State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-3756/P1
ARG:/...:...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** creation of a category of business corporation identified as a benefit corporation.

Analysis by the Legislative Reference Bureau

This bill creates a category of business corporation identified as a benefit corporation. A benefit corporation may also fall within other categories of business corporations, such as service corporations or statutory close corporations.

Under the bill, a benefit corporation may be created by including in the articles of incorporation at the time of formation, or by later amending the articles of incorporation to include, a statement that the corporation is a benefit corporation. A business corporation's status as a benefit corporation may be terminated by amending the articles of incorporation to delete this statement. When creating or terminating a business corporation's status as a benefit corporation requires amending the articles of incorporation, the vote to amend must meet specified voting requirements.

A benefit corporation must have a purpose of creating general public benefit and the benefit corporation may also specify in its articles of incorporation additional specific public benefit purposes. A "general public benefit" is defined as a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, as measured by a third-party standard, through activities that promote some combination of specific public benefits. Examples of "specific public benefit" include all of the following: 1) providing low-income or underserved individuals or communities with beneficial products or services; 2) promoting economic opportunity for individuals or communities beyond the creation

of jobs in the normal course of business; 3) preserving the environment; 4) improving human health; 5) promoting the arts, sciences, or advancement of knowledge; 6) increasing the flow of capital to entities with a public benefit purpose; and 7) the accomplishment of any other particular benefit for society or the environment.

The board of directors of a benefit corporation must include one director designated as the "benefit director." The benefit director must prepare, for inclusion with the benefit corporation's annual benefit report to shareholders (discussed below), a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects and whether the benefit corporation's directors and officers complied with specified duties. Notwithstanding provisions of the business corporation law, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, must consider the effects of any action or inaction on all of the following: 1) the shareholders of the benefit corporation; 2) the employees and workforce of the benefit corporation and its subsidiaries and 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 any community in which offices or facilities of the benefit corporation or its subsidiaries or 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; and 7) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose. In addition, the board, committees, and individual directors may consider the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation and any other pertinent factors or the interests of any other group.

A benefit corporation may also designate a "benefit officer," who has the powers and duties relating to the benefit corporation's purpose of creating general public benefit or specific public benefit and is also responsible for preparing an annual benefit report (described below). Each officer of a benefit corporation must consider the same interests and factors applicable for directors, identified as 1) to 7) immediately above, when the officer has discretion to act with respect to a matter that may have a material effect on the creation of general or specific public benefit by the benefit corporation.

A benefit corporation must prepare an annual benefit report that contains certain information for the reporting year, including the following: 1) a narrative description of the ways in which the benefit corporation pursued general public benefit and specific public benefit and the extent to which such public benefit was created; 2) an assessment of the social and environmental performance of the benefit corporation, prepared in accordance with a third-party standard; 3) the names of the benefit director and benefit officer and the address to which correspondence to each may be directed; 4) the compensation paid by the benefit corporation to each director;

5) the name of each person with a five percent or greater ownership interest in the benefit corporation, and 6) the benefit director's statement (discussed above). This benefit report must be annually delivered to the shareholders, filed with the Department of Financial Institutions, and posted on the benefit corporation's Web site if it has one.

The bill generally restricts the ability to bring actions to enforce the general or specific public benefit purposes of a benefit corporation or the duties of directors or officers with respect to these purposes. However, the benefit corporation itself and, derivatively, shareholders, directors, and certain other persons do have a right of action to enforce these purposes. The bill also includes certain limitations on imposing personal liability on directors and officers of benefit corporations.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 202 of the statutes is created to read:

CHAPTER 202

BENEFIT CORPORATIONS

SUBCHAPTER I

GENERAL PROVISIONS

202.101 Application and effect of chapter. (1) GENERAL RULE. This chapter shall be applicable to all benefit corporations.

(2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY. The existence of a provision of this chapter 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. This chapter shall not affect any statute or rule that is applicable to a business corporation that is not a benefit corporation.

(3) LAWS APPLICABLE TO BENEFIT CORPORATIONS. Except as otherwise provided in this chapter, ch. 180 shall be generally applicable to all benefit corporations. The specific provisions of this chapter shall control over the general provisions of ch. 180.

A benefit corporation may be simultaneously subject to this chapter and provisions of other chapters.

(4) ORGANIC RECORDS. A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this chapter.

