



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 666 and 667 (as introduced 11-9-24)
Sponsor: Senator Sean McCann
Committee: Finance, Insurance, and Consumer Protection

(Senate-passed version)

Date Completed: 12-3-24

INTRODUCTION

The bills would provide for the incorporation of a benefit corporation, which would be a corporation focused on a general public benefit or specific public benefit, such as promoting economic opportunity, preserving the environment, or improving public health, among other things. A benefit corporation would have to measure its intended benefit by a third-party standard that met specific requirements when filing an annual report submitted to the Department of Licensing and Regulatory Affairs (LARA). The bill would prescribe the process for the corporation, a director, or certain shareholders or owners to commence a claim asserting that a director or officer violated a duty or standard of the bill or failed to pursue any benefit the corporation set forth in its articles of incorporation. A benefit corporation would not be liable for monetary damages under the bill's requirements for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

MCL 450.1911 et al. (S.B. 666)
450.1105 et al. (S.B. 667)

Analyst: Nathan Leaman

CONTENT

Senate Bill 667 would add Chapter 9A (Benefit Corporations) to the Business Corporation Act to do the following:

- Provide for the incorporation and termination of a benefit corporation.**
- Prescribe requirements of board members and directors of a benefit corporation, such as considering the effects of any action on the workforce of the corporation, the local and global environment, and the corporation's ability to accomplish general public benefit and any specific public benefit it could have.**
- Specify that a director of a benefit corporation would not be liable for monetary damages to the corporation, the shareholders, or any person that claimed to be a beneficiary of a general or specific public benefit for a failure to fulfill a duty arising under Chapter 9A.**
- Specify that any corporate action taken by a benefit corporation to advance general public benefit or any specific public benefit included in the purpose of the corporation would be presumed the best interests of the benefit corporation.**
- Allow only the benefit corporation, the corporation's director, or shareholders or persons owning specified shares of the corporation to commence a benefit enforcement proceeding against a benefit corporation.**
- Specify that a benefit corporation would not be liable for monetary damages under Chapter 9A for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.**
- Require an action against a director or officer for failure to perform any of the duties imposed under a benefit enforcement proceeding to be commenced within three years after the cause of action had accrued or within two years after the time when the cause of action was discovered, whichever occurred first.**

Senate Bill 666 would amend the Business Corporation Act to require a benefit corporation to file with LARA an annual benefit report describing the corporation's work toward its general public benefit purpose during the year, the third-party standard it used to measure that work's impact, and information concerning the compensation of any of the corporation's directors. A benefit corporation also would have to make the benefit report available to its shareholders and on its website or upon request if it did not have a website.

Senate Bill 667

The Business Corporation Act provides for the organization of corporations in the State. The bill would provide for the organization of a "benefit corporation", which would mean a domestic corporation that meets the requirements for being a benefit corporation under Chapter 9A and has not terminated its status as a benefit corporation under that Chapter. Chapter 9A is described further below.

The Act allows one or more persons to be incorporators of a corporation by filing articles of incorporation for the corporation. Among other things, a corporation's articles of incorporation must contain the purpose for which the corporation is formed. Under the bill, the purpose of a benefit corporation would have to comply with Chapter 9A, but a benefit corporation would not have to state its general public benefit purpose in the articles of incorporation.

The Act requires the corporate name of a professional corporation to contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of those words. The bill would require the corporate name of a benefit corporation to contain the words

"benefit corporation" or "benefit company" or contain the initials "B.C.", with or without periods.

The Act allows a domestic corporation to convert to into a business corporation and a business corporation to convert into a domestic corporation if certain requirements are satisfied. Under the bill, a benefit corporation could not convert into a business corporation or a domestic corporation.

Finally, the Act entitles a shareholder to dissent from and obtain payment of the fair value of the shareholder's shares, in the event of certain corporate actions, such as consummation of a merger plan or consummation of a plan to sell or exchange property of the corporation. Under the bill, a shareholder also would be entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of the following:

- An amendment to the articles of incorporation of a benefit corporation giving rise to a right to dissent under Chapter 9A.
- Consummation of a plan for a merger or share exchange giving rise to a right to dissent under Chapter 9A.

