

1 derivatively on behalf of a public benefit corporation, against
2 a director or officer for:

3 (1) Failure to pursue the general public benefit purpose
4 of the public benefit corporation or any specific
5 public benefit purpose set forth in its articles; or

6 (2) Violation of a duty or standard of conduct under this
7 chapter.

8 "Benefit officer" means the individual designated as the
9 benefit officer of a public benefit corporation under
10 section -10.

11 "General public benefit" means a material positive impact
12 on society and the environment, taken as a whole and as measured
13 by a third-party standard, from the business and operations of a
14 public benefit corporation.

15 "Independent" means that a person has no material
16 relationship with a public benefit corporation or any of its
17 subsidiaries. Serving as a benefit director or benefit officer
18 shall not deem a person independent. A material relationship
19 between a person and a public benefit corporation or any of its
20 subsidiaries shall be conclusively presumed to exist if any of
21 the following apply:



1 (1) The person is, or has been within the last three
2 years, an employee of the public benefit corporation
3 or any of its subsidiaries, other than as a benefit
4 officer;

5 (2) An immediate family member of the person is, or has
6 been within the last three years, an executive officer
7 of the public benefit corporation or any of its
8 subsidiaries, other than as a benefit officer; or

9 (3) There is a beneficial or record ownership of five per
10 cent or more of the outstanding shares of the public
11 benefit corporation by:

12 (A) The person; or

13 (B) An association:

14 (i) Of which the person is a director, an
15 officer, or a manager; or

16 (ii) In which the person owns beneficially or of
17 record five per cent or more of the
18 outstanding equity interests.

19 A percentage of ownership in an association shall be calculated
20 as if all outstanding rights to acquire equity interests in the
21 association had been exercised.



1 "Minimum status vote" means that in addition to any other
2 approval or vote required by this chapter or a bylaw adopted by
3 the shareholders:

4 (1) The holders of shares of every class or series shall
5 be entitled to vote on the corporate action regardless
6 of any limitation stated in the articles of
7 incorporation or bylaws on the voting rights of any
8 class or series; and

9 (2) The corporate action must be approved by vote of the
10 shareholders of each class or series entitled to cast
11 at least two-thirds of the votes that all shareholders
12 of the class or series are entitled to cast thereon.

13 "Public benefit corporation" means a domestic corporation,
14 as defined in section 414-3, that has elected to become subject
15 to this chapter and whose status as a public benefit corporation
16 has not been terminated as provided in this chapter.

17 "Specific public benefit" includes:

18 (1) Providing low-income or underserved individuals or
19 communities with beneficial products or services;

20 (2) Promoting economic opportunity for individuals or
21 communities beyond the creation of jobs in the normal
22 course of business;



- 1 (3) Preserving the environment;
- 2 (4) Improving human health;
- 3 (5) Promoting the arts, sciences, or advancement of
- 4 knowledge;
- 5 (6) Increasing the flow of capital to entities with a
- 6 public benefit purpose; and
- 7 (7) The accomplishment of any other particular benefit for
- 8 society or the environment.

9 "Subsidiary" of a person means an association in which the
10 person owns beneficially or of record fifty per cent or more of
11 the outstanding equity interests. A percentage of ownership in
12 an association shall be calculated as if all outstanding rights
13 to acquire equity interests in the association had been
14 exercised.

15 "Third-party standard" means a standard for defining,
16 reporting, and assessing overall corporate social and
17 environmental performance that is:

- 18 (1) Comprehensive in that it assesses the effect of the
- 19 business and its operations upon the interest listed
- 20 in section -7(a);
- 21 (2) Developed by an organization that is independent of
- 22 the public benefit corporation;



1 (3) Credible because the standard is developed by an
2 organization that:

3 (A) Has access to necessary expertise to assess
4 overall corporate social and environmental
5 performance; and

6 (B) Uses a balanced multi-stakeholder approach
7 including a public comment period of at least
8 thirty days to develop the standard; and

9 (4) Transparent because the following information is
10 publicly available:

11 (A) The criteria considered when measuring the
12 overall social and environmental performance of a
13 business, as well as the relative weightings of
14 those criteria;

15 (B) The identity of the directors, officers, any
16 material owners, and the governing body of the
17 organization that developed and controls
18 revisions to the standard;

19 (C) The process by which revisions to the standard
20 are made;

21 (D) The process by which changes to the membership of
22 the governing body of the organization that



1 developed and controls revisions to the standard
2 are made; and

3 (E) An accounting of the sources of financial support
4 for the organization that developed and controls
5 revisions to the standard, with sufficient detail
6 to disclose any relationships that could
7 reasonably be considered to present a potential
8 conflict of interest.

