

SENATE BILL No. 359

May 4, 2011, Introduced by Senators JANSEN, HUNTER and PAPPAGEORGE and referred to the Committee on Economic Development.

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
(MCL 450.1101 to 450.2098) by adding chapter 9A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 9A

BENEFIT CORPORATIONS

SEC. 951. (1) AS USED IN THIS CHAPTER:

(A) "BENEFIT DIRECTOR" MEANS A DIRECTOR DESIGNATED AS A
BENEFIT DIRECTOR UNDER SECTION 954.

(B) "BENEFIT ENFORCEMENT PROCEEDING" MEANS A CLAIM ASSERTED 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:

(i) A FAILURE TO PURSUE THE GENERAL PUBLIC BENEFIT PURPOSE OF A

1 BENEFIT CORPORATION OR ANY SPECIFIC PUBLIC BENEFIT PURPOSE SET
2 FORTH IN THE ARTICLES OF A BENEFIT CORPORATION.

3 (ii) A VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS
4 CHAPTER.

5 (C) "BENEFIT OFFICER" MEANS AN OFFICER DESIGNATED AS A BENEFIT
6 OFFICER UNDER SECTION 955.

7 (D) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT
8 ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE, AS MEASURED BY A
9 THIRD-PARTY STANDARD, FROM THE BUSINESS AND OPERATIONS OF A BENEFIT
10 CORPORATION.

11 (E) "INDEPENDENT PERSON" MEANS A PERSON THAT DOES NOT HAVE A
12 MATERIAL RELATIONSHIP WITH A BENEFIT CORPORATION OR A SUBSIDIARY OF
13 A BENEFIT CORPORATION. ALL OF THE FOLLOWING APPLY IN DETERMINING
14 WHETHER A PERSON IS AN INDEPENDENT PERSON:

15 (i) DESIGNATION AS A BENEFIT DIRECTOR OR BENEFIT OFFICER SHALL
16 NOT BE CONSIDERED A FACTOR IN DETERMINING WHETHER AN INDIVIDUAL IS
17 AN INDEPENDENT PERSON.

18 (ii) A MATERIAL RELATIONSHIP BETWEEN A PERSON AND A BENEFIT
19 CORPORATION OR ANY OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY
20 PRESUMED TO EXIST IF ANY OF THE FOLLOWING APPLY:

21 (A) THE PERSON IS, OR HAS BEEN WITHIN THE LAST 3 YEARS, AN
22 EMPLOYEE OTHER THAN A BENEFIT OFFICER OF THE BENEFIT CORPORATION OR
23 A SUBSIDIARY OF THE BENEFIT CORPORATION.

24 (B) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS BEEN
25 WITHIN THE LAST 3 YEARS, AN EXECUTIVE OFFICER OTHER THAN A BENEFIT
26 OFFICER OF THE BENEFIT CORPORATION OR A SUBSIDIARY OF THE BENEFIT
27 CORPORATION.

1 (C) THE PERSON IS A BENEFICIAL OR RECORD OWNER OF 5% OR MORE
2 OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION. FOR PURPOSES
3 OF DETERMINING A PERSON'S OWNERSHIP PERCENTAGE UNDER THIS SUB-
4 SUBPARAGRAPH AND SUB-SUBPARAGRAPH (D), ANY OUTSTANDING RIGHTS TO
5 ACQUIRE SHARES IN A BENEFIT CORPORATION ARE CONSIDERED OUTSTANDING
6 SHARES OF THE BENEFIT CORPORATION.

7 (D) AN ENTITY OF WHICH THE PERSON IS A DIRECTOR, AN OFFICER,
8 OR A MANAGER, OR OWNS BENEFICIALLY OR OF RECORD 5% OR MORE OF THE
9 OUTSTANDING EQUITY INTERESTS, IS A BENEFICIAL OR RECORD OWNER OF 5%
10 OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION.

