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## DIGEST

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Leger

HB No. 1178

**Abstract:** Establishes the Benefit Corporations Law.

Proposed law creates the Benefit Corporations Law.

Proposed law applies to all benefit corporations.

Proposed law shall 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. Proposed law shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

Proposed law provides that, except as otherwise provided in proposed law, the Business Corporation Law shall be generally applicable to all benefit corporations. The specific provisions of proposed law shall control over the general provisions of the Business Corporation Law. A benefit corporation may be simultaneously subject to the Benefit Corporations Law and other provisions of proposed law

Proposed law prohibits a provision of the articles or bylaws of a benefit corporation from relaxing, being inconsistent with, or superseding a provision of proposed law.

Proposed law defines "benefit corporation" as a business corporation which has elected to become subject to proposed law and whose status as a benefit corporation has not been terminated.

Proposed law defines "benefit director" as the director designated as the benefit director of a benefit corporation under proposed law.

Proposed law defines "benefit enforcement proceeding" as any claim or action for the failure of a benefit corporation to pursue or create a general public benefit or a specific public benefit purpose set forth in its articles or the violation of any obligation, duty, or standard of conduct under proposed law.

Proposed law defines "benefit officer" as the individual designated as the benefit officer of a benefit corporation under proposed law.

Proposed law defines "general public benefit" as 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.

Proposed law defines "independent" as having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

Proposed law defines "material relationship" as the relationship between a person and a benefit corporation or any of its subsidiaries if any of the following apply:

- (1) The person is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation.
- (2) An immediate family member of the person is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or its subsidiary.
- (3) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the association had been exercised, by either the person, or an association of which the person is a director, an officer, or a manager, or in which the person owns beneficially or of record 5% or more of the outstanding equity interests.

Proposed law defines "minimum status vote" as:

- (1) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of all of the following conditions:
  - (a) The shareholders of every class or series shall be entitled to vote as a class 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 shall be approved by at least 2/3 of the votes that all shareholders of the class or series are entitled to cast on the action.
- (2) 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 all of the following conditions:
  - (a) 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 shall be 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.
  - (b) The action shall be approved by at least 2/3 of the votes or consents that all of those holders are entitled to cast on the action.

Proposed law defines "specific public benefit" as any of the following: providing low-income or

underserved individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; preserving the environment; improving human health; promoting the arts, sciences or advancement of knowledge; increasing the flow of capital to entities with a public benefit purpose; or conferring any other particular benefit on society or the environment.

Proposed law defines "subsidiary" as, in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

Proposed law defines "third-party standard" as a recognized standard for defining, reporting, and assessing corporate social and environmental performance which is all of the following:

- (1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in proposed law.
- (2) Developed by an organization that is independent of the benefit corporation and satisfies all of the following requirements:
  - (a) Not more than 1/3 of the members of the governing body of the organization are representatives of any of the following: an association of businesses operating in a specific industry the performance of whose members is measured by the standard; businesses from a specific industry or an association of businesses in that industry; or a business whose performance is assessed against the standard.
  - (b) The organization is not materially financed by an association or business described in proposed law.
- (3) Credible because the standard is developed by a person that has access to necessary expertise to assess overall corporate social and environmental performance and uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.
- (4) Transparent because all of the following information is publicly available:
  - (a) About the standard: the criteria considered when measuring the overall social and environmental performance of a business and the relative weightings, if any, of those criteria.
  - (b) About the development and revision of the standard: the identity of the directors, officers, material owners and the governing body of the organization that developed and controls revisions to the standard; the process by which revisions to the standard and changes to the membership of the governing body are made; and an accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered

to present a potential conflict of interest.

Proposed law requires a benefit corporation to be formed in accordance with the incorporation provisions of the Business Corporation Law and further requires the articles to also state that it is a benefit corporation.

Proposed law provides that 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. Proposed law further provides that, in order to be effective, the amendment shall be adopted by at least the minimum status vote. The notice of meeting of shareholders that will approve the amendment shall explain the anticipated impact on shareholders of becoming a benefit corporation.

Proposed law provides that if an entity that is not a benefit corporation is a party to a merger or consolidation, or is the exchanging entity in a share exchange, and the surviving or new entity in the merger or consolidation is to be a benefit corporation, then the plan of merger, consolidation or share exchange shall be adopted by at least the minimum status vote.

Proposed law provides that a benefit corporation may terminate its status as such by amending its articles to delete the provision required by proposed law to be stated in the articles of a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum status vote.

Proposed law provides that if a plan of merger, consolidation, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, in order to be effective, the plan shall be adopted by at least the minimum status vote. Proposed law further provides that 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.

Proposed law requires a benefit corporation to have a purpose of creating a general public benefit.

Proposed law provides that the articles of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. The identification of a specific public benefit shall not limit the obligation of a benefit corporation to create a general public benefit.

Proposed law provides that the creation of a general public benefit and specific public benefit shall be in the best interests of the benefit corporation.

Proposed law authorizes a benefit corporation to amend its articles 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 shall be adopted by at least the minimum status vote.

