House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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CHAPTER 165

SENATE BILL 1238

AN ACT

AMENDING SECTIONS 10-122 AND 10-1302, ARIZONA REVISED STATUTES; AMENDING TITLE 10, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 22; RELATING TO BENEFIT CORPORATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 10-122, Arizona Revised Statutes, is amended to read:

10-122. Filing, service and copying fees; expedited report filing and access; same day and next day services; posted wait times; advance monies; definition

A. The commission shall collect and deposit, pursuant to sections 35-146 and 35-147, the following nonrefundable fees when the documents described in this subsection are delivered to the commission:

Document	Fee
1. Articles of incorporation	$50
2. Application for use of indistinguishable name	10
3. Application for reserved name	10
4. Notice of transfer of reserved name	10
5. Application for registered name	10
6. Application for renewal of registered name	10
7. Agent's statement of resignation	10
8. Amendment of articles of incorporation	25
9. Restatement of articles of incorporation with amendment of articles	25
10. Articles of merger or share exchange	100
11. Articles of dissolution	25
12. Articles of domestication	100
13. Articles of revocation of dissolution	25
14. Application for reinstatement following administrative dissolution, in addition to other fees and penalties due	100
15. Application for authority	150
16. Application for withdrawal	25
17. Annual report	45
18. Articles of correction	25
19. Application for certificate of good standing	10
20. Any other document required or permitted to be filed by chapters 1 through 17 of this title	25

B. The commission shall collect a nonrefundable fee of twenty-five dollars each time process is served on it under chapters 1 through 17 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

C. The commission shall charge and collect a reasonable fee for copying documents on request, provided the fee does not exceed the cost of providing the service as determined by the commission. The commission shall also charge a reasonable fee for certifying the copy of a filed document,

provided the fee does not exceed the cost of providing the service as determined by the commission.

D. A penalty of one hundred dollars payable in addition to other fees accrues and is payable if a foreign corporation fails to file an amendment, restated articles that include an amendment, or articles of merger within sixty days of the time of filing in the jurisdiction in which the corporation is domiciled. The penalty collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. One-third of the fees for the annual report of domestic and foreign corporations paid pursuant to subsection A, paragraph 17 of this section shall be deposited in the Arizona arts trust fund established by section 41-983.01 and two-thirds of these fees shall be deposited, pursuant to sections 35-146 and 35-147, in the public access fund established by section 10-122.01.

F. The commission shall provide for and establish an expedited service for the filing of all documents and services provided pursuant to this title as follows:

1. The expedited filing shall be a priority service to be completed as soon as possible after the documents are delivered to the commission.

2. In addition to any other fees required by this section or any other law, the commission shall charge a nonrefundable fee for expedited services, including those requested by fax. The fee shall be determined by a supermajority vote of the commissioners.

3. The commission may provide for and establish same day and next day services for the filing of any documents and services provided pursuant to this title as follows:

(a) The same day and next day services shall not be offered unless all expedited services filed pursuant to this title are processed within a maximum of five business days and all other documents and services filed pursuant to this title are processed within a maximum of thirty business days.

(b) The commission shall suspend same day or next day service if the commission determines that it does not have the necessary resources to perform the service within the established time period.

(c) In addition to any other fees required by this section or any other law, the commissioners may charge a nonrefundable fee for the same day or next day service or both. The fee shall be determined by a supermajority vote of the commissioners.

4. The commission shall publicly post the current wait times for processing regular, expedited and same day and next day services.

G. The commission may charge persons who access the commission's data processing system that is maintained pursuant to section 10-122.01 from remote locations and persons requesting special computer generated printouts,

reports and tapes a reasonable fee that does not exceed the cost of the time, equipment and personnel necessary to provide this service or product as determined by the commission.

H. Except as provided in section 10-122.01, subsection B, paragraph 3, in addition to any fee charged pursuant to this section, the commission may charge and collect the following nonrefundable fees to help defray the cost of the improved data processing system that is maintained pursuant to section 10-122.01:

1. Filing articles of incorporation of a domestic corporation, ten dollars.

2. Filing an application of a foreign corporation for authority to transact business in this state, twenty-five dollars.

I. All monies received pursuant to subsections F, G and H of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the public access fund established by section 10-122.01.

J. Fees charged pursuant to this section are exempt from section 39-121.03, subsection A, paragraph 3.

K. Any person may advance monies to the commission to pay fees required pursuant to this section for future filings and services. All monies received pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the money on deposit account in the public access fund established by section 10-122.01.

