

Regular Session, 2012

HOUSE BILL NO. 1178

BY REPRESENTATIVES LEGER AND ORTEGO

CORPORATIONS: Provides relative to benefit corporations

1 AN ACT

2 To enact Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 12:1801 through 1832, relative to benefit corporations; to enact the "Benefit  
4 Corporations Law"; to provide for applicability; to provide for definitions; to provide  
5 for formation of benefit corporations; to provide for election and termination of  
6 benefit corporation status; to provide for corporate purposes; to provide for a  
7 standard of conduct for directors and officers; to provide for a benefit director; to  
8 provide for a benefit officer; to provide for a right of action; to require an annual  
9 benefits report; to provide for stock certificates; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 27 of Title 12 of the Louisiana Revised Statutes of 1950,  
12 comprised of R.S. 12:1801 through 1832, is hereby enacted to read as follows:

13 CHAPTER 27. BENEFIT CORPORATIONS

14 PART I. PRELIMINARY PROVISIONS

15 §1801. Short title

16 This Chapter shall be known and may be cited as the "Benefit Corporations  
17 Law".

18 §1802. Application and effect of Chapter

19 A. This Chapter shall apply to all benefit corporations.

1           B. The existence of a provision of this Chapter shall not of itself create an  
2           implication that a contrary or different rule of law is applicable to a business  
3           corporation that is not a benefit corporation. This Chapter shall not affect a statute  
4           or rule of law that is applicable to a business corporation that is not a benefit  
5           corporation.

6           C. Except as otherwise provided in this Chapter, the Business Corporation  
7           Law, R.S. 12:1 et seq., shall be generally applicable to all benefit corporations. The  
8           specific provisions of this Chapter shall control over the general provisions of the  
9           Business Corporation Law. A benefit corporation may be simultaneously subject to  
10          this Chapter and one or more other Chapters within this Title.

11          D. A provision of the articles or bylaws of a benefit corporation shall not  
12          relax, be inconsistent with, or supersede a provision of this Chapter.

13          §1803. Definitions

14          A. As used in this Chapter, the following terms and phrases shall have the  
15          meaning ascribed to them in this Section, unless the context clearly indicates  
16          otherwise:

17                 (1) "Affiliate" means, in relation to a person, a subsidiary of the person or  
18                 an entity which owns beneficially or of record majority of the outstanding equity  
19                 interests of the person.

20                 (2) "Benefit corporation" means a business corporation which has elected  
21                 to become subject to this Chapter and whose status as a benefit corporation has not  
22                 been terminated.

23                 (3) "Benefit director" means the director designated as the benefit director  
24                 of a benefit corporation pursuant to R.S. 12:1822.

25                 (4) "Benefit enforcement proceeding" means any claim or action for one or  
26                 both of the following:

27                         (a) Failure of a benefit corporation to pursue or create a general public  
28                         benefit or a specific public benefit purpose set forth in its articles.

1            (b) Violation of any obligation, duty, or standard of conduct pursuant to this  
2            Chapter.

3            (5) "Benefit officer" means the individual designated as the benefit officer  
4            of a benefit corporation pursuant to R.S. 12:1824.

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

8            (7) "Independent" means having no material relationship with a benefit  
9            corporation or a subsidiary of the benefit corporation.

10           (8) "Material relationship" means the relationship between a person and a  
11           benefit corporation or any of its subsidiaries if any of the following apply:

12           (a) The person is, or has been within the last three years, an employee,  
13           officer, or director of the benefit corporation, or an affiliate of the benefit  
14           corporation.

15           (b) An immediate family member of the person is, or has been within the last  
16           three years, an employee, officer, or director of the benefit corporation, or an affiliate  
17           of the benefit corporation.

18           (c) There is beneficial or record ownership of five percent or more of the  
19           outstanding shares of the benefit corporation by either the person or an entity of  
20           which the person is a director, an officer, or a manager, or in which the person owns  
21           beneficially or of record five percent or more of the outstanding equity interests.

22           (9) "Minimum vote" means the approval by holders of two-thirds of the  
23           shares present and voting of each class or series and any other approval or vote  
24           required under the Business Corporation Law or the articles.

25           (10) "Specific public benefit" means any of the following:

26           (a) Serving low-income or underserved individuals or communities.

27           (b) Promoting economic opportunity for low-income or underserved  
28           individuals or communities.

29           (c) Preserving the environment or other environmental impact.

