



# Representative Sam Kito

## Alaska State Legislature

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### Sectional Analysis House Bill 124

*"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."*

**Section 1** 10.06.633(a) Establishes how corporations may be dissolved and is amended to include benefit corporations; (a8) declares that a benefit corporation is dissolved if delinquent for 6 months or more in including its benefit report in the biennial report or in paying the benefit report filing fee.

**Section 2** Adds a new chapter to AS 10 Alaska corporations code, chapter 60-Benefit Corporations.

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#### Article 1

*Establishes how a business corporation may incorporate or amend its status to become a benefit corporation; that the benefit corporation shall have a purpose of creating general public benefit from all effects of its business and operations and may identify a specific public benefit; requires that any status change must be approved by the minimum two-thirds vote.*

**Section 10.60.010** Establishes how a new business corporation or an existing entity may become a benefit corporation; declares that an amendment of an existing corporation must be adopted by at least the minimum two-thirds vote.

**Section 10.60.020** States that if an existing entity that is not a benefit corporation will become one as a result of a merger or other status change, the plan of merger or status change must be approved by at least the minimum required vote.

**Section 10.60.030** In addition to its corporate purpose under existing corporate statute AS 10.06.005, this states that a benefit corporation shall have a purpose of creating general public benefit from all effects of its business and operations and creation of the general public benefit is determined to be in the best interest of the benefit corporation.

**Section 10.60.040** Allows a benefit corporation to identify or amend its articles to include a specific public benefit purpose in addition to its general public benefit purpose and lists examples of specific public benefits.

**Section 10.60.050** Clarifies that a professional corporation formed under AS 10.45 does not violate this statute by being a benefit corporation under 10.60.

**Section 10.60.060** Provides that a benefit corporation may terminate its benefit status by amending its articles, or by being party to a merger or other status change which would terminate its benefit corporation status; both must be approved by at least the minimum required vote.

**Section 10.60.070** States that if a benefit corporation disposes of all or substantially all of its assets the transaction, unless it's in the usual and regular course of business, must be approved by the minimum status vote required.

## **Article 2**

*Establishes the duties of the board and the directors and enumerates seven factors that must be considered while making decisions; clarifies that a director of a benefit corporation is not personally liable for the failure to create a general public benefit if they are acting in compliance with the chapter and in good faith.*

**Section 10.60.100** Establishes seven factors that the board of directors and individual directors of a benefit corporation shall consider while discharging their duties. The directors of the benefit corporation are not required to give priority to any one of these listed factors unless the intention to prioritize has been identified in the benefit corporation's articles of incorporation.

**Section 10.60.110** States that consideration of these factors is not a violation of existing Alaska statutes regarding the duties and rights of corporate boards (AS 10.06.450).

**Section 10.60.120** Except as provided in the articles of incorporation, this states that a director of a benefit corporation is not personally liable for monetary damages for action, inaction, or failure of the benefit corporation to create a general public benefit if the duties of the director were performed in compliance with this chapter or AS 10.06.450.

**Section 10.60.130** Clarifies that a director of a benefit corporation does not have a duty to a person solely because that person is a beneficiary of the benefit corporation's general or specific public benefit purpose.

**Section 10.60.140** Declares that a director of a benefit corporation who makes a business judgment in good faith fulfills their duties under this chapter if they are not personally invested in the subject, are informed on the subject of the judgment, rationally believe the business judgment is in the best interest of the benefit corporation, and consider the interests and factors listed under AS 10.60.100 (above).

## **Article 3**

*Directs how the board of a benefit corporation may designate a benefit director, who shall not have a material relationship with the corporation; outlines the benefit director's role, especially relating to the biennial benefit report; allows that the benefit director shall have the same role and rights as any other director of the benefit corporation.*

**Section 10.60.150** Allows that a board of directors of a benefit corporation may include a designated benefit director. A benefit director shall have the same duties and rights as other directors but shall also have additional duties (described below), such as the preparation of the annual compliance statement.