9 § -3 **Formation of public benefit corporations.** A public
10 benefit corporation shall be formed in accordance with the
11 domestic corporation organizational requirements of chapter 414,
12 except that its articles shall also state that it is a public
13 benefit corporation.

14 § -4 **Election of an existing domestic corporation to**
15 **become a public benefit corporation.** (a) An existing domestic
16 corporation may become a public benefit corporation under this
17 chapter by amending its articles so that they contain, in
18 addition to the requirements of chapter 414, part XI, a
19 statement that the corporation is a public benefit corporation.
20 The amendment shall not be effective unless it is adopted by at
21 least the minimum status vote.



1 (b) If a corporation that is not a public benefit
2 corporation is a party to a merger, consolidation, or division,
3 or is the exchanging corporation in a share exchange and the
4 surviving, new, or any resulting corporation in the merger,
5 consolidation, division, or share exchange is to be a public
6 benefit corporation, then the plan of merger, consolidation,
7 division, or share exchange shall not be effective unless it is
8 adopted by the corporation by at least the minimum status vote.

9 § -5 Termination of public benefit corporation status.

10 (a) A public benefit corporation may terminate its status as
11 such and cease to be subject to this chapter by amending its
12 articles to delete the statement that the corporation is a
13 public benefit corporation, as required by section -3. The
14 amendment shall not be effective unless it is adopted by at
15 least the minimum status vote.

16 (b) If a plan of merger, consolidation, division, or share
17 exchange would have the effect of terminating the status of a
18 business corporation as a public benefit corporation, the plan
19 shall not be effective unless it is adopted by at least the
20 minimum status vote.

21 § -6 Corporate purposes. (a) Every public benefit
22 corporation shall have the purpose of creating a general public



1 benefit. This purpose is in addition to its purpose as
2 specified pursuant to section 414-41.

3 (b) In addition to its purpose under section 414-41 and
4 subsection (a), the articles of a public benefit corporation may
5 identify one or more specific public benefits for which the
6 public benefit corporation was created. The identification of a
7 specific public benefit under this subsection does not limit the
8 obligation of a public benefit corporation to create a general
9 public benefit.

10 (c) The creation of general and specific public benefits
11 as provided in subsections (a) and (b) of this section shall be
12 in the best interests of the public benefit corporation.

13 (d) A public benefit corporation may amend its articles to
14 add, amend, or delete the identification of a specific public
15 benefit for which the public benefit corporation was created.
16 The amendment shall not be effective unless it is adopted by at
17 least the minimum status vote.

18 § -7 **Standard of conduct for directors.** (a) In
19 discharging the duties of their respective positions, the board
20 of directors, committees of the board, and individual directors
21 of a public benefit corporation, in considering the best
22 interests of the public benefit corporation:



- 1 (1) Shall consider the effects of any action upon:
- 2 (A) The shareholders of the public benefit
- 3 corporation;
- 4 (B) The employees and workforce of the public benefit
- 5 corporation and its subsidiaries and suppliers;
- 6 (C) The interests of customers as beneficiaries of
- 7 the general or specific public benefit purposes
- 8 of the public benefit corporation;
- 9 (D) Community and societal considerations, including
- 10 those of any community in which offices or
- 11 facilities of the public benefit corporation or
- 12 its subsidiaries or suppliers are located;
- 13 (E) The local and global environment;
- 14 (F) The short-term and long-term interests of the
- 15 public benefit corporation, including benefits
- 16 that may accrue to the public benefit corporation
- 17 from its long-term plans and the possibility that
- 18 these interests may be best served by the
- 19 continued independence of the public benefit
- 20 corporation; and



1 (G) The ability of the public benefit corporation to
2 accomplish its general public benefit purpose and
3 any specific public benefit purpose;

4 (2) May consider:

5 (A) The resources, intent, and conduct of any person
6 seeking to acquire control of the corporation;
7 and

8 (B) Any other pertinent factors or the interests of
9 any other group that they deem appropriate; and

10 (3) Shall not be required to give priority to the
11 interests of any particular person or group referred
12 to in paragraphs (1) or (2) over the interests of any
13 other person or group unless the public benefit
14 corporation has stated its intention to give priority
15 to interests related to a specific public benefit
16 purpose identified in its articles.

17 (b) The consideration of interests and factors in the
18 manner required by subsection (a) shall not constitute a
19 violation of a director's fiduciary duties.