L. IN ADDITION TO ANY OTHER FEES PRESCRIBED BY LAW, THE COMMISSION MAY ESTABLISH A FEE FOR THE FILING OF AN ANNUAL BENEFIT REPORT DELIVERED TO THE COMMISSION PURSUANT TO SECTION 10-2442. THE FEE SHALL BE DETERMINED BY A MAJORITY VOTE OF THE COMMISSIONERS.

~~L.~~ M. For the purposes of this section, "supermajority" means an affirmative vote of at least four commissioners.

Sec. 2. Section 10-1302, Arizona Revised Statutes, is amended to read:

10-1302. Right to dissent

A. A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

1. Consummation of a plan of merger to which the corporation is a party if either:

(a) Shareholder approval is required for the merger by section 10-1103 or the articles of incorporation and if the shareholder is entitled to vote on the merger.

(b) The corporation is a subsidiary that is merged with its parent under section 10-1104.

2. Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

3. Consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to a court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

4. An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it either:

(a) Alters or abolishes a preferential right of the shares.

(b) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(c) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities.

(d) Excludes or limits the right of the shares to vote on any matter or to cumulate votes other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(e) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 10-604.

5. Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, the bylaws or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

6. AN ELECTION OF THE SHAREHOLDERS PURSUANT TO SECTION 10-2404 TO HAVE BENEFIT CORPORATION STATUS OR AN ELECTION OF THE SHAREHOLDERS PURSUANT TO SECTION 10-2405 TO TERMINATE STATUS AS A BENEFIT CORPORATION.

B. A shareholder entitled to dissent and obtain payment for his shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

C. This section does not apply to the holders of shares of any class or series if the shares of the class or series are redeemable securities issued by a registered investment company as defined pursuant to the investment company act of 1940 (15 United States Code section 80a-1 through 80a-64).

D. Unless the articles of incorporation of the corporation provide otherwise, this section does not apply to the holders of shares of a class or series if the shares of the class or series were registered on a national securities exchange, were listed on the national market systems of the national association of securities dealers automated quotation system or were

held of record by at least two thousand shareholders on the date fixed to determine the shareholders entitled to vote on the proposed corporate action.

Sec. 3. Title 10, Arizona Revised Statutes, is amended by adding chapter 22, to read:

CHAPTER 22

BENEFIT CORPORATIONS

ARTICLE 1. GENERAL PROVISIONS

10-2401. Application and effect of chapter

A. THIS CHAPTER IS APPLICABLE TO ALL BENEFIT CORPORATIONS.

B. THE EXISTENCE OF A PROVISION OF THIS CHAPTER DOES NOT OF ITSELF CREATE AN IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION. THIS CHAPTER DOES NOT AFFECT A STATUTE OR RULE OF LAW THAT IS APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION.

C. EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, CHAPTERS 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 AND 17 OF THIS TITLE ARE GENERALLY APPLICABLE TO ALL BENEFIT CORPORATIONS. THE SPECIFIC PROVISIONS OF THIS CHAPTER CONTROL OVER THE GENERAL PROVISIONS OF CHAPTERS 1 THROUGH 17 OF THIS TITLE.

D. A BENEFIT CORPORATION MAY BE SUBJECT SIMULTANEOUSLY TO THIS CHAPTER AND CHAPTER 18 OR 20 OF THIS TITLE. IN THAT EVENT, THE PROVISIONS OF THIS CHAPTER CONTROL OVER CHAPTER 18 OR 20.

E. A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS OF A BENEFIT CORPORATION MAY NOT LIMIT, BE INCONSISTENT WITH OR SUPERSEDE A PROVISION OF THIS CHAPTER.

10-2402. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "BENEFIT CORPORATION" MEANS A CORPORATION THAT BOTH:

(a) HAS ELECTED TO BECOME SUBJECT TO THIS CHAPTER.

(b) THE STATUS OF WHICH AS A BENEFIT CORPORATION HAS NOT BEEN TERMINATED.

2. "BENEFIT ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR ACTION FOR EITHER OF THE FOLLOWING:

(a) THE FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET FORTH IN ITS ARTICLES.

(b) A VIOLATION OF ANY OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER THIS CHAPTER.

3. "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.

4. "MINIMUM STATUS VOTE" MEANS:

(a) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

(i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY CLASS OR SERIES.

