

HB

124

<TARGET><BILL>HB 124</BILL><SUBJECT>HB
124</SUBJECT><COMM>HL&C30</COMM></TARGET>

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 15, 2017

FURTHER REFERRALS: Finance

Date of Committee Action: 10 APR 2017

The LABOR AND COMMERCE Committee considered:

HB 124

HOUSE BILL NO. 124

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

HB 124 BENEFIT CORPORATIONS

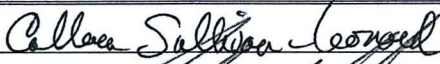

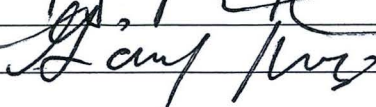

Recommends it be replaced with [] HCS or [] CS for HB124 (L+C)
For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ [] Same Title [] New Title

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev for Depts.:
ADM
AJS
CED
COR
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
1	CED	✓		

PREVIOUS FISCAL NOTES				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	SULLIVAN-LEONARD			X	
	Wool Josephson			X	
	BIRCH Knopp			X	
Chair: 	KITO	✓			
Chair:					



Representative Sam Kito

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Sponsor Statement

House Bill 124

Benefit Corporations

House Bill 124 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.

Thirty-one other states have passed benefit corporation legislation and 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.

House Bill 124 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 House Bill 124 is to give businesses more flexibility and control over their decisions and to provide investors with a clear social investment option.

Thank you for supporting House Bill 124.



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Explanation of Changes House Bill 124 Benefit Corporations Version A to Version D

Version D makes the following changes to HB 124:

- Standardizes the usage of “general public benefit.” It is a unitary concept, so it does not take an indefinite article. This change occurs on **page 5 (line 29)**, **page 9 (line 7)**, **page 9 (line 24)**, **page 10 (line 7)**, and **page 11 (line 2)**.
- Changes “reasonably” to “rationally” in keeping with model legislation. This change occurs on **page 6 (lines 9 and 11)** and **page 9 (lines 17 and 19)**.
- Removes “for a general public benefit purpose” to avoid redundancy on **page 15 (line 7)**.
- Deletes “purpose” in order to use the definitions of those terms in the definition section without tying them to the public benefit corporation’s requirements. This change occurs on **page 15 (line 11)**.
- Changes the effective date to July 1, 2018 on **page 17 (line 7)**.



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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.

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, rationally 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 10.60.730 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, 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).

CS FOR HOUSE BILL NO. 124(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KITO

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 10.06.633(a) is amended to read:

5 (a) A corporation may be dissolved involuntarily by the commissioner if

6 (1) the corporation is delinquent six months in filing its biennial report
7 or in paying its biennial corporation tax or a penalty;

8 (2) the corporation has failed for 30 days to appoint and maintain a
9 registered agent in the state;

10 (3) the corporation has failed for 30 days after change of its registered
11 office or registered agent to file in the office of the commissioner a statement of the
12 change;

13 (4) the corporation has failed for two years to complete dissolution
14 under a certificate of election under AS 10.06.608 to dissolve;

1 (5) a vacancy on the board of the corporation is not filled within six
2 months or the next annual meeting, whichever occurs first;

3 (6) a misrepresentation of material facts has been made in the
4 application, report, affidavit, or other document submitted under this chapter; [OR]

5 (7) the corporation is 90 days delinquent in filing notice of change of
6 an officer, director, alien affiliate, or five percent shareholder, as required by this
7 chapter; or

8 (8) the corporation, if a benefit corporation, is delinquent six
9 months or more in including its benefit report in its biennial report under
10 AS 10.60.570 or in paying the fee established under AS 10.60.570 for including
11 the benefit report in the biennial report; in this paragraph, "benefit corporation"
12 and "benefit report" have the meanings given in AS 10.60.990.

13 * Sec. 2. AS 10 is amended by adding a new chapter to read:

14 **Chapter 60. Benefit Corporations.**

15 **Article 1. Establishment and Termination.**

16 **Sec. 10.60.010. Establishment of benefit corporation.** A business
17 corporation may become a benefit corporation by

18 (1) including, at the time of the business corporation's organization
19 under AS 10.06 or AS 10.45, in the business corporation's articles of incorporation a
20 statement that the business corporation is a benefit corporation under this chapter; or

21 (2) amending its articles of incorporation to contain a statement that
22 the business corporation is a benefit corporation under this chapter; the amendment
23 shall be adopted by at least the minimum vote required under AS 10.60.700(a) for a
24 status change.