20 (c) A director shall not be personally liable for monetary
21 damages for any action taken as a director if the director
22 performed the duties of the director's office in compliance with



1 the general standards of conduct pursuant to section 414-221 and
2 this section or for failure of the public benefit corporation to
3 create a general public benefit or a specific public benefit.

4 (d) A director shall not have a fiduciary duty to a person
5 that is a beneficiary of the general or specific public benefit
6 purposes of a public benefit corporation arising from the status
7 of the person as a beneficiary.

8 § -8 **Benefit director.** (a) The board of directors of a
9 public benefit corporation shall include one director who shall
10 be designated the "benefit director" and shall have, in addition
11 to all of the powers, duties, rights, and immunities of the
12 other directors of the public benefit corporation, the powers,
13 duties, rights, and immunities provided in this section.

14 (b) The benefit director shall be elected and may be
15 removed in the manner provided by sections 414-198 and 414-199,
16 and shall be an individual who is independent. The benefit
17 director may serve concurrently as the benefit officer. The
18 articles or bylaws of a public benefit corporation may prescribe
19 additional qualifications of the benefit director, provided that
20 the qualifications are consistent with this subsection.

21 (c) The benefit director shall prepare, and the public
22 benefit corporation shall include in the annual benefit report



1 to shareholders required by this chapter, a statement whether,
2 in the opinion of the benefit director, the public benefit
3 corporation acted in accordance with its general, and any
4 specific, public benefit purpose in all material respects during
5 the period covered by the report and whether the directors and
6 officers complied with sections -7(a) and -9(a),
7 respectively. If in the opinion of the benefit director the
8 public benefit corporation or its directors or officers failed
9 to act accordingly, then the statement of the benefit director
10 shall include a description of the ways in which the public
11 benefit corporation or its directors or officers failed to act
12 accordingly.

13 (d) For all purposes, the acts of an individual in the
14 capacity of a benefit director shall constitute acts of that
15 individual in the capacity of a director of the public benefit
16 corporation.

17 (e) If the bylaws of a public benefit corporation provide
18 that the powers and duties conferred or imposed upon the board
19 of directors shall be exercised or performed by a person or
20 persons other than the directors or if the bylaws of a statutory
21 close corporation that is a public benefit corporation provide
22 that the business and affairs of the corporation shall be



1 managed by or under the direction of the shareholders, then the
2 bylaws of the public benefit corporation shall provide that the
3 person, persons, or shareholders who perform the duties of the
4 board of directors shall include a person with the powers,
5 duties, rights, and immunities of a benefit director.

6 (f) Regardless of whether the bylaws of a public benefit
7 corporation include a provision eliminating or limiting the
8 personal liability of directors, a benefit director shall not be
9 personally liable for any act or omission committed in the
10 capacity of a benefit director unless the act or omission
11 constitutes self-dealing, wilful misconduct, or a knowing
12 violation of law.

13 § -9 **Standard of conduct for officers.** (a) Each
14 officer of a public benefit corporation shall consider the
15 interests and factors described in section -7(a) in the
16 manner provided in that section when:

- 17 (1) The officer has discretion to act with respect to a
18 matter; and
- 19 (2) It reasonably appears to the officer that the matter
20 may have a material effect on:
- 21 (A) The creation of general or specific public
22 benefit by the public benefit corporation; or



1 (B) Any of the interests or factors referred to in
2 section -7(a).

3 (b) The consideration of interests and factors pursuant to
4 subsection (a) shall not constitute a violation of the officer's
5 fiduciary duties.

6 (c) An officer shall not be personally liable for monetary
7 damages for any action taken as an officer if the officer
8 performed the duties of the position in compliance with the
9 general standards of conduct pursuant to section 414-233 and
10 this section or for failure of the public benefit corporation to
11 create a general or specific public benefit.

12 (d) An officer shall not have a fiduciary duty to a person
13 that is a beneficiary of the general or specific public benefit
14 purposes of a public benefit corporation arising from the status
15 of the person as a beneficiary.

16 § -10 **Benefit officer.** A public benefit corporation may
17 have an officer designated the "benefit officer" who shall have
18 the authority and shall perform the duties in the management of
19 the public benefit corporation relating to the purpose of the
20 corporation to create general or specific public benefit as may
21 be provided by or pursuant to the bylaws or, in the absence of
22 controlling provisions in the bylaws, as may be determined by or



1 pursuant to resolutions or orders of the board of directors. If
2 a public benefit corporation has a benefit officer, the duties
3 of the benefit officer shall include preparing the benefit
4 report required by section -12.

