

HB

49

<TARGET><BILL>HB 49</BILL><SUBJECT>HB
49</SUBJECT><COMM>HFIN29</COMM></TARGET>

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 49
Fiscal Note Number: _____
() Publish Date: _____

Identifier: CSHB049-DCCED-CBPL-03-13-15
Title: BENEFIT CORPORATIONS
Sponsor: SEATON
Requester: (H) FINANCE

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2016 Request	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016					
Personal Services							
Travel							
Services	11.9						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	11.9	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1005 GF/Prgm	11.9						
Total	11.9	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **Yes**
If yes, by what date are the regulations to be adopted, amended or repealed? **07/01/16**

Why this fiscal note differs from previous version:

CSHB 49 amends HB 49 to decrease the extent of the program system changes to the corporations database.

Prepared By:	Janey Hovenden, Director	Phone:	(907)465-2538
Division:	Corporations, Business, and Professional Licensing	Date:	03/13/2015 01:38 PM
Approved By:	Catherine Reardon, Director	Date:	03/13/15
Agency:	Division of Administrative Services, DCCED		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. CSHB 49 (L&C)

Analysis

CSHB 49 will add a new chapter to AS 10 Alaska corporation code, Chapter 60 Benefit Corporations which allows a new or existing corporation organized under AS 10.06 or AS 10.45 to become a benefit corporation. In addition, it amends AS 10.06.633 to allow for the administrative dissolution of a benefit corporation if it fails to file or pay the filing fee for a benefit report.

In addition to its purpose under AS 10.06, a benefit corporation shall have a purpose of creating a general public benefit from the business and operations of the benefit corporation. General public benefit means a material positive effect on people and their surroundings, taken as a whole, assessed against a third-party standard.

A benefit corporation may also identify one or more specific public benefit purposes which means a benefit which serves a public welfare, religious, charitable, scientific, literary, or educational purpose, or another purpose beyond the strict interest of the shareholders of the benefit corporation.

In addition to the establishment of this corporation type, this bill will create new criteria under AS 10.60 which may amend an existing business corporation or professional corporation's status as a benefit corporation.

CSHB49 amends HB49 to require the benefit report to be part of the biennial report.

The Corporation Section database will need modification to allow for the adding and removing of a benefit corporation status, the associated reports and officials required for a benefit corporation.

If the bill passes, the following expenses will be incurred:

- \$9.4 in one-time information technology costs to modify the licensing database;
- \$2.5 in legal cost to amend regulations, printing, and postage.

Corporation licensing fees in the Division of Corporations, Business and Professional Licensing are funded by general fund program receipts, fund source 1005 GF/Prgm (DGF). Corporation fees are set per Title 10; revenue in excess of authorized budgeted expenses reverts to the State of Alaska general fund.

CHB49.

2015 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 04-03-2015

Amendment: _____

MEMBER	Favor	Oppose
REP. EDGMON		
REP. GARA	Y	
REP. GATTIS		X
REP. GUTTENBERG	X	
REP. KAWASAKI	X	
REP. MUNOZ	X	
REP. PRUITT		X
REP. SADDLER		
REP. WILSON		X
REP. NEUMAN	X	
REP. THOMPSON	X	

YEA

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NAY

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Alaska State Legislature

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REPRESENTATIVE PAUL SEATON Rep.Paul.Seaton@akleg.gov

Sponsor Statement HB 49

HB 49 expands the options for Alaskan entrepreneurs and investors by placing a new type of corporate entity, the benefit corporation, in Alaskan statute. A benefit corporation is a for-profit corporation which incorporates public benefits and community improvement into its business practices, no matter the principal service or product provided. Allowing the creation of benefit corporations will give business owners more choice in how to run their business and will bring to Alaska a slice of the \$6.6 trillion that is invested nationally in similar corporations.

Corporate law generally requires a corporation to consider the financial impact to their shareholders as the top priority when making decisions. Under the benefit corporate structure, owners and boards have the freedom to take actions which positively impact their communities without fear of violating a fiduciary duty. Benefit corporations are formed voluntarily and have the same tax status of any other for-profit corporation. By electing in their articles of incorporation to become a benefit corporation, a business simply gains the flexibility to include mission and social impact in their business practices.