25 **Sec. 10.60.020. Approval where organic change.** If an entity that was formed
26 under the laws of this state is not a benefit corporation but is a party to a merger,
27 consolidation, conversion, or interest or share exchange under AS 10.06 or AS 10.55,
28 and the surviving, new, or resulting entity in the merger, consolidation, conversion, or
29 interest or share exchange is a benefit corporation, the domestic entity shall approve,
30 by at least the minimum vote required under AS 10.60.700(b) for a status change, the
31 plan of merger, consolidation, conversion, or interest or share exchange.

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Sec. 10.60.030. General public benefit purpose. (a) A benefit corporation shall have a purpose of creating general public benefit from the business and operations of the benefit corporation. That purpose is in addition to the benefit corporation's purpose under AS 10.06.005.

(b) The achievement of the general public benefit purpose under (a) of this section is determined after all of the effects of the business and operations of the benefit corporation are considered.

(c) The creation of general public benefit under (a) of this section is in the best interests of the benefit corporation.

Sec. 10.60.040. Specific public benefit purpose. (a) In addition to its general public benefit purpose, a benefit corporation may identify in its articles of incorporation one or more specific public benefit purposes.

(b) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit purpose. The benefit corporation shall adopt the amendment by at least the minimum vote required under AS 10.60.700(a) for a status change.

(c) The identification of a specific public benefit purpose under (a) of this section does not limit the benefit corporation's general public benefit purpose.

- (d) A benefit corporation may further a specific public benefit by
 - (1) providing low-income or underserved individuals, families, or communities with beneficial products, services, or educational opportunities;
 - (2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
 - (3) improving human health;
 - (4) promoting the arts, sciences, or advancement of knowledge;
 - (5) increasing the flow of capital to entities with a purpose to benefit the public; or
 - (6) conferring another type of benefit on people or their surroundings.

(e) Pursuing a specific public benefit identified under this section is in the best interests of the benefit corporation.

Sec. 10.60.050. Professional corporations. A professional corporation under

1 AS 10.45 that is a benefit corporation does not violate AS 10.45 by having a general
2 public benefit purpose or a specific public benefit purpose.

3 **Sec. 10.60.060. Termination of benefit corporation status.** (a) A benefit
4 corporation may terminate its status as a benefit corporation and cease to be subject to
5 this chapter by amending its articles of incorporation to delete the statement required
6 by AS 10.60.010 to be in the articles of incorporation. The benefit corporation shall
7 adopt the amendment by at least the minimum vote required under AS 10.60.700(a)
8 for a status change.

9 (b) If a benefit corporation is a party to merger, consolidation, conversion, or
10 interest or share exchange that would have the effect of terminating the status of a
11 benefit corporation, the benefit corporation shall approve, by at least the minimum
12 vote required under AS 10.60.700(a) for a status change, the plan of merger,
13 consolidation, conversion, or interest or share exchange.

14 **Sec. 10.60.070. Disposition of assets.** If a benefit corporation transacts a sale,
15 lease, exchange, or other disposition of all or substantially all of the assets of the
16 benefit corporation, unless the transaction is in the usual and regular course of
17 business, the benefit corporation shall approve the sale, lease, exchange, or other
18 disposition of all or substantially all of the assets of the benefit corporation by at least
19 the minimum vote required under AS 10.60.700(a) for a status change.

20 **Article 2. Directors.**

21 **Sec. 10.60.100. Standard of conduct for directors.** In discharging their duties
22 and in considering the best interests of a benefit corporation, the board of directors,
23 committees of the board, and individual directors of the benefit corporation

24 (1) shall consider the effects of an action or inaction on

25 (A) the shareholders of the benefit corporation;

26 (B) the employees and workforce of the benefit corporation, its
27 subsidiaries, and its suppliers;

28 (C) the interests of customers to the extent they are
29 beneficiaries of the general public benefit purpose or specific public benefit
30 purpose of the benefit corporation;

31 (D) community and societal factors, including the interests of

1 each community in which offices or facilities of the benefit corporation, its
2 subsidiaries, or its suppliers are located;

3 (E) local and global health;

4 (F) the short-term and long-term interests of the benefit
5 corporation, including benefits that may accrue to the benefit corporation from
6 its long-term plans and the possibility that those interests may be best served
7 by the continued independence of the benefit corporation; and