11 (F) "MINIMUM STATUS VOTE" MEANS AN AUTHORIZATION OR APPROVAL
12 OF A CORPORATE ACTION BY THE SHAREHOLDERS OF A BENEFIT CORPORATION
13 THAT MEETS ALL OF THE FOLLOWING:

14 (i) IT MEETS THE SHAREHOLDER APPROVAL OR VOTE REQUIREMENTS OF
15 THIS ACT.

16 (ii) IT MEETS ANY SHAREHOLDER APPROVAL OR VOTE REQUIREMENTS
17 INCLUDED IN ANY PROVISIONS OF THE ARTICLES OF INCORPORATION OR THE
18 BYLAWS OF THE BENEFIT CORPORATION ADOPTED BY THE SHAREHOLDERS.

19 (iii) THE SHAREHOLDERS OF EVERY CLASS OR SERIES ARE ENTITLED TO
20 VOTE ON THE CORPORATE ACTION REGARDLESS OF A LIMITATION STATED IN
21 THE ARTICLES OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY
22 CLASS OR SERIES.

23 (iv) THE CORPORATE ACTION IS APPROVED BY VOTE OF THE
24 SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST 2/3
25 OF THE VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE
26 ENTITLED TO CAST ON THE ACTION.

27 (G) "SPECIFIC PUBLIC BENEFIT" INCLUDES, BUT IS NOT LIMITED TO,

1 ANY OF THE FOLLOWING:

2 (i) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR
3 COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES.

4 (ii) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR
5 COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF
6 BUSINESS.

7 (iii) PRESERVING THE ENVIRONMENT.

8 (iv) IMPROVING HUMAN HEALTH.

9 (v) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF KNOWLEDGE.

10 (vi) INCREASING THE FLOW OF CAPITAL TO ENTITIES THAT HAVE A
11 PUBLIC BENEFIT PURPOSE.

12 (vii) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR THE
13 ENVIRONMENT.

14 (H) IN RELATION TO A PERSON, "SUBSIDIARY" MEANS AN ENTITY IN
15 WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD 50% OR MORE OF THE
16 OUTSTANDING EQUITY INTERESTS. FOR PURPOSES OF DETERMINING A
17 PERSON'S OWNERSHIP PERCENTAGE UNDER THIS SUBDIVISION, ANY
18 OUTSTANDING RIGHTS TO ACQUIRE EQUITY INTERESTS IN AN ENTITY ARE
19 CONSIDERED OUTSTANDING EQUITY INTERESTS IN THAT ENTITY.

20 (I) "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,
21 REPORTING, AND ASSESSING OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL
22 PERFORMANCE THAT IS ALL OF THE FOLLOWING:

23 (i) COMPREHENSIVE, IN THAT IT ASSESSES THE EFFECT OF THE
24 BUSINESS AND ITS OPERATIONS ON THE INTERESTS LISTED IN SECTION
25 956(1)(A)(ii) TO (v).

26 (ii) DEVELOPED BY AN ORGANIZATION THAT IS INDEPENDENT OF THE
27 BENEFIT CORPORATION AND SATISFIES THE FOLLOWING REQUIREMENTS:

1 (A) NOT MORE THAN 1/3 OF THE MEMBERS OF THE GOVERNING BODY OF
2 THE ORGANIZATION ARE REPRESENTATIVES OF EITHER OF THE FOLLOWING:

3 (I) AN ASSOCIATION OF BUSINESSES OPERATING IN A SPECIFIC
4 INDUSTRY IF THE PERFORMANCE OF THE MEMBER BUSINESSES IS MEASURED BY
5 THE STANDARDS.

6 (II) BUSINESSES WHOSE PERFORMANCE IS MEASURED BY THE STANDARD.

7 (B) THE ORGANIZATION IS NOT MATERIALLY FINANCED BY AN
8 ASSOCIATION OR BUSINESS DESCRIBED IN SUB-SUBPARAGRAPH (A).

