

1                   A bill to be entitled  
2           An act relating to benefit corporations; creating s.  
3           607.2001, F.S.; defining terms; creating s. 607.2003,  
4           F.S.; providing applicability; creating s. 607.2005,  
5           F.S.; providing for the organization of benefit  
6           corporations; creating s. 607.2007, F.S.; providing  
7           for existing corporations to become benefit  
8           corporations; creating s. 607.2009, F.S.; authorizing  
9           a corporation to terminate its status as a benefit  
10          corporation; creating s. 607.2011, F.S.; requiring the  
11          corporate purposes set forth in the articles of  
12          incorporation of a benefit corporation to include  
13          certain public benefits; authorizing benefit  
14          corporations to set forth certain public benefit  
15          purposes in their bylaws; authorizing the board of  
16          directors of a benefit corporation to adopt certain  
17          public benefit purposes for the corporation under  
18          certain circumstances; creating s. 607.2013, F.S.;  
19          prescribing certain standards of conduct for, and  
20          limiting the liability of, directors of benefit  
21          corporations; creating s. 207.2015, F.S.; limiting the  
22          liability of officers of a benefit corporation;  
23          creating s. 607.2017, F.S.; authorizing a benefit  
24          corporation to bring enforcement actions for certain  
25          claims against directors and officers of the  
26          corporation; providing for commencement and  
27          maintenance of the proceedings; creating s. 607.2019,  
28          F.S.; requiring a benefit corporation to submit an

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29 annual benefit report to the Department of State and  
30 the corporation's shareholders; providing for public  
31 disclosure of the annual benefit reports; authorizing  
32 the department to adopt rules; amending s. 607.0128,  
33 F.S.; revising the required contents of a certificate  
34 of status, to conform; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Section 607.2001, Florida Statutes, is created  
39 to read:

40 607.2001 Definitions; ss. 607.2001-607.2019.—As used in  
41 ss. 607.2001-607.2019, the term:

42 (1) "Benefit corporation" means a corporation organized  
43 under this chapter that elects to become subject to ss.  
44 607.2001-607.2019, the status of which as a benefit corporation  
45 has not been terminated under s. 607.2009.

46 (2) "General public benefit" means a material positive  
47 impact on society and the environment taken as a whole, as  
48 measured by an independent third-party standard, from the  
49 business and operations of the benefit corporation.

50 (3) "Independent" means not having a material relationship  
51 with a benefit corporation or any of its subsidiaries, either  
52 directly as a shareholder of the benefit corporation or as a  
53 partner, a member, or an owner of any of its subsidiaries or  
54 indirectly as a director, an officer, an owner, or a manager of  
55 an entity that has a material relationship with the benefit  
56 corporation or any of its subsidiaries. A material relationship

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57 between a person and a benefit corporation or any of its  
58 subsidiaries is conclusively presumed to exist if:

59 (a) The person is or, within the previous 3 years, has  
60 been an employee of the benefit corporation or any of its  
61 subsidiaries;

62 (b) An immediate family member of the person is or, within  
63 the previous 3 years, has been an officer of the benefit  
64 corporation or any of its subsidiaries; or

65 (c) There is beneficial ownership of 5 percent or more of  
66 the outstanding shares of the benefit corporation by the person  
67 or an entity:

68 1. Of which the person is a director, an officer, or a  
69 manager; or

70 2. In which the person owns beneficially 5 percent or more  
71 of the outstanding equity interests, which percentage is  
72 calculated as if all outstanding rights to acquire equity  
73 interests in the entity are exercised.

74 (4) "Independent third-party standard" means a recognized  
75 standard for defining, reporting, and assessing corporate social  
76 and environmental performance that:

77 (a) Is developed by a person who is independent of the  
78 benefit corporation.

79 (b) Is transparent because the following information about  
80 the standard is publicly available:

81 1. The factors considered when measuring the performance  
82 of a business.

83 2. The relative weightings of those factors.

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84 3. The identity of the persons that develop and control  
85 changes to the standard and the process by which those changes  
86 are made.

