

11498--B

I N A S S E M B L Y

June 17, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Brodsky, Kavanagh, Rosenthal, Galef, Corwin, Gianaris) -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general construction law and the business corporation law, in relation to authorizing the incorporation of benefit corporations, providing for the public benefit to be created by benefit corporations, for the election and termination of the status of a benefit corporation, for the standards of conduct for directors of a benefit corporation, and for the preparation and distribution of an annual benefit report by a benefit corporation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs 3 and 4 of subdivision d of section 65 of the  
2 general construction law, as added by chapter 451 of the laws of 1973  
3 are amended and a new paragraph 5 is added to read as follows:

- 4 3. A railroad corporation, [or]  
5 4. A transportation corporation[.], OR  
6 5. A BENEFIT CORPORATION.

7 S 2. Section 66 of the general construction law is amended by adding a  
8 new subdivision 4-a to read as follows:

9 4-A. A "BENEFIT CORPORATION" MEANS A BUSINESS CORPORATION THAT HAS  
10 ELECTED TO BECOME SUBJECT TO ARTICLE SEVENTEEN OF THE BUSINESS CORPO-  
11 RATION LAW AND WHOSE STATUS AS A BENEFIT CORPORATION HAS NOT BEEN TERMI-  
12 NATED AS PROVIDED IN ARTICLE SEVENTEEN OF THE BUSINESS CORPORATION LAW.

13 S 3. The business corporation law is amended by adding a new article  
14 17 to read as follows:

15 ARTICLE 17

16 BENEFIT CORPORATIONS

17 SECTION 1701. APPLICATION AND EFFECT OF ARTICLE.

18 1702. DEFINITIONS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 1703. FORMATION OF BENEFIT CORPORATIONS.

2 1704. ELECTION OF AN EXISTING BUSINESS CORPORATION TO BECOME A  
3 BENEFIT CORPORATION.

4 1705. TERMINATION OF BENEFIT CORPORATION STATUS.

5 1706. CORPORATE PURPOSES.

6 1707. STANDARD OF CONDUCT FOR DIRECTORS.

7 1708. ANNUAL BENEFIT REPORT.

8 S 1701. APPLICATION AND EFFECT OF ARTICLE.

9 (A) THIS ARTICLE SHALL BE APPLICABLE TO ALL BENEFIT CORPORATIONS.

10 (B) THE EXISTENCE OF A PROVISION OF THIS ARTICLE SHALL NOT OF ITSELF  
11 CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR  
12 WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A BENEFIT  
13 CORPORATION. THIS ARTICLE SHALL NOT AFFECT ANY STATUTE OR RULE OF LAW  
14 THAT IS OR WOULD BE APPLICABLE TO A BUSINESS CORPORATION THAT IS NOT A  
15 BENEFIT CORPORATION.

16 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THIS CHAPTER SHALL  
17 BE GENERALLY APPLICABLE TO ALL BENEFIT CORPORATIONS.

18 (D) A PROVISION OF THE CERTIFICATE OF INCORPORATION OR BYLAWS OF A  
19 BENEFIT CORPORATION MAY NOT RELAX, BE INCONSISTENT WITH OR SUPERSEDE ANY  
20 PROVISION OF THIS ARTICLE.

21 S 1702. DEFINITIONS.

22 AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE  
23 TERM:

24 (A) "BENEFIT CORPORATION" MEANS A BUSINESS CORPORATION THAT HAS  
25 ELECTED TO BECOME SUBJECT TO THIS ARTICLE AND WHOSE STATUS AS A BENEFIT  
26 CORPORATION HAS NOT BEEN TERMINATED AS PROVIDED IN THIS ARTICLE.

27 (B) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE IMPACT ON SOCI-  
28 ETY AND THE ENVIRONMENT, AS MEASURED BY A THIRD-PARTY STANDARD.

