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, as measured by 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. A 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 the minimum status vote.

"Minimum status vote" is defined 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.

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 benefit corporation may terminate its status as a benefit corporation by amending its articles. The termination must be adopted by a minimum status vote.

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 one director who shall be designated as the 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 action" is a claim or action for failure to pursue the general public benefit purpose or a specific public benefit purpose; or a violation of a duty or standard of conduct under this law.

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 in accordance with 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.

Effective date

This act takes effect in 60 days.

Background: According to the sponsor, 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.”

Furthermore, “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.