

1 HB331  
2 148863-1  
3 By Representative Poole  
4 RFD: Judiciary  
5 First Read: 21-FEB-13

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8 SYNOPSIS: Under existing law, the Alabama Business  
9 Corporation Law authorizes and regulates the  
10 formation and governance of general corporations.  
11 The Alabama Nonprofit Corporation Law authorizes  
12 the formation and governs the nonprofit  
13 corporation.

14 This bill would authorize and regulate the  
15 formation of a benefit corporation.

16 This bill would define terms.

17 This bill would permit an existing  
18 corporation to become a benefit corporation.

19 This bill would provide standards of conduct  
20 for directors and officers.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 Relating to corporations; to authorize and regulate  
27 the formation of a benefit corporation; to define terms; to

1 permit an existing corporation to become a benefit  
2 corporation; and to provide standards of conduct for directors  
3 and officers.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. (a) The provisions of this act shall be  
6 applicable to all benefit corporations.

7 (b) The existence of a provision of this act shall  
8 not of itself create any implication that a contrary or  
9 different rule of law is or would be applicable to a business  
10 corporation that is not a benefit corporation. This act shall  
11 not affect any statute or rule of law that is or would be  
12 applicable to a business corporation that is not a benefit  
13 corporation.

14 (c) Except as otherwise provided in this act, the  
15 Alabama Business Corporation Law shall be generally applicable  
16 to all benefit corporations. The provisions of this act shall  
17 control over conflicting provisions of the Alabama Business  
18 Corporation Law. A benefit corporation may be simultaneously  
19 subject to this act and one or more provisions of the Code of  
20 Alabama 1975.

21 Section 2. (a) The following terms shall have the  
22 following meanings:

23 (1) BENEFIT CORPORATION. A business corporation that  
24 has elected to become subject to this act and whose status as  
25 a benefit corporation has not been terminated as provided in  
26 this act.

1           (2) BENEFIT DIRECTOR. The person, if any, designated  
2 or serving as the benefit director of a benefit corporation as  
3 provided in this act.

4           (3) BENEFIT ENFORCEMENT PROCEEDING. A claim or  
5 action for:

6           a. Failure of a benefit corporation to pursue or  
7 create general public benefit or any specific public benefit  
8 set forth in its articles.

9           b. Violation of an obligation, duty, or standard of  
10 conduct under this act.

11           (4) BENEFIT OFFICER. The officer, if any, designated  
12 as the benefit officer of a benefit corporation as provided in  
13 this act.

14           (5) GENERAL PUBLIC BENEFIT. A material positive  
15 impact on society and the environment taken as a whole,  
16 assessed against a third-party standard, created from the  
17 business and operations of a benefit corporation.

18           (6) INDEPENDENT. A person that has no material  
19 relationship with a benefit corporation or any of its  
20 subsidiaries. A material relationship between an individual  
21 and a benefit corporation or any of its subsidiaries will be  
22 conclusively presumed to exist if:

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

26           b. An immediate family member of the person is, or  
27 has been within the last three years, an executive officer,

1 other than a benefit officer, of the benefit corporation or  
2 any of its subsidiaries.

3 c. The person, or an association of which the person  
4 is a director, officer, or other manager or in which the  
5 person owns beneficially or of record five percent or more of  
6 the outstanding equity interests, owns beneficially or of  
7 record five percent or more of the outstanding shares of the  
8 benefit corporation.

9 (7) MINIMUM STATUS VOTE. In addition to any other  
10 approval or vote required by this act or other law:

11 a. In the case of a business corporation:

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

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

20 b. In the case of a domestic entity other than a  
21 business corporation:

22 1. The holders of every class or series of equity  
23 interest in the entity that are entitled to receive a  
24 distribution of any kind from the entity shall be entitled to  
25 vote on or consent to the action regardless of any otherwise  
26 applicable limitation on the voting or consent rights of any  
27 class or series.

1           2. The action must be approved by vote or consent of  
2 the holders described in subparagraph 1. entitled to cast at  
3 least two-thirds of the votes, or consent that all of those  
4 holders are entitled to cast on the action.

5           (8) PUBLICLY TRADED CORPORATION. A business  
6 corporation that has shares listed on a national securities  
7 exchange or traded in a market maintained by one or more  
8 members of a national securities association.

9           (9) SPECIFIC PUBLIC BENEFIT includes:

10           a. Providing low-income or underserved individuals  
11 or communities with beneficial products or services.

12           b. Promoting economic opportunity for individuals or  
13 communities beyond the creation of jobs in the normal course  
14 of business.

15           c. Preserving or restoring the environment.

16           d. Improving human health.

17           e. Promoting the arts, sciences, faith, or  
18 advancement of knowledge.

19           f. Increasing the flow of capital to entities with a  
20 public benefit purpose.