87 (5) "Specific public benefit" means a benefit that serves  
88 one or more public welfare, religious, charitable, scientific,  
89 literary, or educational purposes, or other purpose or benefit  
90 beyond the strict interests of the shareholders of the benefit  
91 corporation.

92 (6) "Subsidiary" means, in relation to an individual, an  
93 entity in which the individual either:

94 (a) Directly or indirectly owns equity interests entitled  
95 to cast a majority of the votes entitled to be cast generally in  
96 an election of directors or members of the governing body of the  
97 entity; or

98 (b) Otherwise owns or controls voting or contractual power  
99 to exercise effective governing control of the entity. The  
100 percentage of ownership of equity interests or ownership or  
101 control of power to exercise control is calculated as if all  
102 outstanding rights to acquire equity interests in the entity are  
103 exercised.

104 Section 2. Section 607.2003, Florida Statutes, is created  
105 to read:

106 607.2003 Application and effect of ss. 607.2001-607.2019.—

107 (1) Sections 607.2001-607.2019 apply to all benefit  
108 corporations in the state.

109 (2) Any provision in ss. 607.2001-607.2019 does not itself  
110 create the implication that a contrary or different law applies  
111 to a corporation organized under this chapter that is not a

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112 benefit corporation. Sections 607.2001-607.2019 do not affect  
113 any law that applies to a corporation that is not a benefit  
114 corporation.

115 (3) The provisions of ss. 607.2001-607.2019 shall control  
116 over the general provisions of this chapter with respect to a  
117 benefit corporation.

118 Section 3. Section 607.2005, Florida Statutes, is created  
119 to read:

120 607.2005 Organization of benefit corporations.—A benefit  
121 corporation must be organized under this chapter, except that  
122 its articles of incorporation, as initially filed with the  
123 Department of State or as amended, must also state that it is a  
124 benefit corporation.

125 Section 4. Section 607.2007, Florida Statutes, is created  
126 to read:

127 607.2007 Election of status after incorporation.—A  
128 corporation that was not organized as a benefit corporation may  
129 become a benefit corporation by amending its articles of  
130 incorporation to contain, in addition to the requirements of s.  
131 607.0202, a statement that the corporation is a benefit  
132 corporation. Any such amendment must be adopted under s.  
133 607.1003 and be approved by all shareholders entitled to vote on  
134 the amendment or, if shares have not yet been issued, the  
135 amendment must be approved under s. 607.1005.

136 Section 5. Section 607.2009, Florida Statutes, is created  
137 to read:

138 607.2009 Termination of status.—A corporation may  
139 terminate its status as a benefit corporation and cease to be

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140 subject to ss. 607.2001-607.2019 by amending its articles of  
141 incorporation to delete the statement required in ss. 607.2005  
142 and 607.2007 that the corporation is a benefit corporation. Any  
143 such amendment must be adopted under s. 607.1003 and be approved  
144 by all shareholders entitled to vote on the amendment or, if  
145 shares have not yet been issued, the amendment must be approved  
146 under s. 607.1005.

147 Section 6. Section 607.2011, Florida Statutes, is created  
148 to read:

149 607.2011 Corporate purposes; general and specific public  
150 benefits.—

151 (1) A benefit corporation must have as one of its purposes  
152 the creation of the general public benefit. A benefit  
153 corporation must include this purpose, in addition to the lawful  
154 purpose or purposes for which the corporation is organized under  
155 s. 607.0301, in its articles of incorporation.

156 (2) A benefit corporation may also have as one of its  
157 purposes the creation of one or more of the following specific  
158 public benefits:

159 (a) Providing low-income or underserved individuals or  
160 communities with beneficial products or services.

161 (b) Promoting economic opportunity for individuals or  
162 communities beyond the creation of jobs in the normal course of  
163 business.

164 (c) Preserving the environment.

165 (d) Improving human health.

166 (e) Promoting the arts, sciences, or advancement of  
167 knowledge.

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168 (f) Increasing the flow of capital to entities with a  
169 public benefit purpose.

170 (g) Conferring any other particular benefit on society or  
171 the environment.

172  
173 Any specific public benefit created under this subsection does  
174 not satisfy the obligation of the benefit corporation to create  
175 the general public benefit.

