Attachment A

Benefit Corporations

Rep. Pete Lee & Sen. John Kefalas

HB 1138: Authorize Benefit Corporations

What Does It Do?

This bill creates a new class of Colorado companies called Benefit Corporations, which pursue a general or specific public benefit to have a positive impact on society and the environment in addition to seeking profits. A major goal is to attract social entrepreneurs and socially responsible "impact" investors to Colorado.

Why Do We Need Benefit Corporations?

Historically, there have been two types of Colorado corporations: business corporations, which pursue profit maximization for the benefit of its shareholders, and nonprofit corporations, which pursue charitable, religious and other social and public goals. In a business corporation, a director who puts social or public benefit ahead of profit maximization may be violating his or her duty. This legislation provides flexibility to business corporations to pursue general or specific public benefits, even at the cost of reducing profits, by becoming "benefit corporations."

How Is A Benefit Corporation Created?

A business corporation can become a "benefit corporation" either upon formation or with the consent of 2/3 of its shareholders. Shareholders who do not consent to the designation will have dissenters' rights. The bill includes detailed notification requirements to ensure that those who become shareholders of a benefit corporation are aware of the nature of the corporation – i.e., that it will also pursue social or public benefits rather than pure profit maximization. As a result, shareholders and investors will be able to make an informed decision about whether they wish to invest in such a corporation.

What Kinds Of Benefits Will They Pursue?

When a benefit corporation is formed the shareholders decide the nature of the benefit to be sought after, whether it be a "general public benefit" and/or a "specific public benefit." "General public benefit" means a "material positive impact on society and the environment, taken as a whole, as assessed against a third party standard." "Specific public benefit" means a material positive impact on specific things. For example, supporting the sustainability of the Arkansas River Basin, the economic development of a depressed neighborhood, a religious mission, the advancement of arts and sciences, and supporting a local school district would all be specific public benefits.

How Will Benefit Corporations Be Held Accountable?

Corporate directors are required to take the specified general or specific public benefit into account in decision-making. They may also consider the interests of shareholders, employees, customers, suppliers, and their operating communities as well as the local and global environment. They are protected from breach of fiduciary duty claims when they take these interests into account over pure profit maximization. However, shareholders may bring an action against a benefit corporation or its directors for failing to pursue the general or specific public benefit. Members of the public may not bring such an action unless granted the authority to do so in the benefit corporation's articles of incorporation.

How Will They Spread Awareness About These Benefits?

Benefit corporations may designate a benefit director, prepare and publish annual benefit reports discussing their public benefit activities, and have third party assessments done to evaluate their performance, all to the extent required by their articles of incorporation or by resolution of its shareholders/directors.

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