

HOUSE BILL NO. 346

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE SEATON

Introduced: 2/26/14

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to corporations, including public benefit corporations; and providing
2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 10 is amended by adding a new chapter to read:

5 **Chapter 60. Public Benefit Corporations.**

6 **Article 1. Establishment and Termination.**

7 **Sec. 10.60.010. Establishment of public benefit corporation.** A corporation
8 that is organized under AS 10.06 may become a public benefit corporation by

9 (1) including, at the time of the corporation's organization under
10 AS 10.06, in the corporation's articles of incorporation a statement that the corporation
11 is a public benefit corporation under this chapter; or

12 (2) amending its articles of incorporation to contain a statement that
13 the corporation is a public benefit corporation under this chapter; the amendment shall
14 be adopted by at least the minimum vote required under AS 10.60.700 for a status

1 change.

2 **Sec. 10.60.020. Approval where organic change.** If an entity that was formed
3 under the laws of this state is not a public benefit corporation but is a party to a
4 merger, consolidation, conversion, or interest or share exchange under AS 10.06 or
5 AS 10.55, and the surviving, new, or resulting entity in the merger, consolidation,
6 conversion, or interest or share exchange is a public benefit corporation, the domestic
7 entity shall approve, by at least the minimum vote required under AS 10.60.700 for a
8 status change, the plan of merger, consolidation, conversion, or interest or share
9 exchange.

10 **Sec. 10.60.030. General public benefit purpose.** (a) A public benefit
11 corporation shall have a purpose of creating general public benefit from the business
12 and operations of the public benefit corporation. That purpose is in addition to the
13 public benefit corporation's purpose under AS 10.06.005.

14 (b) The achievement of the general public benefit purpose under (a) of this
15 section is determined after all of the effects of the business and operations of the
16 public benefit corporation are considered.

17 (c) The creation of general public benefit under (a) of this section is in the best
18 interests of the public benefit corporation.

19 **Sec. 10.60.040. Specific public benefit purpose.** (a) In addition to its general
20 public benefit purpose, a public benefit corporation may identify in its articles of
21 incorporation one or more specific public benefit purposes.

22 (b) A public benefit corporation may amend its articles of incorporation to
23 add, amend, or delete a specific public benefit purpose. The public benefit corporation
24 shall adopt the amendment by at least the minimum vote required under AS 10.60.700
25 for a status change.

26 (c) The identification of a specific public benefit purpose under (a) of this
27 section does not limit the public benefit corporation's general public benefit purpose.

28 (d) A public benefit corporation may further a specific public benefit by

29 (1) providing low-income or underserved individuals, families, or
30 communities with beneficial products, services, or educational opportunities;

31 (2) promoting economic opportunity for individuals or communities

1 beyond the creation of jobs in the normal course of business;

2 (3) improving human health;

3 (4) promoting the arts, sciences, or advancement of knowledge;

4 (5) increasing the flow of capital to entities with a purpose to benefit
5 the public; or

6 (6) conferring another type of benefit on society or the environment.

7 (e) Pursuing a specific public benefit identified under this section is in the best
8 interests of the public benefit corporation.

9 **Sec. 10.60.050. Professional corporations.** A professional corporation under
10 AS 10.45 that is a public benefit corporation does not violate AS 10.45 by having a
11 general public benefit purpose or a specific public benefit purpose.

12 **Sec. 10.60.060. Termination of public benefit corporation status.** (a) A
13 public benefit corporation may terminate its status as a public benefit corporation and
14 cease to be subject to this chapter by amending its articles of incorporation to delete
15 the statement required by AS 10.60.010 to be in the articles of incorporation. The
16 public benefit corporation shall adopt the amendment by at least the minimum vote
17 required under AS 10.60.700 for a status change.

18 (b) If a public benefit corporation is a party to merger, consolidation,
19 conversion, or interest or share exchange that would have the effect of terminating the
20 status of a public benefit corporation, the public benefit corporation shall approve, by
21 at least the minimum vote required under AS 10.60.700 for a status change, the plan of
22 merger, consolidation, conversion, or interest or share exchange.

