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)]

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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.