Twenty-seven other states have passed benefit corporation legislation and many more have benefit bills in process. Over 1400 benefit corporations have incorporated in those states, including Ben & Jerry's, Patagonia, Rasmussen College, Epic Coffee, and King Arthur Flour Company (America's oldest flour company). Each of these companies works to benefit the public and their communities in the way that matters most to them.

HB 49 also includes measures to ensure accountability and transparency. Just as a traditional corporation provides their shareholders with financial reports, a benefit corporation will additionally create and publish a biennial benefit report describing how the company has pursued the general public benefit. This report, which is held against a third party standard, allows shareholders, investors, and the public to confidently invest in benefit corporations that share their values.

The goal of HB 49 is to give businesses more flexibility and control over their decisions and to provide investors with a clear social investment option.

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House Bill 49 Explanation of Changes Version H to Version E

Version E makes the following changes to HB 49:

- Replaces references to the *delivering* of the benefit report to the department with *inclusion* of the benefit report in the biennial corporate report. This change occurs on page 2, page 10, page 12, and page 13. This change allows the department to file the benefit report as a part of the biennial report required of all corporations under AS 10.06.805.
- Inserts new subsection (c) to section 10.60.570. Subsection (c) allows the department to file the benefit report in paper form rather than electronic, but the benefit corporation may file electronically if they choose. This will allow the department to file benefit reports in paper form without creating an expensive new electronic database.

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REPRESENTATIVE PAUL SEATON Rep.Paul.Seaton@akleg.gov

HB 49 Sectional Analysis Version: 29-LS0002\E

Please note that a sectional analysis of a bill or resolution should not be considered an authoritative interpretation of the measure itself.

The legislation is the best statement of its contents.

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.

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, reasonably 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 proprietary 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 10.60.730- 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.

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, 2016.

Section 4- Implements Section 3 immediately.

Section 5- Provides an effective date of July 1, 2016 for this Act except for Section 4 (above).

Prepared by the Office of Representative Seaton. Summarized from:

King Arthur Flour 2014 Benefit Corporation Report

Mission Statement: *We support and seek to expand all aspects of baking by being the highest quality product, information, and education resource for, and inspiration to, bakers worldwide. Our foundation is our good King Arthur flours and our commitment is to the highest standards of excellence, value, and integrity in everything we do.*

Core Values:

- Passion
- Employee-Ownership (100% Employee Owned)
- Quality
- Community
- Stewardship

Community:

- Employee-Owners receive up to 40 hours of paid volunteer time per year (Part-time and Full-Time)
- Donate to nonprofit Organizations within a 100-mile radius of Norwich, VT. Focus on: nutrition education, hunger relief, and environmental sustainability.
- Share unsold baked goods from bakery with local service organizations for the community
- Only use American –grown and –milled wheat in King Arthur Flour
- FY14: 3,238 hours of volunteer time with 173 employees participating

Example Employee Benefits:

- 8 Paid Holidays a Year (Full Time and Part Time Employees)
- Medical, Dental, Vision, Life, Dependent Life, and Long- and Short-Term Disability Insurance Coverage
- Retirement: Shares of stocks allocated to employees once a year through Employee Stock Ownership Plan (ESOP), Employee-Owners can also opt in to company 401(k) plan.
- Wellness and Health: Offer opportunities for employees with wellness and fitness classes, along with other programs with the focus

Challenges Outlined in Report:

- Solar – No significant solar installation, no plans to pursue in FY2015. Pursuing other ways to improve environmental impact instead.
- Evaluating Significant Supplies – Did not make forward progress on evaluating the social and environmental performance of their suppliers. Remains a 5-year goal for King Arthur Flour.