23 **Sec. 10.60.070. Disposition of assets.** If a public benefit corporation transacts
24 a sale, lease, exchange, or other disposition of all or substantially all of the assets of
25 the public benefit corporation, unless the transaction is in the usual and regular course
26 of business, the public benefit corporation shall approve the sale, lease, exchange, or
27 other disposition of all or substantially all of the assets of the public benefit
28 corporation by at least the minimum vote required under AS 10.60.700 for a status
29 change.

30 **Article 2. Directors.**

31 **Sec. 10.60.100. Standard of conduct for directors.** In discharging their duties

1 and in considering the best interests of a public benefit corporation, the board of
2 directors, committees of the board, and individual directors of the public benefit
3 corporation

4 (1) shall consider the effects of an action or inaction on

5 (A) the shareholders of the public benefit corporation;

6 (B) the employees and workforce of the public benefit
7 corporation, its subsidiaries, and its suppliers;

8 (C) the interests of customers to the extent they are
9 beneficiaries of the general public benefit purpose or specific public benefit
10 purpose of the public benefit corporation;

11 (D) community and societal factors, including the interests of
12 each community in which offices or facilities of the public benefit corporation,
13 its subsidiaries, or its suppliers are located;

14 (E) local and global health;

15 (F) the short-term and long-term interests of the public benefit
16 corporation, including benefits that may accrue to the public benefit
17 corporation from its long-term plans and the possibility that those interests may
18 be best served by the continued independence of the public benefit corporation;
19 and

20 (G) the ability of the public benefit corporation to accomplish
21 its general public benefit purpose and specific public benefit purpose, if any;

22 (2) may consider

23 (A) the resources, intent, and conduct of a person seeking to
24 acquire control of the public benefit corporation; and

25 (B) other pertinent factors or the interests of other groups the
26 directors consider appropriate;

27 (3) are not required to give priority to a particular interest or factor
28 referred to in (1) or (2) of this section over another interest or factor unless the public
29 benefit corporation has stated in its articles of incorporation its intention to give
30 priority to certain interests or factors related to its accomplishment of its general
31 public benefit purpose or of a specific public benefit purpose identified in its articles.

1 (1) is designated the benefit director; and

2 (2) has, in addition to the powers, duties, rights, and immunities of the
3 other directors of the public benefit corporation, the powers, duties, rights, and
4 immunities provided in AS 10.60.150 - 10.60.220.

5 **Sec. 10.60.160. Election of benefit director.** The board of directors shall elect
6 and may remove the benefit director in the manner provided by AS 10.06.453 -
7 10.06.463.

8 **Sec. 10.60.170. Qualifications of benefit director.** (a) The benefit director of
9 a public benefit corporation, except as provided in AS 10.60.210, shall be an
10 individual who does not have a material relationship under AS 10.60.220 with the
11 public benefit corporation or a subsidiary of the public benefit corporation. The benefit
12 director may serve as the benefit officer at the same time as serving as the benefit
13 director. The articles of incorporation or bylaws of a public benefit corporation may
14 prescribe additional qualifications of the benefit director not inconsistent with this
15 subsection.

16 (b) Serving as benefit director of a public benefit corporation does not
17 establish that an individual has a material relationship with the public benefit
18 corporation or a subsidiary of the public benefit corporation.

19 **Sec. 10.60.180. Annual compliance statement.** The benefit director shall
20 prepare, and the public benefit corporation shall include in the annual benefit report to
21 shareholders required by AS 10.60.500,

22 (1) the opinion of the benefit director on whether the public benefit
23 corporation acted in accordance with its general public benefit purpose and any
24 specific public benefit purpose in all material respects during the period covered by
25 the report;

26 (2) the opinion of the benefit director on whether the directors and
27 officers complied with AS 10.60.100 and 10.60.230 during the period covered by the
28 report; and

29 (3) if the benefit director believes the public benefit corporation or its
30 directors or officers failed to act or comply in the manner described in (1) or (2) of this
31 section, a description of the ways in which the public benefit corporation or its

1 directors or officers failed to act or comply.

