

IN THE SENATE

SENATE BILL NO. 1076

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO BENEFIT CORPORATIONS; AMENDING TITLE 30, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 20, TITLE 30, IDAHO CODE, TO PROVIDE A SHORT
3 TITLE AND STATE THE APPLICATION AND EFFECT OF THIS CHAPTER, TO DEFINE
4 TERMS, TO ESTABLISH INCORPORATION REQUIREMENTS FOR BENEFIT CORPORA-
5 TIONS, TO ESTABLISH THE PROCESS UNDER WHICH BENEFIT CORPORATION STATUS
6 IS ADOPTED, TO ESTABLISH THE PROCESS UNDER WHICH BENEFIT CORPORATION
7 STATUS IS TERMINATED, TO DESCRIBE THE PURPOSES OF BENEFIT CORPORA-
8 TIONS, TO ESTABLISH STANDARDS OF CONDUCT FOR DIRECTORS, TO PROVIDE THAT
9 CERTAIN BENEFIT CORPORATIONS SHALL HAVE AND OTHERS MAY HAVE A BENEFIT
10 DIRECTOR AND TO ESTABLISH RULES RELATING TO THE BENEFIT DIRECTOR, TO
11 ESTABLISH STANDARDS OF CONDUCT FOR OFFICERS, TO PROVIDE THAT BENEFIT
12 CORPORATIONS MAY HAVE A BENEFIT OFFICER WHO PERFORMS CERTAIN DUTIES, TO
13 PROVIDE RULES FOR BRINGING AN ACTION AGAINST A BENEFIT CORPORATION, TO
14 REQUIRE AN ANNUAL BENEFIT REPORT AND TO REQUIRE THE BENEFIT REPORT BE
15 MADE AVAILABLE TO CERTAIN PERSONS AND THE PUBLIC.
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Title 30, Idaho Code, be, and the same is hereby amended
19 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
20 ter 20, Title 30, Idaho Code, and to read as follows:

21 CHAPTER 20

22 IDAHO BENEFIT CORPORATION ACT

23 30-2001. APPLICATION AND EFFECT OF THIS CHAPTER. (1) This chapter may
24 be known and cited as the "Idaho Benefit Corporation Act."

25 (2) This chapter shall be applicable to all benefit corporations.

26 (3) The existence of a provision of this chapter shall not of itself
27 create an implication that a contrary or different rule of law is applica-
28 ble to a business corporation that is not a benefit corporation. This chap-
29 ter shall not affect a statute or rule of law that is applicable to a business
30 corporation that is not a benefit corporation.

31 (4) Except as otherwise provided in this chapter, the Idaho business
32 corporation act shall be generally applicable to all benefit corporations.
33 A benefit corporation may be subject simultaneously to this chapter and
34 other chapters of this title. The provisions of this chapter shall control
35 over other provisions of this title, including chapters 1 and 13 of this
36 title.

37 (5) A provision of the articles of incorporation or bylaws of a benefit
38 corporation may not limit, be inconsistent with or supersede a provision of
39 this chapter.

40 30-2002. DEFINITIONS. In this chapter:

1 (1) "Benefit corporation" means a business corporation that has
2 elected to become subject to this chapter and the status of which as a benefit
3 corporation has not been terminated.

4 (2) "Benefit director" means the director designated as the benefit di-
5 rector of a benefit corporation under section 30-2008, Idaho Code.

6 (3) "Benefit enforcement proceeding" means any claim, action or pro-
7 ceeding for failure of a benefit corporation to pursue or create general pub-
8 lic benefit or a specific public benefit purpose as set forth in its arti-
9 cles, or violation of any obligation, duty or standard of conduct under this
10 chapter.

11 (4) "Benefit officer" means the individual designated as the benefit
12 officer of a benefit corporation under section 30-2010, Idaho Code.

13 (5) "General public benefit" means a material positive impact on soci-
14 ety and the environment, taken as a whole, as assessed under a third-party
15 standard, resulting from the business and operations of a benefit corpora-
16 tion.

