

House Bill 2318

Sponsored by Representative BUCKLEY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits creation of, or conversion of other business entity into, benefit corporation for purpose of providing general public benefit or specific public benefit in addition to other corporate purposes. Specifies approval requirements from holders of equity interests in benefit corporation. Specifies nature of general and specific public benefits. Prescribes requirements for and duties of benefit director and benefit officer and specifies limits on benefit director's and benefit officer's liability. Requires annual benefit report.

Specifies requirements for objective standard against which benefit corporation measures whether benefit corporation provided general public benefit and any required specific public benefit.

A BILL FOR AN ACT

1
2 Relating to benefit corporations.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 13 of this 2013 Act are added to and made a part of ORS**
5 **chapter 60.**

6 **SECTION 2. As used in sections 2 to 13 of this 2013 Act:**

7 (1) **"Benefit corporation" means a corporation that is incorporated, formed or created**
8 **under the provisions of section 4 of this 2013 Act.**

9 (2) **"Benefit director" means an individual who is elected as the benefit director of a**
10 **benefit corporation under section 8 of this 2013 Act.**

11 (3) **"Benefit officer" means an individual who is designated as the benefit officer of a**
12 **benefit corporation under section 10 of this 2013 Act.**

13 (4) **"General public benefit" means an aggregate improvement in the material condition**
14 **of society and in the natural environment that, when measured against an objective standard**
15 **of the type described in section 13 of this 2013 Act, can be shown to have resulted from the**
16 **operations of a benefit corporation.**

17 (5) **"Specific public benefit" means:**

18 (a) **Providing beneficial products or services to low-income or underserved individuals or**
19 **communities;**

20 (b) **Providing individuals or communities with economic opportunities other than em-**
21 **ployment with the benefit corporation;**

22 (c) **Preserving the natural environment;**

23 (d) **Improving human health;**

24 (e) **Promoting the arts, science or the advancement of knowledge;**

25 (f) **Providing or enabling another person to provide capital to an entity that provides a**
26 **general or specific public benefit; or**

27 (g) **Providing any other specific and measurable benefit to society or the natural envi-**
28 **ronment.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (6) “Subsidiary” means an entity, the outstanding equity interests of which a person
 2 owns in an amount equivalent to or greater than 50 percent of the equity interests that have
 3 been exercised, presuming for the purposes of this definition that all rights to acquire equity
 4 interests in the entity have been exercised.

5 **SECTION 3.** (1) Except as otherwise provided in sections 2 to 13 of this 2013 Act, this
 6 chapter applies to a corporation that states in the corporation’s articles of incorporation or
 7 articles of conversion that the corporation is subject to sections 2 to 13 of this 2013 Act and
 8 to a corporation that elects to become a benefit corporation under section 4 of this 2013 Act.

9 (2) To the extent that a provision of sections 2 to 13 of this 2013 Act conflicts with an-
 10 other provision of this chapter, a specific provision of sections 2 to 13 of this 2013 Act con-
 11 trols over a general provision of this chapter.

12 (3) The provisions of sections 2 to 13 of this 2013 Act do not apply to a corporation that
 13 is not a benefit corporation.

14 **SECTION 4.** (1) Notwithstanding ORS 60.074 (2), a corporation incorporated under this
 15 chapter is a benefit corporation under sections 2 to 13 of this 2013 Act if the corporation’s
 16 articles of incorporation state that the corporation is a benefit corporation subject to
 17 sections 2 to 13 of this 2013 Act.

18 (2) A corporation that is incorporated under this chapter may become a benefit corpo-
 19 ration by amending the corporation’s articles of incorporation to state, in addition to the
 20 requirements set forth in ORS 60.047, that the corporation is a benefit corporation subject
 21 to sections 2 to 13 of this 2013 Act. The amendment to the articles of incorporation must
 22 be approved as provided in section 5 of this 2013 Act.

23 (3) A benefit corporation may be formed by means of a conversion if articles of conver-
 24 sion that state that the converted entity will be a benefit corporation that is subject to
 25 sections 2 to 13 of this 2013 Act are approved as provided in section 5 of this 2013 Act.