21           g. The accomplishment of any other particular  
22 benefit for society or the environment.

23           (10) SUBSIDIARY. An association in which the person  
24 owns beneficially or of record 50 percent or more of the  
25 outstanding equity interests.

1           (11) THIRD-PARTY STANDARD. A recognized standard for  
2 defining, reporting, and assessing corporate social and  
3 environmental performance that is:

4           a. Comprehensive because it assesses the effect of  
5 the business and its operations upon the interests listed in  
6 paragraphs b. to e., inclusive, of subdivision (1) of  
7 subsection (a) of Section 6.

8           b. Developed by a person that is independent of the  
9 benefit corporation.

10          c. Credible because it is developed by an entity  
11 that has access to necessary expertise to assess overall  
12 corporate social and environmental performance, and uses a  
13 balanced multistakeholder approach to develop the standard,  
14 including a reasonable public comment period.

15          d. Transparent because the following information  
16 about the standard is publicly available:

17           1. The factors considered when measuring the  
18 performance of a business.

19           2. The relative weightings of those factors.

20           3. The identity of the persons who developed and  
21 control changes to the standard and the process by which those  
22 changes are made.

23          (b) For purposes of the definitions of "independent"  
24 and "subsidiary" in this section, a percentage of ownership in  
25 an association shall be calculated as if all outstanding  
26 rights to acquire equity interests in the association had been  
27 exercised.

1           Section 3. (a) A benefit corporation shall be  
2 incorporated in accordance with Article 2 of the Alabama  
3 Business Corporation Law, but its articles of incorporation  
4 shall also state that it is a benefit corporation.

5           (b) A business corporation may become a benefit  
6 corporation under this act by amending its certificate of  
7 formation so that it contains a statement that the corporation  
8 is a benefit corporation. The amendment shall not be effective  
9 unless it is adopted by at least the minimum status vote.

10          (c) If a domestic entity that is not a benefit  
11 corporation is a party to a merger or consolidation or is the  
12 exchanging corporation in a share exchange, and the surviving  
13 entity in the merger, consolidation, or share exchange is to  
14 be a benefit corporation, then the plan of merger,  
15 consolidation, or share exchange shall not be effective unless  
16 it is adopted by the entity by at least the minimum status  
17 vote.

18          Section 4. (a) A benefit corporation may terminate  
19 its status as such and cease to be subject to this act by  
20 amending its articles to delete the provision required by  
21 Section 3 to be stated in the articles of a benefit  
22 corporation. The amendment shall not be effective unless it is  
23 adopted by at least the minimum status vote.

24          (b) If a plan of merger, consolidation, conversion,  
25 or share exchange would have the effect of terminating the  
26 status of a business corporation as a benefit corporation, the



1 plan shall not be effective unless it is adopted by at least  
2 the minimum status vote.

3 Section 5. (a) Every benefit corporation shall have  
4 the purpose of creating general public benefit. This purpose  
5 is in addition to, and may be a limitation on, its purpose  
6 under Section 10A-2-3.01, Code of Alabama 1975.

7 (b) The articles of a benefit corporation may  
8 identify one or more specific public benefits that it is the  
9 purpose of the benefit corporation to create in addition to  
10 its purposes under Section 10A-2-3.01, Code of Alabama 1975.

11 (c) The identification of a specific public benefit  
12 under this section does not limit the obligation of a benefit  
13 corporation to create general public benefit. The creation of  
14 general and specific public benefit as provided in this  
15 section is in the best interests of the benefit corporation.

16 (d) A benefit corporation may amend its articles to  
17 add, amend, or delete the identification of a specific public  
18 benefit that it is the purpose of the benefit corporation to  
19 create. The amendment shall not be effective unless it is  
20 adopted by at least the minimum status vote.

21 (e) A professional corporation that is a benefit  
22 corporation does not violate Section 10A-4-2.01, Code of  
23 Alabama 1975, by having the purpose to create general public  
24 benefit or a specific public benefit.

25 Section 6. (a) In discharging the duties of their  
26 respective positions, the board of directors, committees of

1 the board, and individual directors of a benefit corporation,  
2 in considering the best interest of the benefit corporation,

3 (1) Shall consider the effects of any action upon:

4 a. The shareholders of the benefit corporation;

5 b. The employees and workforce of the benefit  
6 corporation and its subsidiaries and suppliers;

7 c. The interests of customers as beneficiaries of  
8 the general or specific public benefit purposes of the benefit  
9 corporation;

10 d. Community and societal considerations, including  
11 those of any community in which offices or facilities of the  
12 benefit corporation or its subsidiaries or suppliers are  
13 located;

14 e. The local and global environments;

15 f. The short-term and long-term interests of the  
16 benefit corporation, including benefits that may accrue to the  
17 benefit corporation from its long-term plans and the  
18 possibility that these interests may be best served by the  
19 continued independence of the benefit corporation; and

20 g. The ability of the benefit corporation to  
21 accomplish its general public benefit purpose and any specific  
22 public benefit purpose.