9 (iii) CREDIBLE, BECAUSE THE STANDARD IS DEVELOPED BY A PERSON
10 THAT MEETS BOTH OF THE FOLLOWING:

11 (A) THE PERSON HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS
12 OVERALL CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE.

13 (B) THE PERSON USES A BALANCED MULTISTAKEHOLDER APPROACH THAT
14 INCLUDES A PUBLIC COMMENT PERIOD OF AT LEAST 30 DAYS TO DEVELOP THE
15 STANDARD.

16 (iv) TRANSPARENT, BECAUSE ALL OF THE FOLLOWING ARE PUBLICLY
17 AVAILABLE:

18 (A) THE CRITERIA CONSIDERED IN THE STANDARD WHEN MEASURING THE
19 OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A BUSINESS, AND THE
20 RELATIVE WEIGHTINGS OF THOSE CRITERIA.

21 (B) THE FOLLOWING INFORMATION ABOUT THE DEVELOPMENT AND
22 REVISION OF THE STANDARD:

23 (I) THE IDENTITY OF THE DIRECTORS, OFFICERS, ANY MATERIAL
24 OWNERS, AND THE GOVERNING BODY OF THE ORGANIZATION THAT DEVELOPED
25 AND CONTROLS REVISIONS TO THE STANDARD.

26 (II) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND
27 CHANGES TO THE MEMBERSHIP OF THE GOVERNING BODY ARE MADE.

1 (III) AN ACCOUNTING OF THE SOURCES OF FINANCIAL SUPPORT FOR
2 THE ORGANIZATION, WITH SUFFICIENT DETAIL TO DISCLOSE ANY
3 RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED TO PRESENT A
4 POTENTIAL CONFLICT OF INTEREST.

5 (2) THIS CHAPTER DOES NOT APPLY TO ANY CORPORATION THAT IS NOT
6 A BENEFIT CORPORATION OR TO A CORPORATION THAT TERMINATES ITS
7 STATUS AS A BENEFIT CORPORATION UNDER SECTION 952(4).

8 (3) IF THERE IS A CONFLICT BETWEEN A SPECIFIC PROVISION OF
9 THIS CHAPTER AND A GENERAL PROVISION OF THIS ACT, THE PROVISION OF
10 THIS CHAPTER APPLIES WITH RESPECT TO A BENEFIT CORPORATION.

11 SEC. 952. (1) A DOMESTIC CORPORATION THAT MEETS ALL OF THE
12 FOLLOWING IS A BENEFIT CORPORATION AND SUBJECT TO THIS CHAPTER:

13 (A) THE CORPORATION IS FORMED UNDER THIS ACT.

14 (B) THE ARTICLES OF THE CORPORATION STATE THAT IT IS A BENEFIT
15 CORPORATION. HOWEVER, AN AMENDMENT TO THE ARTICLES TO INCLUDE THE
16 STATEMENT DESCRIBED IN THIS SUBDIVISION IS NOT EFFECTIVE UNLESS IT
17 IS ADOPTED BY A MINIMUM STATUS VOTE.

18 (2) IN ADDITION TO THE PURPOSES DESCRIBED IN SECTION 202(B),
19 THE PURPOSES INCLUDED IN THE ARTICLES OF A BENEFIT CORPORATION
20 SHALL INCLUDE CREATING GENERAL PUBLIC BENEFIT. THE PURPOSES MAY
21 ALSO INCLUDE 1 OR MORE SPECIFIC PUBLIC BENEFITS IDENTIFIED IN THE
22 ARTICLES, BUT THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT UNDER
23 THIS SUBDIVISION DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
24 CORPORATION TO CREATE GENERAL PUBLIC BENEFIT.