2 **Sec. 10.60.190. Status of actions.** The action or inaction of a benefit director
3 in the capacity of a benefit director constitutes for all purposes an action or inaction of
4 that individual in the capacity of a director of the public benefit corporation.

5 **Sec. 10.60.200. Exoneration from personal liability.** Regardless of whether
6 the articles of incorporation of a public benefit corporation include a provision
7 eliminating or limiting the personal liability of directors under AS 10.06.210, a benefit
8 director is not personally liable for an action or omission when done in the capacity of
9 a benefit director unless the action or omission constitutes self-dealing, willful
10 misconduct, or a knowing violation of law.

11 **Sec. 10.60.210. Professional corporations.** The benefit director of a public
12 benefit corporation that is a professional corporation is not prohibited from having a
13 material relationship under AS 10.60.220 with the public benefit corporation or a
14 subsidiary of the public benefit corporation.

15 **Sec. 10.60.220. Material relationship.** When determining under
16 AS 10.60.170 whether a benefit director of a public benefit corporation has a material
17 relationship with the public benefit corporation or a subsidiary of the public benefit
18 corporation, a material relationship is conclusively presumed to exist if

19 (1) the individual is, or has been within the last three years, an
20 employee other than a benefit officer of the public benefit corporation or a subsidiary;

21 (2) an immediate family member of the individual is, or has been
22 within the last three years, an executive officer other than a benefit officer of the
23 public benefit corporation or a subsidiary;

24 (3) there is beneficial or record ownership of five percent or more of
25 the outstanding shares of the public benefit corporation, calculated as if all outstanding
26 rights to acquire equity interests in the public benefit corporation had been exercised,
27 by

28 (A) the individual; or

29 (B) an entity

30 (i) of which the individual is a director, an officer, or a
31 manager; or

1 (ii) in which the individual owns beneficially or of
 2 record five percent or more of the outstanding equity interests,
 3 calculated as if all outstanding rights to acquire equity interests in the
 4 entity had been exercised.

5 **Article 4. Officers.**

6 **Sec. 10.60.230. Standard of conduct for officers.** An officer of a public
 7 benefit corporation shall consider the interests and factors under AS 10.60.100 if the
 8 officer

9 (1) has discretion to act with respect to a matter; and

10 (2) reasonably believes that the matter identified under (1) of this
 11 section may have a material effect on the creation by the public benefit corporation of
 12 general public benefit or a specific public benefit identified in the articles of
 13 incorporation of the public benefit corporation.

14 **Sec. 10.60.240. Coordination with other corporate officer requirements.**

15 The consideration of interests and factors under AS 10.60.230 by an officer of a public
 16 benefit corporation does not constitute a violation of AS 10.06.483.

17 **Sec. 10.60.250. Exoneration from personal liability.** Except as provided in
 18 the articles of incorporation, an officer of a public benefit corporation is not personally
 19 liable for monetary damages for

20 (1) an action or inaction as an officer in the course of performing the
 21 duties of an officer under AS 10.60.230 - 10.60.270 if the officer performs the duties
 22 of the position in compliance with AS 10.06.483 and this section; or

23 (2) a failure of the public benefit corporation to pursue or create a
 24 general public benefit or a specific public benefit.

25 **Sec. 10.60.260. No duty to beneficiary.** An officer of a public benefit
 26 corporation does not have a duty arising from the person's status as a beneficiary to a
 27 person who is a beneficiary of the general public benefit purpose or a specific public
 28 benefit purpose of the public benefit corporation.

29 **Sec. 10.60.270. Business judgment.** An officer who makes a business
 30 judgment in good faith fulfills the duty under AS 10.60.230 - 10.60.270 if the officer

31 (1) is disinterested in the subject of the business judgment;

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

4 (3) reasonably believes that the business judgment is in the best
5 interests of the public benefit corporation; in this paragraph, "best interests" includes
6 the creation of the general public benefit purpose and any specific public benefit
7 purpose.