- 1           (d) Improving human health.
- 2           (e) Promoting the arts, sciences, or advancement of knowledge.
- 3           (f) Increasing the flow of capital to entities with a purpose listed in this  
4 Paragraph.
- 5           (g) Historic preservation.
- 6           (h) Urban beautification.
- 7           (11) "Subsidiary" means, in relation to a person, an entity in which the  
8 person owns beneficially or of record fifty percent or more of the outstanding equity  
9 interests.
- 10          (12) "Third-party standard" means a recognized standard for defining,  
11 reporting, and assessing corporate public benefit performance which is all of the  
12 following:
- 13           (a) Comprehensive in that it assesses the effect of the corporation and its  
14 operations upon the specific public benefit specified in the articles.
- 15           (b) Transparent because the following information about the standard is  
16 publicly available:
- 17           (i) The criteria considered when measuring the overall social and  
18 environmental performance of a business.
- 19           (ii) The relative weightings, if any, of those criteria.
- 20           (iii) The identity of the directors, officers, material owners, and the  
21 governing body of the organization that developed and controls revisions to the  
22 standard.
- 23           (iv) The process by which revisions to the standard and changes to the  
24 membership of the governing body are made.
- 25           (v) An accounting of the sources of financial support for the organization,  
26 with sufficient detail to disclose any relationships that could reasonably be  
27 considered to present a potential conflict of interest.
- 28          B. Terms not otherwise defined in Subsection A of this Section shall have  
29 the meanings given to them in the Business Corporation Law.

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

4           §1804. Election of status; corporate name

5           A. A business corporation incorporated in accordance with R.S.  
6           12:21 et seq. may elect to be a benefit corporation under this Chapter by  
7           stating in its articles that it is a benefit corporation subject to this Chapter.

8           B. Any amendment to the articles of an existing business corporation  
9           to add a statement that it is a benefit corporation subject to this Chapter shall  
10           be adopted by at least the minimum vote. The notice of the meeting of  
11           shareholders to approve the amendment shall specifically state the public  
12           benefits to be included in the purposes of the benefit corporation and shall  
13           explain the anticipated impact on shareholders of becoming a benefit  
14           corporation.

15           C. If an entity that is not a benefit corporation is a party to a merger or  
16           consolidation, or is the exchanging entity in a share exchange, and the surviving or  
17           new entity in the merger or consolidation is to be a benefit corporation, then the plan  
18           of merger, consolidation, or share exchange shall be adopted by at least the minimum  
19           vote.

20           D. The corporate name of a benefit corporation shall end with the following  
21           phrase, which may be in parentheses, "A Benefit Corporation".

22           §1805. Termination of status

23           A. A benefit corporation may terminate its status as such and cease to be  
24           subject to this Chapter by amending its articles to delete the provision required by  
25           R.S. 12:1804 to be stated in the articles of a benefit corporation. In order to be  
26           effective, the amendment shall be adopted by at least the minimum vote.

27           B. If a merger, consolidation, or share exchange of a benefit corporation  
28           would have the effect of terminating the status of a business corporation as a benefit  
29           corporation, in order to be effective, the plan of merger, consolidation, division, or

1 share exchange shall be adopted by at least the minimum vote of the benefit  
2 corporation. Any sale, lease, exchange, or other disposition of all or substantially all  
3 of the assets of a benefit corporation, unless the transaction is in the usual and  
4 regular course of business, shall not be effective unless the transaction is approved  
5 by at least the minimum vote.

6 §§1806-1810. [Reserved.]

7 PART II. CORPORATE PURPOSES

8 §1811. Corporate purposes

9 A. A benefit corporation shall have a purpose of creating a general public  
10 benefit. This purpose is in addition to its purpose under R.S. 12:21 et seq.

11 B. The articles of a benefit corporation may identify one or more specific  
12 public benefits that it is the purpose of the benefit corporation to create in addition  
13 to its purposes under R.S. 12:21 et seq. and Subsection A of this Section. The  
14 identification of a specific public benefit under this Subsection shall not limit the  
15 obligation of a benefit corporation under Subsection A of this Section.

16 C. The creation of a general public benefit and specific public benefit under  
17 Subsections A and B of this Section is in the best interests of the benefit corporation.

18 D. A benefit corporation may amend its articles to add, amend, or delete the  
19 identification of a specific public benefit that it is the purpose of the benefit  
20 corporation to create. In order to be effective, the amendment shall be adopted by  
21 at least the minimum vote.

22 E. A professional corporation that is a benefit corporation shall not be  
23 deemed in violation of R.S. 12:804, 904, 984, 1054, 1074, 1089, 1113, 1133, 1154,  
24 1193, or 1403 by having the purpose to create general public benefit or a specific  
25 public benefit.



1 general public benefit purpose or of a specific public benefit purpose identified in the  
2 articles.

3 B. The consideration of interests and factors in the manner required by  
4 Subsection A of this Section shall not constitute a violation of R.S. 12:91.

5 C. A director shall not be personally liable for monetary damages for either  
6 of the following:

7 (1) Any action taken as a director if the director performed the duties of  
8 office pursuant to R.S. 12:91.