Chapter 9A Definitions

"Benefit enforcement proceeding" would mean a claim asserted or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for either of the following:

- A failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in the articles of incorporation of the benefit corporation.
- A violation of a duty or standard of conduct under Chapter 9A.

"General public benefit" would mean a material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

"Minimum status vote" would mean an authorization or approval of a corporate action by the shareholders of a benefit corporation that meets all the following:

- The shareholder approval or vote requirements of the Act.
- Any shareholder approval or vote requirements included in any provisions of the articles of incorporation.
- The shareholders of every class or series are entitled to vote on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.
- The corporate action is approved by vote of the shareholders of each class or series entitled to cast at least $\frac{2}{3}$ of the votes that all shareholders of the class or series are entitled to cast on the action.

"Specific public benefit" would include, but would not be limited to, any of the following:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Preserving the environment.

- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities that have a public benefit purpose.
- Conferring any other particular benefit on society or the environment.

"Subsidiary" would mean an entity in which a person owns beneficially or of record 50% or more of the outstanding equity interests. For purposes of determining a person's ownership percentage, any outstanding rights to acquire equity interests in an entity would be considered outstanding equity interests in that entity.

"Third-party standard" would mean a standard for defining, reporting, and assessing overall corporate social and environmental performance that is all the following:

- Comprehensive, in that it assesses the effect of the business and its operations on the interests that the bill would require benefit corporations to consider in any action.
- Developed by an organization that is independent of the benefit corporation and satisfies the following requirements: 1) a requirement that not more than 1/3 of the members of the governing body of the organization are representatives of either an association of businesses operating in a specific industry if the performance of the member businesses is measured by the standard or businesses whose performance is measured by the standard; and 2) the organization is not materially financed by an association or business described above.
- Credible, because the standard is developed by a person that has access to necessary expertise to assess overall corporate social and environmental performance and uses a balanced multistakeholder approach that includes a public comment period of at least 30 days to develop the standard.

Additionally, the term would mean a standard as described above that is also transparent, because all the following are publicly:

- The criteria considered in the standard when measuring the overall social and environmental performance of a business, and the relative weightings of those criteria.
- The following information about the development and revision of the standard: 1) the identity of the directors, officers, any material owners, and the governing body of the organization that developed and controls revisions to the standard; 2) the process by which revisions to the standard and changes to the membership of the governing body are made; and 3) an accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

The bill specifies that Chapter 9A would not apply to any corporation that was not a benefit corporation or to a corporation that terminated its status as a benefit corporation. If there were a conflict between a specific provision of Chapter 9A and a general provision of the Act, the provision of Chapter 9A would apply with respect to a benefit corporation.

Requirements for the Establishment of a Benefit Corporation

A domestic corporation that met either of the following would be a benefit corporation and subject to Chapter 9A:

- The corporation was formed under the Act.
- The corporation's articles of incorporation stated that it was a benefit corporation; however, an amendment to the articles of incorporation to include such a statement would not be effective unless it was adopted by a minimum status vote, and a shareholder that

did not vote for or consent in writing to the amendment could dissent and receive payment for the shares.

Under the bill, in addition to the purposes described in the Act, the purposes of a benefit corporation also could include one or more specific public benefits identified in the articles of incorporation, but the identification of a specific public benefit would not limit the obligation of a benefit corporation to create general public benefit.

An amendment to the articles of incorporation of a benefit corporation to change the purposes of the corporation by adding, amending, or deleting one or more specific public benefits would not be effective unless it was adopted by a minimum status vote. A shareholder that would not vote for or consent in writing to the amendment could dissent as provided in Section 762 of the Act and receive payment for the shares.¹

A benefit corporation could terminate its status as a benefit corporation by amending its articles of incorporation to remove the provisions describing its status as a benefit corporation; however, each of the following would apply to an amendment to the articles of incorporation:

- The amendment would not be effective unless it was adopted by a minimum status vote.
- A shareholder that did not vote for or consent in writing to the amendment could dissent and receive payment for the shares.

