

1 S.263

2 Introduced by Senators Shumlin and Miller

3 Referred to Committee on Economic Development, Housing & Gen. Affairs

4 Date: January 5, 2010

5 Subject: Commerce and trade; business organizations; for-benefit corporations

6 Statement of purpose: This bill proposes to allow new and existing for-profit  
7 corporations to elect status as a for-benefit corporation, with the purpose,  
8 among other things, of creating public benefit.

*An act relating to the Vermont Benefit Corporations Act*

9 ~~An act relating to job creation and economic development~~

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 11A V.S.A. chapter 21 is added to read:~~

12 ~~CHAPTER 21. FOR-BENEFIT CORPORATIONS~~

13 ~~§ 21.01. SHORT TITLE~~

14 ~~§ 21.02. LAW APPLICABLE~~

15 ~~§ 21.03. DEFINITIONS~~

16 ~~§ 21.04. COMPUTATION OF OWNERSHIP~~

17 ~~§ 21.05. INCORPORATION OF A FOR-BENEFIT CORPORATION~~

18 ~~§ 21.06. ELECTION OF EXISTING CORPORATION TO BECOME A~~

19 ~~FOR-BENEFIT CORPORATION~~

20 ~~§ 21.07. MERGER AND SHARE EXCHANGE~~

§ 21.08. TERMINATION OF FOR-BENEFIT CORPORATION STATUS

BY AMENDMENT OF ARTICLES OF INCORPORATION;

VOTE REQUIRED

§ 21.09. CORPORATE PURPOSE

§ 21.10. STANDARD OF CONDUCT FOR DIRECTORS

§ 21.11. FOR-BENEFIT DIRECTOR

§ 21.12. STANDARD OF CONDUCT FOR OFFICERS

§ 21.13. FOR-BENEFIT OFFICER

§ 21.14. RIGHT OF ACTION

§ 21.15. ANNUAL FOR-BENEFIT REPORT TO SHAREHOLDERS

§ 21.16. ANNUAL REPORT FILED WITH SECRETARY OF STATE

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the “Vermont For-Benefit Corporation Act.”

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to for-benefit corporations organized under this chapter. The provisions of this title other than those set forth in this chapter shall apply to for-benefit corporations in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a for-benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

1 ~~(b) The existence of a provision of this chapter does not of itself create any~~  
2 ~~implication that a contrary or different rule of law is or would be applicable to~~  
3 ~~a corporation that is not a for-benefit corporation. This chapter does not affect~~  
4 ~~any statute or rule of law as it applies to a corporation that is not a for-benefit~~  
5 ~~corporation.~~

6 (c) A provision of the articles of incorporation or bylaws of a for-benefit  
7 corporation may not be inconsistent with any provision of this chapter.

8 (d) The definitions provided in other chapters of this title apply to the use  
9 in this chapter of the terms defined in those provisions.

10 § 21.03. DEFINITIONS

11 As used in this chapter:

12 (1) "For-benefit corporation" means a corporation organized under this  
13 chapter whose articles of incorporation:

14 (A) include the following statement: "This corporation is a  
15 for-benefit corporation;" and

16 (B) contain the provisions required by subsection 2.02(a) of this title.

17 (2) "For-benefit director" means the director designated as the  
18 for-benefit director of a for-benefit corporation as provided in section 21.11 of  
19 this title.

20 (3) "For-benefit officer" means the officer of a for-benefit corporation,  
21 if any, designated as the for-benefit officer as provided in section 21.13 of this

1 title.

2 (4) "Independent" with respect to an individual means that the  
3 individual has no material relationship with the for-benefit corporation or any  
4 of its subsidiaries (other than the relationship of serving as the for-benefit  
5 director or for-benefit officer), either directly or as an owner or manager of an  
6 entity that has a material relationship with the for-benefit corporation or any of  
7 its subsidiaries. A material relationship between an individual and the  
8 for-benefit corporation or any of its subsidiaries will be conclusively presumed  
9 to exist if:

10 (A) the individual is, or has been within the last three years, an  
11 employee of the for-benefit corporation or any of its subsidiaries, other than as  
12 a for-benefit officer;

13 (B) an immediate family member of the individual is, or has been  
14 within the last three years, an executive officer, other than a for-benefit officer,  
15 of the for-benefit corporation or any of its subsidiaries; or

16 (C) the individual, or an entity of which the individual is a manager  
17 or in which the individual owns beneficially or of record five percent or more  
18 of the equity interests, owns beneficially or of record five percent or more of  
19 the shares of the for-benefit corporation.