25 (3) AN AMENDMENT TO THE ARTICLES OF INCORPORATION OF A BENEFIT
26 CORPORATION TO CHANGE THE PURPOSES OF THE CORPORATION BY ADDING,
27 AMENDING, OR DELETING 1 OR MORE SPECIFIC PUBLIC BENEFITS IS NOT

1 EFFECTIVE UNLESS IT IS ADOPTED BY A MINIMUM STATUS VOTE.

2 (4) A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS A
3 BENEFIT CORPORATION BY AMENDING ITS ARTICLES TO REMOVE THE
4 PROVISIONS DESCRIBED IN THIS SECTION. HOWEVER, AN AMENDMENT TO THE
5 ARTICLES DESCRIBED IN THIS SUBSECTION IS NOT EFFECTIVE UNLESS IT IS
6 ADOPTED BY A MINIMUM STATUS VOTE.

7 SEC. 953. (1) IN ADDITION TO THE REQUIREMENTS OF CHAPTER 7, IF
8 A DOMESTIC CORPORATION THAT IS NOT A BENEFIT CORPORATION IS A
9 CONSTITUENT CORPORATION IN A MERGER OR AN EXCHANGING CORPORATION IN
10 A SHARE EXCHANGE, AND THE SURVIVING OR ACQUIRING CORPORATION WILL
11 BE A BENEFIT CORPORATION UNDER THE PLAN OF MERGER OR SHARE
12 EXCHANGE, THE PLAN MUST BE APPROVED BY A MINIMUM STATUS VOTE OF
13 THAT CONSTITUENT OR EXCHANGING CORPORATION.

14 (2) IN ADDITION TO THE REQUIREMENTS OF CHAPTER 7, A PLAN OF
15 MERGER OR SHARE EXCHANGE THAT WOULD HAVE THE EFFECT OF TERMINATING
16 THE STATUS OF A DOMESTIC CORPORATION AS A BENEFIT CORPORATION MUST
17 BE APPROVED BY A MINIMUM STATUS VOTE OF THAT CORPORATION.

18 SEC. 954. (1) THE BOARD OF DIRECTORS OF A BENEFIT CORPORATION
19 SHALL DESIGNATE 1 DIRECTOR AS A BENEFIT DIRECTOR. ALL OF THE
20 FOLLOWING APPLY TO THE BENEFIT DIRECTOR DESIGNATED BY THE BOARD:

21 (A) IN ADDITION TO THE POWERS, DUTIES, RIGHTS, AND IMMUNITIES
22 OF THE OTHER DIRECTORS OF THE BENEFIT CORPORATION, THE BENEFIT
23 DIRECTOR SHALL HAVE THE POWERS, DUTIES, RIGHTS, AND IMMUNITIES
24 PROVIDED IN THIS CHAPTER.

25 (B) THE BENEFIT DIRECTOR SHALL BE AN INDEPENDENT PERSON.

26 (C) THE BENEFIT DIRECTOR MAY SERVE AS THE BENEFIT OFFICER OF
27 THE CORPORATION AT THE SAME TIME HE OR SHE IS SERVING AS THE

1 BENEFIT DIRECTOR.

2 (D) THE ARTICLES OR BYLAWS OF THE BENEFIT CORPORATION MAY
3 PRESCRIBE ADDITIONAL QUALIFICATIONS OF THE BENEFIT DIRECTOR THAT
4 ARE NOT INCONSISTENT WITH THIS SUBSECTION.

5 (E) AN ACTION OF AN INDIVIDUAL IN HIS OR HER CAPACITY OF A
6 BENEFIT DIRECTOR IS CONSIDERED AN ACTION OF THAT INDIVIDUAL IN HIS
7 OR HER CAPACITY OF A DIRECTOR OF THE BENEFIT CORPORATION.

8 (2) THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT
9 CORPORATION SHALL INCLUDE IN THE ANNUAL BENEFIT REPORT TO
10 SHAREHOLDERS REQUIRED UNDER SECTION 958, AN OPINION OF THE BENEFIT
11 DIRECTOR ON ALL OF THE FOLLOWING:

12 (A) WHETHER THE BENEFIT CORPORATION ACTED IN ACCORDANCE WITH
13 ITS PURPOSE TO CREATE GENERAL PUBLIC BENEFIT AND ANY SPECIFIC
14 PUBLIC BENEFIT INCLUDED IN THE PURPOSES OF THE CORPORATION IN ALL
15 MATERIAL RESPECTS DURING THE PERIOD COVERED BY THE REPORT.