Under the bill, in addition to the requirements of Chapter 7 (Corporate Combinations and Dispositions), if a domestic corporation that was not a benefit corporation were a constituent corporation in a merger or an exchanging corporation in a share exchange, and the surviving or acquiring corporation would be a benefit corporation under the plan of merger or share exchange, the plan would have to be approved by a minimum status vote of that constituent or exchanging corporation. Similarly, a plan of merger or share exchange that would have the effect of terminating the status of a domestic corporation as a benefit corporation would have to be approved by a minimum status vote of that corporation. A shareholder of a corporation that was not a benefit corporation could dissent under Section 762 and receive payment for the shares if the shareholder did not vote for or consent in writing to a plan of merger or share exchange and the shareholder held the shares immediately before the effective time of the merger or share exchange.

Requirements of a Benefit Corporation Board

Under the bill, all of the following would apply to the board, committees of the board, and individual directors of a benefit corporation, and to any officer of a benefit corporation who had discretion to act with respect to any matter if it reasonably appeared to the officer that the matter could have a material effect on the creation of general public benefit or a specific public benefit by the benefit corporation, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation. They would have to consider the effects of any action on all the following:

- The shareholders of the benefit corporation.
- The employees and workforce of the benefit corporation and its subsidiaries and suppliers.
- The interests of customers as beneficiaries of the general public benefit and any specific public benefit included in the purpose of the benefit corporation.

¹ The bill would amend Section 762 to allow a shareholder to dissent for reasons specified in Chapter 9A.

- Community and societal considerations, including those of each community where offices or facilities of the benefit corporation and its subsidiaries and suppliers were located.
- The local and global environment.
- The short-term and long-term interests of the benefit corporation, including benefits that could accrue to the benefit corporation from its long-term plans and the possibility that these interests and the general public benefit and any specific public benefit included in the purpose of the benefit corporation could be best served by the continued independence of the benefit corporation.
- The ability of the benefit corporation to accomplish general public benefit and any specific public benefit included in the purposes of the benefit corporation.

In evaluating a person's proposed acquisition of control of the benefit corporation, they could consider, in addition to the effects of the proposed acquisition on the persons, interests, or factors described above, the resources, intent, and conduct of the person seeking to acquire control of the benefit corporation. They also could consider any other pertinent factors or the interests of any other group that they considered appropriate.

They would not have to give priority to the interests of a particular person or group described above over the interests of any other person or group unless the benefit corporation had stated its intention in its articles of incorporation to give priority to interests related to a specific public benefit purpose identified in its articles of incorporation.

The consideration of interests and factors by a director or officer of a benefit corporation in the discharge of the director's or officer's duties would not constitute a violation of Section 541a of the Act, which requires a director or officer to discharge duties in good faith, with prudence, and in a manner believed to be in the best interest of the corporation. Additionally, a director or officer who made a business judgment in good faith would fulfill the director's or officer's duties under the bill if the director or officer met all the following:

- Was not interested in the subject of the business judgment.
- Was informed with respect to the subject of the business judgment to the extent the director or officer reasonably believed to be appropriate under the circumstances.
- Rationally believed that the business judgment was in the best interests of the benefit corporation.

Under the bill, a director of a benefit corporation would not be liable for monetary damages to the corporation, the shareholders, or any person that claimed to be a beneficiary of a general or specific public benefit for a failure to fulfill a duty arising under Chapter 9A or solely because the director performed duties in compliance with the bill's provisions.

A director or officer of a benefit corporation would not have a duty to a person that was a beneficiary of the general or any specific public benefit purposes of the benefit corporation arising from the status of the person as a beneficiary. Any corporate action taken by a benefit corporation to advance general public benefit or any specific public benefit included in the purpose of the corporation would be presumed the best interests of the benefit corporation.