8 **Sec. 10.60.280. Benefit officer.** A public benefit corporation may designate an
9 officer as the benefit officer of the public benefit corporation. A benefit officer has the
10 powers and duties of the public benefit corporation that relate to the creation of a
11 general public benefit and a specific public benefit, as the powers and duties are
12 provided in the bylaws, or, absent controlling provisions in the bylaws, by resolutions
13 or orders of the board of directors. A benefit officer shall prepare the benefit report
14 required by AS 10.60.500.

15 **Article 5. Actions and Claims.**

16 **Sec. 10.60.300. Actions and claims.** Unless another provision of this chapter
17 limits liability, a person identified under AS 10.60.320 may bring an action or assert a
18 claim against a public benefit corporation or its directors or officers with respect to

19 (1) a failure to pursue or create general public benefit or a specific
20 public benefit set out in its articles of incorporation; or

21 (2) a violation of an obligation, duty, or standard of conduct under this
22 chapter.

23 **Sec. 10.60.310. Limitation on liability of corporation.** Notwithstanding
24 AS 10.60.300, a public benefit corporation is not liable for monetary damages under
25 this chapter for a failure of the public benefit corporation to pursue or create a general
26 public benefit or a specific public benefit.

27 **Sec. 10.60.320. Right to bring action.** (a) An action under AS 10.60.300 may
28 be commenced or maintained only

29 (1) directly by the public benefit corporation; or

30 (2) derivatively under AS 10.06.435 by

31 (A) a person or group of persons that owned beneficially or of

1 record at least two percent of the total number of the shares of the public
 2 benefit corporation of a class or series outstanding at the time of the act or
 3 omission complained of;

4 (B) a director of the public benefit corporation;

5 (C) a person or group of persons who owned beneficially or of
 6 record five percent or more of the outstanding equity interests in a person of
 7 which the public benefit corporation is a subsidiary at the time of the act or
 8 omission complained of; or

9 (D) another person specified in the articles of incorporation or
 10 bylaws of the public benefit corporation.

11 (b) In this section, a person is the beneficial owner of shares or equity interests
 12 if the shares or equity interests are held in a voting trust or by a nominee on behalf of
 13 the person.

14 **Article 6. Reporting.**

15 **Sec. 10.60.500. Benefit report.** In addition to the biennial report required by
 16 AS 10.06.805, a public benefit corporation shall prepare an annual benefit report.

17 **Sec. 10.60.510. Contents of report.** The benefit report required by
 18 AS 10.60.500 must contain

19 (1) a description of

20 (A) the ways in which the public benefit corporation pursued
 21 the general public benefit during the year being reported and the extent to
 22 which the public benefit corporation created general public benefit;

23 (B) the ways in which the public benefit corporation pursued
 24 each specific public benefit identified in the articles of incorporation and the
 25 extent to which the public benefit corporation created the specific public
 26 benefit;

27 (C) any circumstances that have hindered the creation by the
 28 public benefit corporation of general public benefit or specific public benefit;

29 (D) the process and rationale for selecting or changing the
 30 third-party standard used to prepare the benefit report;

31 (2) an assessment of the overall performance of the general public

1 benefit purpose by the public benefit corporation against a third-party standard

2 (A) applied consistently with any application of that standard in
3 prior benefit reports; or

4 (B) accompanied by an explanation of the reasons for

5 (i) any inconsistent application; or

6 (ii) the change to that standard from the one used in the
7 immediately prior report;

8 (3) the name of the benefit director and the benefit officer, if any, and
9 the address to which correspondence to each of them may be directed;

10 (4) the compensation paid by the public benefit corporation during the
11 year to each director in the capacity of a director;

12 (5) the statement of the benefit director described in AS 10.60.180; and

13 (6) a statement of any connection between the organization that
14 established the third-party standard or its directors, officers, or any holder of five
15 percent or more of the governance interests in the organization and the public benefit
16 corporation or its directors, officers, or any holder of five percent or more of the
17 outstanding shares of the public benefit corporation, including any financial or
18 governance relationship that might materially affect the credibility of the use of the
19 third-party standard.

20 **Sec. 10.60.520. Correspondence relating to change of benefit director.** If,
21 during the year covered by a benefit report, a benefit director resigned from or refused
22 to stand for reelection to the position of benefit director, or was removed from the
23 position of benefit director, and the benefit director furnished the public benefit
24 corporation with written correspondence concerning the circumstances surrounding
25 the resignation, refusal, or removal, the benefit report must include that
26 correspondence as an exhibit.