8 (G) the ability of the benefit corporation to accomplish its
9 general public benefit purpose and specific public benefit purpose, if any;

10 (2) may consider

11 (A) the resources, intent, and conduct of a person seeking to
12 acquire control of the benefit corporation; and

13 (B) other pertinent factors or the interests of other groups the
14 directors consider appropriate;

15 (3) are not required to give priority to a particular interest or factor
16 referred to in (1) or (2) of this section over another interest or factor unless the benefit
17 corporation has stated in its articles of incorporation its intention to give priority to
18 certain interests or factors related to its accomplishment of its general public benefit
19 purpose or of a specific public benefit purpose identified in its articles.

20 **Sec. 10.60.110. Coordination with other corporate board requirements.**

21 The consideration of interests and factors in the manner required by AS 10.60.100
22 does not constitute a violation of AS 10.06.450.

23 **Sec. 10.60.120. Exoneration from personal liability.** Except as provided in
24 the articles of incorporation, a director is not personally liable for monetary damages
25 for

26 (1) an action or inaction in the course of performing the duties of a
27 director under AS 10.60.100 if the director performed the duties of office in
28 compliance with AS 10.06.450 and AS 10.60.100 - 10.60.140; or

29 (2) a failure of the benefit corporation to pursue or create general
30 public benefit or a specific public benefit.

31 **Sec. 10.60.130. No duty to beneficiary.** A director of a benefit corporation

1 does not have a duty arising from the person's status as a beneficiary to a person who
2 is a beneficiary of the general public benefit purpose or a specific public benefit
3 purpose of the benefit corporation.

4 **Sec. 10.60.140. Business judgment.** (a) A director of a benefit corporation
5 who makes a business judgment in good faith fulfills the duty under AS 10.60.100 -
6 10.60.140 if the director

7 (1) is disinterested in the subject of the business judgment;

8 (2) is informed with respect to the subject of the business judgment to
9 the extent the director rationally believes to be appropriate under the circumstances;
10 and

11 (3) rationally believes that the business judgment is in the best interests
12 of the benefit corporation; in this paragraph, "best interests" includes the creation of
13 general public benefit and any specific public benefit.

14 (b) When making a determination under (a) of this section, the director shall
15 consider the interests and factors listed in AS 10.60.100.

16 **Article 3. Benefit Director.**

17 **Sec. 10.60.150. Benefit director.** The board of directors of a benefit
18 corporation may include a director who

19 (1) is designated the benefit director; and

20 (2) has, in addition to the powers, duties, rights, and immunities of the
21 other directors of the benefit corporation, the powers, duties, rights, and immunities
22 provided in AS 10.60.150 - 10.60.220.

23 **Sec. 10.60.160. Election of benefit director.** The board of directors shall elect
24 and may remove the benefit director in the manner provided by AS 10.06.453 -
25 10.06.463.

26 **Sec. 10.60.170. Qualifications of benefit director.** (a) The benefit director of
27 a benefit corporation, except as provided in AS 10.60.210, shall be an individual who
28 does not have a material relationship under AS 10.60.220 with the benefit corporation
29 or a subsidiary of the benefit corporation. The benefit director may serve as the benefit
30 officer at the same time as serving as the benefit director. The articles of incorporation
31 or bylaws of a benefit corporation may prescribe additional qualifications of the

1 benefit director not inconsistent with this subsection.

2 (b) Serving as benefit director of a benefit corporation does not establish that
3 an individual has a material relationship with the benefit corporation or a subsidiary of
4 the benefit corporation.

5 **Sec. 10.60.180. Compliance statement.** The benefit director shall prepare, and
6 the benefit corporation shall include in the benefit report to shareholders required by
7 AS 10.60.500,

8 (1) the opinion of the benefit director on whether the benefit
9 corporation acted in accordance with its general public benefit purpose and any
10 specific public benefit purpose in all material respects during the period covered by
11 the report;

12 (2) the opinion of the benefit director on whether the directors and
13 officers complied with AS 10.60.100 and 10.60.230 during the period covered by the
14 report; and

15 (3) if the benefit director believes the benefit corporation or its
16 directors or officers failed to act or comply in the manner described in (1) or (2) of this
17 section, a description of the ways in which the benefit corporation or its directors or
18 officers failed to act or comply.