26 (4) An entity that is not a benefit corporation may become a benefit corporation by
 27 merging or exchanging shares with a benefit corporation if the shareholders or holders of
 28 equity interests of the entity that is not the benefit corporation approve, as provided in
 29 section 5 of this 2013 Act, a plan of merger or a plan for share exchange with a benefit cor-
 30 poration under which the surviving entity will be a benefit corporation.

31 (5) A benefit corporation may become an entity other than a benefit corporation only if
 32 an action to remove the provision in the articles of incorporation or in the articles of con-
 33 version that states that the entity is a benefit corporation subject to sections 2 to 13 of this
 34 2013 Act is approved as provided in section 5 of this 2013 Act.

35 (6)(a) A plan for a benefit corporation must be approved as provided in section 5 of this
 36 2013 Act if the plan would:

37 (A) Merge the benefit corporation with an entity that is not a benefit corporation, if the
 38 surviving entity would not be a benefit corporation;

39 (B) Provide for exchanging shares with an entity that is not a benefit corporation, if the
 40 share exchange would create an entity that is not a benefit corporation;

41 (C) Convert the benefit corporation to an entity that is not a benefit corporation; or

42 (D) Otherwise cause the provisions of sections 2 to 13 of this 2013 Act not to apply to the
 43 benefit corporation.

44 (b) A sale, lease, exchange or other disposition of all or substantially all of a benefit
 45 corporation’s assets must be approved as provided in section 5 of this 2013 Act unless the

1 benefit corporation conducts the sale, lease, exchange or other disposition in the ordinary
 2 course of the benefit corporation's business.

3 (7) A provision of a benefit corporation's articles of incorporation, articles of conversion
 4 or plan described under subsection (6) of this section may be inconsistent with or supersede
 5 a provision of sections 2 to 13 of this 2013 Act only to the extent that the provision in the
 6 articles of incorporation, articles of conversion or plan imposes a more stringent require-
 7 ment on the benefit corporation, in keeping with the purposes set forth in sections 2 to 13
 8 of this 2013 Act, than a provision of sections 2 to 13 of this 2013 Act imposes.

9 **SECTION 5.** An approval of an action described in section 4 (2) to (6) or 6 of this 2013
 10 Act is effective only if, in addition to any other applicable requirements:

11 (1)(a) The shareholders of every class or series of shares of a corporation are entitled to
 12 vote on the action regardless of a provision in the corporation's articles of incorporation or
 13 bylaws that limits voting participation for a class or series of shares.

14 (b) At least two-thirds of the shares of each class or series of shares that are entitled
 15 to vote on the action are voted to approve the action.

16 (2)(a) The holders of every class or series of equity interest that is entitled to receive a
 17 distribution of any kind from an entity that is not a corporation are entitled to vote on or
 18 consent to the action regardless of an otherwise applicable limitation on voting participation
 19 for, or consent required from, a class or series of equity interest.

20 (b) The holders of at least two-thirds of the equity interests that are entitled to receive
 21 a distribution from the entity, and are entitled to vote on or consent to the action, approve
 22 the action.

23 **SECTION 6.** (1) In addition to the purpose set forth in ORS 60.074 (1), a benefit corpo-
 24 ration has the purpose of providing a general public benefit.

25 (2)(a) The articles of incorporation for a benefit corporation may identify a specific pur-
 26 pose for the benefit corporation in addition to the purposes described in subsection (1) of this
 27 section. A benefit corporation's identification of a specific purpose does not limit the benefit
 28 corporation's obligation to fulfill the purposes described in subsection (1) of this section.

29 (b) The benefit corporation also may amend the articles of incorporation to add, amend
 30 or remove a specific public benefit. The amendment to the articles of incorporation must
 31 be approved as provided in section 5 of this 2013 Act.

32 (3) Notwithstanding the requirement in ORS 58.076 that a professional corporation have
 33 rendering professional service as the professional corporation's sole purpose, a professional
 34 corporation that is a benefit corporation shall have the purposes set forth in ORS 58.076 and
 35 the purpose of providing a general public benefit and may in addition have the purpose of
 36 providing a specific public benefit.

