

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1028

INTRODUCER: Senator Thurston

SUBJECT: Corporations

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1028 allows state banks and trust companies to form as social purpose corporations or benefit corporations. Social purpose corporations and benefit corporations are formed to make profits, but also to use corporate assets to pursue public interest goals. They differ from not-for-profit entities because they are for-profit entities and are permitted to distribute dividends to shareholders.

The bill also authorizes social purpose corporations and benefit corporations to omit confidential information from their annual benefit reports, but the entity must expressly state that it has omitted the information from the report.

State banks and trust companies are authorized to modify their form articles of incorporation with the Office of Financial Regulation (OFR) to include provisions required for social purpose corporations or benefit corporations. They are also authorized to approve special stock offering plans.

II. Present Situation:

State-Chartered Banks or Trust Companies

The Office of Financial Regulation regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.¹ The OFR has regulatory authority over banks and trust companies, pursuant to ch. 658, F.S., of the Financial Institutions Codes ("codes"). These banks and trust companies operate pursuant to part I of ch. 607, F.S., relating to

¹ Section 655.001, F.S.

for-profit corporations, to the extent that ch. 607, F.S., does not conflict with, or is expressly superseded by, the codes.

A corporation that seeks to organize as a state-chartered bank or trust company in Florida must submit an application for authority to organize to the OFR.² The application must include the financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer.³ The OFR is required to grant the corporation's request to organize if it meets certain criteria relating to local conditions, capitalization, paid-in capital-in surplus, qualifications of the proposed officer and directors, the corporate name of the proposed state bank or trust company, and provision of suitable quarters at the location.⁴

After OFR grants a corporation's approval to organize, the corporation must submit its articles of incorporation and filing fee to the OFR to become chartered and begin its corporate existence as a banking corporation or trust company.⁵ The OFR must then provide the proposed directors with form articles of incorporation that reflect only those provisions that are required under s. 658.23, F.S. and part I of ch. 607, F.S., dealing with for-profit corporations.⁶

Currently, state banks and trust companies are not permitted to be formed as social purpose or benefit corporations.⁷

Social Purpose Corporations and Benefit Corporations, Generally

In 2014, the Florida Legislature adopted legislation that governs social purpose corporations and benefit corporations.⁸ These “hybrid corporations” serve dual purposes. They allow their directors and officers to both optimize stockholder welfare, commonly viewed as profit maximization, and create general public benefit.⁹ Public benefit is generally defined as having a positive effect, or minimizing negative effects, on the environment or on one or more categories of people or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature.¹⁰ Social purpose and benefit corporations retain profit-making goals, and therefore do not qualify as charities or not-for-profit corporations; however, their directive to create public benefit distinguishes them from traditional corporations.¹¹

² Section 658.19, F.S.

³ *Id.*

⁴ Section 658.21, F.S.

⁵ Section 658.23(1), F.S.

⁶ *See, e.g.*, Florida Office of Financial Regulation, *Model Articles of Incorporation Bank, Trust Company, or Association* (Revised Jul. 2005), https://www.flofr.com/PDFs/model_articles_OFR.pdf.

⁷ Section 658.30(1), F.S.

⁸ Chapter 2014-209, ss. 7-33, Laws of Fla (creating ss. 607.501-607.613, F.S., “Social Purpose Corporations” and “Benefit Corporations” effective Jul. 1, 2014).

⁹ John Montgomery Business Law Today, *Mastering the Benefit Corporation* (Jul. 2, 2016), available at https://www.americanbar.org/publications/blt/2016/07/02_montgomery.html.

¹⁰ Section 607.502(6), F.S.

¹¹ Stuart Cohn, Stuart Ames, *Now It's Easier Being Green: Florida's New Benefit and Social Purpose Corporations* at 2 (Nov. 2014) 88-Nov. Fla. B.J. 38, <https://www.floridabar.org/news/tfb-journal/?durl=/divcom%2fjn%2fjnjournal01%2ensf%2f8c9f13012b96736985256aa900624829%2fc655f4f9d7d009b585257d7e004bcb18%21OpenDocument>.

The primary difference between a social purpose corporation (governed by part II of ch. 607, F.S.) and a benefit corporation (governed by part III of ch. 607, F.S.) is the public benefit purpose imposed upon each of the corporations.¹² A social purpose corporation must pursue or create one or more public benefits, which may be specific.¹³ 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.¹⁴ 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. Both of these corporations can be the subject of a benefit enforcement proceeding to compel them to pursue or create a general or specific public benefit.¹⁵ However, neither corporation, nor any of its directors and officers, may be found monetarily liable for a failure to create or pursue public benefit. For-profit corporations and their officers and directors are not subject to a requirement to pursue public benefit.

