

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 654

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senators Clemens and Richter

SUBJECT: Business Organizations

DATE: March 18, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 654 amends the Florida Business Corporation Act to allow for the creation of two new forms of corporate enterprise: the social purpose corporation and the benefit corporation. These new entities will allow businesses to engage in societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization. Key elements of the social purpose corporation and the benefit corporation are:

- A social purpose corporation must pursue one or more narrowly identified public benefits.
- A benefit corporation must pursue a general public benefit, which is a broad purpose intended to encompass a broad range of social and environmental factors that are affected by the corporation.
- The corporation's directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation.
- Like directors and officers of all corporations, the new entities' directors and officers are immune from personal liability for failure to pursue or achieve the corporation's benefit goals, but they are subject to duty of care and fiduciary principles applicable to all corporate directors and officers.
- Benefit enforcement judicial proceedings may be brought by a shareholder or certain individuals for claims that the directors or officers have failed to satisfy their obligations in making corporate decisions. Such proceedings are analogous to a shareholder derivative action and allow shareholders to hold a social purpose corporation accountable to its stated public benefit.

- The corporation must provide an annual benefit report to all its shareholders describing and assessing the corporation's efforts made during the year to achieve the corporation's benefit goals.

Additionally, the bill specifies which differences in the name of certain business entities are not considered distinguishable and thus are not sufficiently distinguishable from the names of other business entities. The bill also provides that the business name distinguishability requirement does not require business entity names to be distinguishable from the name of any general partnership registration or limited liability partnership statement filed with the Florida Department of State.

## II. Present Situation:

### For-profit Corporations

For-profit corporations are established in Florida under ch. 607, F.S., the Florida Business Corporation Act. Generally, a corporation is a complex business structure and is considered a separate legal entity from its owners, who own shares of stock in the company.<sup>1</sup> A corporation may be taxed, sued, and can enter into contractual agreements.<sup>2</sup> Shareholders are not personally liable for corporate obligations. Similarly, directors are generally not personally liable for damages for their actions regarding corporate management or policy.<sup>3</sup>

As the name suggests, a for-profit corporation exists to pursue the goal of profit maximization for its shareholders.<sup>4</sup> In pursuing this goal, a corporation's directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise, and in a manner he or she reasonably believes to be in the best interests of the corporation.<sup>5</sup> Additionally, Florida law specifically permits a director, in discharging his or her duties, to consider other factors he or she deems relevant, including:

the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.<sup>6</sup>

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<sup>1</sup> For basic information regarding corporations, see *Choose Your Business Structure: Corporation*, SBA.Gov, <http://www.sba.gov/content/corporation> (last visited February 10, 2014).

<sup>2</sup> See s. 607.0302, F.S.

<sup>3</sup> Section 607.0831, F.S.

<sup>4</sup> See, e.g., *Dodge v. Ford*, 170 N.W. 668, 684 (1919) ("A business corporation is organized and carried on primarily for the profit of the stockholders."); Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 Wash. & Lee L. Rev. 1423 (1993) ("Shareholder wealth maximization long has been the fundamental norm which guides U.S. corporate decisionmakers.").

<sup>5</sup> Section 607.0830(1), F.S.

<sup>6</sup> Section 607.0830(3), F.S.

## **Social Purpose Corporations and Benefit Corporations**

Recent interest among consumers, investors, and entrepreneurs in socially responsible businesses that pursue public benefit goals in addition to, or even as a priority over, the business' profit motive has led to the creation of new forms of corporate entities.<sup>7</sup>

The Business Law Section of The Florida Bar has proposed the creation of two new alternative forms of corporate entity: social purpose corporations and benefit corporations.<sup>8</sup> As explained by the Business Law Section, these entities “will allow entrepreneurs and investors to cause their corporation to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.”<sup>9</sup>