19 **Sec. 10.60.190. Status of actions.** The action or inaction of a benefit director
20 in the capacity of a benefit director constitutes for all purposes an action or inaction of
21 that individual in the capacity of a director of the benefit corporation.

22 **Sec. 10.60.200. Exoneration from personal liability.** Regardless of whether
23 the articles of incorporation of a benefit corporation include a provision eliminating or
24 limiting the personal liability of directors under AS 10.06.210, a benefit director is not
25 personally liable for an action or omission when done in the capacity of a benefit
26 director unless the action or omission constitutes self-dealing, willful misconduct, or a
27 knowing violation of law.

28 **Sec. 10.60.210. Professional corporations.** The benefit director of a benefit
29 corporation that is a professional corporation under AS 10.45 is not prohibited from
30 having a material relationship under AS 10.60.220 with the benefit corporation or a
31 subsidiary of the benefit corporation.

1 **Sec. 10.60.220. Material relationship.** When determining under
2 AS 10.60.170 whether a benefit director of a benefit corporation has a material
3 relationship with the benefit corporation or a subsidiary of the benefit corporation, a
4 material relationship is conclusively presumed to exist if

5 (1) the individual is, or has been within the last three years, an
6 employee other than a benefit officer of the benefit corporation or a subsidiary;

7 (2) an immediate family member of the individual is, or has been
8 within the last three years, an executive officer other than a benefit officer of the
9 benefit corporation or a subsidiary;

10 (3) there is beneficial or record ownership of five percent or more of
11 the outstanding shares of the benefit corporation, calculated as if all outstanding rights
12 to acquire equity interests in the benefit corporation had been exercised, by

13 (A) the individual; or

14 (B) an entity

15 (i) of which the individual is a director, an officer, or a
16 manager; or

17 (ii) in which the individual owns beneficially or of
18 record five percent or more of the outstanding equity interests,
19 calculated as if all outstanding rights to acquire equity interests in the
20 entity had been exercised.

21 **Article 4. Officers.**

22 **Sec. 10.60.230. Standard of conduct for officers.** An officer of a benefit
23 corporation shall consider the interests and factors under AS 10.60.100 if the officer

24 (1) has discretion to act with respect to a matter; and

25 (2) reasonably believes that the matter identified under (1) of this
26 section may have a material effect on the creation by the benefit corporation of general
27 public benefit or a specific public benefit identified in the articles of incorporation of
28 the benefit corporation.

29 **Sec. 10.60.240. Coordination with other corporate officer requirements.**
30 The consideration of interests and factors under AS 10.60.230 by an officer of a
31 benefit corporation does not constitute a violation of AS 10.06.483.

1 **Sec. 10.60.250. Exoneration from personal liability.** Except as provided in
2 the articles of incorporation, an officer of a benefit corporation is not personally liable
3 for monetary damages for

4 (1) an action or inaction as an officer in the course of performing the
5 duties of an officer under AS 10.60.230 - 10.60.270 if the officer performs the duties
6 of the position in compliance with AS 10.06.483 and this section; or

7 (2) a failure of the benefit corporation to pursue or create general
8 public benefit or a specific public benefit.

9 **Sec. 10.60.260. No duty to beneficiary.** An officer of a benefit corporation
10 does not have a duty arising from the person's status as a beneficiary to a person who
11 is a beneficiary of the general public benefit purpose or a specific public benefit
12 purpose of the benefit corporation.

13 **Sec. 10.60.270. Business judgment.** An officer who makes a business
14 judgment in good faith fulfills the duty under AS 10.60.230 - 10.60.270 if the officer

15 (1) is disinterested in the subject of the business judgment;

16 (2) is informed with respect to the subject of the business judgment to
17 the extent the officer rationally believes to be appropriate under the circumstances;
18 and

19 (3) rationally believes that the business judgment is in the best interests
20 of the benefit corporation; in this paragraph, "best interests" includes the creation of
21 general public benefit and any specific public benefit.

22 **Sec. 10.60.280. Benefit officer.** A benefit corporation may designate an officer
23 as the benefit officer of the benefit corporation. A benefit officer has the powers and
24 duties of the benefit corporation that relate to the creation of general public benefit and
25 a specific public benefit, as the powers and duties are provided in the bylaws, or,
26 absent controlling provisions in the bylaws, by resolutions or orders of the board of
27 directors. A benefit officer shall prepare the benefit report required by AS 10.60.500.