27 **Sec. 10.60.530. Audit not required.** A public benefit corporation is not
28 required to have the benefit report, including the assessment of the performance of the
29 public benefit corporation in the benefit report required by AS 10.60.510(2), audited
30 or certified by a person without a connection to the public benefit corporation.

31 **Sec. 10.60.540. Delivery of annual benefit report to shareholders.** A public

1 benefit corporation shall send its annual benefit report to each shareholder not later
2 than the earlier of the date

3 (1) that is 120 days after the end of the fiscal year of the public benefit
4 corporation; or

5 (2) the same date as the date that the public benefit corporation
6 delivers any other annual report to its shareholders.

7 **Sec. 10.60.550. Internet website posting.** If a public benefit corporation has
8 an Internet website, the public benefit corporation shall post all of its benefit reports
9 on the public portion of the website. The public benefit corporation may omit from the
10 benefit reports posted on the website the compensation paid to directors and financial
11 or proprietary information included in the benefit report.

12 **Sec. 10.60.560. Availability of copies of benefit report.** If a public benefit
13 corporation does not have an Internet website, the public benefit corporation shall
14 provide a copy of its most recent benefit report, without charge, to any person who
15 requests a copy, but the public benefit corporation may omit the compensation paid to
16 directors and financial or proprietary information included in the benefit report from
17 the copy of the benefit report provided to the person.

18 **Sec. 10.60.570. Filing of report.** Concurrently with the delivery of the benefit
19 report to shareholders under AS 10.60.540, a public benefit corporation shall deliver a
20 copy of the benefit report to the department for filing by the department, but the public
21 benefit corporation may omit the compensation paid to directors and financial or
22 proprietary information included in the benefit report from the benefit report delivered
23 to the department. The department shall charge a fee established by the department for
24 filing a benefit report.

25 **Article 7. Miscellaneous Provisions.**

26 **Sec. 10.60.700. Status change approval.** In addition to any other required
27 approval or vote, to accomplish a status change of a public benefit corporation,

28 (1) the shareholders of each class or series may vote as a separate
29 voting group on the status change, regardless of a limitation stated in the articles of
30 incorporation or bylaws on the voting rights of a class or series;

31 (2) the shareholders shall approve the status change by a vote of each

1 class or series entitled to cast at least two-thirds of the votes that all shareholders of
2 the class or series are entitled to cast on the action.

3 **Sec. 10.60.710. Shareholder dissent.** In addition to the corporate actions to
4 which a shareholder may dissent under AS 10.06.574(a), a shareholder of a
5 corporation organized under AS 10.06 may dissent under AS 10.06.574 - 10.06.582 if
6 the corporation amends its articles under AS 10.60.010(2) to become a public benefit
7 corporation.

8 **Sec. 10.60.720. Third-party standard.** In this chapter, whenever a third-party
9 standard is used, the standard refers to a recognized standard for defining, reporting,
10 and assessing corporate performance

11 (1) that is comprehensive because it assesses the effect of the public
12 benefit corporation and its operations on the interests listed in AS 10.60.100(1)(B) -
13 (E);

14 (2) that is developed by a person that is not controlled by the public
15 benefit corporation;

16 (3) that is credible because it is developed by a person that

17 (A) has access to the expertise necessary to assess overall
18 corporate performance; and

19 (B) uses an approach, including a reasonable public comment
20 period, to develop the standard that is balanced and considers multiple
21 concerns and interests;

22 (4) for which the following information about the standard is publicly
23 available:

24 (A) the criteria considered when measuring the overall
25 performance of a business;

26 (B) the relative weightings, if any, of the criteria in (A) of this
27 paragraph;

28 (5) for which the following information about the development and
29 revision of the standard is publicly available:

30 (A) the identity of the directors, officers, material owners, and
31 governing body of the entity that developed and controls revisions to the

1 standard;

2 (B) the process by which revisions to the standard and changes
3 to the membership of the governing body are made;

4 (C) an accounting of the revenue and sources of financial
5 support for the entity, with sufficient detail to disclose any relationships that
6 could reasonably be considered to present a potential conflict of interest.