29 (C) "INDEPENDENT" MEANS THAT A PERSON HAS NO MATERIAL RELATIONSHIP  
30 WITH A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES (OTHER THAN THE  
31 RELATIONSHIP OF SERVING AS THE BENEFIT DIRECTOR OR BENEFIT OFFICER),  
32 EITHER DIRECTLY OR AS A SHAREHOLDER, PARTNER, MEMBER OR OTHER OWNER OR A  
33 DIRECTOR, OFFICER OR OTHER MANAGER OF AN ENTITY THAT HAS A MATERIAL  
34 RELATIONSHIP WITH THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES. A  
35 MATERIAL RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT CORPORATION OR  
36 ANY OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY PRESUMED TO EXIST IF:

37 (1) THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS, AN EMPLOY-  
38 EE OF THE BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES;

39 (2) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS BEEN WITHIN  
40 THE LAST THREE YEARS, AN EXECUTIVE OFFICER OF THE BENEFIT CORPORATION OR  
41 ANY OF ITS SUBSIDIARIES; OR

42 (3) THE PERSON, OR AN ENTITY OF WHICH THE PERSON IS A DIRECTOR, OFFI-  
43 CER OR OTHER MANAGER OR IN WHICH THE PERSON OWNS BENEFICIALLY OR OF  
44 RECORD FIVE PERCENT OR MORE OF THE EQUITY INTERESTS, OWNS BENEFICIALLY  
45 OR OF RECORD FIVE PERCENT OR MORE OF THE SHARES OF THE BENEFIT CORPO-  
46 RATION.

47 (D) "MINIMUM STATUS VOTE" MEANS THAT, IN ADDITION TO ANY OTHER  
48 APPROVAL OR VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPO-  
49 RATION OR A BYLAW ADOPTED BY THE SHAREHOLDERS:

50 (1) THE HOLDERS OF SHARES OF EVERY CLASS OR SERIES SHALL BE ENTITLED  
51 TO VOTE ON THE CORPORATE ACTION REGARDLESS OF ANY LIMITATION STATED IN  
52 THE CERTIFICATE OF INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY  
53 CLASS OR SERIES.

54 (2) THE CORPORATE ACTION MUST BE APPROVED BY VOTE OF THE SHAREHOLDERS  
55 OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST THREE-QUARTERS OF THE

1 VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST  
2 THEREON.

3 (E) "SPECIFIC PUBLIC BENEFIT," AS MEASURED BY A THIRD-PARTY STANDARD,  
4 INCLUDES:

5 (1) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR COMMUNITIES  
6 WITH BENEFICIAL PRODUCTS OR SERVICES;

7 (2) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR COMMUNITIES  
8 BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF BUSINESS;

9 (3) PRESERVING THE ENVIRONMENT;

10 (4) IMPROVING HUMAN HEALTH;

11 (5) PROMOTING THE ARTS, SCIENCES OR ADVANCEMENT OF KNOWLEDGE;

12 (6) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC BENEFIT  
13 PURPOSE; AND

14 (7) THE ACCOMPLISHMENT OF ANY OTHER PARTICULAR BENEFIT FOR SOCIETY OR  
15 THE ENVIRONMENT.

16 (F) "SUBSIDIARY" MEANS AN ENTITY IN WHICH A PERSON OWNS BENEFICIALLY  
17 OR OF RECORD FIFTY PERCENT OR MORE OF THE EQUITY INTERESTS.

18 (G) "THIRD-PARTY STANDARD" MEANS A STANDARD RECOGNIZED BY THE SECRE-  
19 TARY OF STATE OR ITS DESIGNEE OR DESIGNEES FOR DEFINING, REPORTING AND  
20 ASSESSING CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE THAT IS:

21 (1) DEVELOPED BY A PERSON THAT IS INDEPENDENT OF THE BENEFIT CORPO-  
22 RATION; AND

23 (2) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION ABOUT THE STANDARD  
24 IS PUBLICLY AVAILABLE:

25 (A) THE FACTORS CONSIDERED WHEN MEASURING THE PERFORMANCE OF A BUSI-  
26 NESS;

27 (B) THE RELATIVE WEIGHTINGS OF THOSE FACTORS; AND

28 (C) THE IDENTITY OF THE PERSONS WHO DEVELOPED AND CONTROL CHANGES TO  
29 THE STANDARD AND THE PROCESS BY WHICH THOSE CHANGES ARE MADE.

30 S 1703. FORMATION OF BENEFIT CORPORATIONS.

31 A BENEFIT CORPORATION SHALL BE FORMED IN ACCORDANCE WITH THIS CHAPTER  
32 EXCEPT THAT ITS CERTIFICATE OF INCORPORATION SHALL ALSO STATE THAT IT IS  
33 A BENEFIT CORPORATION.