23 (2) May consider:

24 a. The resources, intent and conduct, past, stated  
25 and potential, of any person seeking to acquire control of the  
26 corporation; and

1           b. Any other pertinent factors or the interests of  
2 any other group that they deem appropriate.

3           (3) Shall not be required to give priority to the  
4 interests of any particular person or group referred to in  
5 subdivisions (1) and (2) over the interests of any other  
6 person or group unless the benefit corporation has stated its  
7 intention to give priority to interests related to a specific  
8 public benefit purpose identified in its articles.

9           (b) The consideration of interests and factors in  
10 the manner required by subsection (a) shall not constitute a  
11 violation of Section 10A-2-8.30, Code of Alabama 1975.

12           (c) A director is not personally liable for monetary  
13 damages for:

14           (1) Any action taken as a director if the director  
15 performed the duties of office in compliance with Section  
16 10A-2-8.30, Code of Alabama 1975; or

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

19           (d) A director does not have a duty to a person that  
20 is a beneficiary of the general public benefit purpose or a  
21 specific public benefit purpose of a benefit corporation  
22 arising from the status of the person as a beneficiary.

23           (e) A director who makes a business judgment in good  
24 faith fulfills the duty under this section if the director:

25           (1) Does not have an interest in the subject of the  
26 business judgment.

1           (2) Is informed with respect to the subject of the  
2 business judgment to the extent the director reasonably  
3 believes it to be appropriate under the circumstances; and

4           (3) Rationally believes that the business judgment  
5 is in the best interests of the benefit corporation.

6           Section 7. (a) The governing persons of a benefit  
7 corporation that is a publicly traded corporation shall  
8 include, and the governing persons of any other benefit  
9 corporation may include, one director who shall be designated  
10 the "benefit director" and shall have, in addition to all of  
11 the powers, duties, rights, and immunities of the other  
12 directors of the benefit corporation, the powers, duties,  
13 rights, and immunities provided in this act.

14           (b) The benefit director shall be elected, and may  
15 be removed, in the manner provided by Division A of Article 8  
16 of the Alabama Business Corporation Law. Except as provided in  
17 subsections (e) and (g), the benefit director shall be an  
18 individual who is independent. The benefit director may serve  
19 as the benefit officer at the same time as serving as the  
20 benefit director. The governing documents of a benefit  
21 corporation may prescribe additional qualifications of the  
22 benefit director not inconsistent with this act.

23           (c) The benefit director shall prepare, and the  
24 benefit corporation shall include in the annual benefit report  
25 to shareholders required by Section 11, a statement whether,  
26 in the opinion of the benefit director, the benefit  
27 corporation acted in accordance with its general, and any

1 specific, public benefit purpose in all material respects  
2 during the period covered by the report and whether the  
3 governing persons and officers complied with Sections 6 and 8.  
4 If, in the opinion of the benefit director the benefit  
5 corporation or its governing persons or officers failed so to  
6 act, then the statement of the benefit director shall include  
7 a description of the ways in which the benefit corporation or  
8 its directors or officers failed so to act.

9 (d) The acts of an individual in the capacity of a  
10 benefit director shall constitute for all purposes acts of  
11 that individual in the capacity of a director of the benefit  
12 corporation.

13 (e) (1) The bylaws of a benefit corporation must  
14 provide that the persons or shareholders who perform the  
15 duties of the board of directors include a person with the  
16 powers, duties, rights, and immunities of a benefit director  
17 if either of the following applies:

18 a. The bylaws of a benefit corporation provide that  
19 the powers and duties conferred or imposed upon the board of  
20 directors shall be exercised or performed by a person other  
21 than the directors.

22 b. The bylaws of a statutory close corporation that  
23 is a benefit corporation provide that the business and affairs  
24 of the corporation shall be managed by or under the direction  
25 of the shareholders.

1           (2) A person that exercises one or more of the  
2 powers, duties, or rights of a benefit director under this  
3 subsection:

4           a. Does not need to be independent of the benefit  
5 corporation;

6           b. Shall have the immunities of a benefit director;

7           c. May share the powers, duties, and rights of a  
8 benefit director with one or more other persons; and

9           d. Shall not be subject to the procedures for  
10 election or removal of directors in this act unless:

11           1. The person is also a director of the benefit  
12 corporation; or

13           2. The bylaws make those procedures applicable.

