

SB2897



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2897

Introduced 2/1/2012, by Sen. Michael W. Frerichs

SYNOPSIS AS INTRODUCED:

New Act

Creates the Benefit Corporation Act. Provides that a corporation may elect to become a benefit corporation by amending its articles of incorporation. Provides that in addition to its purposes under the Business Corporation Act of 1983 and any specific purpose set forth in its articles of incorporation, a benefit corporation shall have a purpose of creating general public benefit. Requires the preparation of an annual report for specified distribution and filing with the Secretary of State. Defines key terms and contains provisions concerning accountability and transparency.

LRB097 13492 JLS 62053 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Article 1. General Provisions

5 Section 1. Short title. This Act may be cited as the
6 Benefit Corporation Act.

7 Section 1.05. Application and effect of the Act.

8 (a) This Act shall be applicable to all benefit
9 corporations.

10 (b) The existence of a provision of this Act shall not of
11 itself create an implication that a contrary or different rule
12 of law is applicable to a corporation which is not a benefit
13 corporation. This Act shall not affect a statute or rule of law
14 that is applicable to a business corporation that is not a
15 benefit corporation.

16 (c) The Business Corporation Act of 1983, as heretofore or
17 hereafter amended, shall be applicable to such benefit
18 corporations, including their organization, and they shall
19 enjoy the powers and privileges and be subject to the duties,
20 far as the same may be limited or enlarged by this Act. If any
21 provision of this Act conflicts with the Business Corporation
22 Act of 1983, this Act shall take precedence.

1 (d) A provision of the articles of incorporation or bylaws
2 of a benefit corporation may not relax, be inconsistent with,
3 or supersede a provision of this Act.

4 Section 1.10. Definitions. As used in this Act, unless the
5 context otherwise requires, the words and phrases defined in
6 this Section shall have the meanings set forth herein.

7 "Benefit corporation" means a corporation organized under
8 the Business Corporation Act of 1983:

9 (1) which has elected to become subject to this Act;
10 and

11 (2) whose status as a benefit corporation has not been
12 terminated under Section 2.10.

13 "Benefit director" means either:

14 (1) the director designated as the benefit director of
15 a benefit corporation under Section 4.05; or

16 (2) a person with one or more of the powers, duties, or
17 rights of a benefit director to the extent provided in the
18 bylaws pursuant to section 4.05.

19 "Benefit enforcement proceeding" means a claim or action
20 for:

21 (1) the failure of a benefit corporation to pursue or
22 create general public benefit or a specific public benefit
23 set forth in its articles of incorporation; or

24 (2) a violation of an obligation, duty, or standard of
25 conduct under this Act.

1 "Benefit Officer" means the individual designated as the
2 benefit officer of a benefit corporation under Section 4.15.

3 "General public benefit" means a material positive impact
4 on society and the environment, taken as a whole, assessed
5 against a third-party standard, from the business and
6 operations of a benefit corporation.

7 "Independent" means having no material relationship with a
8 benefit corporation or a subsidiary of the benefit corporation.
9 A person serving as benefit director or benefit officer may be
10 considered independent. For the purposes of this definition, a
11 percentage of ownership in an entity shall be calculated as if
12 all outstanding rights to acquire equity interests in the
13 entity have been exercised. A material relationship between a
14 person and a benefit corporation or any of its subsidiaries
15 will be conclusively presumed to exist if:

16 (1) the person is, or has been within the last 3 years,
17 an employee other than a benefit officer of the benefit
18 corporation or a subsidiary of the benefit corporation;

19 (2) an immediate family member of the person is, or has
20 been within the last 3 years, an executive officer other
21 than a benefit officer of the benefit corporation or its
22 subsidiaries; or

23 (3) there is beneficial or record ownership of 5% or
24 more of the outstanding shares of the benefit corporation
25 by:

26 (A) the person; or

1 (B) an entity:

2 (i) of which the person is a director, an
3 officer, or a manager; or

4 (ii) in which the person owns beneficially or
5 of record 5% or more of the outstanding equity
6 interests.