176 (3) (a) A benefit corporation may set forth a specific  
177 public benefit purpose in its articles of incorporation or  
178 bylaws and, except as otherwise provided in the articles of  
179 incorporation or bylaws, the board of directors may also adopt a  
180 specific public benefit purpose for the corporation.

181 (b) A benefit corporation may amend its articles of  
182 incorporation to add, amend, or delete a specific public benefit  
183 purpose. Any such amendment must be approved under s. 607.1003.

184 (4) A benefit corporation may only create the general  
185 public benefit and any specific public benefit, if such benefits  
186 are within the best interests of the benefit corporation.

187 Section 7. Section 607.2013, Florida Statutes, is created  
188 to read:

189 607.2013 Standards for directors of benefit corporations.—

190 (1) In accordance with the general standards for directors  
191 of corporations in s. 607.0830, in discharging the duties of his  
192 or her respective position and considering the best interests of  
193 the benefit corporation, a member of the board of directors, a  
194 member of a committee, or an individual director of a benefit  
195 corporation:

196        (a) Shall consider the effects of any corporate action  
 197 upon:

198        1. The shareholders of the benefit corporation.  
 199        2. The employees and workforce of the benefit corporation  
 200 and its subsidiaries and suppliers.

201        3. The interests of customers as beneficiaries of the  
 202 general and any specific public benefit purposes of the benefit  
 203 corporation.

204        4. Community and societal considerations, including those  
 205 of each community in which offices or facilities of the benefit  
 206 corporation and its subsidiaries and suppliers are located.

207        5. The local and global environment.

208        6. The short-term and long-term interests of the benefit  
 209 corporation, including benefits that may accrue to the benefit  
 210 corporation from its long-term plans and the possibility that  
 211 these interests and the general and any specific public benefit  
 212 purposes of the benefit corporation may be best served by the  
 213 continued independence of the benefit corporation.

214        7. The ability of the benefit corporation to create the  
 215 general public benefit and any of its specific public benefit  
 216 purposes.

217        (b) May consider:

218        1. The factors listed in s. 607.0830(3).

219        2. The resources; intent; and past, stated, and potential  
 220 conduct of any person seeking to acquire control of the benefit  
 221 corporation.

222        3. Other pertinent factors or the interests of any other  
 223 person who he or she deems appropriate.



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224 (c) Need not give priority to the interests of a  
225 particular person or group referred to in paragraph (a) or  
226 paragraph (b) over the interests of any other person or group  
227 unless the benefit corporation states its intention to give  
228 priority to interests related to any specific public benefit  
229 purpose set forth in its articles of incorporation or bylaws or  
230 otherwise adopted by its board of directors.

231 (2) Consideration of interests and factors in the manner  
232 required under subsection (1) does not constitute a violation of  
233 s. 607.0830 or a conflict of interest under s. 607.0832.

234 (3) In any proceeding brought by or on behalf of a benefit  
235 corporation or its shareholders, a director is not personally  
236 liable for monetary damages for:

237 (a) Any action taken as a director, if the director  
238 complied with s. 607.0830 and this section in the performance of  
239 his or her duties.

240 (b) Failure of the benefit corporation to create the  
241 general public benefit or any specific public benefit.

242 Section 8. Section 207.2015, Florida Statutes, is created  
243 to read:

244 207.2015 Limitation of liability of officers.—An officer  
245 of a benefit corporation is not liable for any action taken in  
246 the performance of his or her duties as an officer, which he or  
247 she believes, in his or her good faith business judgment, is  
248 consistent with:

249 (1) The general public benefit purpose of the benefit  
250 corporation or any specific public benefit purpose set forth in

251 its articles of incorporation or bylaws or otherwise adopted by  
 252 its board of directors.

253 (2) The requirements of any independent third-party  
 254 standard in effect for the benefit corporation.

255 Section 9. Section 607.2017, Florida Statutes, is created  
 256 to read:

257 607.2017 Benefit enforcement proceedings.-

258 (1) A benefit corporation may bring an action for any  
 259 claim against a director or officer of the corporation for:

260 (a) Failing to pursue the general public benefit purpose  
 261 of the benefit corporation or any specific public benefit  
 262 purpose set forth in its articles of incorporation or bylaws or  
 263 otherwise adopted by its board of directors.