(ii) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST TWO-THIRDS OF THE VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE ACTION.

(b) IN THE CASE OF A DOMESTIC ENTITY OTHER THAN A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE OR CONSENT, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

(i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS OR SERIES.

(ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

5. "SPECIFIC PUBLIC BENEFIT" INCLUDES:

(a) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES.

(b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS.

(c) PROTECTING OR RESTORING THE ENVIRONMENT.

(d) IMPROVING HUMAN HEALTH.

(e) PROMOTING THE ARTS, SCIENCES OR ADVANCEMENT OF KNOWLEDGE.

(f) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PURPOSE TO BENEFIT SOCIETY OR THE ENVIRONMENT.

(g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR THE ENVIRONMENT AS SPECIFIED IN THE BENEFIT CORPORATION'S ARTICLES OF INCORPORATION.

6. "SUBSIDIARY" MEANS, IN RELATION TO A PERSON, AN ENTITY IN WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD FIFTY PER CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS.

7. "SUPERMAJORITY STATUS VOTE" MEANS:

(a) FOR A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

(i) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO VOTE AS A SEPARATE VOTING GROUP ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION

STATED IN THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY CLASS OR SERIES.

(ii) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST THREE-FOURTHS OF THE VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST ON THE ACTION.

(b) FOR A DOMESTIC ENTITY OTHER THAN A BUSINESS CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE OR CONSENT, THE SATISFACTION OF THE FOLLOWING CONDITIONS:

(i) THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE ENTITY THAT ARE ENTITLED TO RECEIVE A DISTRIBUTION OF ANY KIND FROM THE ENTITY ARE ENTITLED TO VOTE ON OR CONSENT TO THE ACTION REGARDLESS OF ANY OTHERWISE APPLICABLE LIMITATION ON THE VOTING OR CONSENT RIGHTS OF ANY CLASS OR SERIES.

(ii) THE ACTION IS APPROVED BY VOTE OR CONSENT OF THE HOLDERS DESCRIBED IN ITEM (i) OF THIS SUBDIVISION ENTITLED TO CAST AT LEAST THREE-FOURTHS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

8. "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD FOR DEFINING, REPORTING AND ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT IS:

(a) COMPREHENSIVE BECAUSE IT ASSESSES THE EFFECT OF A BUSINESS AND ITS OPERATIONS ON THE INTERESTS LISTED IN SECTION 10-2431, SUBSECTION A, PARAGRAPH 1.

(b) DEVELOPED BY AN ENTITY THAT IS NOT CONTROLLED BY THE BENEFIT CORPORATION.

(c) CREDIBLE BECAUSE IT IS DEVELOPED BY AN ENTITY THAT BOTH:

(i) HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE.

(ii) USES A BALANCED MULTISTAKEHOLDER APPROACH TO DEVELOP THE STANDARD, INCLUDING A REASONABLE PUBLIC COMMENT PERIOD.

(d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY AVAILABLE ABOUT THE STANDARD:

(i) THE CRITERIA CONSIDERED WHEN MEASURING THE OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A BUSINESS.

(ii) THE RELATIVE WEIGHTINGS, IF ANY, OF THOSE CRITERIA.

(e) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS PUBLICLY AVAILABLE ABOUT THE DEVELOPMENT AND REVISION OF THE STANDARD:

(i) THE IDENTITY OF THE DIRECTORS, OFFICERS, MATERIAL OWNERS AND GOVERNING BODY OF THE ENTITY THAT DEVELOPED AND CONTROLS REVISIONS TO THE STANDARD.

(ii) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND CHANGES TO THE MEMBERSHIP OF THE GOVERNING BODY ARE MADE.

(iii) AN ACCOUNTING OF THE REVENUE AND SOURCES OF FINANCIAL SUPPORT FOR THE ENTITY, WITH SUFFICIENT DETAIL TO DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED TO PRESENT A POTENTIAL CONFLICT OF INTEREST.

10-2403. Incorporation of benefit corporation

A BENEFIT CORPORATION SHALL BE INCORPORATED IN ACCORDANCE WITH CHAPTER 2, ARTICLE 1 OF THIS TITLE, EXCEPT THAT ITS ARTICLES OF INCORPORATION MUST ALSO STATE THAT IT IS A BENEFIT CORPORATION.