The primary difference between a social purpose corporation and a benefit corporation is the public benefit purpose imposed upon each of the corporations. A social purpose corporation must pursue or create one or more public benefits, which may be quite specific. In contrast, a benefit corporation must pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.<sup>10</sup> For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Standard corporate law does not impose such a mandate.<sup>11</sup>

The primary purpose of both a social purpose corporation and a benefit corporation is to allow directors and officers of the corporation to pursue the twin goals of public benefit and profit maximization. Because these corporations still retain profit-making goals, they are distinguishable from charities and not-for-profit corporations and could not be formed as such.<sup>12</sup>

Benefit corporation legislation has been adopted in 19 states plus the District of Columbia, and social purpose corporation legislation has been adopted in two states.<sup>13</sup>

## **Business Entity Name Distinguishability**

Chapters 605, 607, 617, and 620, F.S., currently require the name of a limited liability company (LLC), for-profit corporation, nonprofit corporation, and limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State (DOS), with the exception of fictitious name registrations. However, the term “distinguishable”

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<sup>7</sup> See B Lab, *White Paper; The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately the Public*, 2-6 January 18, 2013 available at [http://benefitcorp.net/storage/documents/Beneicit\\_Corporation\\_White\\_Paper\\_1\\_18\\_2013.pdf](http://benefitcorp.net/storage/documents/Beneicit_Corporation_White_Paper_1_18_2013.pdf) (last visited February 11, 2014).

<sup>8</sup> The Business Law Section of The Florida Bar, *Proposed Legislation to Amend Chapter 607, Florida Statutes, to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation*, 1 (January 15, 2014) (on file with the Senate Committee on Judiciary).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 11-12.

is not defined by any of these statutes.<sup>14</sup> According to DOS, some businesses try to adopt names that are similar to existing businesses in an effort to capitalize on the goodwill of existing businesses.<sup>15</sup> Close name similarities can cause confusion in the business environment and in some instances existing businesses experience hardships when new businesses form and use names similar to that of an established business.<sup>16</sup>

### III. Effect of Proposed Changes:

#### Social Purpose Corporations and Benefit Corporations

##### *Restructure of Ch. 607, F.S.*

**Sections 2, 6, and 20** of the bill breaks ch. 607, F.S., the Florida Business Corporation Act, into 3 parts. Part I is entitled “General Provisions” and comprises ss. 607.0101-607.193, F.S., which are current law regulations for for-profit corporations. Part II is entitled “Social Purpose Corporations” and comprises ss. 607.501- 607.513, F.S., which are created in the bill. Part III is entitled “Benefit Corporations” and comprises ss. 607.601-607.613, F.S., which are created in the bill.

**Sections 7 and 21** create ss. 607.501 and 607.601, F.S., respectively, to provide that part II of ch. 607, F.S., applies to a social purpose corporation and that part III of ch. 607, F.S., applies to a benefit corporation. The bill also provides that except for those provisions in ch. 607, F.S., that specifically apply to social purpose or benefit corporations, all otherwise non-conflicting provisions of ch. 607, F.S., apply as well. Additionally, unless authorized in the applicable part, a social purpose or benefit corporation’s articles of incorporation (articles) or bylaws, or a shareholders’ agreement, may not limit, be inconsistent with, or supersede the applicable part.

**Sections 8 and 22** create ss. 607.502 and 607.602, F.S., respectively, to provide definitions for terms used in parts II and III of ch. 607, F.S., which are created by the bill.

**Sections 9 and 23** create ss. 607.503 and 607.603, F.S., respectively, to require the corporation’s articles to state that it is either a social purpose corporation or a benefit corporation and to require the incorporator to satisfy the requirements of ch. 607, F.S.

##### *Creation of Social Purpose Corporation and Benefit Corporation*

**Sections 10 and 24** create ss. 607.504 and 607.604, F.S., respectively, to permit an existing corporation to become a social purpose or benefit corporation by amending its articles to include a statement that the corporation is a social purpose corporation or benefit corporation or by a merger, conversion, or share exchange. Such action must be adopted by a minimum status vote. A “minimum status vote” is defined, in the case of a corporation, as a vote in which all shareholders are entitled to vote and the action is approved by a two-thirds vote of each class or series of shares entitled to vote; or, in the case of a domestic entity other than a corporation, as a vote in which the holders of each class or series of equity interest in the entity who are entitled to

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<sup>14</sup> Florida Department of State, *Bill Analysis for Senate Bill 654* (February 4, 2014) (on file with the Senate Committee on Judiciary).