**Section 10.60.160** States that the board of a benefit corporation will elect and remove a benefit director following the manner of general Alaska corporate law under AS 10.06.453.

**Section 10.60.170** Directs that a benefit director shall not have a material relationship (defined under AS.10.60.220) with the benefit corporation or its subsidiaries and allows for additional benefit director qualifications under the benefit corporation's articles or bylaws.

**Section 10.60.180** Declares that a benefit director shall prepare a biennial compliance statement to be included in the benefit corporation's annual report. The compliance statement will include the benefit director's opinion on the benefit corporation's achievement of its general public benefit purpose, any specific public benefit purpose, the director's compliance with their duties, and any failures in these sections.

**Section 10.60.190** Equates the actions or inactions of a benefit director with actions or inactions of any director of the benefit corporation.

**Section 10.60.200** States that a benefit director is not personally liable for actions done in their capacity as benefit director unless the action constitutes willful misconduct or violation of law.

**Section 10.60.210** Provides that a benefit director of a professional corporation that is also a benefit corporation is not prohibited from having a material relationship with the benefit corporation or a subsidiary.

**Section 10.60.220** Establishes the guidelines for determining whether a benefit director of a benefit corporation has a material relationship with the benefit corporation or a subsidiary.

#### **Article 4**

*Directs an officer of a benefit corporation to consider the factors enumerated under the board of directors; clarifies the duties of an officer acting in good faith; and allows that a benefit corporation may designate a benefit officer, who shall have duties similar to the benefit director.*

**Section 10.60.230** Directs an officer of a benefit corporation to consider the factors listed in AS 10.60.100 (duties of the directors) if the officer is in the position to act in a way that may influence the creation of general public benefit or specific public benefit.

**Section 10.60.240** States that an officer does not violate current general corporate statutes regarding duties of officers (AS 10.06.483) when considering the factors previously mentioned above.

**Section 10.60.250** Except as provided in the articles of incorporation, this states that an officer of a benefit corporation is not personally liable for monetary damages if their duties were performed in compliance with Alaska statutes.

**Section 10.60.260** Clarifies that an officer of a benefit corporation does not have a duty to a person solely because that person is a beneficiary of the corporation's general or specific public benefit.

**Section 10.60.270** Declares that an officer of a benefit corporation who makes a business judgment in good faith fulfills their duties under this chapter if they are not personally invested in the subject, are informed on the subject of the judgment, reasonably believe it is in the best interest of the benefit corporation, and if they consider the factors listed in AS 10.60.100.

**Section 10.60.280** Allows that a benefit corporation may designate an officer as a benefit officer, who shall have duties that are related to the creation of general public benefits and specific public benefits. The benefit officer shall prepare the annual benefit report required in Article 6.

#### **Article 5**

*Identifies the persons that may bring actions or claims against a benefit corporation for a failure to pursue general or specific public benefit.*

**Section 10.60.300** States that persons identified under AS 10.60.320 may bring an action or claim against a benefit corporation for a failure to pursue general or specific public benefits as set out in their articles or for a violation of duties under this chapter.

**Section 10.60.310** Clarifies that a benefit corporation is not liable for monetary damages for a failure to create a general or specific public benefit.

**Section 10.60.320** Identifies the persons or entities that may bring a claim or action against a benefit corporation under AS 10.60.300.

#### **Article 6**

*Defines what must be contained in the required biennial benefit report; requires that the benefit report must be held against a third party standard; establishes a timeline for the delivery of the report to shareholders; requires public availability of the report; and directs the benefit corporation to file the benefit report with the department as part of their biennial report.*

**Section 10.60.500** Requires a benefit corporation to file a biennial benefit report as a part of the biennial report required by AS 10.06.805.

