

**The Florida Bar Business Law Section – Executive Council**

**Thursday, January 10, 2013**

**3:30 p.m. to 6:30 p.m.**

**Orlando Airport Marriott**

**Room Name: Amelia**

**Meeting of the Executive Council**

**AGENDA**

- I. Call to Order, and Introductions by Council Members – Brian Gart, Chair
- A. **Pro Bono Resolution**  
Be it resolved, that the Business Law Section, encourages pro bono Service by its membership; and
- Be it further resolved that as part of its efforts to further and support pro bono service, the Business Law Section supports the Pro Bono Committee partnering with the CLE Committee and other committees of the Business Law Section to include a brief (3-5 minutes) presentation re-affirming the Business Law Section’s support of and commitment to pro bono service at CLE programming and other appropriate Section events.
- B. Announcement of the Leadership Academy *Exhibit A*  
C. Elder Law Section – Legislative Position Request *Exhibit B*
- II. Approval of Minutes – Judge Bill Van Nortwick *Exhibit C*
- III. Treasurer’s Report – Judge Bill Van Nortwick *Exhibit D*  
A. Approval of the 2013-14 BLS Budget *Exhibit E*
- IV. Reports of Special Committees and Task Forces
- A. Ch 608 LLC Drafting Task Force - Lou Conti /Gary Teblum/Greg Marks  
B. Third Party Opinion Standards – Robert Barron  
C. Subcommittee on Covenants Not to Compete – Hal Litchford  
D. Social Media Task Force – Brian Gart *Exhibit F*
- V. Committee Reports
- A. Antitrust, Franchise & Trade Regulation - Jude Cooper/Ava Doppelt  
B. Bankruptcy / UCC - Jacob Brown/Robert P. Charbonneau

- C. Bankruptcy / Judicial Liaison – Doug Bates / Hon. Paul Hyman
- D. Business Litigation - Barbara Riesberg/ Russell Landy
- E. Communications - Lynn Sherman/ Kacy Donlon/ Sam Lewis
- F. Computer & Technology Law – Kevin Levy/Lawrence Kunin
- G. Continuing Legal Education – Michael Chesal/ Ryon McCabe/ Lori Vaughan
- H. Corporations, Securities & Financial Services - Laurie Green/ Stefan Rubin *Exhibit G*
- I. Diversity Committee - Leyza Blanco/ Detra Shaw-Wilder
- J. Intellectual Property - Leora Herrmann/Ury Fischer/ Dineen Wasyluk
- K. Legislation - Alan Howard/ Jon Polenberg / Bill Wiley / Aimee Diaz Lyon
- L. Long – Range Planning – Greg Yadley/ Hon. Michael G. Williamson
- M. Membership & Law School Relations - Jodi Cooke / Phil Kabler/ Peter Valori
- N. Pro Bono Committee - Mark Stein/ Jennifer Morando / Hon. Laurel Isicoff
- O. Retreat & Sponsorships – Michael Chesal/ Lori Vaughan
- P. State/Federal Courts Liaison – Mark Nichols / Hon. Mary S. Scriven/Hon. Gill Freeman

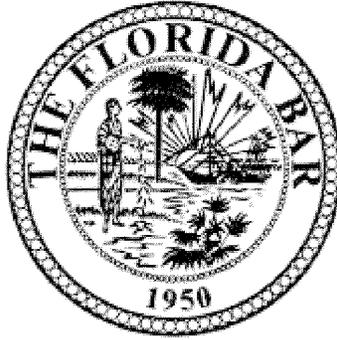
VI. Other Reports

- A. Historian / Parliamentarian- Phil Schwartz/ Russ Blain
- B. Council of Sections – Hon. William Van Nortwick, Jr.
- C. Board of Governors – Michael Higer
- D. RPPTL Liaison Report – Jamie Marx
- E. Tax Liaison Report – Nick Lioce
- F. Liaison to Out-of-State Practitioners – Donald Workman
- G. Young Lawyers Division Liaison Report – Andrew Jenkins
- H. Chair – Brian Gart
- I. Chair-Elect – Steph Nagin
  - 1. Discussion of BLS “APP”

VII. Future Meeting Dates

- A. Executive Council Spring Retreat -- April 17 -21, Hotel Yountville, Napa Valley
- B. Annual Meeting, June 27, 2013, Boca Raton Resort and Convention Center, Boca Raton
- C. Labor Day Section Retreat– August 30 - September 2, 2013, TBD, Naples, Florida
- D. Mid –Year Meeting—January 22-23, 2014, Hilton Walt Disney World Resort, Orlando