34 S 1704. ELECTION OF AN EXISTING BUSINESS CORPORATION TO BECOME A BENEFIT  
35 CORPORATION.

36 (A) A BUSINESS CORPORATION MAY BECOME A BENEFIT CORPORATION UNDER THIS  
37 ARTICLE BY AMENDING ITS CERTIFICATE OF INCORPORATION SO THAT IT CONTAINS  
38 A STATEMENT THAT THE CORPORATION IS A BENEFIT CORPORATION. THE AMENDMENT  
39 SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM  
40 STATUS VOTE.

41 (B) ANY CORPORATION THAT IS NOT A BENEFIT CORPORATION THAT IS A PARTY  
42 TO A MERGER OR CONSOLIDATION IN WHICH THE SURVIVING OR CONSOLIDATED  
43 CORPORATION WILL BE A BENEFIT CORPORATION MUST APPROVE THE PLAN OF MERG-  
44 ER OR CONSOLIDATION BY AT LEAST THE MINIMUM STATUS VOTE IN ADDITION TO  
45 ANY OTHER VOTE REQUIRED BY THIS CHAPTER, THE CERTIFICATE OF INCORPO-  
46 RATION OR THE BYLAWS.

47 S 1705. TERMINATION OF BENEFIT CORPORATION STATUS.

48 (A) A BENEFIT CORPORATION MAY TERMINATE ITS STATUS AS SUCH AND CEASE  
49 TO BE SUBJECT TO THIS ARTICLE BY AMENDING ITS CERTIFICATE OF INCORPO-  
50 RATION TO DELETE THE STATEMENT THAT THE CORPORATION IS A BENEFIT CORPO-  
51 RATION. THE AMENDMENT SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT  
52 LEAST THE MINIMUM STATUS VOTE.

53 (B) IF A PLAN OR MERGER OR CONSOLIDATION WOULD HAVE THE EFFECT OF  
54 TERMINATING THE STATUS OF A BUSINESS CORPORATION AS A BENEFIT CORPO-  
55 RATION, THE PLAN SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST  
56 THE MINIMUM STATUS VOTE.

1 S 1706. CORPORATE PURPOSES.

2 (A) EVERY BENEFIT CORPORATION SHALL HAVE A PURPOSE OF CREATING GENERAL  
3 PUBLIC BENEFIT. THIS PURPOSE IS IN ADDITION TO ITS PURPOSES UNDER  
4 SECTION TWO HUNDRED ONE OF THIS CHAPTER AND ANY SPECIFIC PURPOSE SET  
5 FORTH IN ITS ARTICLES UNDER PARAGRAPH (B) OF THIS SECTION. THE PURPOSE  
6 TO CREATE GENERAL PUBLIC BENEFIT MAY BE A LIMITATION ON THE OTHER  
7 PURPOSES OF THE BENEFIT CORPORATION, AND SHALL CONTROL OVER ANY INCON-  
8 SISTENT PURPOSE OF THE BENEFIT CORPORATION.

9 (B) THE ARTICLES OF A BENEFIT CORPORATION MAY IDENTIFY ONE OR MORE  
10 SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF THE BENEFIT CORPO-  
11 RATION TO CREATE IN ADDITION TO ITS PURPOSES UNDER SECTION TWO HUNDRED  
12 ONE OF THIS CHAPTER AND PARAGRAPH (A) OF THIS SECTION.

13 (C) THE CREATION OF GENERAL AND SPECIFIC PUBLIC BENEFITS AS PROVIDED  
14 IN PARAGRAPHS (A) AND (B) OF THIS SECTION IS IN THE BEST INTERESTS OF  
15 THE BENEFIT CORPORATION.

16 (D) A BENEFIT CORPORATION MAY AMEND ITS CERTIFICATE OF INCORPORATION  
17 TO ADD, AMEND OR DELETE THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT  
18 THAT IT IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE. THE AMEND-  
19 MENT SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM  
20 STATUS VOTE.