20 (5) "Public benefit" means promoting economic opportunity for  
21 individuals or communities beyond the creation of jobs in the normal course of

1 ~~business, preserving the environment, improving human health, promoting the~~  
2 ~~arts, sciences, or advancement of knowledge, and increasing the flow of capital~~  
3 ~~to entities with a public benefit purpose.~~

4 ~~(6) "Subsidiary" of a person means an entity in which the person owns~~  
5 ~~beneficially or of record 50 percent or more of the equity interests.~~

6 ~~§ 21.04. COMPUTATION OF OWNERSHIP~~

7 ~~Whenever this chapter refers to a percentage of ownership in an entity, that~~  
8 ~~percentage shall be calculated as if all outstanding rights to acquire equity~~  
9 ~~interests in the entity had been exercised.~~

10 ~~§ 21.05. INCORPORATION OF A FOR-BENEFIT CORPORATION~~

11 ~~A for-benefit corporation shall be formed in accordance with sections 2.01,~~  
12 ~~2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall~~  
13 ~~also contain the provision required by subdivision 21.03(1) of this title.~~

14 ~~§ 21.06. ELECTION OF EXISTING CORPORATION TO BECOME A~~  
15 ~~FOR-BENEFIT CORPORATION~~

16 ~~Any corporation organized under this title may become a for-benefit~~  
17 ~~corporation by executing and filing, in accordance with sections 10.01–10.09~~  
18 ~~of this title, an article of amendment to its articles of incorporation, which shall~~  
19 ~~contain the provision required by subdivision 21.03(1) of this title.~~

20 ~~§ 21.07. MERGER AND SHARE EXCHANGE~~

21 ~~A plan of merger or share exchange that if effected would terminate the~~

1 ~~for benefit corporation status of a corporation must be approved by a vote of at~~  
2 least two-thirds of the votes entitled to be cast by the outstanding shares of the  
3 corporation, provided that if any class of shares is entitled to vote as a group,  
4 approval shall also require the affirmative vote of the holders of at least  
5 two-thirds of the votes entitled to be cast by the outstanding shares of each  
6 voting group.

7 § 21.08. TERMINATION OF FOR-BENEFIT CORPORATION STATUS  
8 BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE  
9 REQUIRED

10 (a) A corporation may terminate its status as a for-benefit corporation and  
11 cease to be subject to this chapter by amending its articles of incorporation to  
12 delete the provision required by subdivision 21.03(1) of this title in addition to  
13 the provisions required by section 2.02 of this title to be stated in the articles of  
14 incorporation of a for-benefit corporation. Any such amendment shall be  
15 adopted and shall become effective in accordance with sections 10.01–10.09 of  
16 this title and shall be approved by the highest of the vote required by the  
17 articles of incorporation, the board of directors, or subsection (b) of this  
18 section.

19 (b) An amendment to terminate the status of a for-benefit corporation shall  
20 be approved by a vote of at least two-thirds of the votes entitled to be cast by  
21 the outstanding shares of the corporation, provided that if any class of shares is

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1 ~~entitled to vote as a group, approval shall also require the affirmative vote of~~  
2 the holders of at least two-thirds of the votes entitled to be cast by the  
3 outstanding shares of each voting group.

4 § 21.09. CORPORATE PURPOSE

5 (a) Every for-benefit corporation shall have the purpose of creating public  
6 benefit generally in addition to its purpose under subsection 3.01(a) of this title  
7 and any specific purpose set forth in its articles of incorporation.

8 (b) The articles of incorporation of a for-benefit corporation may identify  
9 one or more specific public benefits that it is the purpose of the for-benefit  
10 corporation to create.