5 § -11 **Right of action.** (a) Except as provided in
6 sections -12(e) and -12(f), the duties of directors and
7 officers under this chapter, and the general and any specific
8 public benefit purpose of a public benefit corporation, shall be
9 enforced only in a benefit enforcement proceeding. Except as
10 provided in section -12(e) and -12(f), no person may bring
11 an action or assert a claim against a public benefit corporation
12 or its directors or officers with respect to the duties of
13 directors and officers under this chapter and the general and
14 any specific public benefit purpose of the public benefit
15 corporation, except in a benefit enforcement proceeding.

16 (b) A benefit enforcement proceeding may be commenced or
17 maintained only:

18 (1) Directly by the public benefit corporation; or

19 (2) Derivatively by:

20 (A) A shareholder;

21 (B) A director;



1 (C) A person or group of persons that owns
2 beneficially or of record five per cent or more
3 of the equity interests in an association of
4 which the public benefit corporation is a
5 subsidiary; or

6 (D) Any other persons as may be specified in the
7 articles or bylaws of the public benefit
8 corporation.

9 § -12 **Annual benefit report.** (a) A public benefit
10 corporation shall deliver to each shareholder an annual benefit
11 report including:

12 (1) A narrative description of:

13 (A) The ways in which the public benefit corporation
14 pursued general public benefits during the year
15 and the extent to which general public benefit
16 was created;

17 (B) The ways in which the public benefit corporation
18 pursued any specific public benefit that the
19 articles state as a purpose of the public benefit
20 corporation and the extent to which that specific
21 public benefit was created; and



- 1 (C) Any circumstances that have hindered the creation
2 by the public benefit corporation of general or
3 specific public benefits;
- 4 (2) An assessment of the overall social and environmental
5 performance of the public benefit corporation,
6 prepared in accordance with a third-party standard
7 applied consistently with any application of that
8 standard in prior benefit reports or accompanied by an
9 explanation of the reasons for any inconsistent
10 application;
- 11 (3) The name of the benefit director and the benefit
12 officer, if any, and the address to which
13 correspondence to each of them may be directed;
- 14 (4) The compensation paid by the public benefit
15 corporation during the year to each director in that
16 capacity;
- 17 (5) The name of each person that owns five per cent or
18 more of the outstanding shares of the public benefit
19 corporation either beneficially, to the extent known
20 to the public benefit corporation without independent
21 investigation, or of record;



1 (6) The statement of the benefit director described in
2 section -8(c); and

3 (7) A statement of any connection to the third party
4 standard, or its directors, officers, or material
5 owners from the public benefit corporation, or its
6 directors, officers, and material owners, including
7 any financial or governance relationship that might
8 materially affect the credibility of the objective
9 assessment of the third party standard.

10 (b) The benefit report shall be sent annually to each
11 shareholder within one hundred twenty days following the end of
12 the fiscal year of the public benefit corporation.

13 (c) A public benefit corporation shall post its most
14 recent benefit report on the public portion of its website, if
15 any, except that the compensation paid to directors and any
16 financial or proprietary information included in the benefit
17 report may be omitted from the benefit report as posted.

18 (d) Concurrently with the delivery of the benefit report
19 to shareholders pursuant to subsection (b), the public benefit
20 corporation shall deliver a copy of the benefit report to the
21 department of commerce and consumer affairs for filing, except
22 that the compensation paid to directors and any financial or



1 proprietary information included in the benefit report may be
2 omitted from the benefit report as filed under this section.
3 The department of commerce and consumer affairs shall charge a
4 fee of \$70 for filing a benefit report.

5 (e) In addition to the penalties set forth in section
6 414-473, each public benefit corporation that fails or refuses
7 to file its benefit report for any year shall be subject to a
8 forfeiture of an amount to be determined by the director of
9 commerce and consumer affairs not to exceed \$100 for every
10 violation, neglect, or failure, to be recovered by action
11 brought in the name of the State by the director. A continuance
12 of a failure to file the required report shall be a separate
13 offense for each thirty days of the continuance. The director
14 of commerce and consumer affairs, for good cause shown, may
15 reduce or waive the penalty imposed by this section.

16 (f) In addition to the grounds for administrative
17 dissolution set forth in section 414-401, the director of
18 commerce and consumer affairs may commence a proceeding under
19 section 414-402 to administratively dissolve a public benefit
20 corporation if the public benefit corporation fails to file its
21 annual benefit report for a period of two years."

22



1 SECTION 2. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Yr. [Signature]

Erzanne Chum Cabland

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Report Title:

Public Benefit Corporations; Organization

Description:

Establishes an organizational and regulatory framework for public benefit corporations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