As of May 2017, 32 states permitted benefit corporations¹⁶ and four states have legislation that allows social purpose corporations.¹⁷ Kickstarter, Ben & Jerry’s, Patagonia, and King Arthur Flour are examples of benefit corporations that all operate with a commitment to environmental and social factors, as well as to their shareholders’ financial interests.¹⁸ Virginia Community Capital was the first federally chartered bank to become a benefit corporation in April 2016.¹⁹

Annual Benefit Report

Section 607.612, F.S., requires benefit corporations to prepare an annual benefit report (report). The report must contain information such as:²⁰

- A description of the ways the benefit corporation pursued the general and specific public benefit goal;
- An explanation of the third-party standard against which the benefit corporation’s performance is assessed, if applicable;
- The contact information of certain directors and officers; and
- If any benefit director resigned from, refused to stand for reelection to, or was removed from his or her position.

¹² *Id.*

¹³ Section 607.506, F.S.

¹⁴ Section 607.606, F.S.

¹⁵ Sections 607.602, 607.511, 607.611 F.S.

¹⁶ Benefit Corporation Gateway, *State-by-State Guide*, <http://www.benefitcorporationgateway.org/h/entrepreneurs-main/state-by-state-guide/> (last visited Jan. 28, 2018).

¹⁷ Rob Esposito, Shawn Pelsinger, *Social Enterprise Law Tracker: Status Tool*, <http://socentlawtracker.org/#/spsc> (last visited Jan. 26, 2018).

¹⁸ B Lab, *FAQ’s*, <http://benefitcorp.net/faq> (last visited Jan. 19, 2018).

¹⁹ Cision PRWeb, *For-Profit Bank Becomes First Benefit Corporation Bank in U.S.* (Apr. 4, 2016), <http://www.prweb.com/releases/2016/03/prweb13301237.htm>.

²⁰ Section 607.612, F.S.

A social purpose corporation's annual benefit report is substantially similar to a benefit corporation's, but it need only describe how it pursued a *particular* rather than *general* public benefit.²¹

These annual benefit reports are not required to be audited or certified by a third-party standards provider, such as B-Lab, unless a corporation's articles of incorporation state otherwise.²²

Additionally, a social purpose or benefit corporation must deliver its annual benefit report to each of its shareholders and post the report publicly.²³ If a social purpose or benefit corporation fails to publicly furnish its annual benefit report, one of its shareholders may bring an action to compel its provision in circuit court. The court may award the suing shareholder costs and attorney's fees.

III. Effect of Proposed Changes:

Authorization to Form as a Social Purpose or Benefit Corporation (Section 3)

The bill amends s. 658.23, F.S., to allow state banks and trust companies regulated under ch. 658, F.S., to form as social purpose or benefit corporations. Specifically, the banks and trust companies that seek to form as a social purpose or benefit corporation may amend the OFR's form articles of incorporation to conform the articles to the requirements of parts II or III of ch. 607, F.S.,

Currently, these banks and trust companies must file articles of incorporation as a for-profit corporation under part I of ch. 607, F.S.

Authorization to Form and Hold Authorized Meetings (Section 4)

The bill amends s. 658.30, F.S., to clarify that bank and trust companies are subject to ch. 607, F.S., including parts II or III (Social Purpose Corporations and Benefit Corporations), to the extent that ch. 658, F.S., does not directly conflict or expressly supersede. The bill permits meetings of stockholders, directors, and committees as authorized under part I of ch. 607.

Authorization to Omit Confidential Information from Annual Report (Sections 1 and 2)

The bill amends sections 607.512 and 607.612, F.S., to allow social purpose corporations and benefit corporations to omit information required to be kept confidential under state or federal law from their annual benefit reports. If the social purpose corporation or benefit corporation does omit the information, however, it must expressly state that it did so in its annual benefit report. This allows banks and trust companies that form as social purpose or benefit corporations to maintain the confidentiality of information that is required to be confidential under the Financial Institution Codes.

²¹ Section 607.512(1)(a)1., F.S.

²² Sections 607.512(3), 607.612(4), F.S.

²³ Sections 607.513 and 607.613, F.S.

Authorization for Special Stock Approval (Section 5)

The bill amends s. 658.36, F.S., changes in capital, to permit the inclusion of social purpose corporations and benefit corporations in the special stock approval provisions that currently pertain to state banks and trust companies.

Effective Date (Section 6)

The bill takes effect July 1, 2018.

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:

It may be more difficult for a benefit or social purpose corporation's annual benefit report to be measured against a third-party standard if information is omitted from the report. This may frustrate the purpose of certain investors, who may choose to divest themselves of a company with a redacted annual benefit report.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the provisions in sections 1 and 2 of the bill are made with the intent to allow banks to keep information confidential as required by law, the amendments will have the effect of allowing all social purpose or benefit corporations to omit confidential information.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 607.512, 607.612, 658.23, 658.30, and 658.36.

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

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

None.

B. Amendments:

None.