11 (c) The creation of public benefit as provided in subsections (a) and (b) of  
12 this section is in the best interests of the for-benefit corporation.

13 (d) A for-benefit corporation may amend its articles of incorporation to  
14 add, amend or delete the identification of a specific public benefit that it is the  
15 purpose of the for-benefit corporation to create. Any such amendment shall be  
16 adopted and shall become effective in accordance with sections 10.01–10.09 of  
17 this title and shall be approved by the higher of the vote required by the articles  
18 of incorporation or by subsection (e) of this section.

19 (e) An amendment of the articles of incorporation of a for-benefit  
20 corporation to add, amend, or delete the identification of a specific public  
21 benefit that it is the purpose of the for-benefit corporation to create shall be

1 ~~adopted by a vote of at least two-thirds of the votes entitled to be cast by the~~  
2 outstanding shares of the corporation, provided that if any class of shares is  
3 entitled to vote as a group, approval shall also require the affirmative vote of  
4 the holders of at least two-thirds of the votes entitled to be cast by the  
5 outstanding shares of each voting group.

6 § 21.10. STANDARD OF CONDUCT FOR DIRECTORS

7 (a) Each director of a for-benefit corporation, in discharging his or her  
8 duties as a director, including the director's duties as a member of a  
9 committee:

10 (1) shall, in determining what the director reasonably believes to be in  
11 the best interests of the for-benefit corporation, consider the effects of any  
12 action or decision not to act on the shareholders, employees, suppliers, and  
13 customers of the for-benefit corporation and its subsidiaries, the economy of  
14 the state, region and nation, community, and societal considerations, including  
15 those of any community in which offices or facilities of the for-benefit  
16 corporation or its subsidiaries are located, and the local and global  
17 environment;

18 (2) may consider any other pertinent factors or the interests of any other  
19 group that the director determines are appropriate to consider;

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1 ~~(3) shall not be required to give priority to the interests of any particular~~  
2 ~~person or group referred to in subdivision (a)(1) or (2) of this section over the~~  
3 ~~interests of any other person or group;~~

4 ~~(4) shall consider the long-term and short-term interests of the~~  
5 ~~corporation, including the possibility that those interests may be best served by~~  
6 ~~the continued independence of the for-benefit corporation; and~~

7 ~~(5) shall not be subject to a different or higher standard when an action~~  
8 ~~or inaction might affect control of the for-benefit corporation.~~

9 ~~(b) The consideration of interests and factors in the manner described in~~  
10 ~~subsection (a) of this section shall not constitute a violation of section 8.30 of~~  
11 ~~this title.~~

12 ~~(c) A director is not liable as such to the for-benefit corporation or any~~  
13 ~~person entitled to bring a for-benefit enforcement proceeding under section~~  
14 ~~21.14 of this title for any action taken as a director, or any failure to take any~~  
15 ~~action, if the director performed the duties of his or her office in compliance~~  
16 ~~with section 8.30 of this title and this section.~~

17 § 21.11. FOR-BENEFIT DIRECTOR

18 ~~(a) The board of directors of a for-benefit corporation shall at all times~~  
19 ~~include one director who shall be designated the “for-benefit director” and~~  
20 ~~shall have, in addition to all of the powers, duties, rights, and immunities of the~~  
21 ~~other directors of the for-benefit corporation, the powers, duties, rights, and~~

1 ~~immunities provided in this section.~~

2 (b) The for-benefit director shall be elected in the manner provided by  
3 subchapter 1 of chapter 8 of this title and shall be an individual who is  
4 independent of the for-benefit corporation. The for-benefit director may serve  
5 as the for-benefit officer at the same time as serving as the for-benefit director.  
6 The articles of incorporation or bylaws of a for-benefit corporation may  
7 prescribe additional qualifications of the for-benefit director not inconsistent  
8 with this subsection.