<sup>15</sup> Florida Department of State, *Business Entity Name Distinguishability* (on file with the Senate Committee on Judiciary).

<sup>16</sup> *Id.*

receive a distribution are entitled to vote on or consent to the action and the action is approved by a two-thirds vote or consent of each class or series of equity interest who are entitled to vote or consent.<sup>17</sup>

If an entity elects to become a social purpose or benefit corporation by amendment of its articles or by a merger, conversion, or share exchange, shareholders are entitled to appraisal rights.

### ***Termination of Social Purpose Corporation or Benefit Corporation Status***

**Sections 11 and 25** create ss. 607.505 and 607.605, F.S., respectively, to permit a social purpose or benefit corporation to terminate its status as such by amending its articles, or by merger, conversion, or share exchange. Termination of its status requires a minimum status vote unless the transaction terminating the status is in the usual and regular course of business, pursuant to a court order, or is a sale in which all or a substantial portion of the net proceeds of the sale will be distributed to the shareholders within 1 year of the sale.

If a corporation's status as a social purpose or benefit corporation is terminated pursuant to an amendment of its articles or by a merger, conversion, or share exchange, shareholders of the corporation are entitled to appraisal rights.

**Section 5** amends s. 607.1302, F.S., to provide appraisal rights to shareholders of a domestic corporation that becomes a social purpose or a benefit corporation, or terminates its status as such, by amendment of its articles or by a merger, conversion, or share exchange.

### ***Statutory Public Benefit Purposes***

**Sections 12 and 26** create ss. 607.506 and 607.606, F.S., respectively to describe the statutory corporate purposes of social purpose corporations and benefit corporations.

A social purpose corporation has the purpose of creating a "public benefit," which is defined as a positive effect, or the minimization of negative effects, on the environment or on *one or more* categories of persons or entities, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, due to the business and operations of the corporation. The term includes:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities that provide a benefit to society or the environment.<sup>18</sup>

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<sup>17</sup> The definitions of "minimum status vote" are created in ss. 607.502(5) and 607.602(7), F.S., in Sections 8 and 22 of the bill.

<sup>18</sup> The definition of "public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(6), F.S.

A social purpose corporation's articles may identify one or more additional specific public benefits as its purpose in its articles in addition to its original public benefit purpose and any other lawful purpose it may have. The specific public benefit must be consistent with the corporation's public benefit.<sup>19</sup> It may amend its articles to add, amend, or delete the identification of any additional public benefit; however, the amendment must be adopted by a minimum status vote. In sum, a social purpose corporation must pursue or create one or more narrowly identifiable public benefits.<sup>20</sup>

A benefit corporation, however, has the purpose of creating a *general* public benefit, which is broadly defined as a material, positive effect on society and the environment, as assessed using a third-party standard, which is attributable to the business and operations of the corporation.<sup>21</sup> In addition to its general public benefit purpose, a benefit corporation's articles may also identify one or more specific public benefits, which are defined similar to "public benefit" for a social purpose corporation as discussed above. Any specific public benefit adopted by a benefit corporation must be consistent with the general benefit purpose of the corporation.<sup>22</sup> It may amend its articles to add, amend, or delete the identification of a specific public benefit; however, the amendment must be adopted by a minimum status vote. Additionally, the adoption of a specific public benefit, does not relieve the benefit corporation of its obligation to create a general public benefit.<sup>23</sup>

Unlike a social purpose corporation, which must pursue or create one or more narrowly defined public benefits, a benefit corporation must pursue or create a *general* public benefit, which, as indicated by the Business Law Section, "is a broad purpose intended to encompass many societal and environmental factors that are impacted by the business and operations of the corporation."<sup>24</sup> However, both corporations may adopt additional specific public benefits.