202.102 Definitions; computation of ownership; independence. (1) DEFINITIONS. Unless the context clearly indicates otherwise, in this chapter:

(a) "Benefit corporation" means a business corporation that has elected to become subject to this chapter and whose status as a benefit corporation has not been terminated under s. 202.105 or 202.401 (5).

(b) "Benefit director" means the person designated as the benefit director of a benefit corporation as provided in s. 202.302.

(c) "Benefit enforcement proceeding" means any claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for any of the following:

1. Failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles.

2. Violation of a duty or standard of conduct under this chapter.

(d) "Benefit officer" means the officer of a benefit corporation, if any, designated as the benefit officer as provided in s. 202.304.

(e) "Department" means the department of financial institutions.

(f) "Entity" has the meaning given in s. 180.0103 (8).

(g) "General public benefit" means a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, as measured

by a 3rd-party standard, through activities that promote some combination of specific public benefits.

(h) "Independent" means that a person has no material relationship with a benefit corporation or any of its subsidiaries, either directly or as a shareholder, partner, member, or other owner or as a director, officer, or other manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries.

(i) "Minimum status vote" means that, in addition to any other approval or vote required by this ~~subch~~ chapter or ch. 180 or a bylaw adopted by the shareholders, at least one of the following applies:

1. The holders of shares of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

2. The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast thereon.

(j) "Service corporation" has the meaning given in s. 180.1901 (2).

(k) "Specific public benefit" includes all of the following:

1. Providing low-income or underserved individuals or communities with beneficial products or services.

2. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

3. Preserving the environment.

4. Improving human health.

5. Promoting the arts, sciences, or advancement of knowledge.

6. Increasing the flow of capital to entities with a public benefit purpose.

7. The accomplishment of any other particular benefit for society or the environment.

(L) "Subsidiary" of a person means an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests.

(m) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is all of the following:

1. Developed by a person that is independent of the benefit corporation.

2. Transparent because all of the following information about the standard is publicly available:

a. The factors considered when measuring the performance of a business.

b. The relative weightings of the factors under subd. 2.a.

c. The identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(2) COMPUTATION OF OWNERSHIP; INDEPENDENCE. (a) For purposes of subs. (1) (h) and (L), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(b) For purposes of sub. (1) (h), all of the following apply:

1. Serving as a benefit director or benefit officer does not make a person not independent.

2. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

a. The person is, or has been within the last 3 years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer.

b. An immediate family member of the person is, or has been within the last 3 years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries.

c. The person, or an entity of which the person is a director, officer, or other manager or in which the person owns beneficially or of record 5 percent or more of the outstanding equity interests, owns beneficially or of record 5 percent or more of the outstanding shares of the benefit corporation.

202.103 Formation of benefit corporations. A benefit corporation shall be formed in accordance with ch. 180, except that its articles shall also state that it is a benefit corporation.

202.104 Election of an existing business corporation to become a benefit corporation. **(1)** AMENDMENT. An existing business corporation may become a benefit corporation under this chapter by amending its articles so that they contain, in addition to the requirements of s. 180.0202, a statement that the corporation is a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit corporation is a party to a merger, consolidation, or division or is the exchanging corporation in a share exchange, and the surviving, new, or any resulting corporation in the merger, consolidation, division, or share exchange is to be a benefit corporation, then the plan of merger, consolidation, division, or share exchange shall not be effective unless it is adopted by the corporation by at least the minimum status vote.

202.105 Termination of benefit corporation status. **(1)** AMENDMENT. A benefit corporation may terminate its status as such and cease to be subject to this

chapter by amending its articles to delete the provision required by ss. 202.103 and 202.104 to be stated in the articles of a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(2) FUNDAMENTAL TRANSACTIONS. If a corporate plan would have the effect of terminating the status of a business corporation as a benefit corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote.

SUBCHAPTER II

CORPORATE PURPOSES

202.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE. A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under s. 180.0301 and any specific purpose set forth in its articles under sub. (2).

(2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE. 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 in addition to its purposes under s. 180.0301 and sub. (1). The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) EFFECT OF PURPOSES. The creation of general public benefit and specific public benefit as provided in subs. (1) and (2) is in the best interests of the benefit corporation. shall be considered to be

(4) AMENDMENT. A benefit corporation may 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. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(5) SERVICE CORPORATIONS. A service corporation that is a benefit corporation is not limited by ss. 180.1903 and 180.1905 in its authority to create general public benefit or a specific public benefit.