9 (c) The for-benefit director shall prepare, and the for-benefit corporation  
10 shall include in the for-benefit report to shareholders required by section 21.15  
11 of this title, a statement whether, in the opinion of the for-benefit director, the  
12 for-benefit corporation acted in accordance with its general and any specific  
13 public benefit purpose in all material respects during the period covered by the  
14 report and whether the directors and officers complied with sections 21.10(a)  
15 and 21.12, respectively, of this title. If in the opinion of the for-benefit director  
16 the corporation or its directors or officers failed so to act, then the statement of  
17 the for-benefit director shall include a description of the ways in which the  
18 corporation or its directors or officers failed so to act.

19 (d) The acts and omissions of an individual in the capacity of a for-benefit  
20 director shall constitute for all purposes acts and omissions of that individual in  
21 the capacity of a director of the for-benefit corporation.

1 ~~(c) If the articles of incorporation of a for-benefit corporation that is a close~~  
2 ~~corporation dispense with a board of directors pursuant to sections 20.08 and~~  
3 ~~20.09 of this title, then the articles of incorporation must provide that the~~  
4 ~~persons who perform the duties of a board of directors shall include a person~~  
5 ~~with the powers, duties, rights, and immunities of a for-benefit director.~~

6 ~~(f) Regardless of whether the articles of incorporation of a for-benefit~~  
7 ~~corporation include a provision eliminating or limiting the personal liability of~~  
8 ~~directors authorized by subdivision 2.02(b)(4) of this title, a for-benefit~~  
9 ~~director shall not be personally liable for any act or omission in the capacity of~~  
10 ~~a for-benefit director unless the act or omission is not in good faith, involves~~  
11 ~~intentional misconduct or a knowing violation of law, or involves a transaction~~  
12 ~~from which the director directly or indirectly derived an improper personal~~  
13 ~~benefit.~~

14 § 21.12. STANDARD OF CONDUCT FOR OFFICERS

15 ~~(a) An officer of a for-benefit corporation with discretionary authority,~~  
16 ~~when discharging the officer's duties under that authority in connection with~~  
17 ~~an action or decision not to act that has a material effect on the creation of~~  
18 ~~general or specific public benefit by the for-benefit corporation, shall consider~~  
19 ~~the interests and factors described in subsection 21.10(a) of this title in the~~  
20 ~~manner provided in that subsection.~~

21 ~~(b) The consideration of interests and factors in the manner described in~~

1 ~~subsection (a) of this section shall not constitute a violation of the fiduciary~~  
2 ~~duty of an officer to the for-benefit corporation.~~

3 ~~(c) An officer is not liable as such to the for-benefit corporation or any~~  
4 ~~person entitled to bring a for-benefit enforcement proceeding under section~~  
5 ~~21.14 of this title for any action the officer takes or omits to take as an officer~~  
6 ~~if, in connection with the action or omission, the officer performed the duties~~  
7 ~~of the position in compliance with section 8.41 of this title and this section.~~

8 § 21.13. FOR-BENEFIT OFFICER

9 A for-benefit corporation may have an officer designated the “for-benefit  
10 officer” who shall have such authority and shall perform such duties relating to  
11 the purpose of the corporation to create public benefit as shall be set forth with  
12 respect to the office in the bylaws or, to the extent consistent with the bylaws,  
13 prescribed with respect to the office by the board of directors or by direction of  
14 an officer authorized by the board of directors to prescribe the duties of the  
15 office. If a for-benefit corporation has a for-benefit officer, the duties of the  
16 for-benefit officer shall include preparing the for-benefit report required by  
17 section 21.15 of this title.

18 § 21.14. RIGHT OF ACTION

19 (a) The duties of directors and officers under this chapter and the general  
20 and specific public benefit purposes of a for-benefit corporation may only be  
21 enforced in a for-benefit enforcement proceeding, and no person may bring

1 ~~such an action or claim against a for benefit corporation or its directors or~~  
2 ~~officers except as provided in this section.~~

3 ~~(b) A for-benefit enforcement proceeding may be commenced or~~  
4 ~~maintained only by:~~

5 ~~(1) a shareholder that would otherwise be entitled to commence or~~  
6 ~~maintain a proceeding in the right of the for-benefit corporation on any basis;~~