9 (2) Failure of the benefit corporation to pursue or create a general public  
10 benefit or specific public benefit.

11 D. A director shall not have a duty to a person that is a beneficiary of the  
12 general public benefit purpose or a specific public benefit purpose of a benefit  
13 corporation arising from the status of the person as a beneficiary.

14 §1822. Benefit director

15 A. The board of directors of a benefit corporation shall include a director  
16 who shall be designated the benefit director and who shall have, in addition to the  
17 powers, duties, rights, and immunities of the other directors of the benefit  
18 corporation, the powers, duties, rights, and immunities provided for in this Part.

19 B. The benefit director shall be elected, and may be removed, pursuant to  
20 R.S. 12:81, and shall be an individual who is independent. The benefit director may  
21 serve as the benefit officer at the same time as serving as the benefit director. The  
22 articles or bylaws of a benefit corporation may prescribe additional qualifications or  
23 duties of the benefit director not inconsistent with this Subsection.

24 C. The benefit director shall be responsible for the preparation of an annual  
25 benefit report submitted to shareholders as required by R.S. 12:1831. The benefit  
26 director may retain an independent third party to audit the annual benefit report or  
27 conduct any other assessment of the corporation's conduct of its special public  
28 benefit purposes. The annual benefit report shall include a statement of the benefit  
29 director, in the opinion of the benefit director, on all of the following:

1           (1) Whether the benefit corporation acted in accordance with its general  
2           public benefit purpose and any specific public benefit purpose in all material respects  
3           during the period covered by the report.

4           (2) Whether the directors and officers complied with R.S. 12:1821(A) and  
5           1823(A), respectively.

6           (3) If, in the opinion of the benefit director, the benefit corporation or its  
7           directors or officers failed to comply with R.S. 12:1821(A) and 1823(A), a  
8           description of the ways in which the benefit corporation or its directors or officers  
9           failed to comply.

10           D. The act or inaction of an individual in the capacity of a benefit director  
11           shall constitute for all purposes an act or inaction of that individual in the capacity  
12           of a director of the benefit corporation.

13           E. Regardless of whether the bylaws of a benefit corporation include a  
14           provision eliminating or limiting the personal liability of directors authorized by R.S.  
15           12:24(C)(4), a benefit director shall not be personally liable for an act or omission  
16           in the capacity of a benefit director unless the act or omission constitutes  
17           self-dealing, willful misconduct, or a knowing violation of law.

18           F. The benefit director of a professional corporation shall not be required to  
19           be independent.

20           §1823. Standard of conduct for officers

21           A. Each officer of a benefit corporation shall consider the interests and  
22           factors described in R.S. 12:1821 pursuant to that Section if all of the following  
23           applies:

24           (1) The officer has discretion to act with respect to the matter.

25           (2) It reasonably appears to the officer that the matter may have a material  
26           effect on the creation by the benefit corporation of a general public benefit or a  
27           specific public benefit identified in the articles of the benefit corporation.

28           B. The consideration of interests and factors pursuant to Subsection A of this  
29           Section shall not constitute a violation of R.S. 12:91.

1           C. An officer shall not be personally liable for monetary damages for either  
2           of the following:

3           (1) An action or omission as an officer if the officer performed the duties of  
4           the position pursuant to R.S. 12:91.

5           (2) Failure of the benefit corporation to pursue or create general public  
6           benefit or specific public benefit.

7           D. An officer shall not have a duty to a person that is a beneficiary of the  
8           general public benefit purpose or a specific public benefit purpose of a benefit  
9           corporation arising from the status of the person as a beneficiary.

10          §1824. Benefit officer

11           A. A benefit corporation may have an officer designated as the benefit  
12           officer.

13           B. A benefit officer shall have all of the following:

14           (1) The powers and duties relating to the purpose of the corporation to create  
15           a general public benefit or specific public benefit provided by the bylaws or, absent  
16           controlling provisions in the bylaws, by resolutions or orders of the board of  
17           directors.

18           (2) The duty to prepare the benefit report required by R.S. 12:1831.

19          §1825. Right of action

20           A. The duties of directors and officers under this Chapter and the specific  
21           public benefit purposes of a benefit corporation may be enforced only under this  
22           Chapter, except in accordance with this Section, in a benefit enforcement proceeding,  
23           and no person shall bring an action or assert a claim against a benefit corporation.

24           B. A benefit enforcement proceeding shall only be commenced or  
25           maintained directly by the benefit corporation or derivatively by one of the following  
26           parties:

27           (1) A shareholder.

28           (2) A benefit director.



1           (6) The statement of the benefit director pursuant to R.S. 12:1822(C).