King Arthur Flour has been working with B Lab since 2007 to evaluate the social and environmental benefits of King Arthur Flour, and will continue to do so as a Vermont Benefit Corporation. King Arthur Flour has an **Overall B Score of 108**, while the Median Score is 80, this is out of all businesses that have completed the B Impact Assessment. King Arthur Flour has a **worker score in the top 10%** of all certified B Corporation on the B Impact Assessment.

Helen Phillips

From: Rep. Steve Thompson
Sent: Wednesday, March 18, 2015 5:04 PM
To: Helen Phillips
Subject: FW: In support of HB49 - Benefit Corporations

From: Scott Bell [mailto:scott.v.bell@gmail.com]
Sent: Tuesday, March 17, 2015 10:52 PM
To: Rep. Steve Thompson
Cc: Rep. Paul Seaton
Subject: In support of HB49 - Benefit Corporations

Dear Representative Thompson,

I encourage you to support passage of HB49 allowing businesses to incorporate as benefit corporations. This will allow Alaskans the option 26 other states, including Delaware, have to:

1. Give legal protection to directors and officers to consider the interests of all stakeholders, not just shareholders, when making decisions.
2. Create additional rights for shareholders to hold directors and officers accountable to consider these interests.

Thank you,
Scott Bell
PO Box 81795
Fairbanks, AK 99708

Specific Benefit Purposes in Our Bylaws

In 2011, in preparation for our conversion to a benefit corporation, Patagonia developed specific public benefit purposes to reflect our values and mission. These were adopted by our board of directors and shareholders for each of our US-based primary companies (Patagonia, Inc., Patagonia Works, Great Pacific Iron Works, Fletcher Chouinard Designs, Inc. and Patagonia Provisions, Inc.) and written into the articles of incorporation and bylaws for each company. They may not be changed or removed without unanimous shareholder approval. As a result, they govern each company's actions at the most fundamental level. Our specific benefit purposes as they appear in our articles and by-laws are as follows:

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Thank you,
Scott Bell
PO Box 81795
Fairbanks, AK 99708

26 States & Washington D.C.* have passed benefit corporation laws

- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Hawaii
- Illinois
- Louisiana
- Maryland
- Massachusetts
- Minnesota
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New York
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Utah
- Vermont
- Virginia
- *Washington D.C.
- West Virginia

15 States considering legislation

- Alaska
- Alabama
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Michigan
- Montana
- New Mexico
- North Dakota
- Oklahoma
- Ohio
- Wisconsin

*Compiled by the office of Representative Seaton
Source: BenefitCorp.net and Bcorporation.net*

Benefit Corporations (Over 350 benefit corporations have been incorporated- these are just a few)

<i>Benefit Corporations</i>	<i>Product or Service</i>
Dansko	Footwear
Ben & Jerry's	Ice cream
Patagonia, Inc.,	Outdoor apparel
Etsy	E-commerce platform
PlayLab	Training, curriculum and project kits for kids
Numi	Organic Tea
New Belgium Brewing Co, Inc.	Belgian Inspired Ales
W.S. Badger Co, Inc.	Body care, Badger Balm
King Arthur Flour Company	Baking ingredients and tools- America's oldest flour company
Klean Kanteen	Reusable food and beverage containers
Method Products	Home and personal care products
Mightybytes, Inc.	Web-based design, development and media services
Vermont Creamery	Fresh and aged cheese
Duggan Funeral Service	Full service funeral home
Direct Dental	Self-funded dental and vision plans for business
Andy Smith Photography	Photography
HomeCareAssociates	Home health care services
CAP Global	Napo pharmaceuticals
Always Cleaning Company, Inc.	Residential and office cleaning
Aspen Construction Services, Corp.	Construction services
Blessed Coffee	Premium, single origin coffee
Brain Forest	Branding firm
Crowded House Real Estate, Inc.	Real estate
Evil Twin Booking Agency	Entertainment and event agents
Lilypadsgs	Design, construction, and property management
Little Bean Sprout	New and used baby clothes
Turnstile Tours, Inc.	New York tours
Bike Index	Bicycle registration

*Compiled by Rep. Seaton
More benefit corporations listed at benefitcorp.net*

Legal FAQ's

For a more thorough discussion of the below and other questions regarding the need and rationale for benefit corporation legislation, please read *Clark, Vranka, et al, [Benefit Corporation White Paper](#)* . For additional summary information, please see the [For Directors](#) section of the site.