SUBCHAPTER III

ACCOUNTABILITY

202.301 Standard of conduct for directors. (1) CONSIDERATION OF INTERESTS. (a) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, shall consider the effects of any action or inaction on all of the following:

1. The shareholders of the benefit corporation.

2. The employees and workforce of the benefit corporation and its subsidiaries and 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 any community in which offices or facilities of the benefit corporation or its subsidiaries or 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 corporate 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.

(b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, may consider any of the following:

1. The resources, intent, and conduct of any person seeking to acquire control of the corporation.

2. Any other pertinent factors or the interests of any other group that is deemed appropriate.

(c) Under pars. (a) and (b), the board of directors, committees of the board, and individual directors of a benefit corporation are not required to give priority to the interests of any particular person or group referred to in pars. (a) or (b) over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give such priority.

(2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests and factors in the manner required by sub. (1) does not constitute a violation of s. 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors to consider interests and factors as provided in s. 180.0827.

(3) EXONERATION FROM PERSONAL LIABILITY. A director of a benefit corporation is not personally liable, as such, for monetary damages for any of the following:

(a) Any action taken as a director if the director performed the duties of his or her office in compliance with this section and the provisions of ch. 180.

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) LIMITATION ON STANDING. A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

202.302 Benefit director. (1) GENERAL RULE. The board of directors of a benefit corporation shall include one director who shall be designated the "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this subchapter. e section

(2) ELECTION, REMOVAL, AND QUALIFICATIONS. The benefit director shall be elected, and may be removed, in the manner provided by subch. VIII of ch. 180, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) ANNUAL COMPLIANCE STATEMENT. The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by s. 202.401, a statement whether, in the opinion of the benefit director, 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 and whether the directors and officers complied with ss. 202.301 (1) and 202.303 (1), respectively. If in the opinion of the benefit director the benefit corporation or its directors or officers failed to comply with ss. 202.301 (1) and 202.303 (1), then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to comply with ss. 202.301 (1) and 202.303 (1).

(4) STATUS OF ACTIONS. The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(5) ALTERNATIVE GOVERNANCE ARRANGEMENTS. If a benefit corporation has elected under s. 180.1821 not to have a board of directors, then the bylaws of the benefit corporation must provide that the shareholders who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director. ~~a~~ a benefit corporation's

(6) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and any provision of its bylaws, a benefit director shall not be personally liable for any 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.

202.303 Standard of conduct for officers. (1) GENERAL RULE. Each officer of a benefit corporation shall consider the interests and factors described in s. 202.301 (1) in the manner provided in that subsection when 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 of general or specific public benefit by the benefit corporation or on any of the interests or factors referred to in s. 202.301 (1).

(2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests and factors in the manner described in sub. (1) shall not constitute a violation of s. 180.0841 or any other provision of ch. 180.

(3) EXONERATION FROM PERSONAL LIABILITY. An officer of a benefit corporation is not personally liable, as such, for monetary damages for any action taken as an officer if the officer performed the duties of the position in compliance with this section and the provisions of ch. 180.

202.304 Benefit officer. **(1)** DESIGNATION. A benefit corporation may have an officer designated the "benefit officer."

(2) FUNCTIONS. A benefit officer shall have the powers and duties, as provided in the bylaws and as determined by the board of directors, relating to the benefit corporation's purpose of creating general public benefit or specific public benefit. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by s. 202.401.

202.305 Right of action. **(1)** GENERAL RULE. The duties of directors and officers under this chapter, and the general and any specific public benefit purpose of a benefit corporation, may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this chapter and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

(2) PARTIES WITH STANDING. A benefit enforcement proceeding may be commenced or maintained only directly by the benefit corporation or derivatively by any of the following:

(a) A shareholder.

(b) A director.

(c) A person or group of persons that owns beneficially or of record 10 percent or more of the equity interest in an entity of which the benefit corporation is a subsidiary

(d) Any other person that is specified in the articles or bylaws of the benefit corporation.

