S T A T E O F N E W Y O R K

S. 6088 A. 8907

S E N A T E - A S S E M B L Y

(PREFILED)

January 4, 2012

IN SENATE -- Introduced by Sens. SQUADRON, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. SILVER -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the general construction law and the business corporation law, in relation to benefit corporations

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

Section 1. Subdivision 4-a of section 66 of the general construction law, as added by chapter 599 of the laws of 2011, is amended to read as follows:

4-a. A "benefit corporation" means a business corporation incorporated under article [seventeen] FOUR of the business corporation law [and whose status as a benefit corporation has not been terminated as provided in article seventeen of the business corporation law] THAT WAS FORMED AS A BENEFIT CORPORATION OR HAS ELECTED TO BECOME A BENEFIT CORPORATION AS PROVIDED IN ARTICLE SEVENTEEN OF THE BUSINESS CORPORATION LAW UNTIL SUCH TIME AS IT HAS CEASED TO BE A BENEFIT CORPORATION AS PROVIDED IN ARTICLE SEVENTEEN OF THE BUSINESS CORPORATION LAW.

S 2. Paragraphs (a) and (d) of section 1702 of the business corporation law, as added by chapter 599 of the laws of 2011, are amended to read as follows:

(a) "Benefit corporation" means a business corporation incorporated under [this article and whose status as a benefit corporation has not been terminated as provided in this article] ARTICLE FOUR OF THIS CHAPTER THAT WAS FORMED AS A BENEFIT CORPORATION OR HAS ELECTED TO BECOME A BENEFIT CORPORATION AS PROVIDED IN THIS ARTICLE UNTIL SUCH TIME AS IT HAS CEASED TO BE A BENEFIT CORPORATION AS PROVIDED IN THIS ARTICLE.

(d) "Minimum status vote" means that, in addition to any other approval or vote required by this chapter, the certificate of incorporation or a bylaw adopted by the shareholders, THE HIGHER OF:

(1) [The holders of shares of every class or series that are entitled to vote on the corporate action shall be entitled to vote as a class on the corporate action; and

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

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(2) The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least three-quarters of the votes that all shareholders of the class or series are entitled to cast thereon] THE VOTE REQUIRED BY THE CERTIFICATE OF INCORPORATION; OR

(2) TWO-THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF THE CORPORATION, PROVIDED THAT IF ANY CLASS OF SHARES IS ENTITLED TO VOTE AS A GROUP, APPROVAL SHALL ALSO REQUIRE THE AFFIRMATIVE VOTE OF THE HOLDERS OF AT LEAST TWO-THIRDS OF THE VOTES ENTITLED TO BE CAST BY THE OUTSTANDING SHARES OF EACH VOTING GROUP.

S 3. Section 1703 of the business corporation law, as added by chapter 599 of the laws of 2011, is amended to read as follows:

S 1703. Formation of benefit corporations.

A benefit corporation shall be [formed in accordance with this chapter except that] INCORPORATED UNDER ARTICLE FOUR OF THIS CHAPTER, IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, AND its certificate of incorporation shall also state that it is a benefit corporation.

S 4. Paragraphs (a) and (b) of section 1704 of the business corporation law, as added by chapter 599 of the laws of 2011, are amended to read as follows:

(a) A business corporation may become a benefit corporation under this article by amending its certificate of incorporation so that it contains a statement that the corporation is a benefit corporation. [The] SUCH amendment shall [not] be [effective unless it is] adopted by at least the minimum status vote.

(b) Any corporation that is not a benefit corporation that is a party to a merger or consolidation in which [the surviving or consolidated corporation will be a benefit corporation] SUCH CORPORATION WILL BECOME A BENEFIT CORPORATION must approve the plan of merger or consolidation by at least the minimum status vote in addition to any other vote required by this chapter, the certificate of incorporation or the bylaws.

S 5. Paragraphs (a), (b) and (d) of section 1705 of the business corporation law, as added by chapter 599 of the laws of 2011, are amended to read as follows:

(a) A benefit corporation may terminate its status as such and cease to be subject to this article by amending its certificate of incorporation to delete the statement that the corporation is a benefit corporation. [The] SUCH amendment shall [not] be [effective unless it is] adopted by at least the minimum status vote.

(b) [If a] ANY benefit corporation THAT is a party to a merger or consolidation in which [the surviving or new corporation will not be] SUCH CORPORATION WILL NO LONGER BE a benefit corporation[,] AS A RESULT OF THE TRANSACTION, MUST APPROVE the plan of merger or consolidation [shall not be effective unless it is adopted] by at least the minimum status vote in addition to any other vote required by this chapter, the certificate of incorporation or the bylaws.

(d) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, [unless the transaction is in the usual and regular course of business of the benefit corporation,] shall [not] be [effective unless the transaction is] approved by at least the minimum status vote in addition to any other vote required by this chapter, the certificate of incorporation or the bylaws.

S 6. This act shall take effect on the same date and in the same manner as section 5 of chapter 599 of the laws of 2011, takes effect.