

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1285 Florida Business Corporation Act

**SPONSOR(S):** Albritton

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	14 Y, 0 N	Wright	Anstead
2) Oversight, Transparency & Administration Subcommittee	9 Y, 0 N	Hoffman	Harrington
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Office of Financial Regulation (OFR) has regulatory authority over state-chartered depository and non-depository financial institutions and financial service companies, including state-chartered banks and trust companies.

Social purpose and benefit corporations are those formed to use corporate assets to pursue public benefit goals in addition to the generally accepted corporate goal of profit maximization. The profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations.

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

The bill authorizes:

- state banks and trust companies to form as a social purpose or benefit corporation;
- social purpose or benefit corporations to omit confidential information from their annual benefit reports;
- state banks and trust companies to modify their form articles of incorporation with OFR to include provisions required for social purpose or benefit corporations; and
- state banks and trust companies to approve special stock offering plans.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *State-Chartered Banks or Trust Companies*

The Florida Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of 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.<sup>1</sup> 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 pt. I of ch. 607, F.S., relating to for-profit corporations, to the extent that ch. 607, F.S., does not conflict with, or is not expressly superseded by, the codes.<sup>2</sup>

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 OFR.<sup>3</sup> The application must include the financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer.<sup>4</sup> 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.<sup>5</sup>

After OFR grants a corporation's approval to organize, the corporation must submit its articles of incorporation and filing fee to OFR to become chartered and begin its corporate existence as a banking corporation or trust company.<sup>6</sup> 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 pt. I of ch. 607, F.S., relating to for-profit corporations.<sup>7</sup>

Currently, state banks and trust companies are not permitted to be formed as social purpose or benefit corporations.<sup>8</sup>

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

In 2014, the Florida Legislature adopted legislation that governs social purpose corporations and benefit corporations. Generally, social purpose and benefit corporations protect directors and officers who use corporate assets to pursue public benefit goals in addition to the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations.<sup>9</sup>

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<sup>1</sup> s. 655.001(2), F.S.

<sup>2</sup> s. 658.30(1), F.S.

<sup>3</sup> s. 658.19, F.S.

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

<sup>5</sup> s. 658.21, F.S.

<sup>6</sup> s. 658.23(1), F.S.

<sup>7</sup> *See, e.g.*, Florida Office of Financial Regulation, *Model Articles of Incorporation Bank, Trust Company, or Association*, available at [https://www.flofr.com/PDFs/model\\_articles\\_OFR.pdf](https://www.flofr.com/PDFs/model_articles_OFR.pdf) (last visited Jan. 24, 2018).

<sup>8</sup> s. 658.23, F.S.

<sup>9</sup> *See generally* ch. 607, pts. II and III, F.S.

The primary difference between a social purpose corporation and a benefit corporation is the degree of public benefit purpose imposed upon each of the corporations.<sup>10</sup> A social purpose corporation may pursue or create one or more public benefits, which may be specific.<sup>11</sup> In contrast, a benefit corporation may 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>12</sup>

For both types of corporations, 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. 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.<sup>13</sup>

As of May 2017, 32 states permitted benefit corporations.<sup>14</sup> Four states have legislation that allow social purpose corporations.<sup>15</sup> There are approximately 3,500 benefit corporations nationwide, including Kickstarter, Ben & Jerry’s, Patagonia, Warby Parker, Etsy, and King Arthur Flour, all of which operate with a commitment to environmental and social factors, as well as to their shareholders’ financial interests.<sup>16</sup> Virginia Community Capital was the first federally chartered bank to become a benefit corporation in April 2016.<sup>17</sup>

### *Annual Benefit Report*

Benefit corporations must prepare an annual benefit report (report). The report must contain information such as:<sup>18</sup>

- 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;<sup>19</sup>
- 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.