28 **Article 5. Actions and Claims.**

29 **Sec. 10.60.300. Actions and claims.** Unless another provision of this chapter
30 limits liability, a person identified under AS 10.60.320 may bring an action or assert a
31 claim against a benefit corporation or its directors or officers with respect to

- 1 (1) a failure to pursue or create general public benefit or a specific
- 2 public benefit set out in its articles of incorporation; or
- 3 (2) a violation of an obligation, duty, or standard of conduct under this
- 4 chapter.

Sec. 10.60.310. Limitation on liability of benefit corporation.

Notwithstanding AS 10.60.300, a benefit corporation is not liable for monetary damages under this chapter for a failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

Sec. 10.60.320. Right to bring action. (a) An action under AS 10.60.300 may be commenced or maintained only

- 11 (1) directly by the benefit corporation; or
- 12 (2) derivatively under AS 10.06.435 by

13 (A) a person or group of persons that owned beneficially or of
14 record at least two percent of the total number of the shares of the benefit
15 corporation of a class or series outstanding at the time of the act or omission
16 complained of;

17 (B) a director of the benefit corporation;

18 (C) a person or group of persons who owned beneficially or of
19 record five percent or more of the outstanding equity interests in a person of
20 which the benefit corporation is a subsidiary at the time of the act or omission
21 complained of; or

22 (D) another person specified in the articles of incorporation or
23 bylaws of the benefit corporation.

24 (b) In this section, a person is the beneficial owner of shares or equity interests
25 if the shares or equity interests are held in a voting trust or by a nominee on behalf of
26 the person.

Article 6. Reporting.

28 **Sec. 10.60.500. Benefit report.** As part of the biennial report required by
29 AS 10.06.805, a benefit corporation shall prepare a biennial benefit report.

30 **Sec. 10.60.510. Contents of report.** The benefit report required by
31 AS 10.60.500 must contain, for the period covered by the benefit report,

1 (1) a description of

2 (A) the ways in which the benefit corporation pursued general
3 public benefit and the extent to which the benefit corporation created general
4 public benefit;

5 (B) the ways in which the benefit corporation pursued each
6 specific public benefit identified in the articles of incorporation and the extent
7 to which the benefit corporation created the specific public benefit;

8 (C) any circumstances that have hindered the creation by the
9 benefit corporation of general public benefit or specific public benefit;

10 (D) the process and rationale for selecting or changing the
11 third-party standard used to prepare the benefit report;

12 (2) an assessment of the overall performance of the general public
13 benefit purpose by the benefit corporation against a third-party standard

14 (A) applied consistently with any application of that standard in
15 prior benefit reports; or

16 (B) accompanied by an explanation of the reasons for

17 (i) any inconsistent application; or

18 (ii) the change to that standard from the one used in the
19 immediately prior report;

20 (3) the name of the benefit director, if any, and the benefit officer, if
21 any, and the address to which correspondence to each of them may be directed;

22 (4) the compensation paid by the benefit corporation to each director in
23 the capacity of a director;

24 (5) the statement of the benefit director described in AS 10.60.180; and

25 (6) a statement of any connection between the organization that
26 established the third-party standard or its directors, officers, or any holder of five
27 percent or more of the governance interests in the organization and the benefit
28 corporation or its directors, officers, or any holder of five percent or more of the
29 outstanding shares of the benefit corporation, including any financial or governance
30 relationship that might materially affect the credibility of the use of the third-party
31 standard.

1 **Sec. 10.60.520. Correspondence relating to change of benefit director.** If,
2 during the period covered by a benefit report, a benefit director resigned from or
3 refused to stand for reelection to the position of benefit director, or was removed from
4 the position of benefit director, and the benefit director furnished the benefit
5 corporation with written correspondence concerning the circumstances surrounding
6 the resignation, refusal, or removal, the benefit report must include that
7 correspondence as an exhibit.

8 **Sec. 10.60.530. Audit not required.** A benefit corporation is not required to
9 have the benefit report, including the assessment of the performance of the benefit
10 corporation in the benefit report required by AS 10.60.510(2), audited or certified by a
11 person without a connection to the benefit corporation.

12 **Sec. 10.60.540. Delivery of benefit report to shareholders.** A benefit
13 corporation shall send its benefit report to each shareholder not later than the date that
14 is 120 days after the end of the period covered by the benefit report.

