



Representative Sam Kito

Alaska State Legislature

House District 33

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Chair
House Labor & Commerce

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Member
House Health &
Social Services

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House Rules

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The Honorable Anna MacKinnon
Senate Finance Co-Chair

Thank you for hearing House Bill 124 in the Senate Finance Committee on March 21st. I wanted to follow up with additional information to questions that were asked by members in the hearing.

Rep. Tommy Stringer (R), South Carolina State Representative, introduced similar benefit corporation legislation and said, "If we believe that private donations to individual charities are the most efficient way to solve societal problems, then we should expect government to create laws that enable that possibility."

Since the hearing, Department of Revenue has submitted a zero fiscal note, which states:

"Under this bill a benefit corporation would be taxed the same as any other for-profit corporation. Therefore, we do not anticipate a tax revenue impact if this bill were to pass. There is the theoretical possibility that current corporate taxpayers could elect this new classification option and their Alaska taxable income could be negatively impacted as a result. However, that seems very unlikely given that other states that have passed similar legislation have not reported lower corporate taxable income as a result. We feel confident that this bill would not have a material impact on Alaska corporate taxable income."

This legislation decreases the risk of a benefit corporation being sued for pursuing its mission and is particularly necessary at a time when a corporation is looking to sell. If Buyer A is cartoonishly evil and has a higher purchase offer than Buyer B, whose values align with the values of the company, the corporation is currently legally bound to take Buyer A's offer, even if the buyer will not uphold the company's values or protect the employees.

Across the nation there have been many cases where this has come into effect. Pertinent legal opinions in such cases have said:

- "Directors cannot defend a business strategy that openly eschews stockholder wealth maximization." –eBay v. Newmark (Craigslist) (2010)
- "The object of the corporation is to produce profits for the stockholders and the social beliefs of the managers, no more than their own financial interests, cannot be their end in managing the corporation." –Chief Justice of the Delaware Supreme Court Leo Strine, Wake Forest L. Rev. (2012)
- "Under [Revlon, Inc. vs. MacAndrews] in the traditional public company context, a board of directors that has decided to sell the corporation in a change of control transaction must, within the discretion afforded it by



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positive regulatory law, sell the corporation to the bidder offering to pay the highest price to the company's stockholders." –Chief Justice of the Delaware Supreme Court Leo Strine, HBLR (2014)

- "Concern for the non-stockholder interest is inappropriate when an auction among active bidders is in progress, and the object no longer is to protect or maintain the corporate enterprise but to sell it to the highest bidder." – Revlon v. MacAndrews & Forbes Holding (1986)

With or without HB 124, corporations must still answer to the private market to stay in business and have the same incentives to stay in business. "Public good" is broadly defined in the bill and left up to the corporation, but is intended to support communities in addition to making a profit for investors. Below is a list of some Benefit Corporations who have defined "public good" in their articles of incorporation with much more conservative values than companies like Patagonia or Arctic Solar Ventures, which we mentioned in committee.

Delaware Concealed Carry Coalition, PBC: "The specific public benefit purpose of the corporation is to Support the laws of the State of Delaware as they pertain to carry and conceal a deadly weapon through education and training to promote responsible firearm ownership."

B Revolution: "The Corporation shall also have the specific public benefit purposes of helping investors, entrepreneurs, and executives build values-driven organizations; supporting faith-based communities, particularly of the Christian faith; fostering the investment of capital in values-driven businesses; and carrying out charitable works through donations and service."

Journey of Faith Incorporated: "The specific public benefit purpose of the corporation is to actively spread the Gospel of Jesus Christ and financial support Christian missions, ministries, and charities while utilizing cutting edge technology and sustainable energy practices."

Devoteability Inc: "As its specific public benefit purpose, the corporation shall (1) help people become more fully devoted to a life of integrity and Christian virtues by providing tools and resources that encourage a stronger personal relationship with God, and (2) annually return at least ten percent of its net profit to faith-based charities, as directed by the Board of Directors."

I hope this has resolved your concerns with HB 124. We'd be happy to meet and clear up any other questions you may have. Thank you for your continued consideration of the bill and I urge your support.

Sincerely,

Rep. Sam Kito III