17 (6) "Independent" means having no material relationship with a benefit
18 corporation or a subsidiary of the benefit corporation; provided however,
19 that serving as a benefit director or benefit officer does not by itself pre-
20 clude a person from being independent. A material relationship between an
21 individual and a benefit corporation or any of its subsidiaries will be con-
22 clusively presumed to exist if any of the following apply:

23 (a) The individual is or has been within the last three (3) years an em-
24 ployee other than a benefit officer of the benefit corporation or a sub-
25 subsidiary.

26 (b) An immediate family member of the individual is or has been within
27 the last three (3) years an executive officer other than a benefit offi-
28 cer of the benefit corporation or a subsidiary.

29 (c) There is beneficial or record ownership of five percent (5%) or more
30 of the outstanding shares of the benefit corporation, calculated as if
31 all outstanding rights to acquire equity interests in the benefit cor-
32 poration had been exercised, by:

33 (i) The individual; or

34 (ii) An entity:

35 1. Of which the individual is a director, an officer or a
36 manager; or

37 2. In which the individual owns beneficially or of record
38 five percent (5%) or more of the outstanding equity inter-
39 ests, calculated as if all outstanding rights to acquire eq-
40 uity interests in the entity had been exercised.

41 (7) "Minimum status vote" means:

42 (a) In the case of a business corporation, in addition to any other re-
43 quired approval or vote, the satisfaction of the following conditions:

44 (i) The shareholders of every class or series shall be entitled to
45 vote as a separate voting group on the corporate action regardless
46 of a limitation stated in the articles of incorporation or bylaws
47 on the voting rights of any class or series.

48 (ii) The corporate action must be approved by vote of the
49 shareholders of each class or series entitled to cast at least

- 1 two-thirds (2/3) of the votes that all shareholders of the class or
2 series are entitled to cast on the action.
- 3 (b) In the case of a domestic entity other than a business corporation,
4 in addition to any other required approval, vote or consent, the satis-
5 faction of the following conditions:
- 6 (i) The holders of every class or series of equity interest in the
7 entity that are entitled to receive a distribution of any kind from
8 the entity shall be entitled to vote on or consent to the action
9 regardless of any otherwise applicable limitation on the voting or
10 consent rights of any class or series.
- 11 (ii) The action must be approved by vote or consent of the holders
12 entitled to cast at least two-thirds (2/3) of the votes or consents
13 that all of those holders are entitled to cast on the action.
- 14 (8) "Publicly traded corporation" means a business corporation that
15 has shares listed on a national securities exchange or traded in a market
16 maintained by one (1) or more members of a national securities association.
- 17 (9) "Specific public benefit" includes:
- 18 (a) Providing low-income or underserved individuals or communities
19 with beneficial products or services;
- 20 (b) Promoting economic opportunity for individuals or communities be-
21 yond the creation of jobs in the normal course of business;
- 22 (c) Protecting or restoring the environment;
- 23 (d) Improving human health;
- 24 (e) Promoting the arts, sciences or advancement of knowledge;
- 25 (f) Increasing the flow of capital to entities with a purpose to benefit
26 society or the environment; or
- 27 (g) Conferring any other particular benefit on society or the environ-
28 ment.
- 29 (10) "Subsidiary" means, in relation to a person, an entity in which
30 the person owns beneficially or of record fifty percent (50%) or more of the
31 outstanding equity interests, calculated as if all outstanding rights to ac-
32 quire equity interests in the entity had been exercised.
- 33 (11) "Third-party standard" means a recognized standard for defining,
34 reporting and assessing corporate social and environmental performance that
35 is:
- 36 (a) Comprehensive in that it assesses the effect of the business and its
37 operations on the interests listed in section 30-2007(1), Idaho Code;
- 38 (b) Developed by an entity that is not controlled by the benefit corpo-
39 ration;
- 40 (c) Credible in that it is developed by an entity that both has access to
41 necessary expertise to assess overall corporate social and environmen-
42 tal performance, and uses a balanced multi-stakeholder approach to de-
43 velop the standard, including a reasonable public comment period; and
- 44 (d) Transparent in that information about the standard is publicly
45 available, including information about:
- 46 (i) The criteria and weighting of such criteria used in the stan-
47 dard;
- 48 (ii) The identity of those who developed or revised the standard;
- 49 and

1 (iii) An accounting of the revenue and sources of financial sup-
2 port for the entity that developed the standard, with sufficient
3 detail to disclose any relationships that could reasonably be con-
4 sidered to present a potential conflict of interest.