37 (4) Providing a general public benefit and a specific public benefit is in the best interest
 38 of a benefit corporation.

39 **SECTION 7.** (1) A director of a benefit corporation shall act in the best interests of the
 40 benefit corporation and shall discharge the director's duties as provided in ORS 60.357. In
 41 addition, the director shall consider how an action of the director or of the benefit corpo-
 42 ration or a decision not to act will affect:

- 43 (a) The shareholders of the benefit corporation;
- 44 (b) The employees of the benefit corporation;
- 45 (c) Subsidiaries and suppliers of the benefit corporation;

1 (d) The interest of customers of the benefit corporation in receiving a portion of the
 2 general public benefit or specific public benefit that the benefit corporation provides;

3 (e) The community in which the benefit corporation is located, operates or has offices
 4 or other facilities and in which the benefit corporation's subsidiaries and suppliers are lo-
 5 cated, operate or have offices or other facilities;

6 (f) The local natural environment and the natural environment worldwide;

7 (g) The short-term and long-term interests of the benefit corporation, including an in-
 8 terest in benefits that might accrue from the benefit corporation's long-term plans and the
 9 possibility that the interests of the benefit corporation are best served by keeping the benefit
 10 corporation independent; and

11 (h) The benefit corporation's ability to fulfill the benefit corporation's general public
 12 benefit purpose and any specific public benefit purpose set forth in the benefit corporation's
 13 articles of incorporation.

14 (2) A director of a benefit corporation may consider how an action of the director or of
 15 the benefit corporation or decision not to act will affect other interests the director deems
 16 pertinent.

17 (3) A director of a benefit corporation need not give a particular interest identified in
 18 subsection (1) or (2) of this section priority over another interest identified in subsection (1)
 19 or (2) of this section unless the benefit corporation's articles of incorporation identify an
 20 interest to which the director must give priority and the interest is related to the benefit
 21 corporation's provision of a general public benefit or a specific public benefit.

22 (4) A director's consideration of the effects of an action or a decision not to act under
 23 subsection (1) or (2) of this section is in accordance with the provisions of ORS 60.357 as the
 24 provisions apply to a director of a benefit corporation.

25 (5)(a) A director of a benefit corporation is not personally liable for money damages as
 26 a consequence of taking an action or deciding not to act if the director discharged the
 27 director's duties in accordance with ORS 60.357 and the provisions of this section.

28 (b) A director of a benefit corporation is not personally liable for money damages for the
 29 benefit corporation's failure to provide a general public benefit or a specific public benefit.

30 (c) A director of a benefit corporation does not have a duty to a person as a consequence
 31 of the person's status as a beneficiary of the general public benefit or specific public benefit
 32 that the benefit corporation provides.

33 **SECTION 8.** (1)(a) A benefit corporation must have a board of directors constituted as
 34 required under this chapter, one director of which is the benefit director. The benefit direc-
 35 tor, in addition to the powers, duties, rights, privileges and immunities that other directors
 36 of the benefit corporation have, has the powers, duties, rights, privileges and immunities set
 37 forth in this section.

38 (b) The benefit director may not have a material relationship with a benefit corporation
 39 or a subsidiary of a benefit corporation. For the purposes of this paragraph, a material re-
 40 lationship exists between the benefit director and the benefit corporation or a subsidiary of
 41 the benefit corporation if:

42 (A) The benefit director is, or within the three years before becoming the benefit director
 43 was, an employee of the benefit corporation or a subsidiary of the benefit corporation, unless
 44 the benefit corporation or a subsidiary of the benefit corporation employs or employed the
 45 benefit director as the benefit officer of the benefit corporation or the subsidiary of the

1 **benefit corporation;**

2 (B) An immediate family member of the director is, or within the three years before the
3 benefit director became the benefit director was, an executive officer of the benefit corpo-
4 ration or a subsidiary of the benefit corporation, unless the immediate family member is or
5 was the benefit officer of the benefit corporation or a subsidiary of the benefit corporation;

6 (C) The director owns five percent or more of the outstanding shares of the benefit cor-
7 poration; or

8 (D) The director is also a director, officer or manager of, or owns five percent or more
9 of the equity interests of, an entity that owns five percent or more of the outstanding equity
10 interests of the benefit corporation.