Benefit Enforcement Proceeding

Under the bill, the duties of any directors and officers of a benefit corporation arising under Chapter 9A, or the general public benefit purpose or any specific public benefit purpose of a benefit corporation organized under Chapter 9A, could be enforced only in a benefit enforcement proceeding described below. A person could not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties under Chapter 9A of any directors or officers of the benefit corporation or the general public benefit

purpose or any specific public benefit purpose of the benefit corporation organized under Chapter 9A, except in a benefit enforcement proceeding described below.

A benefit enforcement proceeding against a benefit corporation could be commenced or maintained only directly, by the benefit corporation, or derivatively, by any of the following:

- A shareholder of the benefit corporation that owned beneficially or of record, individually or collectively, as of the date the benefit enforcement proceeding was instituted, either at least 2% of the corporation's outstanding shares or, if the shares of the benefit corporation were listed on a national securities exchange, 2% of the corporation's outstanding shares or shares that had a market value of \$2.0 million, whichever was less.
- A director of the benefit corporation.
- A person or group of persons that owned beneficially or of record 5% or more of the outstanding voting power in the election of directors of an entity of which the benefit corporation was a subsidiary or the right to receive 5% or more of the distributions to shareholders made by an entity of which the benefit corporation was a subsidiary.
- Any other person specified in the articles of incorporation or bylaws of the benefit corporation.

Actions and Liabilities

Under the bill, a benefit corporation would not be liable for monetary damages under Chapter 9A for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

An action against a director or officer for failure to perform any of the duties imposed under a benefit enforcement proceeding would have to be commenced within three years after the cause of action had accrued, or within two years after the time when the cause of action was discovered or should reasonably have been discovered by the complainant, whichever occurred first.

Senate Bill 666

The Business Corporation Act requires a corporation to file annually a report with the Department of Licensing and Regulatory Affairs (LARA) that contains specific information concerning the corporation's location, board, and the nature of its business. Under the bill, a benefit corporation would have to file the annual benefit report required by the bill and described below with the annual required report.

The bill would require a benefit corporation to prepare an annual benefit report, which would have to include all the following:

- A narrative description of the ways in which the benefit corporation pursued the benefit corporation's general public benefit purpose during the year and the extent to which general public benefit was created.
- A narrative description of the ways in which the benefit corporation pursued any specific public benefit included in the purposes of the benefit corporation in the articles of incorporation and the extent to which that specific public benefit was created.
- A narrative description of any circumstances that have hindered the creation by the benefit corporation of general public benefit or a specific public benefit described above.
- The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- The compensation paid by the benefit corporation during the year to each director in the director's capacity as a director.

- A statement of any connection between the organization that developed the third-party standard, or its directors, officers, or material owners, and the benefit corporation, or its directors, officers, or material owners, including any financial or governance relationship that could materially affect the credibility of the objective assessment of the third-party standard.

Additionally, the report would have to include an assessment of the overall social and environmental performance of the benefit corporation that met one of the following:

- Was prepared in accordance with a third-party standard applied consistently with any application of that standard in previous benefit reports.
- If the assessment were prepared by applying a third-party standard in a manner inconsistent with that standard as applied in previous benefit reports, was accompanied by an explanation of the reasons for the inconsistent application of the standard applied.

A benefit corporation would not have to use a third party to perform, audit, or certify an assessment included in an annual benefit report described above.

A benefit corporation would have to distribute to each shareholder a copy of the annual benefit report, either within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation distributes any other annual report to its shareholders. The benefit corporation could distribute the annual benefit report to a shareholder electronically, either by electronic transmission of the report or by making the report available for electronic transmission. If the report were distributed electronically, the benefit corporation would have to provide the report in written form to a shareholder on request.

A benefit corporation would have to post its most recent annual benefit report on the public portion of its internet website, if any, but the benefit corporation could omit the compensation paid to directors and any financial or proprietary information included in the benefit report from the benefit report posted on its website. If a benefit corporation did not have an internet website, the benefit corporation would have to provide a copy of its most recent annual benefit report, without charge, to a person that requested a copy, but the benefit corporation could omit the amount of compensation paid to directors and any financial or proprietary information included in the benefit report from the benefit report provided to the person.

SAS\S2324\s666sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.