5 30-2003. INCORPORATION. A benefit corporation shall be incorporated
6 in accordance with part 2, chapter 1, title 30, Idaho Code, but its articles
7 of incorporation must also state that it is a benefit corporation.

8 30-2004. ELECTION OF BENEFIT CORPORATION STATUS. (1) An existing
9 business corporation may become a benefit corporation under this chapter
10 by amending its articles of incorporation so that they contain a statement
11 that the corporation is a benefit corporation. In order to be effective, the
12 amendment must be adopted by at least the minimum status vote.

13 (2) (a) Except as provided in paragraph (b) of this subsection, if a do-
14 mestic entity that is not a benefit corporation is a party to a merger
15 or conversion or the exchanging entity in an interest exchange and the
16 surviving or converted entity in the merger, conversion or interest ex-
17 change is to be a benefit corporation, the plan of merger, conversion
18 or interest exchange must be approved by the domestic entity by at least
19 the minimum status vote.

20 (b) Paragraph (a) of this subsection does not apply in the case of a cor-
21 poration that is a party to a merger if the shareholders of the corpo-
22 ration are not entitled to vote on the merger pursuant to section 30-1-
23 1105, Idaho Code.

24 30-2005. TERMINATION OF STATUS. (1) A benefit corporation may termi-
25 nate its status as such and cease to be subject to this chapter by amending
26 its articles of incorporation to delete the provision adopting benefit cor-
27 poration status. In order to be effective, the amendment must be adopted by
28 at least the minimum status vote.

29 (2) (a) Except as provided in paragraph (b) of this subsection, if a
30 plan of merger, conversion or share exchange would have the effect of
31 terminating the status of a business corporation as a benefit corpora-
32 tion, the plan must be adopted by at least the minimum status vote in or-
33 der to be effective.

34 (b) Paragraph (a) of this subsection does not apply in the case of a cor-
35 poration that is a party to a merger if the shareholders of the corpo-
36 ration are not entitled to vote on the merger pursuant to section 30-1-
37 1105, Idaho Code.

38 (3) Any sale, lease, exchange or other disposition of all or substan-
39 tially all of the assets of a benefit corporation, unless the transaction is
40 in the usual and regular course of business, shall not be effective unless
41 the transaction is approved by at least the minimum status vote.

42 30-2006. CORPORATE PURPOSES. (1) A benefit corporation shall have a
43 purpose of creating general public benefit. This purpose is in addition to
44 its purpose under section 30-1-301, Idaho Code.

45 (2) The articles of incorporation of a benefit corporation may identify
46 one (1) or more specific public benefits that it is the purpose of the benefit

1 corporation to create in addition to its purposes under section 30-1-301,
2 Idaho Code, and subsection (1) of this section. The identification of a spe-
3 cific public benefit under this subsection does not limit the purpose of a
4 benefit corporation to create general public benefit under subsection (1) of
5 this subsection.

6 (3) The creation of general public benefit and specific public benefits
7 under subsections (1) and (2) of this section is in the best interests of the
8 benefit corporation.

9 (4) A benefit corporation may amend its articles of incorporation to
10 add, amend or delete the identification of a specific public benefit that it
11 is the purpose of the benefit corporation to create. In order to be effec-
12 tive, the amendment must be adopted by at least the minimum status vote.

13 (5) A professional corporation that is a benefit corporation does not
14 violate section 30-1-1303(2), Idaho Code, by having the purpose to create
15 general public benefit or a specific public benefit.

