

2017 DRAFTING REQUEST

Bill

For: **Ken Skowronski (608) 266-8590** Drafter: **agary**
 By: **Justin** Secondary Drafters:
 Date: **2/22/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Skowronski@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Benefit corporations

Instructions:

Wants redraft of 2015 AB 59

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 2/22/2017	kfollett 2/27/2017			
/P1	agary 3/24/2017	anienaja 3/24/2017	lparisi 2/27/2017		
/1	agary 5/1/2017	kfollett 5/3/2017	hkohn 3/24/2017	lparisi 3/30/2017	
/2			hkohn 5/3/2017	mbarman 5/8/2017	

FE Sent For: *2*

Not Needed

<END>



State of Wisconsin
2015 - 2016 LEGISLATURE

wanted
by Mon.
2/27

-2250/P1
LRB-1/31/1
ARG:wj/jt
kjf

7 8 in 2/22
2015 ASSEMBLY BILL 59

February 23, 2015 - Introduced by Representatives KOOYENGA, HESSELBEIN, MACCO, JOHNSON, GOYKE, KNUDSON, SANFELIPPO, SUBECK, KLEEFISCH, C. TAYLOR, KULP, DOYLE, KAHL, QUINN, KNODL, RIPP, GENRICH, BARCA, BERCEAU, KREMER, ZAMARRIPA, SPREITZER, HINTZ and HEBL, cosponsored by Senators DARLING, WIRCH, LASSA, RINGHAND and OLSEN. Referred to Committee on Financial Institutions.

Reyn

- 1 AN ACT to create chapter 204 of the statutes; relating to: creation of a category
- 2 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.

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, 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.

ASSEMBLY BILL 59

1 (2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY. The existence of a
2 provision of this chapter shall not of itself create an implication that a contrary or
3 different rule of law is applicable to a business corporation that is not a benefit
4 corporation. This chapter shall not affect any statute or rule that is applicable to a
5 business corporation that is not a benefit corporation.

6 (3) LAWS APPLICABLE TO BENEFIT CORPORATIONS. Except as otherwise provided in
7 this chapter, ch. 180 shall be generally applicable to all benefit corporations. The
8 specific provisions of this chapter shall control over the general provisions of ch. 180.
9 A benefit corporation may be simultaneously subject to this chapter and provisions
10 of other chapters.

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

14 **204.102 Definitions.** Unless the context clearly indicates otherwise, in this
15 chapter:

16 (1) "Benefit corporation" means a business corporation that has elected to
17 become subject to this chapter and whose status as a benefit corporation has not been
18 terminated under s. 204.105.

19 (2) "Benefit director" means the person designated as the benefit director of a
20 benefit corporation as provided in s. 204.302.

21 (3) "Benefit officer" means the officer of a benefit corporation, if any, designated
22 as the benefit officer as provided in s. 204.304.

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

ASSEMBLY BILL 59**SECTION 1**

1 (5) "General public benefit" means a material positive impact on society and
2 the environment by the operations of a benefit corporation taken as a whole, through
3 activities that promote some combination of specific public benefits.

4 (6) "Service corporation" has the meaning given in s. 180.1901 (2). ✓

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

6 (a) Providing low-income or underserved individuals or communities with
7 beneficial products or services.

8 (b) Promoting economic opportunity for individuals or communities beyond the
9 creation of jobs in the normal course of business.

10 (c) Preserving the environment.

11 (d) Improving human health.

12 (e) Promoting the arts, sciences, or advancement of knowledge.

13 (f) Increasing the flow of capital to entities with a public benefit purpose.

14 (g) The accomplishment of any other particular benefit for society or the
15 environment.

16 **204.103 Formation of benefit corporations.** A benefit corporation shall be
17 formed in accordance with ch. 180, except that its articles shall also state that it is
18 a benefit corporation.

19 **204.104 Election of an existing business corporation to become a**
20 **benefit corporation.** (1) AMENDMENT. An existing business corporation may
21 become a benefit corporation under this chapter by amending its articles so that they
22 contain, in addition to the requirements of s. 180.0202, a statement that the
23 corporation is a benefit corporation.

