

HB 1956 -- PUBLIC BENEFIT CORPORATIONS

SPONSOR: Schupp

This bill authorizes and regulates the formation and governance of a new form of corporate entity known as a benefit corporation. A benefit corporation must be formed for the purpose of creating a general public benefit and be incorporated in accordance with Sections 351.010 to 351.1228, RSMo, but its articles of incorporation must also state that it is a benefit corporation.

An existing corporation may become a benefit corporation by amending its articles of incorporation to contain a statement that the corporation is a benefit corporation and the amendment must be adopted by at least the minimum status vote. For an entity that is party to a merger, consolidation, or is the exchanging entity where the surviving, new, or resulting entity in the merger, consolidation, or share exchange is intended to be a benefit corporation, the plan for the transaction must be adopted by the minimum status vote.

A benefit corporation may terminate its status as a benefit corporation by amending its articles of incorporation to remove the provision that the corporation is a benefit corporation if the amendment is adopted by the least minimum status vote. If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective.

The articles of incorporation of a benefit corporation must have a purpose of creating a general public benefit and its articles of incorporation may identify one or more specific public benefits in addition to its purposes under Sections 351.010 to 351.1228 and specified provisions in the bill. A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific benefit. In order to be effective, the amendment must be adopted by at least the minimum status vote.

The duties of the board of directors, committees of the board, individual directors, and officers and the considerations that they must consider in any action or inaction are specified. The bill specifies that a director is not personally liable for monetary damages for specified actions.

When a benefit corporation is a publicly traded corporation, the board of directors must include a benefit director. The benefit director must be elected and may be removed as specified and must be an individual who is independent. The benefit director may

serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation may include additional qualifications in addition to the provisions of the bill.

The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders, his or her opinion on specified questions.

The benefit corporation must prepare an annual benefit report that includes the following:

(1) A narrative description of the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created, the ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state and the extent to which the specific public benefit was created, and any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit, and the process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard;

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

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

(5) A statement of any connection between the organization that established the third-party standard, or its director, officers, or any holder of 5% or more of the governance interests in the organization and the benefit corporation or its director, officers, or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard; and

(6) A description of the persons that exercise the powers, duties, and rights and who have the immunities of the board of directors if the benefit corporation has dispensed with or restricted the discretion or powers of the board of directors.

A benefit corporation must send its annual 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. The benefit corporation must post all of its benefit reports on the public portion of its Internet website. If they do not have an Internet website, it must provide a copy without charge to any person upon request. The compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the copy provided.

The benefit corporation is required to file with the Secretary of State a copy of the benefit report with a filing fee of \$45.