**Section 10.60.510** Declares what must be contained in the biennial benefit report. The report will include descriptions of how the benefit corporation pursued the general and any specific public benefit, circumstances that hindered that pursuit, and why the third-party standard was selected or changed; an assessment of the overall performance of the general public benefit purpose held against a third-party standard; the name and address of the benefit director and benefit officer, if any; the compensation paid to each director; the compliance statement of the benefit director; and any connection between the creator of the third-party standard and the benefit corporation.

**Section 10.60.520** Requires that, if a benefit director resigns or is removed, the benefit report shall include any written correspondence regarding the resignation or removal.

**Section 10.60.540** Establishes a timeline for delivery of the benefit report to the shareholders.

**Section 10.60.550** Directs the benefit corporation to post all of its benefit reports on the benefit corporation's public website, if the website exists. The posted reports may omit director compensation, financial or proprietary information that was included in the report to the shareholders.

**Section 10.60.560** Requires a benefit corporation that does not have a website to provide a copy of the most recent benefit report free of charge to any person who requests it. The report may omit director compensation, financial or proprietary information that was included in the report to the shareholders.

**Section 10.60.570** Requires the benefit corporation to provide the Department of Commerce, Community, and Economic Development with a copy of the biennial benefit report for filing as a part of its biennial reports (AS 10.06.805), omitting any director compensation, financial or propriety information, and requires the department to establish a fee for the filing of the benefit report. A failure to deliver the report or pay the filing fee within six months or more constitutes a basis for involuntary dissolution of the benefit corporation (AS 10.06.633). Subsection (c) allows that the department may file the benefit report in hard copy, rather than electronically.

## **Article 7**

*Identifies the process necessary for a benefit corporation to effect a status change; allows for shareholder dissent under a status change; defines guidelines for the third-party standards; clarifies that a benefit corporation is not eligible for any tax exemptions beyond those available for a traditional corporation; and states that this chapter does not prevent a non-benefit corporate entity from considering a general or specific public benefit.*

**Section 10.60.700** Establishes that a status change (merger, amendment, etc.) for a benefit corporation or domestic entity other than a business corporation must be approved by at least a two-thirds vote of all shareholders entitled to vote.

**Section 10.60.710** Allows a shareholder to dissent if the business corporation amends its article to become a benefit corporation. Shareholder dissent is covered under current business corporate statutes AS 10.06.574–10.06.582.

**Section 10.60.720** Establishes statutory guidelines for third-party standards used as an assessment tool in the required annual benefit report.

**Section 10.60.725** Provides a “safe harbor” clause for third parties entering into contract with a benefit corporation and clarifies that this provision does not exempt third parties from complying with federal or state law or regulation.

**Section 10.60.730** Clarifies that a benefit corporation is not eligible for any tax exemptions beyond what is available to corporations that are not benefit corporations.

**Section 10.60.740** Clarifies that this chapter does not prevent a non-benefit corporate entity from including the consideration of or donation to a general or specific public benefit in its general powers.

## **Article 8**

*Allows from the creation of regulations for this chapter; clarifies that this chapter does not affect non-benefit corporate entities; declares that benefit corporations are subject to Alaska corporate law unless specifically addressed; and defines terms used in the chapter.*

**Section 10.60.910** Allows the department to adopt regulations to implement chapter 10.60.

**Section 10.60.920** Clarifies that this chapter does not affect statutes or laws that apply to business corporations that are not benefit corporations.

**Section 10.60.930** Clarifies that a benefit corporation is subject to general Alaska corporate law (AS 10.06 and AS 10.45) unless specifically addressed by this chapter, in which case this chapter takes priority over provisions in previous chapters.

**Section 10.60.940** States that a provision of the articles or bylaws of a benefit corporation may not limit, be inconsistent with, or superseded a provision of this chapter.

**Section 10.60.990** Defines terms used throughout the chapter.

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**Section 3** Allows the Department of Commerce, Community, and Economic Development to adopt regulations to implement this Act, not to take effect before July 1, 2018.

**Section 4** Implements Section 3 immediately.

**Section 5** Provides an effective date of July 1, 2018 for this Act except for Section 4 (above).