15 **Sec. 10.60.550. Internet website posting.** If a benefit corporation has an
16 Internet website, the benefit corporation shall post all of its benefit reports on the
17 public portion of the website. The benefit corporation may omit from the benefit
18 reports posted on the website the compensation paid to directors and financial or
19 proprietary information included in the benefit report.

20 **Sec. 10.60.560. Availability of copies of benefit report.** If a benefit
21 corporation does not have an Internet website, the benefit corporation shall provide a
22 copy of its most recent benefit report, without charge, to any person who requests a
23 copy, but the benefit corporation may omit the compensation paid to directors and
24 financial or proprietary information included in the benefit report from the copy of the
25 benefit report provided to the person.

26 **Sec. 10.60.570. Filing of report; delinquency.** (a) A benefit corporation shall
27 include its benefit report in the biennial report that it files under AS 10.06.805, but the
28 benefit corporation may omit the compensation paid to directors and financial or
29 proprietary information included in the benefit report from the benefit report included
30 in the biennial report. The department shall charge a fee established by the department
31 for including the benefit report in the biennial report of the benefit corporation.

1 (b) If a benefit corporation is delinquent six months or more in including its
 2 benefit report in its biennial report under AS 10.60.570 or in paying the fee established
 3 under this section for including the benefit report in the biennial report, the
 4 delinquency constitutes a basis for involuntary dissolution of the benefit corporation
 5 under AS 10.06.633.

6 (c) A benefit corporation may submit its benefit report to the department
 7 electronically. The department may file in paper form, rather than electronic form, the
 8 benefit report portion of a biennial report filed with the department.

9 **Article 7. Miscellaneous Provisions.**

10 **Sec. 10.60.700. Status change approval.** (a) In addition to any other approval
 11 or vote required for the status change, to accomplish a status change of a benefit
 12 corporation,

13 (1) the benefit corporation shall allow all of the shareholders of each
 14 class or series to vote as a separate voting group on the status change, regardless of a
 15 limitation stated in the articles of incorporation or bylaws on the voting rights of a
 16 class or series; and

17 (2) in each class or series, at least two-thirds of all votes that the
 18 shareholders of that class or series are entitled to cast under (1) of this subsection on
 19 the status change must approve the status change.

20 (b) In addition to any other approval, vote, or consent required for the status
 21 change, to accomplish a status change of a domestic entity other than a business
 22 corporation,

23 (1) the domestic entity shall allow all of the equity holders to vote on
 24 or consent to the status change regardless of any otherwise applicable limitation on the
 25 voting or consent rights of a class or series of equity interests; and

26 (2) in each class or series of equity interest, at least two-thirds of all of
 27 the votes that the equity holders of that class or series are entitled to cast under (1) of
 28 this subsection must approve the status change.

29 (c) In (b) of this section, "equity holder" means a person who holds any class
 30 or series of equity interest in a domestic entity if the person is entitled to receive a
 31 distribution of any kind arising out of the equity interest.

1 **Sec. 10.60.710. Shareholder dissent.** In addition to the corporate actions to
2 which a shareholder may dissent under AS 10.06.574(a), a shareholder of a business
3 corporation may dissent under AS 10.06.574 - 10.06.582 if the business corporation
4 amends its articles under AS 10.60.010(2) to become a benefit corporation.

5 **Sec. 10.60.720. Third-party standard.** In this chapter, whenever a third-party
6 standard is used, the standard refers to a recognized standard for defining, reporting,
7 and assessing corporate performance

8 (1) that is comprehensive because it assesses the effect of the benefit
9 corporation and its operations on the interests listed in AS 10.60.100(1)(B) - (E);

10 (2) that is developed by a person that is not controlled by the benefit
11 corporation;

12 (3) that is credible because it is developed by a person that

13 (A) has access to the expertise necessary to assess overall
14 corporate performance; and

15 (B) uses an approach, including a reasonable public comment
16 period, to develop the standard that is balanced and considers multiple
17 concerns and interests;

18 (4) for which the following information about the standard is publicly
19 available:

20 (A) the criteria considered when measuring the overall
21 performance of a business;

22 (B) the relative weightings, if any, of the criteria in (A) of this
23 paragraph;

24 (5) for which the following information about the development and
25 revision of the standard is publicly available:

26 (A) the identity of the directors, officers, material owners, and
27 governing body of the entity that developed and controls revisions to the
28 standard;

29 (B) the process by which revisions to the standard and changes
30 to the membership of the governing body are made;

31 (C) an accounting of the revenue and sources of financial

1 support for the entity, with sufficient detail to disclose any relationships that
2 could reasonably be considered to present a potential conflict of interest.