16 (B) WHETHER THE DIRECTORS AND OFFICERS COMPLIED WITH SECTIONS
17 954 AND 955, RESPECTIVELY.

18 (C) IF IT IS THE OPINION OF THE BENEFIT DIRECTOR THAT THE
19 BENEFIT CORPORATION FAILED TO COMPLY WITH SUBDIVISION (A) OR ITS
20 DIRECTORS OR OFFICERS FAILED TO COMPLY WITH SUBDIVISION (B), A
21 DESCRIPTION OF THE WAYS IN WHICH THE BENEFIT CORPORATION OR ITS
22 DIRECTORS OR OFFICERS FAILED TO COMPLY.

23 (3) IF A BENEFIT CORPORATION DOES NOT HAVE A BOARD PURSUANT TO
24 AN AGREEMENT OF THE SHAREHOLDERS OF THE BENEFIT CORPORATION UNDER
25 SECTION 488, THE BYLAWS OF THE BENEFIT CORPORATION MUST PROVIDE
26 THAT THE PERSONS OR SHAREHOLDERS WHO PERFORM THE DUTIES OF THE
27 BOARD INCLUDE A PERSON WITH THE POWERS, DUTIES, RIGHTS, AND

1 IMMUNITIES OF A BENEFIT DIRECTOR.

2 (4) REGARDLESS OF WHETHER THE ARTICLES OF INCORPORATION OF A
3 BENEFIT CORPORATION INCLUDE A PROVISION LIMITING THE LIABILITY OF
4 DIRECTORS UNDER SECTION 209, A BENEFIT DIRECTOR IS NOT PERSONALLY
5 LIABLE FOR AN ACT OR OMISSION IN HIS OR HER CAPACITY AS A BENEFIT
6 DIRECTOR UNLESS THE ACT OR OMISSION CONSTITUTES SELF-DEALING,
7 WILLFUL MISCONDUCT, OR A KNOWING VIOLATION OF LAW.

8 SEC. 955. A BENEFIT CORPORATION MAY DESIGNATE AN OFFICER AS
9 THE BENEFIT OFFICER. ALL OF THE FOLLOWING APPLY TO A BENEFIT
10 OFFICER DESIGNATED BY THE CORPORATION:

11 (A) IN THE MANAGEMENT OF THE BENEFIT CORPORATION, THE BENEFIT
12 OFFICER SHALL HAVE THE POWERS AND DUTIES RELATING TO THE PURPOSE OF
13 THE CORPORATION TO CREATE GENERAL PUBLIC BENEFIT OR ANY SPECIFIC
14 PUBLIC BENEFIT PROVIDED BY EITHER OF THE FOLLOWING:

15 (i) THE BYLAWS.

16 (ii) IF THE BYLAWS DO NOT CONTAIN PROVISIONS RELATING TO THE
17 POWERS AND DUTIES OF THE BENEFIT OFFICER, BY RESOLUTIONS OR ORDERS
18 OF THE BOARD OF DIRECTORS.

19 (B) THE BENEFIT OFFICER SHALL PREPARE THE BENEFIT REPORT
20 REQUIRED UNDER SECTION 958.