10-2404. Election of benefit corporation status

A. AN EXISTING BUSINESS CORPORATION MAY BECOME A BENEFIT CORPORATION UNDER THIS CHAPTER BY AMENDING ITS ARTICLES OF INCORPORATION SO THAT THEY CONTAIN, IN ADDITION TO THE REQUIREMENTS OF SECTION 10-202, A STATEMENT THAT THE CORPORATION IS A BENEFIT CORPORATION. IN ORDER TO BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE SUPERMAJORITY STATUS VOTE.

B. IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY TO A MERGER OR THE ACQUIRED ENTITY IN A SHARE EXCHANGE, AND THE SURVIVING OR ACQUIRED ENTITY IN THE MERGER OR SHARE EXCHANGE IS TO BE A BENEFIT CORPORATION, THE PLAN OF MERGER OR SHARE EXCHANGE MUST BE ADOPTED BY AT LEAST THE SUPERMAJORITY STATUS VOTE.

10-2405. Termination of benefit corporation status

A. A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A BENEFIT CORPORATION AND CEASE TO BE SUBJECT TO THIS CHAPTER BY AMENDING ITS ARTICLES OF INCORPORATION TO DELETE THE PROVISION REQUIRED BY SECTIONS 10-2403 OR 10-2404 TO BE STATED IN THE ARTICLES OF A BENEFIT CORPORATION. IN ORDER TO BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

B. IF A PLAN OF MERGER OR SHARE EXCHANGE WOULD HAVE THE EFFECT OF TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPORATION, THE PLAN MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE IN ORDER TO BE EFFECTIVE. ANY SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF 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.

ARTICLE 2. CORPORATE PURPOSES

10-2421. Corporate purposes

A. A BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSE UNDER SECTION 10-301.

B. THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION MAY IDENTIFY ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION 10-301 AND SUBSECTION A OF THIS SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC

BENEFIT UNDER THIS SUBSECTION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT CORPORATION UNDER SUBSECTION A OF THIS SECTION.

C. THE CREATION OF GENERAL PUBLIC BENEFIT AND A SPECIFIC PUBLIC BENEFIT UNDER SUBSECTIONS A AND B OF THIS SECTION IS IN THE BEST INTERESTS OF THE BENEFIT CORPORATION.

D. A BENEFIT CORPORATION MAY AMEND ITS ARTICLES OF INCORPORATION TO ADD, AMEND OR DELETE THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT THAT IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE. IN ORDER TO BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

E. A PROFESSIONAL CORPORATION THAT IS A BENEFIT CORPORATION DOES NOT VIOLATE SECTION 10-2211 BY HAVING THE PURPOSE TO CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

ARTICLE 3. ACCOUNTABILITY

10-2431. Standard of conduct for directors

A. IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE BOARD OF DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A BENEFIT CORPORATION:

1. SHALL CONSIDER THE EFFECTS OF ANY ACTION OR INACTION ON:

(a) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

(b) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION, ITS SUBSIDIARIES AND ITS SUPPLIERS.

(c) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT CORPORATION.

(d) COMMUNITY AND SOCIETAL FACTORS, INCLUDING THOSE OF EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT CORPORATION, ITS SUBSIDIARIES OR ITS SUPPLIERS ARE LOCATED.

(e) THE LOCAL AND GLOBAL ENVIRONMENT.

(f) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT CORPORATION.

(g) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC BENEFIT PURPOSE.

2. MAY CONSIDER THE INTERESTS REFERRED TO IN SECTION 10-2702 AND OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP THAT THEY DEEM APPROPRIATE EXCEPT THAT THEY DO NOT HAVE TO GIVE PRIORITY TO THE INTERESTS OF A PARTICULAR PERSON OR GROUP REFERRED TO IN THIS SUBSECTION OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE BENEFIT CORPORATION HAS STATED IN ITS ARTICLES OF INCORPORATION ITS INTENTION TO GIVE PRIORITY TO CERTAIN INTERESTS RELATED TO ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT PURPOSE OR OF A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS ARTICLES.

B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED BY SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION 10-830.

C. EXCEPT AS PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS AND IN SUBSECTION E OF THIS SECTION, A DIRECTOR IS NOT PERSONALLY LIABLE FOR MONETARY DAMAGES FOR:

1. ANY ACTION OR INACTION IN THE COURSE OF PERFORMING THE DUTIES OF A DIRECTOR UNDER SUBSECTION A OF THIS SECTION IF THE DIRECTOR PERFORMED THE DUTIES OF OFFICE IN COMPLIANCE WITH SECTION 10-830 AND THIS SECTION.