16 30-2007. STANDARD OF CONDUCT FOR DIRECTORS. (1) In discharging the
17 duties of their respective positions and in considering the best interests
18 of the benefit corporation, the board of directors, committees of the board
19 and individual directors of a benefit corporation shall consider the effects
20 of any action or inaction on:

21 (a) The shareholders of the benefit corporation;

22 (b) The employees of the benefit corporation;

23 (c) The subsidiaries and suppliers of the benefit corporation;

24 (d) The interests of customers as beneficiaries of the general public
25 benefit or specific public benefit purposes of the benefit corporation;

26 (e) Community and social factors, including those of each community
27 in which offices or facilities of the benefit corporation, its sub-
28 sidiaries, or its suppliers are located;

29 (f) The local and global environment;

30 (g) The short-term and long-term interests of the benefit corporation,
31 including benefits that may accrue to the benefit corporation from its
32 long-term plans and the possibility that these interests may be best
33 served by the continued independence of the benefit corporation; and

34 (h) The ability of the benefit corporation to accomplish its general
35 public benefit purpose and any specific public benefit purpose.

36 (2) In discharging the duties of their respective positions and in con-
37 sidering the best interests of the benefit corporation, the board of direc-
38 tors, committees of the board and individual directors of a benefit corpo-
39 ration may also consider any other pertinent factors or the interests of any
40 group that they deem appropriate.

41 (3) The board of directors, committees of the board and individual di-
42 rectors of a benefit corporation need not give priority to a particular in-
43 terest or factor referred to in subsection (1) or (2) of this section over any
44 other interest or factor unless the benefit corporation has stated in its ar-
45 ticles of incorporation its intention to give priority to certain interests
46 or factors related to its accomplishment of its general public benefit or of
47 a specific public benefit purpose identified in its articles of incorpora-
48 tion.

1 (4) The consideration of interests and factors in the manner required
2 by this section does not constitute a violation of section 30-1-830, Idaho
3 Code.

4 (5) Except as provided in the articles of incorporation, a director is
5 not personally liable for monetary damages for:

6 (a) Any action or inaction in the course of performing the duties of a
7 director under subsection (1) of this section if the director performed
8 the duties of office in compliance with section 3-1-830, Idaho Code, and
9 this section; or

10 (b) Failure of the benefit corporation to pursue or create general pub-
11 lic benefit or specific public benefit.

12 (6) A director does not have a duty to a person that is a beneficiary of
13 the general public benefit purpose or a specific public benefit purpose of a
14 benefit corporation arising from the status of the person as a beneficiary.

15 30-2008. BENEFIT DIRECTOR. (1) The board of directors of a benefit
16 corporation that is a publicly traded corporation shall, and the board of any
17 other benefit corporation may, include a director who shall be designated
18 the benefit director, and shall have, in addition to the powers, duties,
19 rights and immunities of the other directors of the benefit corporation, the
20 powers, duties, rights and immunities provided in this chapter.

21 (2) The benefit director shall be elected and may be removed in the man-
22 ner provided in sections 30-1-803 through 30-1-809, Idaho Code. Except as
23 provided in subsection (6) of this section, the benefit director shall be an
24 individual who is independent. The benefit director may serve as the bene-
25 fit officer at the same time as serving as the benefit director. The articles
26 of incorporation or bylaws of a benefit corporation may prescribe additional
27 qualifications of the benefit director not inconsistent with this subsec-
28 tion.

29 (3) The benefit director shall prepare and the benefit corporation
30 shall include in the annual benefit report to shareholders required by
31 section 30-2012, Idaho Code, the opinion of the benefit director on the fol-
32 lowing:

33 (a) Whether the benefit corporation acted in accordance with its gen-
34 eral public benefit purpose and any specific public benefit purpose in
35 all material respects during the period covered by the report;

36 (b) Whether the directors and officers complied with sections 30-2007
37 and 30-2009, Idaho Code, respectively; and

38 (c) If, in the opinion of the benefit director, the benefit corporation
39 or its directors or officers failed to act or comply in the manner de-
40 scribed in paragraphs (a) and (b) of this subsection, a description of
41 the ways in which the benefit corporation or its directors or officers
42 failed to act or comply.