14           (f) Regardless of whether the bylaws of a benefit  
15 corporation include a provision eliminating or limiting the  
16 personal liability of directors authorized, a benefit director  
17 shall not be personally liable for any act or omission in the  
18 capacity of a benefit director unless the act or omission  
19 constitutes self-dealing, willful misconduct, or a knowing  
20 violation of law.

21           (g) The benefit director of a professional  
22 corporation does not need to be independent.

23           Section 8. (a) Each officer of a benefit corporation  
24 shall consider the interests and factors described in  
25 subsection (a) of Section 6 when:

26           (1) The officer has discretion to act with respect  
27 to a matter;

1           (2) It reasonably appears to the officer that the  
2 matter may have a material effect on:

3           a. The creation of general or specific public  
4 benefit by the benefit corporation; or

5           b. Any of the interests or factors referred to in  
6 subsection (a) of Section 6.

7           (b) The consideration of interests and factors in  
8 the manner described in subsection (a) shall not constitute a  
9 violation of Section 10A-2-8.42, Code of Alabama 1975.

10           (c) An officer is not personally liable, as such,  
11 for monetary damages for any action taken as an officer if the  
12 officer performed the duties of the position in compliance  
13 with Section 10A-2-8.42, Code of Alabama 1975, and this  
14 section.

15           Section 9. A benefit corporation may have an officer  
16 designated the "benefit officer" who shall have such authority  
17 and shall perform such duties in the management of the benefit  
18 corporation relating to the purpose of the corporation to  
19 create general or specific public benefit as may be provided  
20 by or pursuant to the bylaws or, in the absence of controlling  
21 provisions in the bylaws, as may be determined by or pursuant  
22 to resolutions or orders of the board of directors. If a  
23 benefit corporation has a benefit officer, the duties of the  
24 benefit officer shall include preparing the benefit report  
25 required by Section 11.

26           Section 10. (a) The duties of directors and officers  
27 under this act, and the general and any specific public

1 benefit purpose of a benefit corporation, may be enforced only  
2 in a benefit enforcement proceeding. No person may bring an  
3 action or assert a claim against a benefit corporation or its  
4 directors or officers with respect to the duties of directors  
5 and officers under this act and the general and any specific  
6 public benefit purpose of the benefit corporation except in a  
7 benefit enforcement proceeding.

8 (b) A benefit enforcement proceeding may be  
9 commenced or maintained only:

10 (1) Directly by the benefit corporation; or

11 (2) Derivatively by:

12 a. A person that owns beneficially or of record at  
13 least two percent of the total number of shares of a class or  
14 series outstanding at the time of the act or omission  
15 complained of;

16 b. A director;

17 c. A person or group of persons that owns  
18 beneficially or of record 10 percent or more of the equity  
19 interests in an association of which the benefit corporation  
20 is a subsidiary at the time of the act or omission complained  
21 of; or

22 d. Such other persons as may be specified in the  
23 articles or bylaws of the benefit corporation.

24 Section 11. (a) A benefit corporation shall deliver  
25 to each shareholder an annual benefit report including:

26 (1) A narrative description of:



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

4           b. The ways in which the benefit corporation pursued  
5 any specific public benefit that the articles state it is the  
6 purpose of the benefit corporation to create and the extent to  
7 which that specific public benefit was created; and

8           c. Any circumstances that have hindered the creation  
9 by the benefit corporation of general or specific public  
10 benefit;

11           (2) An assessment of the social and environmental  
12 performance of the benefit corporation, prepared in accordance  
13 with a third-party standard applied consistently with any  
14 application of that standard in prior benefit reports or  
15 accompanied by an explanation of the reasons for any  
16 inconsistent application;

17           (3) The name of the benefit director and the benefit  
18 officer, if any, and the address to which correspondence to  
19 each of them may be directed;

20           (4) The compensation paid by the benefit corporation  
21 during the year to each director in that capacity; and

22           (5) The statement of the benefit director described  
23 in Section 6.

24           (b) The benefit report must be sent annually to each  
25 shareholder within 120 days following the end of the fiscal  
26 year of the benefit corporation or at the same time that the

1 benefit corporation delivers any other annual report to its  
2 shareholders.

3 (c) A benefit corporation must post its most recent  
4 benefit report on the public portion of its website, if any,  
5 except that the compensation paid to directors and any  
6 financial or proprietary information included in the benefit  
7 report may be omitted from the benefit report as posted.

8 (d) Concurrently with the delivery of the benefit  
9 report to shareholders pursuant to subsection (b), the benefit  
10 corporation must deliver a copy of the benefit report to the  
11 Secretary of State for filing, except that the compensation  
12 paid to directors and any financial or proprietary information  
13 included in the benefit report may be omitted from the benefit  
14 report as filed under this section. The Secretary of State  
15 shall charge a fee of seventy dollars (\$70) for filing a  
16 benefit report.

17 Section 12. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.