7 **Sec. 10.60.730. Tax exemptions.** A public benefit corporation may not claim a
8 tax exemption under AS 43.20 (Alaska Net Income Tax Act) if the tax exemption is
9 not also available to corporations that are not public benefit corporations.

10 **Sec. 10.60.740. Interpretation.** The authorization under AS 10.60.010 to form
11 a public benefit corporation for a general public benefit purpose and the authorization
12 under AS 10.60.040 for a public benefit corporation to identify a specific public
13 benefit purpose may not be interpreted to prevent a business entity that is formed
14 under another law of this state from including in its general powers the consideration
15 of, or donation to, a general public benefit purpose or a specific public benefit
16 purpose.

17 **Article 8. General Provisions.**

18 **Sec. 10.60.910. Regulations.** The department may adopt regulations under
19 AS 44.62 (Administrative Procedure Act) to implement this chapter.

20 **Sec. 10.60.920. Application to business corporations generally.** The
21 existence of a provision of this chapter does not, by itself, suggest that a contrary or
22 different rule of law applies to a business corporation that is not a public benefit
23 corporation. This chapter does not affect a statute or other law that applies to a
24 business corporation that is not a public benefit corporation.

25 **Sec. 10.60.930. Applicable laws.** Except as otherwise provided in this chapter,
26 AS 10.06 applies to a public benefit corporation. A public benefit corporation may be
27 simultaneously subject to this chapter and AS 10.45. The provisions of AS 10.06 and
28 AS 10.45 are subject to this chapter.

29 **Sec. 10.60.940. Consistency with chapter.** A provision of the articles of
30 incorporation or bylaws of a public benefit corporation may not limit, be inconsistent
31 with, or supersede a provision of this chapter.

1 **Sec. 10.60.990. Definitions.** In this chapter,

2 (1) "benefit director" means the director designated as the benefit
3 director of a public benefit corporation under AS 10.60.150;

4 (2) "benefit officer" means the individual designated as the benefit
5 officer of a public benefit corporation under AS 10.60.280;

6 (3) "benefit report" means the report required by AS 10.60.500;

7 (4) "business corporation" means a corporation organized under
8 AS 10.06, including a professional corporation under AS 10.45;

9 (5) "general public benefit" means a material positive effect on society
10 or the environment, taken as a whole, assessed against a third-party standard;

11 (6) "general public benefit purpose" means the public benefit purpose
12 under AS 10.60.030;

13 (7) "public benefit corporation" means a corporation that elects under
14 AS 10.60.010 to become subject to this chapter;

15 (8) "specific public benefit" means a benefit that serves a public
16 welfare, religious, charitable, scientific, literary, or educational purpose, or another
17 purpose beyond the strict interest of the shareholders of the public benefit corporation;

18 (9) "specific public benefit purpose" means a specific public benefit
19 purpose that is identified as a public benefit purpose by a public benefit corporation
20 under AS 10.60.040(a) or (b);

21 (10) "status change" means

22 (A) an amendment of the articles of incorporation under
23 AS 10.60.010;

24 (B) an election of an existing corporation to become a public
25 benefit corporation under AS 10.60.010;

26 (C) the approval of a plan of merger, consolidation, conversion,
27 or interest or share exchange under AS 10.60.020;

28 (D) the termination of public benefit corporation status under
29 AS 10.60.060; or

30 (E) a disposition of assets under AS 10.60.070;

31 (11) "subsidiary" means an entity in which a person owns beneficially

1 or of record 50 percent or more of the outstanding equity interests calculated as if all
2 outstanding rights to acquire equity interests in the entity had been exercised.

3 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
6 Economic Development may adopt regulations under AS 10.60.910, enacted by sec. 1 of this
7 Act, necessary to implement this Act. The regulations take effect under AS 44.62
8 (Administrative Procedure Act), but not before July 1, 2015.

9 * **Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 4.** Except as provided in sec. 3 of this Act, this Act takes effect July 1, 2015.