7 "Minimum status vote" means that:

8 (1) in the case of a corporation, in addition to any
9 other approval or vote required by the Business Corporation
10 Act of 1983, the bylaws, or the articles of incorporation:

11 (A) the shareholders of every class or series shall
12 be entitled to vote on the corporate action regardless
13 of a limitation stated in the articles of incorporation
14 or bylaws on the voting rights of any class or series;
15 and

16 (B) the corporate action shall be approved by vote
17 of the outstanding shares of each class or series
18 entitled to vote by at least two-thirds of the votes
19 that all shareholders of the class or series are
20 entitled to cast on the action; and

21 (2) in the case of an entity organized under the laws
22 of this State that is not a corporation, in addition to any
23 other approval, vote, or consent required by the statutory
24 law, if any, that principally governs the internal affairs
25 of the entity or any provision of the publicly filed record
26 or document required to form the entity, if any, or of any

1 agreement binding on some or all of the holders of equity
2 interests in the entity:

3 (A) the holders of every class or series of equity
4 interest in the entity that are entitled to receive a
5 distribution of any kind from the entity shall be
6 entitled to vote on or consent to the action regardless
7 of any otherwise applicable limitation on the voting or
8 consent rights of any class or series; and

9 (B) the action must be approved by a vote or
10 consent of at least two-thirds of such holders.

11 "Specific public benefit" means:

12 (1) providing low-income or underserved individuals or
13 communities with beneficial products or services;

14 (2) promoting economic opportunity for individuals or
15 communities beyond the creation of jobs in the ordinary
16 course of business;

17 (3) preserving the environment;

18 (4) improving human health;

19 (5) promoting the arts, sciences or advancement of
20 knowledge;

21 (6) increasing the flow of capital to entities with a
22 public benefit purpose; or

23 (7) the accomplishment of any other particular benefit
24 for society or the environment.

25 "Subsidiary" of a person means an entity in which the
26 person owns beneficially or of record 50% or more of the

1 outstanding equity interests. For the purposes of this
2 subsection, a percentage of ownership in an entity shall be
3 calculated as if all outstanding rights to acquire equity
4 interests in the entity have been exercised.

5 "Third-party standard" means a standard for defining,
6 reporting, and assessing overall corporate, social, and
7 environmental performance that:

8 (1) is a comprehensive assessment of the impact of the
9 business and the business' operations upon the
10 considerations listed in subdivisions (a)(1)(B) through
11 (a)(1)(E) of Section 4.01;

12 (2) is developed by an entity that has no material
13 financial relationship with the benefit corporation or any
14 of its subsidiaries;

15 (3) is developed by an entity that is not materially
16 financed by any of the following organizations and not more
17 than one-third of the members of the governing body of the
18 entity are representatives of:

19 (A) associations of businesses operating in a
20 specific industry, the performance of whose
21 members is measured by the standard;

22 (B) businesses from a specific industry or an
23 association of businesses in that industry; or

24 (C) businesses whose performance is assessed
25 against the standard; and

26 (4) is developed by an entity that:

1 (A) accesses necessary and appropriate expertise
2 to assess overall corporate social and environmental
3 performance; and

4 (B) uses a balanced multi-stakeholder approach,
5 including a public comment period of at least 30 days
6 to develop the standard; and

7 (5) makes the following information regarding the
8 standard publicly available:

9 (A) the factors considered when measuring the
10 overall social and environmental performance of a
11 business and the relative weight, if any, given to each
12 of those factors;

13 (B) the identity of the directors, officers, any
14 material owners, and the governing body of the entity
15 that developed, and controls revisions to, the
16 standard, and the process by which revisions to the
17 standard and changes to the membership of the governing
18 body are made; and

19 (C) an accounting of the sources of financial
20 support for the entity, with sufficient detail to
21 disclose any relationships that could reasonably be
22 considered to present a potential conflict of
23 interest.

24 Article 2. Formation of Benefit Corporations

1 Section 2.01. Formation of benefit corporations. A benefit
2 corporation must be formed in accordance with Article 2 of the
3 Business Corporation Act of 1983. In addition to the formation
4 requirements of that Act, the articles of incorporation of a
5 benefit corporation must state that it is a benefit corporation
6 in accordance with the provisions of this Article.

7 Section 2.05. Election of status.

8 (a) A corporation may become a benefit corporation under
9 this Act by amending its articles of incorporation so that they
10 contain a statement that the corporation is a benefit
11 corporation. In order to be effective, the amendment must be
12 adopted by at least the minimum status vote.

13 (b) For any entity that is a party to a merger or
14 consolidation or is the exchanging entity in a share exchange,
15 where the surviving, new, or resulting entity in the merger,
16 consolidation, or share exchange is intended to be a benefit
17 corporation, such plan of merger, consolidation, or share
18 exchange must be adopted by at least the minimum status vote in
19 order to be effective.