11 (c) For the purposes of paragraph (b) of this subsection, a determination of the percent-
12 age of ownership of a benefit corporation, a subsidiary or another entity shall presume for
13 the purposes of the determination that all rights to acquire equity interests in the benefit
14 corporation, the subsidiary or the entity have been exercised.

15 (d) A benefit director may also serve as the benefit officer of a benefit corporation.

16 (e) The articles of incorporation or bylaws of the benefit corporation may set forth ad-
17 ditional qualifications for a benefit director that are consistent with the provisions of this
18 section.

19 (2) The shareholders of the benefit corporation shall elect a benefit director in accord-
20 ance with the provisions of ORS 60.251, 60.307 and 60.311. The shareholders of the benefit
21 corporation may remove a benefit director in accordance with the provisions of ORS 60.324.

22 (3)(a) Each year the benefit director shall prepare for inclusion in the benefit
23 corporation's annual benefit report to shareholders required under section 12 of this 2013
24 Act a written opinion as to whether:

25 (A) The benefit corporation acted in material compliance with the general public benefit
26 and any specific public benefit purposes set forth for the benefit corporation in the articles
27 of incorporation;

28 (B) The directors of the benefit corporation acted in accordance with section 7 of this
29 2013 Act; and

30 (C) The officers of the benefit corporation acted in accordance with section 9 of this 2013
31 Act.

32 (b) If the benefit director determines that the benefit corporation failed to act in material
33 compliance with, or that the directors or officers of the benefit corporation failed to act in
34 accordance with, the standards described in paragraph (a) of this subsection, the benefit di-
35 rector shall describe in the written opinion the nature and scope of the failure.

36 (4) An individual's action or decision not to act made in the capacity of a benefit director
37 is for all purposes the individual's action or decision not to act in the individual's capacity
38 as a director of the benefit corporation.

39 (5) A benefit director is not personally liable for an action or omission the benefit direc-
40 tor made in the benefit director's capacity as a benefit director unless the action or omission
41 constituted self-dealing, willful misconduct or a knowing violation of law.

42 **SECTION 9.** (1) An officer of a benefit corporation shall act in the best interests of the
43 benefit corporation and shall discharge the officer's duties as provided in ORS 60.374 and
44 60.377. In addition, the officer shall consider the effects of an action of the officer or of the
45 benefit corporation or of a decision not to act:

1 (a) To the extent the officer has the discretion to take the action or to decide not to act;

2 (b) If, in the officer's reasonable judgment, the action or decision not to act may have a
3 material effect on the general public benefit or a specific public benefit the benefit corpo-
4 ration provides; and

5 (c) In accordance with the provisions set forth under section 7 (1) to (3) of this 2013 Act
6 for a director's consideration of the effects of the action or the decision not to act.

7 (2) An officer's consideration of the effects of an action or a decision not to act under
8 subsection (1) of this section is in accordance with the provisions of ORS 60.374 and 60.377
9 as the provisions apply to an officer of a benefit corporation.

10 (3)(a) An officer of a benefit corporation is not personally liable for money damages as
11 a consequence of taking an action or deciding not to act if the officer discharged the officer's
12 duties in accordance with ORS 60.374 and 60.377 and the provisions of this section.

13 (b) An officer of a benefit corporation is not personally liable for money damages for the
14 benefit corporation's failure to provide a general public benefit or a specific public benefit.

15 (c) An officer of a benefit corporation does not have a duty to a person as a consequence
16 of the person's status as a beneficiary of the general public benefit or specific public benefit
17 that the benefit corporation provides.

18 **SECTION 10.** (1) A benefit corporation may designate an officer of the benefit corporation
19 as the benefit corporation's benefit officer.