24 (2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit
25 corporation is a party to a merger, consolidation, or division or is the exchanging

ASSEMBLY BILL 59

1 corporation in a share exchange, and the surviving, new, or any resulting corporation
2 in the merger, consolidation, division, or share exchange is to be a benefit
3 corporation, then the plan of merger, consolidation, division, or share exchange shall
4 not be effective unless the articles of the surviving, new, or resulting corporation
5 contain a statement that the corporation is a benefit corporation.

6 **204.105 Termination of benefit corporation status.** A benefit corporation
7 may terminate its status as such and cease to be subject to this chapter by amending
8 its articles to delete the provision required by ss. 204.103 and 204.104 to be stated
9 in the articles of a benefit corporation.

SUBCHAPTER II

CORPORATE PURPOSES

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12 **204.201 Corporate purposes.** (1) GENERAL PUBLIC BENEFIT PURPOSE. A
13 benefit corporation shall have a purpose of creating general public benefit. This
14 purpose is in addition to its purpose under s. 180.0301 and any specific purpose set
15 forth in its articles under sub. (2).

16 (2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE. The articles of a benefit
17 corporation may identify one or more specific public benefits that it is the purpose
18 of the benefit corporation to create in addition to its purposes under s. 180.0301 and
19 sub. (1). The identification of a specific public benefit under this subsection does not
20 limit the obligation of a benefit corporation to create general public benefit.

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

ASSEMBLY BILL 59

1 possibility that these interests may be best served by the continued corporate
2 independence of the benefit corporation.

3 7. The ability of the benefit corporation to accomplish its general public benefit
4 purpose and any specific public benefit purpose.

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

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

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

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

18 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
19 and factors in the manner required by sub. (1) does not constitute a violation of s.
20 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors
21 to consider interests and factors as provided in s. 180.0827.

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

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

ASSEMBLY BILL 59**SECTION 1**

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

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

6 **204.302 Benefit director.** (1) GENERAL RULE. The board of directors of a
7 benefit corporation shall include one director who shall be designated the "benefit
8 director" and shall have, in addition to all of the powers, duties, rights, and
9 immunities of the other directors of the benefit corporation, the powers, duties,
10 rights, and immunities provided in this section.

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

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

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

24 (5) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and
25 any provision of a benefit corporation's bylaws, a benefit director shall not be

ASSEMBLY BILL 59

1 personally liable for any act or omission in the capacity of a benefit director unless
2 the act or omission constitutes self-dealing, willful misconduct, or a knowing
3 violation of law.

4 **204.303 Standard of conduct for officers.** (1) GENERAL RULE. Each officer
5 of a benefit corporation shall consider the interests and factors described in s.
6 204.301 (1) in the manner provided in that subsection when the officer has discretion
7 to act with respect to a matter and it reasonably appears to the officer that the matter
8 may have a material effect on the creation of general or specific public benefit by the
9 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

10 (2) COORDINATION WITH OTHER PROVISIONS OF LAW. The consideration of interests
11 and factors in the manner described in sub. (1) shall not constitute a violation of s.
12 180.0841 or any other provision of ch. 180.

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

17 **204.304 Benefit officer.** (1) DESIGNATION. A benefit corporation may have
18 an officer designated the "benefit officer."

19 (2) FUNCTIONS. A benefit officer shall have the powers and duties, as provided
20 in the bylaws and as determined by the board of directors, relating to the benefit
21 corporation's purpose of creating general public benefit or specific public benefit.

SECTION 2. Effective date.

22 (1) This act takes effect on the 90th day after the day of publication.

23
24 (END)



in
3/24
TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

3/24 t/c w/ Justin - needs 11

SA✓

No changes

- 1 AN ACT *to create* chapter 204 of the statutes; **relating to:** creation of a category
- 2 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.

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24 (2) FUNDAMENTAL TRANSACTIONS. If a corporation that is not a benefit
25 corporation is a party to a merger, consolidation, or division or is the exchanging

1 corporation in a share exchange, and the surviving, new, or any resulting corporation
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10 SUBCHAPTER II

11 CORPORATE PURPOSES

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

1 possibility that these interests may be best served by the continued corporate
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3 7. The ability of the benefit corporation to accomplish its general public benefit
4 purpose and any specific public benefit purpose.