21 S 1707. STANDARD OF CONDUCT FOR DIRECTORS.

22 (A) IN DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS, THE BOARD  
23 OF DIRECTORS, COMMITTEES OF THE BOARD AND INDIVIDUAL DIRECTORS OF A  
24 BENEFIT CORPORATION:

25 (1) SHALL CONSIDER THE EFFECTS OF ANY ACTION UPON:

26 (A) THE ABILITY FOR THE BENEFIT CORPORATION TO ACCOMPLISH ITS PUBLIC  
27 BENEFIT PURPOSE;

28 (B) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

29 (C) THE EMPLOYEES AND WORKFORCE OF THE BENEFIT CORPORATION AND ITS  
30 SUBSIDIARIES AND SUPPLIERS;

31 (D) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE GENERAL OR  
32 SPECIFIC PUBLIC BENEFIT PURPOSES OF THE BENEFIT CORPORATION;

33 (E) COMMUNITY AND SOCIETAL CONSIDERATIONS, INCLUDING THOSE OF ANY  
34 COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT CORPORATION OR  
35 ITS SUBSIDIARIES OR SUPPLIERS ARE LOCATED;

36 (F) THE LOCAL AND GLOBAL ENVIRONMENT; AND

37 (G) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE BENEFIT CORPORATION,  
38 INCLUDING BENEFITS THAT MAY ACCRUE TO THE BENEFIT CORPORATION FROM ITS  
39 LONG-TERM PLANS AND THE POSSIBILITY THAT THESE INTERESTS MAY BE BEST  
40 SERVED BY THE CONTINUED INDEPENDENCE OF THE BENEFIT CORPORATION;

41 (2) MAY CONSIDER:

42 (A) THE RESOURCES, INTENT AND CONDUCT (PAST, STATED AND POTENTIAL) OF  
43 ANY PERSON SEEKING TO ACQUIRE CONTROL OF THE CORPORATION; AND

44 (B) ANY OTHER PERTINENT FACTORS OR THE INTERESTS OF ANY OTHER GROUP  
45 THAT THEY DEEM APPROPRIATE; AND

46 (3) SHALL NOT BE REQUIRED TO GIVE PRIORITY TO THE INTERESTS OF ANY  
47 PARTICULAR PERSON OR GROUP REFERRED TO IN SUBPARAGRAPHS ONE AND TWO OF  
48 THIS PARAGRAPH OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS  
49 THE BENEFIT CORPORATION HAS STATED ITS INTENTION TO GIVE PRIORITY TO  
50 INTERESTS RELATED TO A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS  
51 CERTIFICATE OF INCORPORATION.

52 (B) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED  
53 BY PARAGRAPH (A) OF THIS SECTION:

54 (1) SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS OF SECTION  
55 SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER; AND

1 (2) IS IN ADDITION TO THE ABILITY OF DIRECTORS TO CONSIDER INTERESTS  
2 AND FACTORS AS PROVIDED IN SECTION SEVEN HUNDRED SEVENTEEN OF THIS CHAP-  
3 TER.

4 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION, A  
5 DIRECTOR OF A BENEFIT CORPORATION HAS THE FIDUCIARY DUTIES OF A DIRECTOR  
6 OF A BUSINESS CORPORATION THAT IS NOT A BENEFIT CORPORATION EXCEPT TO  
7 THE EXTENT THOSE DUTIES ARE INCONSISTENT WITH THE PROVISIONS OF THIS  
8 ARTICLE.

9 S 1708. ANNUAL BENEFIT REPORT.

10 (A) A BENEFIT CORPORATION MUST DELIVER TO EACH SHAREHOLDER AN ANNUAL  
11 BENEFIT REPORT INCLUDING:

12 (1) A NARRATIVE DESCRIPTION OF:

13 (A) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED GENERAL PUBLIC  
14 BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH GENERAL PUBLIC BENEFIT  
15 WAS CREATED;

16 (B) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED ANY SPECIFIC  
17 PUBLIC BENEFIT THAT THE CERTIFICATE OF INCORPORATION STATES IT IS THE  
18 PURPOSE OF THE BENEFIT CORPORATION TO CREATE AND THE EXTENT TO WHICH  
19 THAT SPECIFIC PUBLIC BENEFIT WAS CREATED; AND