SUBCHAPTER IV

TRANSPARENCY

202.401 Annual benefit report. (1) GENERAL RULE. A benefit corporation shall prepare an annual benefit report including all of the following:

(a) A narrative description of all of the following:

1. The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created.

2. The ways in which the benefit corporation pursued any 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.

3. Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit.

(b) An assessment of the social and environmental performance of the benefit corporation, prepared in accordance with a 3rd-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application.

(c) 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.

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(e) The name of each person that owns 5 percent 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.

(f) The statement of the benefit director described in s. 202.302 (3).

(2) TIMING AND DELIVERY OF REPORT. A benefit corporation shall annually send a benefit report to each shareholder within 120 days following the end of the fiscal

year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(3) INTERNET WEB SITE POSTING. A benefit corporation shall post its most recent benefit report on the public portion of its Internet Web site, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(4) FILING OF REPORT. Concurrently with the delivery of the benefit report to shareholders under sub. (2), the benefit corporation shall deliver a copy of the benefit report to the department for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of $70 for filing a benefit report.

(5) FAILURE TO FILE REPORT. If a benefit corporation has not delivered a benefit report to the department for a period of 2 years, the department may prepare and file a statement that the corporation has forfeited its status as a benefit corporation and is no longer subject to this chapter. If the corporation subsequently delivers a benefit report to the department for filing, the status of the corporation as a benefit corporation shall be automatically reinstated upon the filing of the benefit report by the department and the corporation shall again be subject to this chapter.

(END)

D. Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3756/P1dn
ARG:.....
gs

- date -

Please review the attached draft carefully to ensure that it is consistent with your intent. The attached draft is based on a combination of the original B Corp model legislation for benefit corporations and the benefit corporation model act as enacted in Pennsylvania.

I believe that one of the purposes of the model legislation is to allow corporate directors to consider a wider array of factors in determining what is in the best interests of the corporation. I note that Wisconsin law already provides some latitude for directors. Under s. 180.0827, in discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on shareholders, consider the following: 1) the effects of the action on employees, suppliers, and customers of the corporation, 2) the effects of the action on communities in which the corporation operates, and 3) any other factors that the director or officer considers pertinent.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3756/P1dn
ARG:cjs:rs

February 2, 2012

Please review the attached draft carefully to ensure that it is consistent with your intent. The attached draft is based on a combination of the original B Corp model legislation for benefit corporations and the benefit corporation model act as enacted in Pennsylvania.

I believe that one of the purposes of the model legislation is to allow corporate directors to consider a wider array of factors in determining what is in the best interests of the corporation. I note that Wisconsin law already provides some latitude for directors. Under s. 180.0827, in discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on shareholders, consider the following: 1) the effects of the action on employees, suppliers, and customers of the corporation, 2) the effects of the action on communities in which the corporation operates, and 3) any other factors that the director or officer considers pertinent.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-3756/1
ARG:cjs:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT *to create* chapter 202 of the statutes; **relating to:** creation of a category of business corporation identified as a benefit corporation.

Analysis by the Legislative Reference Bureau

This bill creates a category of business corporation identified as a benefit corporation. A benefit corporation may also fall within other categories of business corporations, such as service corporations or statutory close corporations.

Under the bill, a benefit corporation may be created by including in the articles of incorporation at the time of formation, or by later amending the articles of incorporation to include, a statement that the corporation is a benefit corporation. A business corporation's status as a benefit corporation may be terminated by amending the articles of incorporation to delete this statement. When creating or terminating a business corporation's status as a benefit corporation requires amending the articles of incorporation, the vote to amend must meet specified voting requirements.

A benefit corporation must have a purpose of creating general public benefit and the benefit corporation may also specify in its articles of incorporation additional specific public benefit purposes. A "general public benefit" is defined as a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, as measured by a third-party standard, through activities that promote some combination of specific public benefits. Examples of "specific public benefit" include all of the following: 1) providing low-income or underserved individuals or communities with beneficial products or services; 2) promoting economic opportunity for individuals or communities beyond the creation

of jobs in the normal course of business; 3) preserving the environment; 4) improving human health; 5) promoting the arts, sciences, or advancement of knowledge; 6) increasing the flow of capital to entities with a public benefit purpose; and 7) the accomplishment of any other particular benefit for society or the environment.