7 ~~(2) a director of the corporation;~~

8 ~~(3) a person or group of persons that owns beneficially or of record five~~  
9 ~~percent or more of the owner's interests in an entity of which the for-benefit~~  
10 ~~corporation is a subsidiary; or~~

11 ~~(4) such other persons as may be specified in the articles of~~  
12 ~~incorporation or bylaws of the for-benefit corporation.~~

13 ~~(c) As used in this section, "for-benefit enforcement proceeding" means a~~  
14 ~~claim or action:~~

15 ~~(1) against the corporation for violation of or failure to pursue the~~  
16 ~~general public benefit purpose of the for-benefit corporation or any specific~~  
17 ~~public benefit purpose set forth in its articles of incorporation; or~~

18 ~~(2) against a director or officer for violation of a duty or standard of~~  
19 ~~conduct under this chapter.~~

20 ~~§ 21.15. ANNUAL FOR-BENEFIT REPORT TO SHAREHOLDERS~~

21 ~~(a) A for-benefit corporation must deliver to each shareholder an annual~~

1 ~~for benefit report, including:~~

2 ~~(1) a narrative description of:~~

3 ~~(A) the ways in which the for-benefit corporation pursued public~~  
4 ~~benefit generally during the year and the extent to which general public benefit~~  
5 ~~was created;~~

6 ~~(B) the ways in which the for-benefit corporation pursued any~~  
7 ~~specific public benefit that the articles of incorporation state it is the purpose of~~  
8 ~~the for-benefit corporation to create and the extent to which that specific public~~  
9 ~~benefit was created;~~

10 ~~(C) the material deliberations of the board of directors under~~  
11 ~~subsection 21.10(a) of this title during the year; and~~

12 ~~(D) any circumstances that have hindered the creation by the~~  
13 ~~for-benefit corporation of public benefit generally or any specific public~~  
14 ~~benefit;~~

15 ~~(2) an assessment of the social and environmental performance of the~~  
16 ~~for-benefit corporation, prepared in accordance with recognized standards for~~  
17 ~~defining, reporting, and assessing corporate social and environmental~~  
18 ~~performance;~~

19 ~~(3) the name of the for-benefit director and the for-benefit officer, if~~  
20 ~~any, and the address to which correspondence to each of them may be directed;~~

21 ~~(4) the compensation paid to each director during the year; and~~

1 ~~(5) the name of each person that owns beneficially or of record five~~  
2 ~~percent or more of the shares of the for-benefit corporation.~~

3 ~~(b) The for-benefit report must be sent annually to each shareholder on or~~  
4 ~~before each anniversary of the date on which the for-benefit corporation~~  
5 ~~became subject to this chapter, or at the same time that the for-benefit~~  
6 ~~corporation delivers any other annual report to its shareholders.~~

7 ~~(c) A for-benefit corporation shall post its most recent for-benefit report on~~  
8 ~~its website, if any, except that any financial or proprietary information included~~  
9 ~~in the for-benefit report may be omitted from the for-benefit report as posted.~~

10 § 21.16. ANNUAL REPORT FILED WITH SECRETARY OF STATE

11 The annual report that a for-benefit corporation is required to deliver to the  
12 secretary of state pursuant to section 16.22 of this title must include the most  
13 recent for-benefit report delivered to shareholders pursuant to section 21.15 of  
14 this title, except that any financial or proprietary information included in the  
15 for-benefit report may be omitted from the for-benefit report as delivered to the  
16 secretary of state under this section.

17 Sec. 2. EFFECTIVE DATE

18 ~~This act shall take effect upon passage.~~

*Sec. 1. 11A V.S.A. chapter 21 is added to read:*

*CHAPTER 21. BENEFIT CORPORATIONS*

*§ 21.01. SHORT TITLE*

*§ 21.02. LAW APPLICABLE*

*§ 21.03. DEFINITIONS*

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A  
BENEFIT CORPORATION

§ 21.06. MERGER AND SHARE EXCHANGE

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY  
AMENDMENT OF ARTICLES OF INCORPORATION; VOTE  
REQUIRED

§ 21.08. CORPORATE PURPOSE

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

§ 21.10. BENEFIT DIRECTOR

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

§ 21.12. BENEFIT OFFICER

§ 21.13. RIGHT OF ACTION

§ 21.14. ANNUAL BENEFIT REPORT

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the “Vermont Benefit Corporations Act.”