20 (C) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION BY THE BENEFIT  
21 CORPORATION OF GENERAL OR SPECIFIC PUBLIC BENEFIT;

22 (2) AN ASSESSMENT OF THE PERFORMANCE OF THE BENEFIT CORPORATION, RELA-  
23 TIVE TO ITS GENERAL PUBLIC BENEFIT PURPOSE AND, IF APPLICABLE, ITS  
24 SPECIFIC PUBLIC BENEFIT PURPOSE OR PURPOSES, PREPARED IN ACCORDANCE WITH  
25 A THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT  
26 STANDARD IN PRIOR BENEFIT REPORTS OR ACCOMPANIED BY AN EXPLANATION OF  
27 THE REASONS FOR ANY INCONSISTENT APPLICATION;

28 (3) THE COMPENSATION PAID BY THE BENEFIT CORPORATION DURING THE YEAR  
29 TO EACH DIRECTOR IN THAT CAPACITY; AND

30 (4) THE NAME OF EACH PERSON THAT OWNS BENEFICIALLY OR OF RECORD FIVE  
31 PERCENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION.

32 (B) THE BENEFIT REPORT MUST BE SENT ANNUALLY TO EACH SHAREHOLDER WITH-  
33 IN ONE HUNDRED TWENTY DAYS FOLLOWING THE END OF THE FISCAL YEAR OF THE  
34 BENEFIT CORPORATION OR AT THE SAME TIME THAT THE BENEFIT CORPORATION  
35 DELIVERS ANY OTHER ANNUAL REPORT TO ITS SHAREHOLDERS. DELIVERY OF A  
36 BENEFIT REPORT TO SHAREHOLDERS IS IN ADDITION TO ANY OTHER REQUIREMENT  
37 TO DELIVER AN ANNUAL REPORT TO SHAREHOLDERS.

38 (C) A BENEFIT CORPORATION MUST POST ITS MOST RECENT BENEFIT REPORT ON  
39 THE PUBLIC PORTION OF ITS WEBSITE, IF ANY, EXCEPT THAT THE COMPENSATION  
40 PAID TO DIRECTORS AND ANY FINANCIAL OR PROPRIETARY INFORMATION INCLUDED  
41 IN THE BENEFIT REPORT MAY BE OMITTED FROM THE BENEFIT REPORT AS POSTED.

42 (D) CONCURRENTLY WITH THE DELIVERY OF THE BENEFIT REPORT TO SHAREHOLD-  
43 ERS PURSUANT TO PARAGRAPH (B) OF THIS SECTION, THE BENEFIT CORPORATION  
44 MUST DELIVER A COPY OF THE BENEFIT REPORT TO THE DEPARTMENT FOR FILING,  
45 EXCEPT THAT THE COMPENSATION PAID TO DIRECTORS AND ANY FINANCIAL OR  
46 PROPRIETARY INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED  
47 FROM THE BENEFIT REPORT AS FILED UNDER THIS SECTION.

48 (E) IF A BENEFIT CORPORATION HAS NOT DELIVERED A BENEFIT REPORT TO THE  
49 SECRETARY OF STATE FOR A PERIOD OF TWO YEARS, THE SECRETARY OF STATE MAY  
50 PREPARE AND FILE A STATEMENT THAT THE CORPORATION HAS FORFEITED ITS  
51 STATUS AS A BENEFIT CORPORATION AND IS NO LONGER SUBJECT TO THIS ARTI-  
52 CLE. IF THE CORPORATION SUBSEQUENTLY DELIVERS A BENEFIT REPORT TO THE  
53 SECRETARY OF STATE FOR FILING, THE STATUS OF THE CORPORATION AS A BENE-  
54 FIT CORPORATION SHALL BE AUTOMATICALLY REINSTATED UPON THE FILING OF THE  
55 BENEFIT REPORT BY THE SECRETARY OF STATE AND THE CORPORATION SHALL AGAIN  
56 BE SUBJECT TO THIS ARTICLE.

1 (F) THE ANNUAL BENEFIT REPORT SHALL BE IN ADDITION TO ALL OTHER  
2 REPORTING REQUIREMENTS UNDER THIS CHAPTER.  
3 S 4. This act shall take effect on the sixtieth day after it shall  
4 have become a law.