5 (b) Notwithstanding ss. 180.0302 (15) and 180.0827, in discharging the duties
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7 individual directors of a benefit corporation, in considering the best interests of the
8 benefit corporation, may consider any of the following:

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

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

13 (c) Under pars. (a) and (b), the board of directors, committees of the board, and
14 individual directors of a benefit corporation are not required to give priority to the
15 interests of any particular person or group referred to in par. (a) or (b) over the
16 interests of any other person or group unless the benefit corporation has stated in
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25 her office in compliance with this section and the provisions of ch. 180.

1 (b) Failure of the benefit corporation to pursue or create general public benefit
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5 purpose of a benefit corporation arising from the status of the person as a beneficiary.

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10 rights, and immunities provided in this section.

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

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

19 (4) ALTERNATIVE GOVERNANCE ARRANGEMENTS. If a benefit corporation has
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21 benefit corporation must provide that the shareholders who perform the duties of a
22 board of directors shall include a person with the powers, duties, rights, and
23 immunities of a benefit director.

24 (5) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and
25 any provision of a benefit corporation’s bylaws, a benefit director shall not be

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2 the act or omission constitutes self-dealing, willful misconduct, or a knowing
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5 of a benefit corporation shall consider the interests and factors described in s.
6 204.301 (1) in the manner provided in that subsection when the officer has discretion
7 to act with respect to a matter and it reasonably appears to the officer that the matter
8 may have a material effect on the creation of general or specific public benefit by the
9 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

10 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
11 and factors in the manner described in sub. (1) shall not constitute a violation of s.
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15 officer if the officer performed the duties of the position in compliance with this
16 section and the provisions of ch. 180.

17 **204.304 Benefit officer. (1) DESIGNATION.** A benefit corporation may have
18 an officer designated the "benefit officer."

19 **(2) FUNCTIONS.** A benefit officer shall have the powers and duties, as provided
20 in the bylaws and as determined by the board of directors, relating to the benefit
21 corporation's purpose of creating general public benefit or specific public benefit.

22 **SECTION 2. Effective date.**

23 (1) This act takes effect on the 90th day after the day of publication.

24 (END)

Parisi, Lori

From: Phillips, Justin
Sent: Thursday, March 30, 2017 2:10 PM
To: LRB.Legal
Subject: Draft Review: LRB -2250/1

Please Jacket LRB -2250/1 for the ASSEMBLY.

Gary, Aaron

From: Phillips, Justin
Sent: Monday, May 01, 2017 12:10 PM
To: Gary, Aaron
Subject: RE: change to LRB 2250

Hey Aaron,

I finally heard back from some of the people interested in the legislation and I'm going to copy in an email they sent me as it references bills from other states. I'd like to incorporate the legal notes below into our new piece of legislation, thank you:

We recommend that the proposed legislation add a minimal objective reporting requirement to shareholders with flexibility to allow benefit corporations to elect a stricter reporting obligation. Under this proposed change, a benefit corporation would be required to submit a non-public annual report to the shareholders, which would include the corporation's (i) benefit objectives established by the board of directors, (ii) standards for measuring progress towards the objectives, (iii) objective factual information based on the standards regarding in meeting the objectives, and (iv) an assessment of the corporation's success in meeting the objectives and creating a general or specific public benefit. With a voluntary election added to the articles of incorporation or bylaws, the benefit corporation may require public disclosure of such annual report and the use of a third-party standard in connection with, or attain a third-party certification of, the promotion of its stated public benefit.

Our recommendation represents a compromise between no reporting obligations and the model legislation. The model legislation requires (i) annual reporting (ii) made available to the public (iii) using a third party standard (iv) with the inclusion of a significant amount of detail. While heightened reporting does a more thorough job to hold benefit corporations accountable to the shareholders and the public, some states have seen these reporting requirements as too onerous and prefer to allow for more flexibility. However, no mandatory reporting obligations to the shareholders or public increases the risk of benefit corporations not following through on creating a general or specific public benefit and portraying themselves to their shareholders or the public as more socially responsible than they actually are. We believe a compromise exists to protect shareholder interests, to avoid the deterrence of interest in converting to a benefit corporation, and allowing a formal process for electing into higher transparency. Other states have adopted this recommended approach. For example, a similar approach was adopted in Delaware (See 18 Del. Laws. § 366) and has recently been introduced in Oklahoma (See SB1121, HB 1809).