21 SEC. 956. (1) ALL OF THE FOLLOWING APPLY TO THE BOARD,
22 COMMITTEES OF THE BOARD, AND INDIVIDUAL DIRECTORS OF A BENEFIT
23 CORPORATION, AND TO ANY OFFICER OF A BENEFIT CORPORATION WHO HAS
24 DISCRETION TO ACT WITH RESPECT TO ANY MATTER IF IT REASONABLY
25 APPEARS TO THE OFFICER THAT THE MATTER MAY HAVE A MATERIAL EFFECT
26 ON THE CREATION OF GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
27 BENEFIT BY THE BENEFIT CORPORATION, IN DISCHARGING THE DUTIES OF

1 THEIR RESPECTIVE POSITIONS AND IN CONSIDERING THE BEST INTERESTS OF
2 THE BENEFIT CORPORATION:

3 (A) THEY SHALL CONSIDER THE EFFECTS OF ANY ACTION ON ALL OF
4 THE FOLLOWING:

5 (i) THE SHAREHOLDERS OF THE BENEFIT CORPORATION.

6 (ii) THE EMPLOYEES AND WORK FORCE OF THE BENEFIT CORPORATION
7 AND ITS SUBSIDIARIES AND SUPPLIERS.

8 (iii) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL
9 PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC BENEFIT INCLUDED IN THE
10 PURPOSE OF THE BENEFIT CORPORATION.

11 (iv) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF
12 EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT
13 CORPORATION AND ITS SUBSIDIARIES OR SUPPLIERS ARE LOCATED.

14 (v) THE LOCAL AND GLOBAL ENVIRONMENT.

15 (vi) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT
16 CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT
17 CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY THAT THESE
18 INTERESTS AND THE GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC
19 BENEFIT INCLUDED IN THE PURPOSE OF THE BENEFIT CORPORATION MAY BE
20 BEST SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT
21 CORPORATION.

22 (vii) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH
23 GENERAL PUBLIC BENEFIT AND ANY SPECIFIC PUBLIC BENEFIT INCLUDED IN
24 THE PURPOSES OF THE BENEFIT CORPORATION.

25 (B) IN EVALUATING A PERSON'S PROPOSED ACQUISITION OF CONTROL
26 OF THE BENEFIT CORPORATION, THEY MAY CONSIDER THE RESOURCES,
27 INTENT, AND CONDUCT OF THE PERSON SEEKING TO ACQUIRE CONTROL OF THE

1 BENEFIT CORPORATION.

2 (C) THEY MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE
3 INTERESTS OF ANY OTHER GROUP THAT THEY CONSIDER APPROPRIATE.

4 (D) THEY ARE NOT REQUIRED TO GIVE PRIORITY TO THE INTERESTS OF
5 A PARTICULAR PERSON OR GROUP DESCRIBED IN SUBDIVISION (A), (B), OR
6 (C) OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS THE
7 BENEFIT CORPORATION HAS STATED ITS INTENTION TO GIVE PRIORITY TO
8 INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED
9 IN ITS ARTICLES.

10 (2) THE CONSIDERATION OF INTERESTS AND FACTORS BY A DIRECTOR
11 OR OFFICER OF A BENEFIT CORPORATION UNDER SUBSECTION (1) IN THE
12 DISCHARGE OF HIS OR HER DUTIES DOES NOT CONSTITUTE A VIOLATION OF
13 SECTION 541A.

14 (3) A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION IS NOT
15 PERSONALLY LIABLE FOR MONETARY DAMAGES FOR ANY OF THE FOLLOWING:

16 (A) ANY ACTION TAKEN AS A DIRECTOR OR OFFICER IF THE DIRECTOR
17 OR OFFICER PERFORMED HIS OR HER DUTIES IN COMPLIANCE WITH SECTION
18 541A AND THIS SECTION.

19 (B) THE FAILURE OF THE BENEFIT CORPORATION TO CREATE GENERAL
20 PUBLIC BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT.

21 (4) A DIRECTOR OR OFFICER OF A BENEFIT CORPORATION DOES NOT
22 HAVE A FIDUCIARY DUTY TO A PERSON THAT IS A BENEFICIARY OF THE
23 GENERAL OR ANY SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT
24 CORPORATION ARISING FROM THE STATUS OF THE PERSON AS A BENEFICIARY.