43 (4) The act or inaction of an individual in the capacity of a benefit di-
44 rector shall constitute for all purposes an act or inaction of that individ-
45 ual in the capacity of a director of the benefit corporation.

46 (5) Regardless of whether the articles of incorporation or bylaws of
47 a benefit corporation include a provision eliminating or limiting the per-
48 sonal liability of directors authorized by section 30-1-202, Idaho Code, a
49 benefit director shall not be personally liable for an act or omission in

1 the capacity of a benefit director unless the act or omission constitutes
2 self-dealing, willful misconduct or a knowing violation of law.

3 (6) The benefit director of a professional corporation organized under
4 chapter 13, title 30, Idaho Code, does not need to be independent.

5 30-2009. STANDARD OF CONDUCT FOR OFFICERS. (1) Each officer of a bene-
6 fit corporation shall consider the interests and factors as provided in sec-
7 tion 30-2007, Idaho Code, if the officer has discretion to act with respect
8 to a matter, and it reasonably appears to the officer that the matter may have
9 a material effect on the creation by the benefit corporation of general pub-
10 lic benefit or a specific public benefit identified in the articles of incor-
11 poration.

12 (2) The consideration of interests and factors as provided in subsec-
13 tion (1) of this section shall not constitute a violation of sections 30-1-
14 841 and 30-1-842, Idaho Code.

15 (3) Except as provided in the articles of incorporation or bylaws, an
16 officer is not personally liable for monetary damages for:

17 (a) An action or inaction as an officer in the course of performing the
18 duties of an officer under subsection (1) of this section if the officer
19 performed the duties of the position in compliance with sections 30-1-
20 841 and 30-1-842, Idaho Code, and this section; or

21 (b) Failure of the benefit corporation to pursue or create general pub-
22 lic benefit or specific public benefit.

23 (4) An officer does not have a duty to a person that is a beneficiary of
24 the general public benefit purpose or a specific public benefit purpose of a
25 benefit corporation arising from the status of the person as a beneficiary.

26 30-2010. BENEFIT OFFICER. A benefit corporation may have an officer
27 designated the benefit officer. The benefit officer shall have:

28 (1) The powers and duties relating to the purpose of the corporation to
29 create general public benefit or specific public benefit provided by the by-
30 laws or, absent controlling provisions by the bylaws, by resolutions or or-
31 ders of the board of directors; and

32 (2) The duty to prepare the benefit report required in section 30-2012,
33 Idaho Code.

34 30-2011. RIGHT OF ACTION. (1) Except in a benefit enforcement pro-
35 ceeding, no person may bring an action or assert a claim against a benefit
36 corporation or its directors or officers with respect to the corporation's
37 failure to pursue or create general public benefit or a specific public
38 benefit set forth in its articles of incorporation, or the corporation's
39 violation of an obligation, duty or standard of conduct under this chapter.

40 (2) A benefit corporation shall not be liable for monetary damages un-
41 der this chapter for any failure of the benefit corporation to pursue or cre-
42 ate general public benefit or a specific public benefit.

43 (3) A benefit enforcement proceeding may be commenced or maintained di-
44 rectly by the benefit corporation, or derivatively by:

45 (a) A person or group of persons that owned beneficially or of record at
46 least two percent (2%) of the total number of shares of a class or series
47 outstanding at the time of the act or omission complained of;

1 (b) A director;

2 (c) A person or group of persons that owned beneficially or of record
3 five percent (5%) or more of the outstanding equity interests in an en-
4 tity of which the benefit corporation is a subsidiary at the time of the
5 act or omission complained of; or

6 (d) Other persons as specified in the articles of incorporation or by-
7 laws of the benefit corporation.

8 (4) For purposes of this section, a person is the beneficial owner of
9 shares or equity interests if the shares or equity interests are held in a
10 voting trust or by a nominee on behalf of the beneficial owner.