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to a domestic corporation meeting the definition of a benefit corporation in subdivision 21.03(a)(1) of this title. The provisions of this title other than those set forth in this chapter shall apply to a benefit corporation in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

(b) The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a benefit corporation.

(c) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with any provision of this chapter.

(d) Terms that are defined in other chapters of this title shall have the same meaning when used in this chapter, except that in this chapter, “corporation”



shall have the meaning set forth in section 1.40 of this title.

§ 21.03. DEFINITIONS

(a) As used in this chapter:

(1) “Benefit corporation” means a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement “This corporation is a benefit corporation.”

(2) “Benefit director” means the director designated as the benefit director of a benefit corporation as provided in section 21.10 of this title.

(3) “Benefit officer” means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 21.12 of this title.

(4) “General public benefit” means a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

(5) “Independent” means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as an owner or manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(A) the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(B) an immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(C) the person, or an entity of which the person is a manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.

(6) “Specific public benefit” includes:

(A) providing low income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health

(E) promoting the arts or sciences or the advancement of knowledge;

(F) increasing the flow of capital to entities with a public benefit purpose; and

(G) the accomplishment of any other identifiable benefit for society or the environment.

(7) "Subsidiary" of a person means an entity in which the person owns beneficially or of record 50 percent or more of the equity interests.

(8) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(A) is developed by a person that is independent of the benefit corporation; and

(B) is transparent because the following information about the standard is publicly available:

(i) the factors considered when measuring the performance of a business;

(ii) the relative weightings of those factors; and

(iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) For purposes of subdivisions (a)(5)(C) and (7), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

#### § 21.04. INCORPORATION OF A BENEFIT CORPORATION

A benefit corporation shall be formed in accordance with sections 2.01, 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall also contain the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation.

#### § 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

Any corporation organized under this title may become a benefit corporation by amending its articles of incorporation to add the statement required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.06. MERGER AND SHARE EXCHANGE

(a) A plan of merger or share exchange that if effected would terminate the benefit corporation status of a corporation shall be adopted and shall become effective in accordance with chapter 11 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

(b) If a corporation that is not a benefit corporation is a party to a plan of merger or share exchange in which the surviving corporation is a benefit corporation, the plan of merger shall be adopted and shall become effective in accordance with chapter 11 of this title, except that the plan shall be approved in the case of the corporation that is not a benefit corporation by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

A corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation, in addition to the provisions required by section 2.02 of this title to be stated in the articles of incorporation of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.08. CORPORATE PURPOSE

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and subsection (a) of this section. The adoption of a specific public benefit purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to its specific public benefit purpose in its articles of incorporation; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of section 8.30 of this title.

(c) A director is not liable for the failure of a benefit corporation to create general or specific public benefit.

(d) A director is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the director performed the duties of his or her office in compliance with section 8.30 of this title and with this section.

(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.10. BENEFIT DIRECTOR

(a) The board of directors of a benefit corporation shall include one director who shall be designated the "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director shall be elected and may be removed in the manner provided by subchapter 1 of chapter 8 of this title and shall be an individual who is independent of the benefit corporation. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c)(1) The benefit director shall be responsible for the preparation of the annual benefit report required under section 21.14 of this title.

(2) The benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the benefit corporation's social and environmental performance.

(3) The benefit director shall prepare and shall include in the annual benefit report a statement whether, in the opinion of the benefit director:

(A) the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(B) the directors and officers acted in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively.

(4) If in the opinion of the benefit director the benefit corporation failed to act in accordance with its general and any specific public benefit purposes or if its directors or officers failed to act in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to so act.

(d) The acts and omissions of an individual in the capacity of a benefit director shall constitute for all purposes acts and omissions of that individual in the capacity of a director of the benefit corporation.