3 **Sec. 10.60.730. Tax exemptions.** A benefit corporation may not claim a tax
4 exemption under AS 43.20 (Alaska Net Income Tax Act) if the tax exemption is not
5 also available to corporations that are not benefit corporations.

6 **Sec. 10.60.740. Interpretation.** The authorization under AS 10.60.010 to form
7 a benefit corporation and the authorization under AS 10.60.040 for a benefit
8 corporation to identify a specific public benefit purpose may not be interpreted to
9 prevent a business entity that is formed under another law of this state from including
10 in its general powers the consideration of, or donation to, the general public benefit or
11 a specific public benefit.

12 **Article 8. General Provisions.**

13 **Sec. 10.60.910. Regulations.** The department may adopt regulations under
14 AS 44.62 (Administrative Procedure Act) to implement this chapter.

15 **Sec. 10.60.920. Application to business corporations generally.** The
16 existence of a provision of this chapter does not, by itself, suggest that a contrary or
17 different rule of law applies to a business corporation that is not a benefit corporation.
18 This chapter does not affect a statute or other law that applies to a business corporation
19 that is not a benefit corporation.

20 **Sec. 10.60.930. Applicable laws.** Except as otherwise provided in this chapter,
21 AS 10.06 applies to a benefit corporation. A benefit corporation may be
22 simultaneously subject to this chapter and AS 10.45. The provisions of AS 10.06 and
23 AS 10.45 are subject to this chapter.

24 **Sec. 10.60.940. Consistency with chapter.** A provision of the articles of
25 incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or
26 supersede a provision of this chapter.

27 **Sec. 10.60.990. Definitions.** In this chapter,

28 (1) "benefit corporation" means a business corporation that elects
29 under AS 10.60.010 to become subject to this chapter;

30 (2) "benefit director" means the director designated as the benefit
31 director of a benefit corporation under AS 10.60.150;

1 (3) "benefit officer" means the individual designated as the benefit
2 officer of a benefit corporation under AS 10.60.280;

3 (4) "benefit report" means the benefit report required by AS 10.60.500;

4 (5) "business corporation" means a corporation organized under
5 AS 10.06 or AS 10.45;

6 (6) "department" means the Department of Commerce, Community,
7 and Economic Development;

8 (7) "general public benefit" means a material positive effect on people
9 and their surroundings, taken as a whole, assessed against a third-party standard;

10 (8) "general public benefit purpose" means the public benefit purpose
11 under AS 10.60.030;

12 (9) "specific public benefit" means a benefit that serves a public
13 welfare, religious, charitable, scientific, literary, or educational purpose, or another
14 purpose beyond the strict interest of the shareholders of the benefit corporation;

15 (10) "specific public benefit purpose" means a specific public benefit
16 purpose that is identified as a public benefit purpose by a benefit corporation under
17 AS 10.60.040(a) or (b);

18 (11) "status change" means

19 (A) an amendment of the articles of incorporation of a business
20 corporation under AS 10.60.010(2);

21 (B) the approval of a plan of merger, consolidation, conversion,
22 or interest or share exchange under AS 10.60.020;

23 (C) an amendment of the articles of incorporation of a benefit
24 corporation under AS 10.60.040(b);

25 (D) the termination of benefit corporation status under
26 AS 10.60.060; or

27 (E) a disposition of assets under AS 10.60.070;

28 (12) "subsidiary" means an entity in which a person owns beneficially
29 or of record 50 percent or more of the outstanding equity interests calculated as if all
30 outstanding rights to acquire equity interests in the entity had been exercised.

31 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
3 Economic Development may adopt regulations necessary to implement this Act. The
4 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
5 2018.

6 * **Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

7 * **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect July 1, 2018.



Representative Sam Kito

Alaska State Legislature

House District 33

Downtown Juneau
Douglas
Haines
Klukwan
Skagway
Gustavus
Excursion Inlet

Chair
House Labor & Commerce

Chair
Legislative Council

Member
House Health &
Social Services

Member
House Rules

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Sectional Analysis House Bill 124

“An Act relating to new defined benefit tiers in the public employees' retirement system and the teachers' retirement system; providing certain employees an opportunity to choose between the defined benefit and defined contribution plans of the public employees' retirement system and the teachers' retirement system; 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.