The bill also provides that the creation of any specific public benefit by a social purpose corporation or the creation of a general public benefit and specific public benefit by a benefit corporation are in the best interest of the corporation. Additionally, a professional corporation that is a social purpose corporation or a benefit corporation and complies with the applicable statutory purpose does not violate s. 621.08, F.S., which limits a professional service corporation or limited liability company to engage only in providing professional services for which the entity was specifically organized.

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<sup>19</sup> The definition of "specific public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(8), F.S.

<sup>20</sup> The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 1.

<sup>21</sup> The definition of "general public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(5), F.S.

<sup>22</sup> The definition of "specific public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(8), F.S.

<sup>23</sup> See The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

<sup>24</sup> *Id.* at 1.

### ***Standard of Conduct for Directors and Officers***

**Sections 13, 15, 27, and 29** create ss. 607.507, 607.509, 607.607 and 607.609, F.S., respectively to regulate the standard of conduct for directors and officers of social purpose corporations and benefit corporations.

Directors and officers of social purpose corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders and on the corporation's ability to accomplish any public benefits identified in its articles. The directors and officers *may* also consider the effect of a corporate action on the corporation's work force, its customers and suppliers, community and societal factors, the environment, the interests of the corporation, and any other pertinent factors or the interests of any group that they deem appropriate. Directors and officers are not required to give priority or equal weight to the interests of a particular person or group unless the corporation states in its articles its intention to give such priority or equal weight.

Directors and officers of benefit corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders, work force, and customers and suppliers; community and societal factors; the environment; the interests of the corporation; and on the corporation's ability to accomplish its general public benefit purpose and any applicable specific public benefit. The directors and officers *may* consider any other pertinent factors or the interests of any group that they deem appropriate. However, directors and officers are not required to give priority or equal weight to the interests of a particular person or group, unless the corporation states in its articles its intention to give such priority or equal weight.

The bill provides that a director or officer of a social purpose or benefit corporation is not personally liable for monetary damages to the corporation, shareholders, or potential beneficiaries of the corporation's benefit goals for failure to pursue or create a benefit, unless the corporation's articles expressly provide otherwise. Directors are still subject to the traditional duties of good faith and care and to fiduciary principles applicable to all corporate directors under s. 607.0830, F.S.,<sup>25</sup> and officers are still subject to any additional duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S. However, an officer's consideration of those interests and factors described above is not a violation of any duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S.

### ***Benefit Directors***

**Sections 14 and 28** create ss. 607.508 and 607.608, F.S., respectively, to allow a social purpose corporation and a benefit corporation to include, in its articles, an elected, independent<sup>26</sup> benefit director. "Independent" is defined as not having a material relationship with the corporation or a subsidiary. A material relationship is presumed to exist:

- If the individual has been an employee, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;

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<sup>25</sup> The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

<sup>26</sup> Benefit directors of professional service corporations and limited liability companies organized under ch. 621, F.S., are not required to be independent.

- If an immediate family member of the individual has been an executive officer, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;
- If the individual or an entity of which the individual is a director, officer, or manager owns 5 percent or more of the shares of the corporation; or
- If an entity in which the individual owns 5 percent or more of the outstanding equity interests owns 5 percent or more of the shares of the corporation.<sup>27</sup>

A benefit director has the powers, duties, rights and immunities as other corporate directors, and his or her actions or inactions are inseparable from his or her status as a director.

Unless the corporation's articles or bylaws provide otherwise, the benefit director must prepare a report to be included in the corporation's annual benefit report<sup>28</sup> that provides his or her opinion on:

- Whether the corporation acted in accordance with its benefit purpose;
- Whether the corporation's directors and officers complied with the statutory standards of conduct; and
- Whether the corporation or its directors or officers failed, in the case of the corporation, to act in accordance with its statutory purpose, or, in the case of directors and officers, to comply with the requirements to consider the interests and factors provided in ss. 607.507(1) or 607.607(1), F.S., in deciding on a corporate action.