2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

D. A DIRECTOR DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

E. SUBSECTION C OF THIS SECTION DOES NOT APPLY TO A DIRECTOR'S CONFLICTING INTEREST TRANSACTION, AS DEFINED IN SECTION 10-860, IN WHICH THE DIRECTOR HAS DIRECTLY OR INDIRECTLY BENEFITTED.

10-2432. Standard of conduct for officers

A. EACH OFFICER OF A BENEFIT CORPORATION SHALL CONSIDER THE INTERESTS AND FACTORS DESCRIBED IN SECTION 10-2431, SUBSECTION A, IN THE MANNER PROVIDED IN THAT SUBSECTION, IF BOTH OF THE FOLLOWING APPLY:

1. THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A MATTER.

2. IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER MAY HAVE A MATERIAL EFFECT ON THE GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT IDENTIFIED IN THE ARTICLES OF INCORPORATION OF THE BENEFIT CORPORATION.

B. THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER DESCRIBED IN SUBSECTION A OF THIS SECTION DOES NOT CONSTITUTE A VIOLATION OF SECTION 10-842.

C. EXCEPT AS PROVIDED IN THE ARTICLES OF INCORPORATION OR BYLAWS, AN OFFICER IS NOT PERSONALLY LIABLE FOR MONETARY DAMAGES FOR EITHER OF THE FOLLOWING:

1. AN ACTION OR INACTION AS AN OFFICER IN THE COURSE OF PERFORMING THE DUTIES OF AN OFFICER UNDER SUBSECTION A OF THIS SECTION IF THE OFFICER PERFORMED THE DUTIES OF THE POSITION IN COMPLIANCE WITH SECTION 10-842 AND THIS SECTION.

2. FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

D. AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL PUBLIC BENEFIT PURPOSE OR THE SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

E. AN OFFICER WHO MAKES A BUSINESS JUDGMENT IN GOOD FAITH FULFILLS THE DUTY UNDER THIS SECTION IF ALL OF THE FOLLOWING APPLY:

1. THE OFFICER IS NOT INTERESTED IN THE SUBJECT OF THE BUSINESS JUDGMENT.

2. THE OFFICER IS INFORMED WITH RESPECT TO THE SUBJECT OF THE BUSINESS JUDGMENT TO THE EXTENT THE OFFICER REASONABLY BELIEVES TO BE APPROPRIATE UNDER THE CIRCUMSTANCES.

3. THE OFFICER RATIONALLY BELIEVES THAT THE BUSINESS JUDGMENT IS IN THE BEST INTERESTS OF THE BENEFIT CORPORATION.

10-2433. Right of action

A. EXCEPT IN A BENEFIT ENFORCEMENT PROCEEDING, A PERSON MAY NOT BRING AN ACTION OR ASSERT A CLAIM AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS WITH RESPECT TO EITHER OF THE FOLLOWING:

1. THE FAILURE TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS ARTICLES OF INCORPORATION.

2. THE VIOLATION OF AN OBLIGATION, DUTY OR STANDARD OF CONDUCT UNDER THIS CHAPTER.

B. A BENEFIT CORPORATION IS NOT LIABLE FOR MONETARY DAMAGES UNDER THIS CHAPTER FOR ANY FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

C. A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED OR MAINTAINED ONLY BY EITHER OF THE FOLLOWING:

1. DIRECTLY BY THE BENEFIT CORPORATION.

2. DERIVATIVELY IN ACCORDANCE WITH CHAPTER 7, ARTICLE 4 OF THIS TITLE BY ANY OF THE FOLLOWING:

(a) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF RECORD AT LEAST TWO PER CENT OF THE TOTAL NUMBER OF SHARES OF ALL CLASSES AND SERIES OUTSTANDING AT THE TIME OF THE ACT OR OMISSION THAT IS THE SUBJECT OF THE COMPLAINT.

(b) A DIRECTOR.

(c) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF RECORD FIVE PER CENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS IN AN ENTITY OF WHICH THE BENEFIT CORPORATION IS A SUBSIDIARY AT THE TIME OF THE ACT OR OMISSION THAT IS THE SUBJECT OF THE COMPLAINT.

(d) OTHER PERSONS AS SPECIFIED IN THE ARTICLES OF INCORPORATION OR BYLAWS OF THE BENEFIT CORPORATION.