A social purpose corporation’s report is substantially similar to a benefit corporation’s report, but it need only describe how it pursued a particular rather than general public benefit.<sup>20</sup>

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<sup>10</sup> Stuart Cohn & Stuart Ames, *Now It’s Easier Being Green: Florida’s New Benefit and Social Purpose Corporations*, 88-9 FLA. BAR. J. 38, AT 2 (Nov. 2014) available at <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjnjournal01.nsf%2FArticles%2FC655F4F9D7D009B585257D7E004BCB18> (last visited Jan. 24, 2018).

<sup>11</sup> s. 607.506, F.S.

<sup>12</sup> s. 607.606, F.S.

<sup>13</sup> ss. 607.602, 607.511, and 607.611, F.S.

<sup>14</sup> BENEFIT CORPORATION GATEWAY, *State-by-State Guide*, <http://www.benefitcorporationgateway.org/h/entrepreneurs-main/state-by-state-guide/> (last visited Jan. 19, 2018).

<sup>15</sup> Rob Esposito & Shawn Pelsinger, *Social Enterprise Law Tracker: Status Tool*, <http://socentlawtracker.org/#/spcs> (last visited Jan. 24, 2018).

<sup>16</sup> Carol Hazard, *Community Capital Bank becomes first B Corp bank in U.S.*, RICHMOND TIMES-DISPATCH (Apr. 4, 2016), [http://www.richmond.com/business/community-capital-bank-becomes-first-b-corp-bank-in-u/article\\_f26a9996-3f21-5b87-b1fb-c1011730a8ba.html](http://www.richmond.com/business/community-capital-bank-becomes-first-b-corp-bank-in-u/article_f26a9996-3f21-5b87-b1fb-c1011730a8ba.html); see also B-LAB, *FAQ’s*, <http://benefitcorp.net/faq> (last visited Jan. 24, 2018).

<sup>17</sup> 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> (last visited Jan. 24, 2018).

<sup>18</sup> s. 607.612, F.S.

<sup>19</sup> A recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. ss. 607.502(10) and 607.602(10), F.S.

<sup>20</sup> s. 607.512(1)(a)1., F.S.

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.<sup>21</sup>

Additionally, a social purpose or benefit corporation must deliver their annual benefit report to each of its shareholders, and post the report publicly.<sup>22</sup> 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.<sup>23</sup>

### **Effect of Proposed Changes**

The bill allows state banks and trust companies to form as a social purpose or benefit corporation. Specifically, the bill allows the social purpose and benefit corporations statutes to extend to state banks and trust companies, and permits stockholders, directors, and committees of such financial institutions to hold authorized meetings.

The bill allows social purpose corporations and benefit corporations to omit information required to be kept confidential under state or federal law from their annual benefit report. If the social purpose corporation or benefit corporation does omit such 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 Institutions Codes.

The bill authorizes state banks and trust companies to modify their form articles of incorporation with OFR to include provisions required for social purpose or benefit corporations, and to approve special stock offering plans.

The bill provides an effective date of July 1, 2018.

#### **B. SECTION DIRECTORY:**

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|-----------|---|
| Section 1 | Amends s. 607.512, F.S., authorizing the omission of certain confidential information from an annual benefit report of a social purpose corporation.  |
| Section 2 | Amends s. 607.612, F.S., authorizing the omission of certain confidential information from an annual benefit report of a benefit corporation.   |
| Section 3 | Amends s. 658.23, F.S., authorizing the modification of form articles of incorporation to include provisions required for a social purpose or benefit corporation.  |
| Section 4 | Amends s. 658.30, F.S., allowing state banks and trust companies to form as a social purpose of benefit corporation, and stockholders, directors, and committees of financial institutions to hold authorized meetings. |
| Section 5 | Amends s. 658.36, F.S., authorizing a social purpose or benefit financial institution to approve special stock offering plans.  |
| Section 6 | Provides an effective date.   |

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<sup>21</sup> ss. 607.512(3) and 607.612(4), F.S.

<sup>22</sup> ss. 607.513 and 607.613, F.S.

<sup>23</sup> ss. 607.513(4) and 607.613, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow state banks and trust companies to form as social purpose or benefit corporations, which could allow for more innovation in the way banks function or divestment of stockholders in such institutions based on factors associated with banks broadening their investment opportunities.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.