Why would a company want to become a benefit corporation?

- Provide clarity to its directors and officers that their fiduciary duty includes creation of public benefit and consideration of non-financial interests, even in liquidity/sale scenarios;
- Offer legal protection to its directors and officers to consider the interests of its workforce, its community, and the environment when making decisions, even in liquidity/sale scenarios;
- Help maintain the company's mission over time by 1) expanding shareholder rights to enforce this expanded definition of fiduciary duty and standard of consideration; and 2) requiring a 2/3 super-majority vote of shareholders to remove these higher standards; and 3) providing the opportunity to name and enforce pursuit of one or more specific public benefit purposes;
- Differentiate the company in a confusing marketplace in which everyone is claiming to be a responsible or green business;
- Demonstrate leadership by voluntarily electing to hold itself accountable to higher standards of corporate purpose, accountability, and transparency.

What are the legal impediments preventing businesses from operating this way?

The greatest impediments exist in liquidity scenarios.

- In any of the 19 states without a constituency statute, when a company is 'in play,' directors' discretion under the business judgment rule is narrowed as a result of the *Revlon* ruling in Delaware, requiring them to 'take the highest offer' regardless of the impact of that decision on non-financial interests.
- In any of the 31 states with a constituency statute, the lack of case law regarding those statutes leaves lawyers and the directors and officers they counsel with a lack of clarity about how a court would rule if directors made a decision based on broader considerations than just the highest offer.

Impediments also exist in operating scenarios.

- The best interests of the corporation are commonly equated with the financial interests of shareholders. Any decision by directors must be tied back to serving the financial interests of shareholders. This prevents directors from making decisions that consider both financial and non-financial interests.
- Despite the existence of the business judgment rule governing operating decisions, most directors and officers and many attorneys believe that their options are constrained to acting only in the financial interests of shareholders. The belief that 'the social responsibility of business is to increase profits' has been absorbed into U.S. corporate culture and impacts how decisions are made. What is perceived as a legal impediment is often just a cultural impediment. This impediment can be removed by creating a new corporate form explicitly required to take multiple interests into consideration when making decisions.

In states with a constituency statute, can't companies already do this?

- Constituency statutes are permissive and as a result directors 'may' consider non-financial interests. This also means that they 'may not'. The objective of benefit corporation legislation is to give shareholders the option to choose to require directors to consider non-financial interests.
- Constituency statutes have not achieved the other objectives of this legislation cited above.

Why not simply use LLCs to achieve these objectives?

- An LLC could currently amend its membership agreement to incorporate any of the benefit corporation provisions. However, because institutional investors prefer corporate structures over LLC's, any company with plans to raise outside capital or go public is better off with a corporate rather than an LLC structure.
- Incorporating benefit corporation provisions into an LLC operating agreement would not achieve the market differentiation or leadership objectives cited above.

Why require the creation of 'general public benefit' rather than simply require the creation of one or more 'specific public benefits'?

- Most importantly, the primary objective of this legislation is to create a new corporate form and through that a new class of corporations whose corporate purpose requires it to create benefit for society generally as well as shareholders.
- The 'general public benefit' purpose helps prevent abuse of this legislation by corporations interested in green-washing. Without the 'general public benefit' purpose, a corporation could name a single, narrow 'specific public benefit' purpose (e.g. keeping the river in back of the factory clean from toxic effluents) and then 'consider' and dismiss all other non-financial interests when making decisions, which would not meet the primary objective of this legislation to create a new corporate form whose corporate purpose requires it to create benefit for society generally.

This site is run as a public service by B Lab, a nonprofit whose mission is to use the power of business to solve social and environmental problems.

For information on B Lab's other initiatives, please visit www.bcorporation.net.