We recommend that the following Subchapter IV Transparency, Section 204.401 be added to the proposed draft to implement the annual reporting described above:

Subchapter IV: Transparency

Section 204.401 Annual benefit report.

(1) A benefit corporation shall annually provide its shareholders with a statement as to the benefit corporation's promotion of general public benefit or any specific public benefit identified in the articles of incorporation. The statement shall include:

(a) The objectives the board of directors has established to promote general public benefit or any specific public benefit;

(b) The standards the board of directors has adopted to measure the corporation's progress in promoting general public benefit or any specific public benefit;

- (c) Objective factual information based on those standards regarding the benefit corporation's success in meeting the objectives for promoting such public benefit or public benefits and interests; and
 - (d) An assessment of the corporation's success in meeting the objectives and promoting general public benefit or any specific public benefit.
- (2) The articles of incorporation or bylaws of a benefit corporation may require that the benefit corporation:
- (a) Make the statement described in subsection (1) of this section available to the public; and/or
 - (b) Use a third-party standard in connection with or attain a periodic third-party certification addressing the corporation's promotion of general public benefit or any specific public benefit identified in the articles of incorporation.

--
Justin Phillips

Office of Representative Ken Skowronski
82nd Assembly District

(608) 266-8590

From: Gary, Aaron
Sent: Tuesday, April 04, 2017 1:00 PM
To: Phillips, Justin <Justin.Phillips@legis.wisconsin.gov>
Subject: RE: change to LRB 2250

Hi Justin,

LRB-2250 is a redraft of 2015 AB 59, introduced by Rep. Kooyenga last session. In turn, 2015 AB 59 was a redraft of 2013 AB 870, introduced by Rep. Hesselbein in 2013.

The 2013 bill contained reports somewhat similar to what you have described below. I have attached 2013 AB 870 and the reporting requirements can be found starting at p. 11, line 20 and also starting at p. 13, line 14. I believe there were some people concerned about including these reporting requirements. Rep. Kooyenga had these reporting requirements removed when the 2013 bill was redrafted for the 2015 session. I have enclosed instructions for the drafting of the 2015 bill requesting that the reporting provisions be dropped.

Do you want me to add back into your draft the reporting provisions as they appear in 2013 AB 870?

Also, the statutes give shareholders the right to remove directors with or without cause, for any reason, although the corporation's articles or bylaws can modify this authority. See s. 180.0808. So it doesn't seem that additional statutory treatment giving shareholders a way to challenge the board of directors is necessary, unless you want to prohibit the corporation's articles or bylaws from overriding the existing statutory authority when it comes to benefit corporation directors.

<< File: 13-4016_1.pdf >> << File: 15-1510_1 (1).pdf >> << File: 2015 AB 59 changes.pdf >>

Please let me know if you have any questions and/or how you would like me to proceed.

Aaron

Aaron R. Gary
Senior Attorney, Legislative Reference Bureau

608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Phillips, Justin
Sent: Friday, March 31, 2017 1:28 PM
To: Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>
Subject: change to LRB 2250

Hey Aaron,

Of course, as soon as I ask for a jacketed copy of LRB 2250 –regarding benefit corporations, I had a call with some interested parties and suggested a few changes. Wanted to run these changes past you to make sure that they're reading the bill correctly, that those suggested changes aren't in a different statute or that these changes are actually possible.

The group I spoke with suggested adding a provision to the bill for a reporting basis on the pursuit of the mission –that a benefit corp will report a measurable way they're achieving they're corporation's mission - and adding a provision that gives corporation shareholders a way to challenge the corporation's board of directors if they aren't achieving goals set out the corporations mission and bylaws.

Give me a call if you need more direction than this and a suggestion on how to move forward with adding these elements to the LRB

Thanks
Justin

--

Justin Phillips

Office of Representative Ken Skowronski
82nd Assembly District

(608) 266-8590



State of Wisconsin
2017 - 2018 LEGISLATURE

Wanted
Wed.
5/3

LRB-2250/1 Z
ARG:kjf

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2017 BILL

Region

1 AN ACT *to create* chapter 204 of the statutes; **relating to:** creation of a category
2 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.