The board of directors of a benefit corporation must include one director designated as the "benefit director." The benefit director must prepare, for inclusion with the benefit corporation's annual benefit report to shareholders (discussed below), a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects and whether the benefit corporation's directors and officers complied with specified duties. Notwithstanding provisions of the business corporation law, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, must consider the effects of any action or inaction on all of the following: 1) the shareholders of the benefit corporation; 2) the employees and workforce of the benefit corporation and its subsidiaries and 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 any community in which offices or facilities of the benefit corporation or its subsidiaries or 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; and 7) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose. In addition, the board, committees, and individual directors may consider the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation and any other pertinent factors or the interests of any other group.

A benefit corporation may also designate a "benefit officer," who has the powers and duties relating to the benefit corporation's purpose of creating general public benefit or specific public benefit and is also responsible for preparing an annual benefit report (described below). Each officer of a benefit corporation must consider the same interests and factors applicable for directors, identified as 1) to 7) immediately above, when the officer has discretion to act with respect to a matter that may have a material effect on the creation of general or specific public benefit by the benefit corporation.

A benefit corporation must prepare an annual benefit report that contains certain information for the reporting year, including the following: 1) a narrative description of the ways in which the benefit corporation pursued general public benefit and specific public benefit and the extent to which such public benefit was created; 2) an assessment of the social and environmental performance of the benefit corporation, prepared in accordance with a third-party standard; 3) the names of the benefit director and benefit officer and the address to which correspondence to each may be directed; 4) the compensation paid by the benefit corporation to each director;

5) the name of each person with a 5 percent or greater ownership interest in the benefit corporation; and 6) the benefit director's statement (discussed above). This benefit report must be annually delivered to the shareholders, filed with the Department of Financial Institutions, and posted on the benefit corporation's Web site if it has one.

The bill generally restricts the ability to bring actions to enforce the general or specific public benefit purposes of a benefit corporation or the duties of directors or officers with respect to these purposes. However, the benefit corporation itself and, derivatively, shareholders, directors, and certain other persons do have a right of action to enforce these purposes. The bill also includes certain limitations on imposing personal liability on directors and officers of benefit corporations.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 202 of the statutes is created to read:

CHAPTER 202

BENEFIT CORPORATIONS

SUBCHAPTER I

GENERAL PROVISIONS

202.101 Application and effect of chapter. (1) GENERAL RULE. This chapter shall be applicable to all benefit corporations.

(2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY. The existence of a provision of this chapter 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. This chapter shall not affect any statute or rule that is applicable to a business corporation that is not a benefit corporation.

(3) LAWS APPLICABLE TO BENEFIT CORPORATIONS. Except as otherwise provided in this chapter, ch. 180 shall be generally applicable to all benefit corporations. The specific provisions of this chapter shall control over the general provisions of ch. 180.

A benefit corporation may be simultaneously subject to this chapter and provisions of other chapters.

(4) ORGANIC RECORDS. A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this chapter.

202.102 Definitions; computation of ownership; independence. (1) DEFINITIONS. Unless the context clearly indicates otherwise, in this chapter:

(a) "Benefit corporation" means a business corporation that has elected to become subject to this chapter and whose status as a benefit corporation has not been terminated under s. 202.105 or 202.401 (5).

(b) "Benefit director" means the person designated as the benefit director of a benefit corporation as provided in s. 202.302.

(c) "Benefit enforcement proceeding" means any claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for any of the following:

1. Failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles.

2. Violation of a duty or standard of conduct under this chapter.

(d) "Benefit officer" means the officer of a benefit corporation, if any, designated as the benefit officer as provided in s. 202.304.

(e) "Department" means the department of financial institutions.

(f) "Entity" has the meaning given in s. 180.0103 (8).

(g) "General public benefit" means a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, as measured

by a 3rd-party standard, through activities that promote some combination of specific public benefits.

(h) "Independent" means that a person has no material relationship with a benefit corporation or any of its subsidiaries, either directly or as a shareholder, partner, member, or other owner or as a director, officer, or other manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries.

(i) "Minimum status vote" means that, in addition to any other approval or vote required by this chapter or ch. 180 or a bylaw adopted by the shareholders, at least one of the following applies:

1. The holders of shares of every class or series shall be entitled to vote on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

2. The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast thereon.

(j) "Service corporation" has the meaning given in s. 180.1901 (2).

