

SENATE, No. 2260

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MARCH 8, 2018

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Clarifies purpose of benefit corporations and standard of duty of board of directors.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT clarifying the purpose of benefit corporations and
2 amending P.L.2011, c.30.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 5 of P.L.2011, c.30 (C.14A:18-5) is amended to read
8 as follows:

9 5. a. Every benefit corporation shall have the purpose of
10 creating a general public benefit. This purpose is in addition to, and
11 may be a limitation on, its purpose under its certificate of
12 incorporation and any specific purpose set forth in its certificate of
13 incorporation. Every benefit corporation shall be managed in a
14 manner that balances the shareholders' pecuniary interests, the best
15 interests of those materially affected by the benefit corporation's
16 conduct, and the general and specific public benefits created by the
17 benefit corporation.

18 b. The certificate of incorporation of a benefit corporation may
19 identify one or more specific public benefits that is the purpose of
20 the benefit corporation to create in addition to its purposes under its
21 certificate of incorporation and subsection a. of this section. The
22 identification of a specific public benefit under this subsection does
23 not limit the obligation of a benefit corporation to create general
24 public benefit.

25 c. The creation of general and specific public benefits, as
26 provided in subsections a. and b. of this section, shall be in the best
27 interests of the benefit corporation.

28 d. A benefit corporation may amend its certificate of
29 incorporation to add, amend or delete a specific public benefit that
30 is the purpose of the benefit corporation to create. The amendment
31 shall not be effective unless it is adopted by at least the minimum
32 status vote.

33 (cf: P.L.2011, c.30, s.5)

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35 2. Section 6 of P.L.2011, c.30 (C.14A:18-6) is amended to read
36 as follows:

37 6. a. The board of directors, committees of the board and
38 individual directors of a benefit corporation, in considering the best
39 interests of the benefit corporation shall consider and balance the
40 effects of any action upon:

41 (1) the pecuniary interests of the shareholders of the benefit
42 corporation;

43 (2) the employees and workforce of the benefit corporation and
44 its subsidiaries and suppliers;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (3) the interests of customers as beneficiaries of the general or
2 specific public benefit purposes of the benefit corporation;
- 3 (4) community and societal considerations, including those of
4 any community in which offices or facilities of the benefit
5 corporation or its subsidiaries or suppliers are located;
- 6 (5) the local and global environment; **[and]**
- 7 (6) the short-term and long-term interests of the benefit
8 corporation, including benefits that may accrue to the benefit
9 corporation from its long-term plans and the possibility that these
10 interests may be best served by the continued independence of the
11 benefit corporation; and
- 12 (7) the best interests of those materially affected by the benefit
13 corporation's conduct.
- 14 b. The board of directors, committees of the board and
15 individual directors of a benefit corporation, in considering the best
16 interests of the benefit corporation may consider:
- 17 (1) matters listed in subsection (2) of N.J.S.14A:6-1**[; and]** .
- 18 (2) any other pertinent factors or the interests of any other group
19 that they deem appropriate; and
- 20 c. The board of directors, committees of the board and
21 individual directors of a benefit corporation shall not be required to
22 give priority to the interests of any particular person or group
23 referred to in subsection a. or subsection b. of this section over the
24 interests of any other person or group unless the benefit corporation
25 has stated its intention to give priority to interests related to a
26 specific public benefit purpose identified in its certificate of
27 incorporation. With respect to a decision implicating the balance
28 requirement in subsection a. of this section, the decision shall
29 satisfy a director's fiduciary duty to shareholders and the benefit
30 corporation if the decision is both informed and disinterested and
31 not such that no person of ordinary, sound judgment would approve.
- 32 d. A director is not personally liable for monetary damages for
33 failure of the benefit corporation to create general or specific public
34 benefits.
- 35 (cf: P.L.2011, c.30, s.6)

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37 3. This act shall take effect immediately.

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40 STATEMENT

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42 This bill clarifies the purpose of benefit corporations, pursuant to
43 P.L.2011, c.30 (C.14A:18-1 et seq.) and as organized and
44 incorporated under the provisions of the "New Jersey Business
45 Corporation Act," N.J.S.14A:1-1 et seq. P.L.2011, c.30 provides
46 for the creation of benefit corporations with the purpose of
47 generating a general public benefit, defined as a material positive
48 impact on society and the environment, through activities that

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1 promote some combination of specific public benefits. This allows
2 benefit corporations, at the direction of shareholders, to pursue a
3 mission that goes beyond making profit for owners and investors.
4 This bill amends P.L.2011, c.30 to clarify that every benefit
5 corporation must be managed by the board of directors, committees
6 of the board, and individual directors in a manner that balances the
7 shareholders' pecuniary interests, the best interests of those
8 materially affected by the benefit corporation's conduct, and the
9 general and specific public benefits created by the benefit
10 corporation, among other certain factors. The bill provides that,
11 with respect to a decision implicating this balancing requirement,
12 the decision will satisfy a director's fiduciary duties to shareholders
13 and the benefit corporation if the decision is both informed and
14 disinterested and not such that no person of ordinary, sound
15 judgment would approve.