20 Section 2.10. Termination of status.

21 (a) A benefit corporation may terminate its status as such
22 and cease to be subject to this Act by amending its articles of
23 incorporation to remove the statement that the corporation is a
24 benefit corporation. In order to be effective, the amendment

1 must be adopted by at least the minimum status vote.

2 (b) If a plan of merger, conversion, or share exchange
3 would have the effect of terminating the status of a
4 corporation as a benefit corporation, in order to be effective,
5 the plan must be adopted by at least the minimum status vote.

6 (c) A sale, lease, exchange or other disposition of all or
7 substantially all of the assets of a benefit corporation,
8 unless the transaction is in the usual and ordinary course of
9 business, shall not be effective unless the transaction is
10 adopted by at least the minimum status vote.

11 Article 3. Corporate Purposes

12 Section 3.01. Corporate purposes.

13 (a) A benefit corporation shall have a purpose of creating
14 general public benefit. This purpose is in addition to its
15 purposes under Section 3.05 of the Business Corporation Act of
16 1983 and any specific purpose set forth in its articles of
17 incorporation in accordance with subsection (b).

18 (b) The articles of incorporation of a benefit corporation
19 may identify one or more specific public benefits the creation
20 of which is a purpose of the benefit corporation in addition to
21 its purposes under Section 3.05 of the Business Corporation Act
22 of 1983 and subsection (a). The identification of a specific
23 public benefit under this subsection does not limit the
24 obligation of a benefit corporation under subsection (a).

1 (c) The creation of general public benefit and specific
2 public benefit under subsections (a) and (b) is in the best
3 interests of the benefit corporation.

4 (d) A benefit corporation may amend its articles of
5 incorporation to add, change, or remove a specific public
6 benefit. In order to be effective, the amendment must be
7 adopted by at least the minimum status vote.

8 (e) A professional corporation that is a benefit
9 corporation does not violate Sections 3.4 or 6 of the
10 Professional Service Corporation Act by having the purpose to
11 create general public benefit or a specific public benefit.

12 Article 4. Accountability

13 Section 4.01. Standard of Conduct for Directors.

14 (a) Without regard to whether the benefit corporation is
15 subject to Section 8.85 of the Business Corporation Act of
16 1983, in discharging the duties of their respective positions,
17 the board of directors, committees of the board, and individual
18 directors of a benefit corporation in considering the best
19 interests of the benefit corporation:

20 (1) shall consider the effects of any action upon:

21 (A) the shareholders of the benefit corporation;

22 (B) the employees and work force of the benefit
23 corporation, its subsidiaries, and its suppliers;

24 (C) the interests of customers as beneficiaries of

1 the general public benefit or specific public benefit
2 purposes of the benefit corporation;

3 (D) community and societal considerations,
4 including those of each community in which offices or
5 facilities of the benefit corporation, its
6 subsidiaries or its suppliers are located;

7 (E) the local and global environment;

8 (F) the short-term and long-term interests of the
9 benefit corporation, including benefits that may
10 accrue to the benefit corporation from its long-term
11 plans and the possibility that these interests may be
12 best served by the continued independence of the
13 benefit corporation; and

14 (G) the ability of the benefit corporation to
15 accomplish its general public benefit purpose and any
16 specific public benefit purpose; and

17 (2) may consider:

18 (A) considerations listed in Section 8.85 of the
19 Business Corporation Act of 1983; and

20 (B) any other pertinent factors or the interests of
21 any other group that they deem appropriate; but

22 (3) need not give priority to the interests of a
23 particular person or group referred to in paragraphs (1) or
24 (2) over the interests of another person or group unless
25 the benefit corporation has stated in its articles of
26 incorporation its intention to give priority to certain

1 interests related to its accomplishment of its general
2 public benefit purpose or a specific public benefit purpose
3 identified in its articles of incorporation.

4 (b) The consideration of interests and factors in the
5 manner required by subsection (a) is in addition to the ability
6 of directors to consider interests and factors as provided in
7 Section 8.85 of the Business Corporation Act of 1983.

8 (c) A director is not personally liable for monetary
9 damages for:

10 (1) any action taken as a director if the director
11 performed the duties of office in compliance with Article 8
12 of the Business Corporation Act of 1983 and this Section;
13 or

14 (2) a failure of the benefit corporation to pursue or
15 create general public benefit or a specific public benefit.

16 (d) A director does not have a duty to a person that is a
17 beneficiary of the general public benefit purpose or a specific
18 public benefit purpose of a benefit corporation arising from
19 the status of the person as a beneficiary.