(k) "Specific public benefit" includes all of the following:

1. Providing low-income or underserved individuals or communities with beneficial products or services.

2. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

3. Preserving the environment.

4. Improving human health.

5. Promoting the arts, sciences, or advancement of knowledge.

6. Increasing the flow of capital to entities with a public benefit purpose.

7. The accomplishment of any other particular benefit for society or the environment.

(L) "Subsidiary" of a person means an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests.

(m) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is all of the following:

1. Developed by a person that is independent of the benefit corporation.

2. Transparent because all of the following information about the standard is publicly available:

a. The factors considered when measuring the performance of a business.

b. The relative weightings of the factors under subd. 2. a.

c. The identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(2) COMPUTATION OF OWNERSHIP; INDEPENDENCE. (a) For purposes of subs. (1) (h) and (L), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(b) For purposes of sub. (1) (h), all of the following apply:

1. Serving as a benefit director or benefit officer does not make a person not independent.

2. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

a. The person is, or has been within the last 3 years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer.

b. An immediate family member of the person is, or has been within the last 3 years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries.

c. The person, or an entity of which the person is a director, officer, or other manager or in which the person owns beneficially or of record 5 percent or more of the outstanding equity interests, owns beneficially or of record 5 percent or more of the outstanding shares of the benefit corporation.

202.103 Formation of benefit corporations. A benefit corporation shall be formed in accordance with ch. 180, except that its articles shall also state that it is a benefit corporation.

202.104 Election of an existing business corporation to become a benefit corporation. **(1)** AMENDMENT. An existing business corporation may become a benefit corporation under this chapter by amending its articles so that they contain, in addition to the requirements of s. 180.0202, a statement that the corporation is a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit corporation is a party to a merger, consolidation, or division or is the exchanging corporation in a share exchange, and the surviving, new, or any resulting corporation in the merger, consolidation, division, or share exchange is to be a benefit corporation, then the plan of merger, consolidation, division, or share exchange shall not be effective unless it is adopted by at least the minimum status vote.

202.105 Termination of benefit corporation status. **(1)** AMENDMENT. A benefit corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete the provision required by ss. 202.103 and

202.104 to be stated in the articles of a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(2) FUNDAMENTAL TRANSACTIONS. If a corporate plan would have the effect of terminating the status of a business corporation as a benefit corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote.

SUBCHAPTER II

CORPORATE PURPOSES

202.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE. A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under s. 180.0301 and any specific purpose set forth in its articles under sub. (2).

(2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE. 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 in addition to its purposes under s. 180.0301 and sub. (1). The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(3) EFFECT OF PURPOSES. The creation of general public benefit and specific public benefit as provided in subs. (1) and (2) shall be considered to be in the best interests of the benefit corporation.

(4) AMENDMENT. A benefit corporation may 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. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(5) SERVICE CORPORATIONS. A service corporation that is a benefit corporation is not limited by ss. 180.1903 and 180.1905 in its authority to create general public benefit or a specific public benefit.

SUBCHAPTER III

ACCOUNTABILITY

202.301 Standard of conduct for directors. (1) CONSIDERATION OF INTERESTS. (a) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, shall consider the effects of any action or inaction on all of the following:

1. The shareholders of the benefit corporation.

2. The employees and workforce of the benefit corporation and its subsidiaries and 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 any community in which offices or facilities of the benefit corporation or its subsidiaries or 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 corporate 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.

(b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a benefit corporation, in considering the best interests of the benefit corporation, may consider any of the following:

1. The resources, intent, and conduct of any person seeking to acquire control of the corporation.

2. Any other pertinent factors or the interests of any other group that is deemed appropriate.

(c) Under pars. (a) and (b), the board of directors, committees of the board, and individual directors of a benefit corporation are not required to give priority to the interests of any particular person or group referred to in pars. (a) or (b) over the interests of any other person or group unless the benefit corporation has stated in its articles its intention to give such priority.

(2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests and factors in the manner required by sub. (1) does not constitute a violation of s. 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors to consider interests and factors as provided in s. 180.0827.

(3) EXONERATION FROM PERSONAL LIABILITY. A director of a benefit corporation is not personally liable, as such, for monetary damages for any of the following:

(a) Any action taken as a director if the director performed the duties of his or her office in compliance with this section and the provisions of ch. 180.