11 30-2012. PREPARATION OF ANNUAL BENEFIT REPORT. (1) A benefit corpora-
12 tion shall prepare an annual benefit report including the following:

13 (a) A narrative description of:

14 (i) The ways in which the benefit corporation pursued general
15 public benefit during the year and the extent to which general pub-
16 lic benefit was created;

17 (ii) The ways in which the benefit corporation pursued a specific
18 public benefit that the articles of incorporation describe as the
19 purpose of the benefit corporation to create, and the extent to
20 which the specific public benefit was created;

21 (iii) Any circumstances that hindered the creation by the benefit
22 corporation of either general public benefit or specific public
23 benefit; and

24 (iv) The process and rationale for selecting or changing the
25 third-party standard used to prepare the benefit report.

26 (b) An assessment of the overall social and environmental performance
27 of the benefit corporation under a third-party standard applied consis-
28 tently with any application of that standard in prior benefit reports,
29 or accompanied by an explanation of the reasons for any inconsistent ap-
30 plication, or the change to that standard from the one used in the imme-
31 diate prior report.

32 (c) The name of the benefit director and the benefit officer, if any,
33 and the address to which correspondence to each of them may be directed.

34 (d) The compensation paid by the benefit corporation during the year to
35 each director in the capacity of a director.

36 (e) The opinion of the benefit director described in section
37 30-2008(3), Idaho Code.

38 (f) A statement of any connection between the organization that es-
39 tablished the third-party standard, or its directors, officers or any
40 holder of five percent (5%) or more of the governance interests in the
41 organization, and the benefit corporation or its directors, officers
42 or any holder of five percent (5%) or more of the outstanding shares of
43 the benefit corporation, including any financial or governance rela-
44 tionship that might materially affect the credibility of the use of the
45 third-party standard.

46 (g) If the benefit corporation has dispensed with or restricted the
47 discretion or powers of the board of directors, a description of the
48 persons who exercise the powers, duties, and rights and who have the
49 immunities of the board of directors, and the benefit director.

1 (2) If, during the year covered by a benefit report, a benefit director
2 resigned from or refused to stand for reelection to the position of benefit
3 director, or was removed from the position of benefit director, and the ben-
4 efit director furnished the benefit corporation with any written correspon-
5 dence concerning the circumstances surrounding the resignation, refusal or
6 removal, the benefit report shall include that correspondence as an exhibit.

7 (3) Neither the benefit report nor the assessment of the performance of
8 the benefit corporation in the benefit report required in subsection (1) of
9 this section needs to be audited or certified by a third party.

10 30-2013. AVAILABILITY OF ANNUAL BENEFIT REPORT. (1) A benefit corpo-
11 ration shall send its annual benefit report to each shareholder either one
12 hundred twenty (120) days following the end of the fiscal year of the benefit
13 corporation, or at the same time that the benefit corporation delivers any
14 other annual report to its shareholders, whichever is earlier.

15 (2) A benefit corporation shall post all of its benefit reports on the
16 public portion of its website, if any; but the compensation paid to directors
17 and financial or proprietary information included in the benefit reports may
18 be omitted from the benefit reports as posted.

19 (3) If a benefit corporation does not have a website, the benefit cor-
20 poration shall provide a copy of its most recent benefit report, without
21 charge, to any person who requests a copy, provided however, that the compen-
22 sation paid to directors and financial or proprietary information included
23 in the benefit report may be omitted from the copy of the benefit report pro-
24 vided.

25 (4) Concurrently with the delivery of the benefit report to sharehold-
26 ers under subsection (1) of this section, the benefit corporation shall
27 deliver a copy of the benefit report to the secretary of state for filing,
28 provided however, that the compensation paid to directors and financial or
29 proprietary information included in the benefit report may be omitted from
30 the benefit report as delivered to the secretary of state. The secretary of
31 state shall charge a fee for filing a benefit report, such fee to be set in a
32 rule promulgated by the secretary.