20 Section 4.05. Benefit director.

21 (a) The board of directors of a benefit corporation shall
22 include a director, who:

23 (1) is designated as the benefit director; and

24 (2) has, in addition to the powers, duties, rights, and
25 immunities of the other directors of the benefit

1 corporation, the powers, duties, rights, and immunities
2 provided in this Section.

3 (b) The benefit director shall be elected, and may be
4 removed, in the manner provided by Article 8 of the Business
5 Corporation Act of 1983 and shall be an individual who is
6 independent, as defined in Section 1.10. The benefit director
7 may serve as the benefit officer at the same time as serving as
8 the benefit director. The articles of incorporation or bylaws
9 of a benefit corporation may prescribe additional
10 qualifications of the benefit director not inconsistent with
11 this Section.

12 (c) The benefit director shall prepare, and the benefit
13 corporation shall include in the annual benefit report to
14 shareholders required by Section 5.01 of this Act, the opinion
15 of the benefit director on:

16 (1) whether the benefit corporation acted in
17 accordance with its general public benefit purpose and any
18 specific public benefit purpose in all material respects
19 during the period covered by the report; and

20 (2) whether the directors and officers complied with
21 subsection (a) of Section 4.01 and subsection (a) of
22 Section 4.10, respectively, and if, in the opinion of the
23 benefit director, the directors and officers did not so
24 comply, a description of the failure to comply.

25 (d) The acts of an individual in the capacity of a benefit
26 director shall constitute, for all purposes, acts of that

1 individual in the capacity of a director of the benefit
2 corporation.

3 (e) If the bylaws of a benefit corporation provide that the
4 powers and duties conferred or imposed upon the board of
5 directors shall be exercised or performed by a person or
6 persons other than the directors, in contrast to subsection (a)
7 of Section 8.05 of the Business Corporation Act of 1983, or if
8 the bylaws of a close corporation that is a benefit corporation
9 provide that the business and affairs of the corporation shall
10 be managed by or under the director of the shareholders, then
11 the bylaws of the benefit corporation must provide that the
12 person, persons, or shareholders who perform the duties of a
13 board of directors shall include a person with the powers,
14 duties, rights, and immunities of a benefit director.

15 A person who exercises one or more of the powers, duties,
16 or rights of a benefit director pursuant to this subsection:

17 (i) does not need to be independent of the benefit
18 corporation;

19 (ii) shall have the immunities of a benefit director;

20 (iii) may share the powers, duties, and rights of a
21 benefit director with one or more other persons; and

22 (iv) shall not be subject to the procedures for
23 election or removal of directors in Article 8 of the
24 Business Corporation Act of 1983 unless the person is also
25 a director of the benefit corporation or the bylaws make
26 those procedures applicable.

1 (f) Regardless of whether the bylaws of a benefit
2 corporation include a provision eliminating or limiting the
3 personal liability of directors authorized by paragraph (3) of
4 subsection (b) of Section 2.10 of the Business Corporation Act
5 of 1983, a benefit director shall not be personally liable for
6 an act or omission in the capacity of a benefit director unless
7 the act or omission constitutes self-dealing, willful
8 misconduct, or a knowing violation of law.

9 Section 4.10. Standard of conduct for officers.

10 (a) Each officer of a benefit corporation shall consider
11 the interests and factors described in subsection (a) of
12 Section 4.01 in the manner provided in that subsection if:

13 (1) the officer has discretion to act with respect to a
14 matter; and

15 (2) it reasonably appears to the officer that the
16 matter may have a material effect on the creation by the
17 benefit corporation of general public benefit or a specific
18 public benefit identified in the articles of incorporation
19 by the benefit corporation.

20 (b) Exoneration from personal liability. An officer is not
21 personally liable for monetary damages for:

22 (1) action taken as an officer if the officer performed
23 the duties of the position in compliance with this Section;
24 or

25 (2) failure of the benefit corporation to pursue or

1 create general public benefit or specific public benefit.

2 (c) Limitation on standing. An officer does not have a duty
3 to a person that is a beneficiary of the general public benefit
4 purpose or a specific public benefit purpose of a benefit
5 corporation arising from the status of the person as a
6 beneficiary.

7 Section 4.15. Benefit officer.

8 (a) A benefit corporation may have an officer designated as
9 the benefit officer.