Proposed law provides that a professional corporation that is a benefit corporation shall not be deemed in violation of provisions prohibiting a professional corporation from having a purpose other than to practice the specified profession by having the purpose to create general public benefit or a specific public benefit.

Proposed law provides that, 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 shall consider the effects of any action or inaction upon all of the following:

- (1) The shareholders of the benefit corporation.
- (2) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers.
- (3) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- (4) 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.
- (5) The local and global environment.
- (6) 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.
- (7) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

Proposed law provides that, 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 may consider other pertinent factors or the interests of any other group that they deem appropriate.

Proposed law provides that, 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 is not required to give priority to the interests of a particular person or group over the interests of any other person or group unless the benefit corporation has stated in its articles 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.

Proposed law provides that the consideration of interests and factors in the manner required by

proposed law shall not constitute a violation of the fiduciary duty of the directors and officers.

Proposed law provides that a director shall not be personally liable for monetary damages for either of the following:

- (1) Any action taken as a director if the director performed the duties of office pursuant to his fiduciary duty.
- (2) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

Proposed law provides that a director shall 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.

Proposed law requires the board of directors of a benefit corporation to include a director who shall be designated the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided for in proposed law.

Proposed law provides that the benefit director shall be elected, and may be removed, pursuant to the Business Corporations Law and shall be an individual who is independent.

Proposed law authorizes the benefit director to serve as the benefit officer at the same time as serving as the benefit director. Proposed law further authorizes the articles or bylaws of a benefit corporation to prescribe additional qualifications of the benefit director not inconsistent with proposed law.

Proposed law requires the benefit director to prepare, and the benefit corporation to include in the annual benefit report to shareholders, the opinion of the benefit director on all of the following:

- (1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report.
- (2) Whether the directors and officers complied with the fiduciary duty contained in proposed law.
- (3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with their fiduciary duty, a description of the ways in which the benefit corporation or its directors or officers failed to comply.

Proposed law provides that the act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

Proposed law provides that, regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Proposed law provides that the benefit director of a professional corporation shall not be required to be independent.

Proposed law requires each officer of a benefit corporation to consider the interests and factors previously described in proposed law if the officer has discretion to act with respect to a matter and it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of a general public benefit or a specific public benefit identified in the articles of the benefit corporation.

Proposed law provides that the consideration of interests and factors in the manner shall not constitute a violation of the fiduciary duty of the directors and officers.

Proposed law provides that an officer shall not be personally liable for monetary damages for either an action or omission as an officer if the officer performed the duties of the position pursuant to proposed law or the failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

Proposed law provides that an officer shall 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.

Proposed law authorizes a benefit corporation to have an officer designated as the benefit officer.

Proposed law requires the benefit officer to have all of the following:

- (1) The powers and duties relating to the purpose of the corporation to create a general public benefit or specific public benefit provided by the bylaws or, absent controlling provisions in the bylaws, by resolutions or orders of the board of directors.
- (2) The duty to prepare the benefit report required by proposed law.

Proposed law provides that, except in a benefit enforcement proceeding, no person shall bring an action or assert a claim against a benefit corporation or its directors or officers with respect to either of the following:

- (1) Failure to pursue or create a general public benefit or a specific public benefit set forth in its articles.
- (2) Violation of a duty or standard of conduct under proposed law.

Proposed law provides that a benefit corporation shall not be liable for monetary damages for any failure of the benefit corporation to pursue or create a general public benefit or a specific public benefit.

Proposed law requires a benefit enforcement proceeding to only be commenced or maintained directly by the benefit corporation or derivatively by one of the following parties:

- (1) A shareholder.
- (2) A director.
- (3) A person or group of persons that owns beneficially or of record 5% or more of the equity interests in an entity of which the benefit corporation is a subsidiary.
- (4) Other persons as specified in the articles or bylaws of the benefit corporation.

Proposed law requires a benefit corporation to prepare an annual benefit report including all of the following:

- (1) A narrative description of all of the following:
  - (a) The ways in which the benefit corporation pursued a general public benefit during the year and the extent to which the general public benefit was created.
  - (b) The ways in which the benefit corporation pursued a specific public benefit that the articles state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created.
  - (c) Any circumstances that have hindered the creation by the benefit corporation of a general public benefit or 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 which is either applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment shall not be required to be performed, audited, or certified by a third-party standards provider.
- (3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.
- (4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

- (5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either beneficially, to the extent known to the benefit corporation without independent investigation, or of record.
- (6) The statement of the benefit director.
- (7) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

Proposed law requires a benefit corporation to annually send a benefit report to each shareholder either:

- (1) Within 120 days following the end of the fiscal year of the benefit corporation.
- (2) At the same time that the benefit corporation delivers any other annual report to its shareholders.

Proposed law requires a benefit corporation to post all of its benefit reports on the public portion of its Internet website, if any. The compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

Proposed law provides that, 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, but 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.

Proposed law require all certificates representing shares in a benefit corporation to contain, in addition to any other statements required by the Business Corporation Law, the following conspicuous language on the face of the certificate: "This corporation is a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq."

(Adds R.S. 12:1801-1832)