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 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 10.60.730 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, 2017.

Section 4 Implements Section 3 immediately.

Section 5 Provides an effective date of July 1, 2017 for this Act except for Section 4 (above).

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 124
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB124-DCCED-CBPL-03-24-17
Title: BENEFIT CORPORATIONS
Sponsor: KITO
Requester: (H) Labor & Commerce

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)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
Personal Services							
Travel							
Services	27.4						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	27.4	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1005 GF/Prgm (DGF)	27.4						
Total	27.4	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) 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? 07/01/18

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Janey Hovenden, Director</u>	Phone: (907)465-2538
Division: <u>Corporations, Business and Professional Licensing</u>	Date: 03/24/2017 11:30 AM
Approved By: <u>Catherine Reardon, Director</u>	Date: 03/24/17
Agency: <u>Division of Administrative Services, DCCED</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 124

Analysis

HB 124 adds a new chapter, Chapter 60, Benefit Corporations, which will allow a new or existing domestic (Alaskan) business corporation (organized under AS 10.06) or domestic professional corporation (organized under AS 10.45) to become a benefit corporation at creation or through an amendment.

A domestic benefit corporation, in addition to any lawful purpose under AS 10.06 or AS 10.45, must have a purpose of creating general public benefit from the business and operations of a benefit corporation. A general public benefit means a material positive effect on people and their surroundings which is assessed against a third-party standard.

A domestic benefit corporation may also identify one or more specific public benefit purpose, meaning a specific purpose which serves a public welfare, religious, charitable, scientific, literary, educational, or other purpose beyond the strict interest of the shareholder of the domestic benefit corporation.

HB 124 requires a domestic benefit corporation to file a benefit report as part of its biennial report and 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.

The Corporation Section database will need modification to create a new entity indicator, new types of officials, and a new reporting requirement. This will require a program system change to the corporations database. A regulations project will be necessary to adopt regulations for the newly created Chapter 60, Benefit Corporations, and to amend AS 10.06.633.

This bill only provides for domestic (Alaskan) benefit corporations. It does not provide for the state to accept or recognize a foreign (non-Alaskan) benefit corporation. Foreign benefit corporations would file in Alaska as a foreign business corporation and their home state would regulate the "benefit" element.

If the bill passes the following expenses will be incurred:

Services: \$16.9 (legal costs to amend regulations, printing, and postage in the first year)
 \$10.5 (information technology services for system change)

Business licensing fees at CBPL are funded by General Fund/Program Receipts fund source 1005 GF/Prgm (DGF). Business licensing fees are set per AS 43.70, revenue in excess of authorized budgeted expenses reverts to the State of Alaska general fund.



March 31, 2017

Honorable Representative Sam Kito
Chair, House Labor & Commerce
Alaska State Capital 403
120 4th St
Juneau, AK 99801
907-465-4766

Dear Honorable Representative Kito,

I am writing you today on behalf of the company that I founded, Arctic Solar Ventures, in support of House Bill 124 *"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."* Of which authorizes the creation of "benefit corporation" designation into Alaska statute.

Arctic Solar Ventures is a residential and commercial solar design and installation company, headquartered in Anchorage, and the second Certified B Corporation in Alaska. Certified B Corporations are the compendium piece to benefit corporations and they are uniquely intertwined by design.

Within our roll in leading socially responsible business in Alaska we plan on becoming Alaska's first benefit corporation after the passage of this legislation. This is uniquely critical to the DNA of our business and presents many other businesses the opportunity to codify their commitment to society and the environment. Differentiating businesses within our community and in the global community at-large sends a clear message that Alaska is a leading place for socially responsible businesses to form and thrive. Profit, societal benefit, and environmental stewardship can powerfully coexist within business.

We hope that you, the House, and the Senate will fully support the enabling of Alaskan businesses to fully commit themselves toward making the world a better place. Thank you for supporting this critical legislative action that will enable positive change for the future of Alaska.

Best Regards,

A handwritten signature in black ink, appearing to read 'Stephen Trimble', with a long, sweeping underline.

Stephen Trimble, Founder & CEO
Arctic Solar Ventures Corporation



Alaska Sustainable Fisheries Trust

March 27, 2017

Dear Members of the Alaska Legislature,

We support the passage of House Bill 124 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.

Thank you for your attention and support,



Linda Behnken,
ASFT Board