20 (2) A benefit officer has the duty to oversee and the powers necessary to fulfill the ben-
21 efit corporation's purpose of providing a general public benefit and any specific public benefit
22 set forth in the benefit corporation's articles of incorporation. The benefit officer shall act
23 in accordance with the duties and powers specified in the benefit corporation's bylaws or, in
24 the absence of controlling provisions in the bylaws, in accordance with resolutions or orders
25 from the benefit corporation's board of directors.

26 (3) The duties and powers described in subsection (2) of this section must include the
27 duty and power to prepare the annual benefit report required under section 12 of this 2013
28 Act.

29 **SECTION 11.** (1) Except as provided in subsection (2) of this section, a person may not
30 commence a proceeding against a benefit corporation or the directors or officers of a benefit
31 corporation to assert a claim that the benefit corporation, directors or officers:

32 (a) Failed to provide a general public benefit or a specific public benefit set forth in the
33 benefit corporation's articles of incorporation; or

34 (b) Violated a duty or a standard of conduct prescribed under sections 2 to 13 of this 2013
35 Act.

36 (2) A person may commence a direct or derivative proceeding, as appropriate, to compel
37 a benefit corporation to provide a general public benefit or a specific public benefit or to re-
38 quire a director or officer to act in accordance with a duty or a standard of conduct set forth
39 in the benefit corporation's articles of incorporation or under sections 2 to 13 of this 2013
40 Act only if the person is:

41 (a) The benefit corporation;

42 (b) A shareholder;

43 (c) A director;

44 (d) A beneficial owner or an owner of record of five percent or more of the equity in-
45 terests of an entity of which the benefit corporation is a subsidiary; or

1 (e) Another person identified in the benefit corporation’s bylaws or articles of incorpo-
 2 ration as having a right to commence a proceeding under this section.

3 (3) A benefit corporation is not liable for money damages as a consequence of failing to
 4 provide a general public benefit or a specific public benefit.

5 **SECTION 12.** (1) A benefit corporation each year shall prepare and deliver a benefit re-
 6 port.

7 (2)(a) The benefit report shall give a narrative description of:

8 (A) The extent to which the benefit corporation provided a general public benefit and the
 9 actions and methods the benefit corporation used to provide the general public benefit.

10 (B) The extent to which the benefit corporation provided a specific public benefit that the
 11 benefit corporation’s articles of incorporation require the benefit corporation to provide and
 12 the actions and methods the benefit corporation used to provide the specific public benefit.

13 (C) Any circumstances that hindered or prevented the benefit corporation from providing
 14 a general public benefit or a specific public benefit.

15 (b) In addition to the descriptions required under paragraph (a) of this subsection, the
 16 benefit report shall:

17 (A) Assess the extent to which the benefit corporation met or exceeded an objective
 18 standard of the type described in section 13 of this 2013 Act. The benefit corporation shall
 19 conduct the assessment and evaluate the benefit corporation’s performance with respect to
 20 the objective standard in a manner that is consistent with assessments and evaluations done
 21 in previous benefit reports or shall explain the reasons for an inconsistent assessment or
 22 evaluation.

23 (B) Describe the process and rationale the benefit corporation used to select or to change
 24 the objective standard described in subparagraph (A) of this paragraph.

25 (C) Disclose:

26 (i) The names of the benefit director and the benefit officer, if any, and the address or
 27 other contact information for the director and officer;

28 (ii) The compensation the benefit corporation paid during the previous year to each di-
 29 rector of the benefit corporation for services as a director; and

30 (iii) The name of each person that owns five percent or more of the shares of the benefit
 31 corporation, whether the ownership is of record or is beneficial, to the extent that the ben-
 32 efit corporation knows the identity of a beneficial owner without independent investigation.

33 (D) Include:

34 (i) The opinion the benefit director prepared under section 8 (3) of this 2013 Act; and

35 (ii) A statement that describes any connection between the benefit corporation and the
 36 benefit corporation’s directors, officers or material owners and the organization that estab-
 37 lished the objective standard described in section 13 of this 2013 Act and the organization’s
 38 directors, officers or material owners. The statement must disclose any financial or
 39 governance relationship that might materially affect the objectivity of the standard or the
 40 credibility of the benefit corporation’s use of the standard.