### ***Benefit Officers***

**Sections 16 and 30** create ss. 607.510 and 607.610, F.S., respectively, to allow a social purpose corporation and a benefit corporation to designate an officer as a benefit officer with powers and duties set forth in the bylaws or determined by the board of directors. Such powers and duties may include preparing the corporation's annual benefit report and any other powers and duties relating to the public benefit, general public benefit, or specific public benefit purpose of the corporation.

### ***Rights of Action and Benefit Enforcement Proceedings***

**Sections 17 and 31** create ss. 607.511 and 607.611, F.S., respectively, to identify the circumstances under which a person may bring a cause of action against a social purpose corporation or a benefit corporation. Generally, a person may not assert a claim against a social purpose or benefit corporation, or any of its respective directors or officers, for failing to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles. Additionally, a person is generally barred from asserting a claim against a social purpose or a benefit corporation, or any of its respective directors or officers, for violating any obligation, duty, or standard of conduct under ch. 607, F.S.

However, the bill provides that a benefit enforcement proceeding may be brought against the corporation, its directors, and officers directly by the corporation or derivatively by a shareholder, director, person or group that owns 5 percent or more of the outstanding equity

<sup>27</sup> The definitions of "independent" are created in ss. 607.502(4) and 607.602(6), F.S., in Sections 8 and 22 of the bill.

<sup>28</sup> See "Annual Benefit Report" section below.



interest in an entity of which the corporation is a subsidiary, or any other person specified in the corporation's articles or bylaws. A "benefit enforcement proceeding" is defined as a claim or action for a social purpose or benefit corporation's failure to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.<sup>29</sup> A benefit enforcement proceeding may also be brought for a violation of any obligation, duty, or standard of conduct under the applicable provisions of part II or part III of ch. 607, F.S.

The bill also provides that a social purpose corporation or a benefit corporation is not liable for monetary damages for failure of the corporation to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.

### ***Annual Benefit Report***

**Sections 18 and 32** create ss. 607.512 and 607.612, F.S., to require a social purpose corporation and a benefit corporation to prepare and distribute an annual benefit report to shareholders.

For a benefit corporation, the annual report must be based on a third-party standard that is either applied consistently with previous annual reports or contains an explanation of any changes from prior reports. The bill defines a "third-party standard" as a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. The third-party standard must be:

- Comprehensive in its assessment of the effect of the business on the interests and factors the corporation and its officers and directors must consider when deciding on a course of action;
- Developed by an entity that is not controlled by the corporation;
- Developed by an entity with the expertise to assess the overall effect of the business and that uses a comprehensive approach to develop the standard, including a period for public comment; and
- Transparent by making information regarding the criteria used under the third-party standard and information regarding any possible conflict of interest between the entity that developed the standard and the corporation publicly available.<sup>30</sup>

Unlike a benefit corporation, a social purpose corporation's annual benefit report is not required to be based on a third-party standard<sup>31</sup> unless required by the articles or the board of directors. If a third-party standard is required, it must either be applied consistently with previous annual reports or contain an explanation of any changes from prior reports.

For both a social purpose corporation and a benefit corporation, the annual benefit report must also include a description of:

- The ways in which the corporation pursued a public benefit, or general public benefit, as the case may be, during the year and the extent to which such a benefit was created.
- Any circumstance that has hindered the pursuit or creation of a public benefit or general public benefit, as the case may be, by the corporation.

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<sup>29</sup> "Benefit enforcement proceeding" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(2) and 607.602(3), F.S.

<sup>30</sup> "Third-party standard" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(10) and 607.602(10), F.S.