264 (b) Violating a duty or standard of conduct under ss.  
 265 607.2001-607.2019.

266 (c) Failing to prepare and make available the annual  
 267 benefit report required under s. 607.2019.

268 (2) A benefit enforcement proceeding brought under  
 269 subsection (1) shall exclusively be commenced and maintained:

270 (a) Directly by the benefit corporation; or

271 (b) Derivatively by:

272 1. A shareholder of the benefit corporation;

273 2. A director of the benefit corporation;

274 3. A person or group who owns beneficially or of record 10  
 275 percent or more of the equity interests in an entity of which  
 276 the benefit or corporation is a subsidiary; or

277 4. Any other person specifically authorized in the  
 278 articles of incorporation or bylaws of the benefit corporation.

279 (3) (a) The enforcement of any claim against a director or  
 280 officer of a benefit corporation for conduct described in  
 281 subsection (1) shall be enforced exclusively through a benefit  
 282 enforcement proceeding brought under this section.

283 (b) A person may not bring an action or assert a claim  
 284 against a benefit corporation or its directors or officers with  
 285 respect to the conduct described in subsection (1), except in a  
 286 benefit enforcement proceeding brought under this section.

287 Section 10. Section 607.2019, Florida Statutes, is created  
 288 to read:

289 607.2019 Annual benefit report.-

290 (1) A benefit corporation shall prepare an annual benefit  
 291 report in the format prescribed by the Department of State which  
 292 includes the following:

293 (a) A narrative description of:

294 1. The ways in which the benefit corporation pursued the  
 295 general public benefit during the year and the extent to which  
 296 the general public benefit was created.

297 2. The ways in which the benefit corporation pursued any  
 298 specific public benefit during the year and extent to which that  
 299 specific public benefit was created.

300 3. Any circumstances that hindered the creation by the  
 301 benefit corporation of the general or any specific public  
 302 benefit.

303 (b) An assessment of the social and environmental  
 304 performance of the benefit corporation. The assessment must be:

305 1. Prepared in accordance with an independent third-party  
 306 standard specified in the articles of incorporation, the bylaws,

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307 or otherwise adopted by the board of directors and applied  
308 consistently with any application of that standard in previous  
309 benefit reports; or

310 2. Accompanied by an explanation of the reasons for any  
311 inconsistent application.

312 (c) Any other information or disclosures that may be  
313 required under any independent third-party standard adopted by  
314 the directors of the benefit corporation.

315 (2) (a) A benefit corporation must annually file its  
316 benefit report with the Department of State by a date prescribed  
317 by the department.

318 (b) A benefit corporation must also submit a copy of its  
319 annual benefit report to each shareholder of the corporation  
320 within 120 days after the end of the corporation's fiscal year  
321 or upon submitting any other annual report to its shareholders.

322 (3) A benefit corporation shall post its most recent  
323 benefit report on a publicly accessible portion of its Internet  
324 website, if any. If a benefit corporation does not have an  
325 Internet website, it must make a written or electronic copy of  
326 its most recent benefit report available to the public upon  
327 written request. A benefit corporation is not required to  
328 publicly disclose to persons other than its shareholders any  
329 proprietary, confidential, or individual compensation  
330 information contained in its benefit report, to the extent that  
331 any independent third-party standard adopted by the directors of  
332 the benefit corporation permits the omission of such information  
333 from public disclosure.

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334           (4) The Department of State may adopt rules to administer  
 335 this section.

336           Section 11. Paragraphs (c) through (e) of subsection (2)  
 337 of section 607.0128, Florida Statutes, are redesignated as  
 338 paragraphs (d) through (f), respectively, and a new paragraph  
 339 (c) is added to that subsection to read:

340           607.0128 Certificate of status.—

341           (2) A certificate of status or authorization sets forth:

342           (c) If the corporation is a benefit corporation under ss.  
 343 607.2001-607.2019, a statement that the corporation is a benefit  
 344 corporation.

345           Section 12. This act shall take effect upon becoming a  
 346 law.