10 (b) A benefit officer shall have:

11 (1) powers and duties relating to the purpose of the
12 benefit corporation to create general public benefit or
13 specific public benefit provided:

14 (A) by the bylaws of the benefit corporation; or

15 (B) absent controlling provisions in the bylaws,
16 by resolutions or orders of the board of directors; and

17 (2) the duty to prepare the benefit report required by
18 Section 5.01 of this Act.

19 Section 4.20. Right of action; benefit enforcement
20 proceeding.

21 (a) No person may bring an action or assert a claim against
22 a benefit corporation or its directors or officers with respect
23 to failure to pursue or create general public benefit or a
24 specific public benefit set forth in its articles of

1 incorporation or violation of a duty or standard of conduct
2 under this Act except in a benefit enforcement proceeding.

3 (b) A benefit enforcement proceeding may be commenced or
4 maintained only:

5 (1) directly by the benefit corporation; or

6 (2) derivatively by:

7 (A) a shareholder;

8 (B) a director;

9 (C) a person or group of persons that owns
10 beneficially or of record 5% or more of the equity
11 interests in an entity of which the benefit corporation
12 is a subsidiary; or

13 (D) other persons as specified in the articles of
14 incorporation or bylaws of the benefit corporation.

15 (c) A benefit corporation shall not be liable for monetary
16 damages under this Act for any failure of the benefit
17 corporation to pursue or create general public benefit or a
18 specific public benefit.

19 Article 5. Transparency

20 Section 5.01. Annual benefit report.

21 (a) A benefit corporation shall prepare an annual benefit
22 report including all of the following:

23 (1) A narrative description of:

24 (A) the process and rationale for selecting the

1 third party standard used to prepare the benefit
2 report;

3 (B) the ways in which the benefit corporation
4 pursued general public benefit during the year and the
5 extent to which general public benefit was created;

6 (C) the ways in which the benefit corporation
7 pursued a specific public benefit that the articles
8 state it is the purpose of the benefit corporation to
9 create and the extent to which that specific public
10 benefit was created; and

11 (D) any circumstances that have hindered the
12 pursuit by the benefit corporation of its general
13 public benefit purpose and any specific public benefit
14 purpose or the creation by the benefit corporation of
15 general public benefit and any specific public
16 benefit.

17 (2) An assessment of the overall social and
18 environmental performance of the benefit corporation
19 against a third-party standard:

20 (A) applied consistently with any application of
21 that standard in prior benefit reports; or

22 (B) accompanied by an explanation of the reasons
23 for any inconsistent application.

24 (3) The name of the benefit director and the benefit
25 officer, if any, and the address to which correspondence to
26 each of them may be directed.

1 (4) The compensation paid by the benefit corporation
2 during the year to each director in the capacity of a
3 director.

4 (5) The name of each person that owns 5% or more of the
5 outstanding shares of the benefit corporation either:

6 (A) beneficially, to the extent known to the
7 benefit corporation without independent investigation;

8 or

9 (B) of record.

10 (6) The statement of the benefit director required by
11 subsection (c) of Section 4.05.

12 (7) A statement of any connection between the
13 organization that established the third-party standard, or
14 its directors, officers, or material owners, and the
15 benefit corporation or its directors, officers or material
16 owners, including any financial or governance relationship
17 that might materially affect the credibility of the use of
18 the third-party standard.

19 (8) If the benefit corporation has dispensed with, or
20 restricted the discretion or powers of, the board of
21 directors, its annual benefit report must describe the
22 persons who exercise the powers, duties, and rights, and
23 have the immunities of the board of directors and the
24 benefit director as required by subsection (e) of Section
25 4.05.

26 (b) The benefit corporation shall send a benefit report

1 annually to each shareholder:

2 (1) within 120 days following the end of the fiscal
3 year of the benefit corporation; or

4 (2) at the same time that the benefit corporation
5 delivers any other annual report to its shareholders.

6 (c) A benefit corporation shall post all of its benefit
7 reports on the public portion of its Internet website, if any,
8 but the compensation paid to directors and financial or
9 proprietary information included in the benefit reports may be
10 omitted from the benefit reports as posted.

11 (d) If a benefit corporation does not have an Internet
12 website, the benefit corporation shall provide a copy of its
13 most recent benefit report, without charge, to any person that
14 requests a copy.

15 (e) Concurrently with the delivery of the benefit report to
16 shareholders under subsection (c), the benefit corporation
17 shall deliver a copy of the benefit report to the Secretary of
18 State for filing, but the compensation paid to directors and
19 financial or proprietary information included in the benefit
20 report may be omitted from the benefit report as delivered to
21 the Secretary of State.