Legal Disclaimer: The information on this site does not constitute legal advice and is provided solely as a reference. Those interested in electing benefit corporation status should discuss with their legal advisors the potential risks and liabilities and specific processes associated with this for the company's circumstances and state of incorporation.

Source: <http://benefitcorp.net/legislators/legal-faqs>



Alaska Sustainable Fisheries Trust

February 2, 2015

Dear Members of the Alaska Legislature,

We support the passage of House Bill 49 and ask that you provide for its earliest passage. We believe that it will provide a mechanism that is especially important to sustaining local economies in our state. This would create ability in a for-profit venture, such as the Local Fish Fund, which is a related entity of the non-profit Alaska Sustainable Fisheries Trust, to place social priorities related to its mission alongside the necessity to produce benefits for shareholders.

In Alaska, which has more non-profit corporations *per capita* than any other state, a great deal of the vital work of social services and community development has, until now, been carried by non-profits. At the same time, the culture of giving is under-developed, and Alaska has a very low *per capita* rate of charitable contribution. Due to the present atrophy of state budget, many non-profits may be forced to drastically cut back or even cease operations.

In this respect, the ability of private corporations to attract and raise capital offers a model of sustainable operations. This can provide for necessary infrastructure and the means of delivery of services needed in communities. However, the mandate of for-profit business is to produce the greatest possible legal returns for the investment of shareholders.

This is not always compatible with the objectives of community development and the needs for services in communities. For example, the potential returns for the same activities carried out in different communities can vary widely, affecting the allocation of resources and the availability of services. In other cases, the immediate returns available

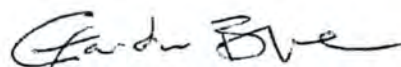
to shareholders from leveraged buyouts financed through debt have frequently affected the long-term local viability of business operations, resulting in higher customer prices, fewer available services, and reduced local payroll.

The directors of for-profit enterprise are compelled, in these and other examples, to choose for the maximization of profit over any social objectives which may be intrinsic to the mission of the company. These social objectives would be protected under the operation of a non-profit, but the capital to produce them is difficult to attract. The Benefit Corporation (B-Corp) model was developed and has been implemented in a number of states to provide for operations of business which are subject to the legal requirements (including tax) of any other for-profit enterprise, with three particular differences:

- Benefit corporations create a "safe harbor" for boards of directors who take interests other than profit into account when making decisions on the corporation's behalf.
- Benefit corporations are required to declare and demonstrate their commitment to an independent, third-party standard.
- Benefit corporations can be held accountable for abandoning their commitment to their stated public-benefit purposes.

Studies indicate that there are large pools of capital available for investment in socially-concerned companies. It is expected that qualified investors in Alaska will be particularly interested in the transparency of local B Corp investment vehicles. The attraction of local companies that can produce modest returns while providing important services for sustainability of local communities is enhanced by comparison to the lack of transparency inherent in many distant investment products.

We are grateful for your attention, and hopeful of your support,

A handwritten signature in black ink, appearing to read "Gordon Blue". The signature is fluid and cursive, with the first name "Gordon" and the last name "Blue" clearly distinguishable.

Gordon Blue, President

February 4, 2014

Representative Paul Seaton

State Capitol, Room 102

Juneau, AK 99801

Hi Representative Seaton,

I am writing to ask that you introduce a bill establishing Benefit Corporation status in Alaska. This important new corporate structure is designed to empower business minds to lead with goals that improve our world — rather than just focus on bottom line profits. My understanding is that 20 states have already approved B corp legislation and 16 other states have approval in the works.

The B corporation recognizes that business minds can devote their money making mentality and skill set to creating the world of which we dream.

Earth Friendly's own social justice mission brings a new business model into the specialty coffee industry. We work to empower the indigenous farmers to earn from 30-50% more of the specialty coffee dollar. At the same time, we work only with farmers who cultivate their exceptional coffee in the shade of the Rainforest using organic farming methods. (Consider that majority of coffee is grown full sun—on former Rainforest land that was slashed and burned.)

Thank you,

Diane E. Hughes, Founder

Earth Friendly Coffee

Toll Free: 1-866-807-6089