25 (5) ANY CORPORATE ACTION TAKEN BY A BENEFIT CORPORATION TO
26 ADVANCE GENERAL PUBLIC BENEFIT OR ANY SPECIFIC PUBLIC BENEFIT
27 INCLUDED IN THE PURPOSE OF THE CORPORATION UNDER SECTION 952(2) IS

1 PRESUMED TO BE IN THE BEST INTERESTS OF THE BENEFIT CORPORATION.

2 SEC. 957. (1) THE DUTIES OF ANY DIRECTORS AND OFFICERS OF A
3 BENEFIT CORPORATION, OR THE GENERAL PUBLIC BENEFIT PURPOSE OR ANY
4 SPECIFIC PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION, MAY BE
5 ENFORCED ONLY IN A BENEFIT ENFORCEMENT PROCEEDING UNDER THIS
6 SECTION. A PERSON SHALL NOT BRING AN ACTION OR ASSERT A CLAIM
7 AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS OR OFFICERS WITH
8 RESPECT TO THE DUTIES OF ANY DIRECTORS OR OFFICERS OF THE BENEFIT
9 CORPORATION OR THE GENERAL PUBLIC BENEFIT PURPOSE OR ANY SPECIFIC
10 PUBLIC BENEFIT PURPOSE OF THE BENEFIT CORPORATION EXCEPT IN A
11 BENEFIT ENFORCEMENT PROCEEDING UNDER THIS SECTION.

12 (2) A BENEFIT ENFORCEMENT PROCEEDING AGAINST A BENEFIT
13 CORPORATION MAY BE COMMENCED OR MAINTAINED ONLY BY 1 OF THE
14 FOLLOWING:

15 (A) DIRECTLY, BY THE BENEFIT CORPORATION.

16 (B) DERIVATIVELY, BY ANY OF THE FOLLOWING:

17 (i) A SHAREHOLDER OF THE BENEFIT CORPORATION.

18 (ii) A DIRECTOR OF THE BENEFIT CORPORATION.

19 (iii) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY OR OF
20 RECORD 5% OR MORE OF THE EQUITY INTERESTS IN AN ENTITY OF WHICH THE
21 BENEFIT CORPORATION IS A SUBSIDIARY.

22 (iv) ANY OTHER PERSON SPECIFIED IN THE ARTICLES OR BYLAWS OF
23 THE BENEFIT CORPORATION.

24 SEC. 958. (1) A BENEFIT CORPORATION SHALL PREPARE AN ANNUAL
25 BENEFIT REPORT. AN ANNUAL BENEFIT REPORT SHALL INCLUDE ALL OF THE
26 FOLLOWING:

27 (A) A NARRATIVE DESCRIPTION OF THE WAYS IN WHICH THE BENEFIT

1 CORPORATION PURSUED THE CORPORATION'S GENERAL PUBLIC BENEFIT
2 PURPOSE DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC
3 BENEFIT WAS CREATED.

4 (B) A NARRATIVE DESCRIPTION OF THE WAYS IN WHICH THE BENEFIT
5 CORPORATION PURSUED ANY SPECIFIC PUBLIC BENEFIT INCLUDED IN THE
6 PURPOSES OF THE CORPORATION IN THE ARTICLES AND THE EXTENT TO WHICH
7 THAT SPECIFIC PUBLIC BENEFIT WAS CREATED.

8 (C) A NARRATIVE DESCRIPTION OF ANY CIRCUMSTANCES THAT HAVE
9 HINDERED THE CREATION BY THE BENEFIT CORPORATION OF GENERAL PUBLIC
10 BENEFIT OR A SPECIFIC PUBLIC BENEFIT DESCRIBED IN SUBDIVISION (A)
11 OR (B).