D. FOR THE PURPOSES OF THIS SECTION, A PERSON IS THE BENEFICIAL OWNER OF SHARES OR EQUITY INTERESTS IF THE SHARES OR EQUITY INTERESTS ARE HELD IN A VOTING TRUST OR BY A NOMINEE ON BEHALF OF THE BENEFICIAL OWNER.

ARTICLE 4. TRANSPARENCY

10-2441. Preparation of annual benefit report

A. A BENEFIT CORPORATION SHALL PREPARE AN ANNUAL BENEFIT REPORT THAT INCLUDES ALL OF THE FOLLOWING:

1. A NARRATIVE DESCRIPTION OF:

(a) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC BENEFIT WAS CREATED.

(b) BOTH:

(i) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED A SPECIFIC PUBLIC BENEFIT THAT THE ARTICLES OF INCORPORATION STATE IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE.

(ii) THE EXTENT TO WHICH THE SPECIFIC PUBLIC BENEFIT WAS CREATED.

(c) ANY CIRCUMSTANCES THAT HAVE HINDERED THE BENEFIT CORPORATION IN CREATING GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

(d) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT.

2. AN ASSESSMENT OF THE OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF THE BENEFIT CORPORATION AGAINST A THIRD-PARTY STANDARD THAT IS EITHER OF THE FOLLOWING:

(a) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT STANDARD IN PRIOR BENEFIT REPORTS.

(b) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR EITHER OF THE FOLLOWING:

(i) ANY INCONSISTENT APPLICATION.

(ii) THE CHANGE TO THAT STANDARD FROM THE ONE USED IN THE IMMEDIATELY PRIOR REPORT.

3. THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR TO EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR.

4. A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS, ITS OFFICERS OR ANY HOLDER OF FIVE PER CENT OR MORE OF THE GOVERNANCE INTERESTS IN THE ORGANIZATION AND THE BENEFIT CORPORATION OR ITS DIRECTORS, ITS OFFICERS OR ANY HOLDER OF FIVE PER CENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION, OR ANY OTHER FINANCIAL OR GOVERNANCE RELATIONSHIP THAT MIGHT MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF THE THIRD-PARTY STANDARD.

B. NEITHER THE BENEFIT REPORT NOR THE ASSESSMENT OF THE PERFORMANCE OF THE BENEFIT CORPORATION IN THE BENEFIT REPORT REQUIRED BY SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS REQUIRED TO BE AUDITED OR CERTIFIED BY A THIRD-PARTY STANDARDS PROVIDER.

10-2442. Availability of annual benefit report

A. A BENEFIT CORPORATION SHALL SEND ITS ANNUAL BENEFIT REPORT TO EACH SHAREHOLDER:

1. WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR OF THE BENEFIT CORPORATION.

2. AT THE SAME TIME THE BENEFIT CORPORATION DELIVERS ANY OTHER ANNUAL REPORT TO ITS SHAREHOLDERS.

B. A BENEFIT CORPORATION SHALL POST ALL OF ITS BENEFIT REPORTS ON THE PUBLIC PORTION OF ITS INTERNET WEBSITE, IF ANY, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORTS MAY BE OMITTED FROM THE BENEFIT REPORTS AS POSTED.

C. IF A BENEFIT CORPORATION DOES NOT HAVE AN INTERNET WEBSITE, THE BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT BENEFIT REPORT, WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A COPY, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE COPY OF THE BENEFIT REPORT PROVIDED.

D. CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO SHAREHOLDERS UNDER SUBSECTION A OF THIS SECTION, THE BENEFIT CORPORATION SHALL DELIVER A COPY OF THE BENEFIT REPORT TO THE ARIZONA CORPORATION COMMISSION FOR FILING, EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM THE BENEFIT REPORT AS DELIVERED TO THE ARIZONA CORPORATION COMMISSION.

Sec. 4. Effective date

This act is effective from and after December 31, 2014.

APPROVED BY THE GOVERNOR APRIL 30, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2013.

Passed the House April 2, 2013,

by the following vote: 40 Ayes,

19 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 14, 2013,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1238

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 22, 20 13

by the following vote: 25 Ayes,

2 Nays, 3 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30 day of April, 20 13

at 9:27 o'clock A M.

Secretary to the Governor

Approved this 30th day of

April

at 2:31 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 1st day of May, 20 13

S.B. 1238

at 9:02 o'clock a M.

Secretary of State