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) LIMITATION ON STANDING. A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

202.302 Benefit director. (1) GENERAL RULE. The board of directors of a benefit corporation shall include one director who shall be designated the "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(2) ELECTION, REMOVAL, AND QUALIFICATIONS. The benefit director shall be elected, and may be removed, in the manner provided by subch. VIII of ch. 180, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) ANNUAL COMPLIANCE STATEMENT. The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by s. 202.401, a statement whether, in the opinion of the benefit director, 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 and whether the directors and officers complied with ss. 202.301 (1) and 202.303 (1), respectively. If in the opinion of the benefit director the benefit corporation or its directors or officers failed to comply with ss. 202.301 (1) and 202.303 (1), then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to comply with ss. 202.301 (1) and 202.303 (1).

(4) STATUS OF ACTIONS. The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(5) ALTERNATIVE GOVERNANCE ARRANGEMENTS. If a benefit corporation has elected under s. 180.1821 not to have a board of directors, then the bylaws of the benefit corporation must provide that the shareholders who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director.

(6) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and any provision of a benefit corporation's bylaws, a benefit director shall not be personally liable for any 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.

202.303 Standard of conduct for officers. (1) GENERAL RULE. Each officer of a benefit corporation shall consider the interests and factors described in s. 202.301 (1) in the manner provided in that subsection when 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 of general or specific public benefit by the benefit corporation or on any of the interests or factors referred to in s. 202.301 (1).

(2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests and factors in the manner described in sub. (1) shall not constitute a violation of s. 180.0841 or any other provision of ch. 180.

(3) EXONERATION FROM PERSONAL LIABILITY. An officer of a benefit corporation is not personally liable, as such, for monetary damages for any action taken as an

officer if the officer performed the duties of the position in compliance with this section and the provisions of ch. 180.

202.304 Benefit officer. **(1)** DESIGNATION. A benefit corporation may have an officer designated the "benefit officer."

(2) FUNCTIONS. A benefit officer shall have the powers and duties, as provided in the bylaws and as determined by the board of directors, relating to the benefit corporation's purpose of creating general public benefit or specific public benefit. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required by s. 202.401.

202.305 Right of action. **(1)** GENERAL RULE. The duties of directors and officers under this chapter, and the general and any specific public benefit purpose of a benefit corporation, may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this chapter and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

(2) PARTIES WITH STANDING. A benefit enforcement proceeding may be commenced or maintained only directly by the benefit corporation or derivatively by any of the following:

(a) A shareholder.

(b) A director.

(c) A person or group of persons that owns beneficially or of record 10 percent or more of the equity interest in an entity of which the benefit corporation is a subsidiary

(d) Any other person that is specified in the articles or bylaws of the benefit corporation.

SUBCHAPTER IV

TRANSPARENCY

202.401 Annual benefit report. (1) GENERAL RULE. A benefit corporation shall prepare an annual benefit report including all of the following:

(a) A narrative description of all of the following:

1. The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created.

2. The ways in which the benefit corporation pursued any 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.

3. Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit.

(b) An assessment of the social and environmental performance of the benefit corporation, prepared in accordance with a 3rd-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application.

(c) 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.

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(e) The name of each person that owns 5 percent 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.

(f) The statement of the benefit director described in s. 202.302 (3).

(2) TIMING AND DELIVERY OF REPORT. A benefit corporation shall annually send a benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(3) INTERNET WEB SITE POSTING. A benefit corporation shall post its most recent benefit report on the public portion of its Internet Web site, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(4) FILING OF REPORT. Concurrently with the delivery of the benefit report to shareholders under sub. (2), the benefit corporation shall deliver a copy of the benefit report to the department for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of $70 for filing a benefit report.

(5) FAILURE TO FILE REPORT. If a benefit corporation has not delivered a benefit report to the department for a period of 2 years, the department may prepare and file a statement that the corporation has forfeited its status as a benefit corporation and is no longer subject to this chapter. If the corporation subsequently delivers a benefit report to the department for filing, the status of the corporation as a benefit corporation shall be automatically reinstated upon the filing of the benefit report by the department and the corporation shall again be subject to this chapter.

(END)

Barman, Mike

From: Rep.Fields
Sent: Thursday, March 08, 2012 9:38 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-3756/1 Topic: Benefit corporations

Please Jacket LRB 11-3756/1 for the ASSEMBLY.