2           (7) A statement of any connection between the organization that established  
3           the third-party standard, or its directors, officers, or any holder of five percent or  
4           more of the governance interests in the organization, and the benefit corporation or  
5           its directors, officers, or any holder of five percent or more of the outstanding shares  
6           of the benefit corporation, including any financial or governance relationship which  
7           might materially affect the credibility of the use of the third-party standard.

8           B. A benefit corporation shall annually send a benefit report to each  
9           shareholder either:

10           (1) Within one hundred twenty days following the end of the fiscal year of  
11           the benefit corporation.

12           (2) At the same time that the benefit corporation delivers any other annual  
13           report to its shareholders.

14           C. A benefit corporation shall post all of its benefit reports on the public  
15           portion of its Internet website, if any. The compensation paid to directors and  
16           financial or proprietary information included in the benefit reports may be omitted  
17           from the benefit reports as posted.

18           D. If a benefit corporation does not have an Internet website, the benefit  
19           corporation shall provide a copy of its most recent benefit report, without charge, to  
20           any person that requests a copy, but the compensation paid to directors and financial  
21           or proprietary information included in the benefit report may be omitted from the  
22           copy of the benefit report provided.

23           §1832. Stock certificates

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

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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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 "affiliate" as, in relation to a person, a subsidiary of the person or an entity which owns beneficially or of record majority of the outstanding equity interests of the person.

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, officer, or director of the benefit corporation or an affiliate of the benefit corporation.
- (2) An immediate family member of the person is, or has been within the last three years, an employee, officer, or director of the benefit corporation or its affiliate.
- (3) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by either the person, or an entity 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 vote" as the approval by holders of two-thirds of the shares present and voting of each class or series and any other approval or vote required under the Business Corporation Law or the articles.

Proposed law defines "specific public benefit" as any of the following: serving low-income or underserved individuals or communities; promoting economic opportunity for low-income or underserved individuals or communities; preserving the environment or other environmental impact; improving human health; promoting the arts, sciences or advancement of knowledge; increasing the flow of capital to entities with a purpose listed in proposed law; historic preservation; or urban beautification.

Proposed law defines "subsidiary" as, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

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

- (1) Comprehensive in that it assesses the effect of the corporation and its operations upon the specific public benefit specified in the articles.
- (2) Transparent because the following information about the standard is publicly available:
  - (a) The criteria considered when measuring the overall social and environmental performance of a business.
  - (b) The relative weightings, if any, of those criteria.
  - (c) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard.
  - (d) The process by which revisions to the standard and changes to the membership of the governing body are made.
  - (e) 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.

Terms not otherwise defined in proposed law shall have the meanings given to them in the Business Corporation Law.

For purposes of the definitions in proposed law, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.

Proposed law provides that a business corporation incorporated may elect to be a benefit corporation by stating in its articles that it is a benefit corporation subject proposed law.

Proposed law requires any amendment to the articles of an existing business corporation to add a statement that it is a benefit corporation subject to proposed law to be adopted by at least the minimum vote. Proposed law further requires the notice of the meeting of shareholders to approve the amendment to specifically state the public benefits to be included in the purposes of the benefit corporation and to 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 vote.

Proposed law requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".

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 merger, consolidation, or share exchange of a benefit corporation would have the effect of terminating the status of a business corporation as a benefit corporation, in order to be effective, the plan of merger, consolidation, division, or share exchange must be adopted by at least the minimum 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 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 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 and officers 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 or duties of the benefit director not inconsistent with proposed law.

Proposed law requires the benefit director to prepare an annual benefit report submitted to shareholders.

Proposed law authorizes the benefit director to retain an independent third party to audit the annual benefit report or conduct any other assessment of the corporation's conduct of its special public benefit purposes.

Proposed law requires the annual benefit report to include a statement of the benefit director, in 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 the duties of directors and officers under proposed law and the specific public benefit purposes of a benefit corporation may be enforced only under proposed law except in accordance with proposed law, in a benefit enforcement proceeding, and no person shall bring an action or assert a claim against a benefit corporation.

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) Other persons as specified in the articles or bylaws of the benefit corporation.

Proposed law requires a benefit corporation to deliver to each shareholder 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 public benefit purpose 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.
- (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 requires 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)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical amendments.
2. Added the definition of "affiliate" and amended the definitions of "material relationship", "specific public benefit", and "third-party standard".
3. Changed "minimum status vote" to "minimum vote" and amended the definition.
4. Provided that terms not defined in proposed law have the meaning given to them in the Business Corporation Law.

5. Provided that for the definitions in proposed law, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.
6. Changed the procedure for election of status as a benefit corporation.
7. Requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".
8. Required the benefit director to prepare an annual benefit report.
9. Provided for a right of action against a benefit corporation.
10. Provided for the contents of the annual benefit report.