<sup>31</sup> *Id.*

- The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- The name and addresses of the benefit director and the benefit officer, if those positions exist.
- If the corporation has a benefit director, he or she must include in the benefit report the required opinion statement regarding the corporation's fulfillment of its statutory benefit purpose.<sup>32</sup>
- If a third-party standard is used, the report must contain a statement of any connection between the entity that established the standard, its directors, officers, or any person with significant control over the entity, and the corporation, its directors, officers, or any significant shareholder of the corporation, including any information that might affect the credibility of the use of the third-party standard.<sup>33</sup>

If a benefit director resigned, refused to stand for reelection, or was removed from his or her position, and furnished written correspondence to the corporation concerning the circumstances surrounding his or her departure, that correspondence must be included in the annual benefit report.

Lastly, the annual benefit report and the third-party standard, if used, are not required to be audited or certified by a third-party standards provider.

### ***Annual Benefit Report Availability***

**Sections 19 and 33** create ss. 607.513 and 607.613, F.S., to regulate the availability of annual benefit reports created by social purpose corporations and benefit corporations. The bill requires a social purpose corporation and a benefit corporation to send its annual benefit report to each shareholder either within 120 days after the end of the corporation's fiscal year or at the same time that the corporation delivers any other annual report to its shareholders. Additionally, the corporation must post each annual benefit report on the public portion of its website for at least 3 years. If the corporation does not have a website, it must provide a free copy of the most recent annual benefit report to any person who requests a copy.

If a social purpose corporation or benefit corporation does not comply with the benefit report delivery requirements, the circuit court in the county in which the principal office of the corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder requests a copy, summarily order the corporation to provide the annual benefit report. If the court orders the annual benefit report to be provided, the court may order the corporation to pay the shareholder's costs, including attorney fees.

### **Business Entity Name Distinguishability**

**Sections 1, 4, 34, 35** amend ss. 605.0112, 607.0401, 617.0401, and 620.1108, F.S., to specify which differences in the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership are not considered distinguishable, and thus do not satisfy the requirement

<sup>32</sup> See "*Benefit Directors*" section above.

<sup>33</sup> Because a third-party standard is always required in an annual benefit report for a benefit corporation, this statement must always be included in its annual benefit report.

that the name of such entities be distinguishable from the names of other entities, except fictitious name registrations.

The bill also provides that the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement. General partnership registration and limited partnership statements, like fictitious name registrations, are merely registered with DOS for public notice purposes.<sup>34</sup>

Clarifying the distinguishability of entity names will help businesses and their customers, and it will help DOS in enforcement actions.

**Sections 3, 34, 36-74** amend ss. 607.0101, 617.0401, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09, F.S., to conform to changes made by the act and conform cross-references.

**Section 75** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may give businesses and entrepreneurs in Florida that desire to pursue public benefit goals along with traditional profit-making goals additional options for the type of corporate entity they create. It may also attract out-of-state businesses and entrepreneurs who want to form a social purpose corporation or a benefit corporation in Florida.

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<sup>34</sup> Department of State Bill Analysis at 2.

**C. Government Sector Impact:**

According to DOS, the bill will have an indeterminate impact on revenue, and any impact the bill has on DOS's information technology system can be covered by the current resources of the department.<sup>35</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 605.0112, 607.0101, 607.0401, 607.1302, 617.0401, 620.1108, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09.

This bill creates the following sections of the Florida Statutes: 607.501, 607.502, 607.503, 607.504, 607.505, 607.506, 607.507, 607.508, 607.509, 607.510, 607.511, 607.512, 607.513, 607.601, 607.602, 607.603, 607.604, 607.605, 607.606, 607.607, 607.608, 607.609, 607.610, 607.611, 607.612, and 607.613.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary Committee on March 18, 2014:**

The committee substitute makes technical changes to the bill without changing any substantive provisions. It changes a reference to "CORPORATIONS" to "GENERAL PROVISIONS," and adds a comma.

**CS by Commerce and Tourism Committee on February 17, 2014:**

The committee substitute clarifies what information must be included in a corporation's annual benefit report and it corrects technical and drafting errors.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>35</sup> *Id.* at 4.