12 (D) AN ASSESSMENT OF THE OVERALL SOCIAL AND ENVIRONMENTAL
13 PERFORMANCE OF THE BENEFIT CORPORATION THAT MEETS 1 OF THE
14 FOLLOWING:

15 (i) IS PREPARED IN ACCORDANCE WITH A THIRD-PARTY STANDARD
16 APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT STANDARD IN
17 PREVIOUS BENEFIT REPORTS.

18 (ii) IF THE ASSESSMENT IS PREPARED BY APPLYING A THIRD-PARTY
19 STANDARD IN A MANNER INCONSISTENT WITH THAT STANDARD AS APPLIED IN
20 PREVIOUS BENEFIT REPORTS, IS ACCOMPANIED BY AN EXPLANATION OF THE
21 REASONS FOR THE INCONSISTENT APPLICATION OF THE STANDARD APPLIED.

22 (E) THE NAME OF THE BENEFIT DIRECTOR, THE NAME OF THE BENEFIT
23 OFFICER IF THE CORPORATION HAS DESIGNATED A BENEFIT OFFICER, AND
24 THE ADDRESS TO WHICH CORRESPONDENCE TO EACH OF THEM MAY BE
25 DIRECTED.

26 (F) THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING
27 THE YEAR TO EACH DIRECTOR IN HIS OR HER CAPACITY AS A DIRECTOR.

1 (G) THE NAME OF EACH PERSON THAT OWNS 5% OR MORE OF THE
2 OUTSTANDING SHARES OF THE BENEFIT CORPORATION, EITHER BENEFICIALLY,
3 TO THE EXTENT KNOWN TO THE BENEFIT CORPORATION WITHOUT INDEPENDENT
4 INVESTIGATION, OR OF RECORD.

5 (H) THE OPINION OF THE BENEFIT DIRECTOR DESCRIBED IN SECTION
6 954(3).

7 (I) A STATEMENT OF ANY CONNECTION BETWEEN THE ORGANIZATION
8 THAT DEVELOPED THE THIRD-PARTY STANDARD, OR ITS DIRECTORS,
9 OFFICERS, OR MATERIAL OWNERS, AND THE BENEFIT CORPORATION, OR ITS
10 DIRECTORS, OFFICERS, OR MATERIAL OWNERS, INCLUDING ANY FINANCIAL OR
11 GOVERNANCE RELATIONSHIP THAT MIGHT MATERIALLY AFFECT THE
12 CREDIBILITY OF THE OBJECTIVE ASSESSMENT OF THE THIRD-PARTY
13 STANDARD.

14 (2) A BENEFIT CORPORATION SHALL SEND EACH SHAREHOLDER A COPY
15 OF THE ANNUAL BENEFIT REPORT, EITHER WITHIN 120 DAYS FOLLOWING THE
16 END OF THE FISCAL YEAR OF THE BENEFIT CORPORATION OR AT THE SAME
17 TIME THAT THE BENEFIT CORPORATION DELIVERS ANY OTHER ANNUAL REPORT
18 TO ITS SHAREHOLDERS.

19 (3) A BENEFIT CORPORATION SHALL POST ITS MOST RECENT ANNUAL
20 BENEFIT REPORT ON THE PUBLIC PORTION OF ITS INTERNET WEBSITE, IF
21 ANY, BUT THE CORPORATION MAY OMIT THE COMPENSATION PAID TO
22 DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE
23 BENEFIT REPORT FROM THE BENEFIT REPORT POSTED ON ITS WEBSITE.

24 (4) A BENEFIT CORPORATION SHALL FILE THE ANNUAL BENEFIT REPORT
25 WITH THE ADMINISTRATOR WITH THE REPORT REQUIRED UNDER SECTION 911,
26 BUT THE CORPORATION MAY OMIT THE COMPENSATION PAID TO DIRECTORS AND
27 FINANCIAL OR PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT

1 **FROM THE BENEFIT REPORT FILED WITH THE ADMINISTRATOR.**

2 Enacting section 1. This amendatory act does not take effect

3 unless Senate Bill No. 360

4 of the 96th Legislature is enacted into law.