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that the persons who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by subdivision 2.02(b)(4) of this title, a benefit director shall not be personally liable for any act or omission taken in his or her official capacity as a benefit director unless the act or omission is not in good faith, involves intentional misconduct or a knowing violation of law, or involves a transaction from which the director directly or indirectly derived an improper personal benefit.

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

(a) An officer of a benefit corporation shall consider the interests and factors described in subsection 21.09(a) of this title in the manner provided in that subsection when:

(1) the officer has discretion in how to act or not act with respect to a matter; and

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

(A) the creation of general or specific public benefit by the benefit corporation; or

(B) any of the interests or factors referred to in section 21.09(a)(1) of this title.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of the fiduciary duty of an officer to the benefit corporation.

(c) An officer is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the officer performed the duties of the position in compliance with section 8.41 of this title and with this section.

(d) An officer is not liable for the failure of a benefit corporation to create general or specific public benefit.

(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.12. BENEFIT OFFICER

A benefit corporation may have an officer designated the “benefit officer” who shall have the authority and shall perform the duties in the management of the benefit corporation relating to the purpose of the corporation to create public benefit as set forth with respect to the office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to the office by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of the office.

§ 21.13. RIGHT OF ACTION

(a) The duties of directors and officers under this chapter and the general and specific public benefit purposes of a benefit corporation may be enforced only in a benefit enforcement proceeding, and no person may bring such an action or claim against a benefit corporation or its directors or officers except as provided in this section.

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

(1) a shareholder that would otherwise be entitled to commence or maintain a proceeding in the right of the benefit corporation on any basis;

(2) a director of the corporation;

(3) a person or group of persons that owns beneficially or of record 10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) such other persons as may be specified in the articles of incorporation of the benefit corporation.

(c) As used in this chapter, “benefit enforcement proceeding” means a claim or action against a director or officer for:

(1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or

(2) violation of a duty or standard of conduct under this chapter.

§ 21.14. ANNUAL BENEFIT REPORT

(a) A benefit corporation shall deliver to each shareholder, in a format approved by the directors, an annual benefit report, which shall include:

(1)(A) a statement of the specific goals or outcomes identified by the benefit corporation for creating general public benefit and any specific public benefit for the period of the benefit report;

(B) a description of the actions taken by the benefit corporation to



attain the identified goals or outcomes and the extent to which the goals or outcomes were attained;

(C) a description of any circumstances that hindered the attainment of the identified goals or outcomes and the creation of general public benefit or any specific public benefit; and

(D) specific actions the benefit corporation can take to improve its social and environmental performance and attain the goals or outcomes identified for creating general public benefit and any specific public benefit.

(2) an assessment of the social and environmental performance of the benefit corporation prepared in accordance with a third-party standard that has been applied consistently with prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(3) a statement of specific goals or outcomes identified by the benefit corporation and approved by the shareholders for creating general public benefit and any specific public benefit for the period of the next benefit report.

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

(5) the compensation paid by the benefit corporation during the year to each director in that capacity;

(6) the name of each person that owns beneficially or of record five percent or more of the shares of the benefit corporation; and

(7) the statement of the benefit director described in subsection 21.10(c) of this title.

(b) A benefit corporation shall annually deliver the benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) After reasonable opportunity for review, the shareholders of the benefit corporation shall approve or reject the annual benefit report by majority vote at the annual meeting of shareholders or at a special meeting held for that purpose.

(d) A benefit corporation shall post its most recent benefit report endorsed by its shareholders on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a benefit corporation does not have a public website, it shall deliver a copy of its most recent benefit report on demand and without charge to any person who requests a copy.

*Sec. 2. 11A V.S.A. § 2.02(a) is amended to read:*

*(a) The articles of incorporation shall set forth:*

*\* \* \**

*(6) one or more classes of shares that together have unlimited voting rights; ~~and~~*

*(7) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution; and*

*(8) whether the corporation is a benefit corporation under chapter 21 of this title.*

*Sec. 3. EFFECTIVE DATE*

*This act shall take effect on July 1, 2011.*