41 (3)(a) The benefit corporation each year shall deliver a copy of the benefit report to each
 42 shareholder within 120 days after the end of the benefit corporation’s fiscal year and at the
 43 same time the benefit corporation delivers any other annual report to shareholders.

44 (b) The benefit corporation shall deliver a copy of the benefit report to the Secretary of
 45 State for filing at the same time the benefit corporation delivers the benefit report to

1 shareholders.

2 (4) A benefit corporation shall post on the publicly accessible pages of the benefit
 3 corporation’s website all of the benefit corporation’s benefit reports or shall provide a copy
 4 of the most recent benefit report without charge to a person that requests a copy.

5 (5) The benefit corporation may omit the disclosures described in subsection (2)(b)(C)(ii)
 6 of this section and any financial or proprietary information included in the benefit report
 7 from copies of the benefit report that the benefit corporation posts, delivers or provides
 8 under subsections (3)(b) and (4) of this section.

9 **SECTION 13.** (1) The benefit corporation shall measure the extent to which the benefit
 10 corporation provides a general public benefit and any specific public benefit set forth in the
 11 benefit corporation’s articles of incorporation against an objective standard that meets the
 12 criteria set forth in subsection (2) of this section.

13 (2) For purposes of this section, an objective standard is a standard that:

14 (a) Was developed by an organization that has no material relationship with the benefit
 15 corporation. For the purposes of this paragraph, the organization may not:

16 (A) Have as more than one-third of the membership of the organization’s governing body
 17 representatives from:

18 (i) An association of businesses that operate in a specific industry for which the standard
 19 is a measurement of the performance of the businesses;

20 (ii) A business from a specific industry or an association of businesses in the specific
 21 industry; or

22 (iii) A business for which the standard is a measurement of performance.

23 (B) Have received material financing from an association or business described in sub-
 24 paragraph (A) of this paragraph.

25 (C) Have as an executive officer or an officer with responsibility for developing or apply-
 26 ing the standard an individual who is, or within the three years before the benefit corpo-
 27 ration began to use the standard was, an employee of the benefit corporation or a subsidiary
 28 of the benefit corporation.

29 (D) Have as an executive officer or an officer with responsibility for developing or ap-
 30 plying the standard an individual who is an immediate family member of an executive officer
 31 of the benefit corporation or of a subsidiary of the benefit corporation.

32 (E) Own, directly or indirectly, or have as a director or officer of the organization an
 33 individual who owns, directly or indirectly, five percent or more of the outstanding shares
 34 of the benefit corporation. Determining ownership of the benefit corporation under this
 35 subparagraph entails the presumption that all rights to acquire shares in the benefit corpo-
 36 ration have been exercised.

37 (b) Was developed by an organization that:

38 (A) Has or has access to the expertise necessary to assess existing social and environ-
 39 mental conditions in the communities in which the benefit corporation operates and to as-
 40 sess improvements in the social and environmental conditions; and

41 (B) Consults with a range of stakeholder groups and individuals and allows the groups
 42 and individuals to comment on a proposed standard or an amendment to a proposed standard
 43 for a period of at least 30 days.

44 (c) Is open and publicly available. For the purposes of this paragraph, the standard is
 45 open and publicly available if:

1 **(A) The criteria used to develop the standard and to evaluate performance relative to the**
2 **standard, along with the relative weight given to the criteria in evaluating performance, are**
3 **published and accessible to the public;**

4 **(B) The identities of the directors, officers, material owners and members of the gov-**
5 **erning body of the organization that develops and revises the standard are published and**
6 **accessible to the public;**

7 **(C) A description of the process the organization uses to develop and revise the standard**
8 **and the process by which the membership of the governing body of the organization is con-**
9 **stituted and changed is published and accessible to the public; and**

10 **(D) The sources of financial support for the organization are published and accessible to**
11 **the public in enough detail to disclose any relationships between the sources and the organ-**
12 **ization that could reasonably be considered to present a conflict of interest.**

13