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, 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.

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1 **(2) APPLICATION OF BUSINESS CORPORATION LAW GENERALLY.** The existence of a
2 provision of this chapter shall not of itself create an implication that a contrary or
3 different rule of law is applicable to a business corporation that is not a benefit
4 corporation. This chapter shall not affect any statute or rule that is applicable to a
5 business corporation that is not a benefit corporation.

6 **(3) LAWS APPLICABLE TO BENEFIT CORPORATIONS.** Except as otherwise provided in
7 this chapter, ch. 180 shall be generally applicable to all benefit corporations. The
8 specific provisions of this chapter shall control over the general provisions of ch. 180.
9 A benefit corporation may be simultaneously subject to this chapter and provisions
10 of other chapters.

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

14 **204.102 Definitions.** Unless the context clearly indicates otherwise, in this
15 chapter:

16 **(1)** “Benefit corporation” means a business corporation that has elected to
17 become subject to this chapter and whose status as a benefit corporation has not been
18 terminated under s. 204.105.

19 **(2)** “Benefit director” means the person designated as the benefit director of a
20 benefit corporation as provided in s. 204.302.

21 **(3)** “Benefit officer” means the officer of a benefit corporation, if any, designated
22 as the benefit officer as provided in s. 204.304.

23 **(4)** “Entity” has the meaning given in s. 180.0103 (8).

BILL**SECTION 1**

1 (5) “General public benefit” means a material positive impact on society and
2 the environment by the operations of a benefit corporation taken as a whole, through
3 activities that promote some combination of specific public benefits.

4 (6) “Service corporation” has the meaning given in s. 180.1901 (2).

5 (7) “Specific public benefit” includes all of the following:

6 (a) Providing low-income or underserved individuals or communities with
7 beneficial products or services.

8 (b) Promoting economic opportunity for individuals or communities beyond the
9 creation of jobs in the normal course of business.

10 (c) Preserving the environment.

11 (d) Improving human health.

12 (e) Promoting the arts, sciences, or advancement of knowledge.

13 (f) Increasing the flow of capital to entities with a public benefit purpose.

14 (g) The accomplishment of any other particular benefit for society or the
15 environment.

16 **204.103 Formation of benefit corporations.** A benefit corporation shall be
17 formed in accordance with ch. 180, except that its articles shall also state that it is
18 a benefit corporation.

19 **204.104 Election of an existing business corporation to become a**
20 **benefit corporation.** (1) **AMENDMENT.** An existing business corporation may
21 become a benefit corporation under this chapter by amending its articles so that they
22 contain, in addition to the requirements of s. 180.0202, a statement that the
23 corporation is a benefit corporation.

24 (2) **FUNDAMENTAL TRANSACTIONS.** If a corporation that is not a benefit
25 corporation is a party to a merger, consolidation, or division or is the exchanging

BILL

1 corporation in a share exchange, and the surviving, new, or any resulting corporation
2 in the merger, consolidation, division, or share exchange is to be a benefit
3 corporation, then the plan of merger, consolidation, division, or share exchange shall
4 not be effective unless the articles of the surviving, new, or resulting corporation
5 contain a statement that the corporation is a benefit corporation.

6 **204.105 Termination of benefit corporation status.** A benefit corporation
7 may terminate its status as such and cease to be subject to this chapter by amending
8 its articles to delete the provision required by ss. 204.103 and 204.104 to be stated
9 in the articles of a benefit corporation.

SUBCHAPTER II

CORPORATE PURPOSES

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12 **204.201 Corporate purposes. (1) GENERAL PUBLIC BENEFIT PURPOSE.** A
13 benefit corporation shall have a purpose of creating general public benefit. This
14 purpose is in addition to its purpose under s. 180.0301 and any specific purpose set
15 forth in its articles under sub. (2).

16 **(2) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE.** The articles of a benefit
17 corporation may identify one or more specific public benefits that it is the purpose
18 of the benefit corporation to create in addition to its purposes under s. 180.0301 and
19 sub. (1). The identification of a specific public benefit under this subsection does not
20 limit the obligation of a benefit corporation to create general public benefit.

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

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1 possibility that these interests may be best served by the continued corporate
2 independence of the benefit corporation.

3 7. The ability of the benefit corporation to accomplish its general public benefit
4 purpose and any specific public benefit purpose.

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

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

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

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

18 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
19 and factors in the manner required by sub. (1) does not constitute a violation of s.
20 180.0801 or any other provision of ch. 180 and is in addition to the ability of directors
21 to consider interests and factors as provided in s. 180.0827.

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

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

BILL**SECTION 1**

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

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

6 **204.302 Benefit director. (1) GENERAL RULE.** The board of directors of a
7 benefit corporation shall include one director who shall be designated the “benefit
8 director” and shall have, in addition to all of the powers, duties, rights, and
9 immunities of the other directors of the benefit corporation, the powers, duties,
10 rights, and immunities provided in this section.

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

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

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

24 (5) EXONERATION FROM PERSONAL LIABILITY. Notwithstanding s. 180.0828 and
25 any provision of a benefit corporation’s bylaws, a benefit director shall not be

BILL

1 personally liable for any act or omission in the capacity of a benefit director unless
2 the act or omission constitutes self-dealing, willful misconduct, or a knowing
3 violation of law.

4 **204.303 Standard of conduct for officers. (1) GENERAL RULE.** Each officer
5 of a benefit corporation shall consider the interests and factors described in s.
6 204.301 (1) in the manner provided in that subsection when the officer has discretion
7 to act with respect to a matter and it reasonably appears to the officer that the matter
8 may have a material effect on the creation of general or specific public benefit by the
9 benefit corporation or on any of the interests or factors referred to in s. 204.301 (1).

10 **(2) COORDINATION WITH OTHER PROVISIONS OF LAW.** The consideration of interests
11 and factors in the manner described in sub. (1) shall not constitute a violation of s.
12 180.0841 or any other provision of ch. 180.

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

17 **204.304 Benefit officer. (1) DESIGNATION.** A benefit corporation may have
18 an officer designated the "benefit officer."

19 **(2) FUNCTIONS.** A benefit officer shall have the powers and duties, as provided
20 in the bylaws and as determined by the board of directors, relating to the benefit
21 corporation's purpose of creating general public benefit or specific public benefit.

22 **SECTION 2. Effective date.**

23 (1) This act takes effect on the 90th day after the day of publication.

24

(END)

insert
9-21 →

1 **INSERT ANAL:**

A benefit corporation must annually provide its shareholders with a statement as to the benefit corporation's promotion of general public benefit or any specific public benefit identified in its articles of incorporation, which statement includes specified information.

2

3 **INSERT 9-21:**

4

SUBCHAPTER IV

5

TRANSPARENCY

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204.401 Annual benefit statement. (1) A benefit corporation shall annually provide its shareholders with a statement as to the benefit corporation's promotion of general public benefit or any specific public benefit identified in its articles. The statement shall include all of the following:

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(a) The objectives the board of directors has established to promote general public benefit or any specific public benefit.

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(b) The standards the board of directors has adopted to measure the corporation's progress in promoting general public benefit or any specific public benefit.

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(c) Objective, factual information based on the standards under par. (b) regarding the benefit corporation's success in meeting the objectives under par. (a) and in promoting public benefits and interests. ✓

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18

(d) An assessment of the corporation's success in meeting the objectives under par. (a) and in promoting general public benefit or any specific public benefit. ✓

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(2) The articles or bylaws of a benefit corporation may require that the benefit corporation do any of the following:

21

1 (a) Make the statement described in sub. (1) available to the public.

2 (b) Use a 3rd-party standard in connection with or attain a periodic 3rd-party
3 certification addressing the corporation's promotion of general public benefit or any
4 specific public benefit identified in its articles.

5

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From: Gibbs, Sarah
Sent: Monday, May 08, 2017 2:09 PM
To: LRB.Legal
Subject: Draft Review: LRB -2250/2

Please Jacket LRB -2250/2 for the ASSEMBLY

Thanks

Sarah Gibbs
Office of Rep Ken Skowronski