# Exhibit “A”



# **THE FLORIDA BAR LEADERSHIP ACADEMY**

*Training Today • Leading Tomorrow*

**LEADERSHIP ACADEMY PLANNING COMMITTEE**

**NEW PROGRAM GUIDELINES**

## I. HISTORICAL PERSPECTIVE

A Florida Bar Leadership Academy (hereinafter the “Academy”) was envisioned by Florida Bar President-Elect Eugene Pettis, after evaluating the Bar’s Strategic Plan and analyzing the landscape of Bar members available to meet the Bar’s long term articulated goals. Initially, President-Elect Pettis worked closely with Florida Bar Executive Director Jack Harkness, the Diversity Initiatives Manager Arnell Bryant-Willis, and Attorney Renee Thompson, to explore how other Bars across the country were developing new leaders to meet the challenges of tomorrow. In considering the best format for this program, an overview and analysis was conducted of other Bar Association Leadership Academy programs to consider alternative versions and components. The list of Leadership Academy programs reviewed included, but was not limited to, the Maryland Bar, the New Hampshire Bar, the Nebraska Bar, the South Carolina Bar, the Missouri Bar, the Ohio Bar, the North Carolina Bar, the Colorado Bar, the Washington State Bar and the Georgia Bar. Those programs were reviewed with an eye toward identifying which components would best meet the needs of The Florida Bar. Thereafter, a larger planning team, the Leadership Academy Planning Committee, was assembled to develop the program more fully and create a proposal for the program. This planning team also included: Florida Bar President Gwynne Young, Attorney Michael Faehner, Attorney Michelle Suskauer, The Honorable Pauline Drake, Attorney Sean Desmond, Attorney Cynthia Everett, Bar Assistant Director of Finance and Accounting Beth Brenneis, Florida Bar Director for the Center of Professionalism Linda Calvert Hanson, Florida Bar Assistant Director for the Center of Professionalism Jacina Parson, and Florida Bar Director of Meetings and Conventions Kathy Tucker.

## II. STATEMENT OF PURPOSE AND GOALS

The Florida Bar Leadership Academy is a multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders, while assisting them in identifying opportunities for future leadership roles within The Florida Bar and the legal profession. Each year a select group of participants, targeted to attorneys who have practiced 3 to 15 years, are selected from applications submitted to the Bar. These participants will be referred to as “Fellows.” In an effort to achieve diversity and wide range inclusion among participants, qualified individuals will be sought from different backgrounds, large and small law firms, the private and public sectors, different practice areas, bar sections and divisions, voluntary and specialty bars, and different geographical areas of the state. At the heart of this program is the Bar’s belief that inclusion is the pathway to unity.

During their term of one year, Fellows will follow a curriculum tailored to enhance their knowledge base and experience, including attending Bar events, special educational programs on topics

such as Bar structure, developing and sustaining programs, devotion to public service, public speaking and the Speakers Bureau, conducting an effective meeting, and developing and implementing a public service project, and many other related areas. *See Proposed Draft Curriculum, Appendix A.* Fellows will have the opportunity to establish relationships with Bar leaders, including former Bar Presidents, Board of Governors members, alumni of the Academy, as well as current Bar leadership, to learn more about the inner workings of the Bar and their role within the legal profession, while enhancing their personal leadership skills. Networking is a significant part of the Academy, wherein the Fellows develop relationships that will last long after the Academy. The skills the Fellows learn will benefit the Bar, their local voluntary or specialty bar associations, their firms, and the public as a whole.

The Mission of the Academy is to enhance the skills of a diverse and inclusive group of lawyers selected from across the state that will enable them to become effective leaders throughout the Bar, our profession, and the greater community. Thus, the goals of the Academy include:

- ★ To enhance leadership skills of a diverse and inclusive group of lawyers;
- ★ To identify, nurture and inspire effective leadership within the Bar and the legal community;
- ★ To enhance the diversity of leaders within the Bar;
- ★ To build relationships among Bar leaders across disciplines within the profession; and
- ★ To raise the level of awareness and engagement among lawyers regarding issues facing the legal profession through the study of ethical, professional and public service issues.

The goals and objectives of the Academy articulated above conform to existing Standing Board Policies, the Integration Rule and the Bar's strategic plan, and they are compatible and achievable. It will take approximately one year for the first class of Fellows to complete the program curriculum, with consecutive classes of Fellows graduating from the program each year thereafter.

During its inaugural year, this program seeks to reach approximately 40 attorneys statewide to serve as Fellows. Ultimately, the size of the Fellowship Class will be driven, in part by the applications of interested members. In reviewing other states, the number of Fellows has been approximately 25. However, it should be noted that most of these states Bar membership is significantly smaller than the Florida Bar with state geographical areas nowhere near the dimensions of the State of Florida. Therefore, the proposed 40 member class is thought to be well within the percentage of other state models.

Beyond the learned skills these Fellows will benefit from personally, this program seeks to instill an in-depth understanding of The Florida Bar and how it's various component parts can best function together. A part of the vision for the Academy is for it to nurture the spirit of inclusion across all of the Bar's boundaries.

With approximately 40 Bar members being selected as Fellows on an annual basis, the benefits, directly and indirectly, of the leadership skills which each Fellow will develop will be returned to their individual organizations and communities with the hope that they will assist those entities to greater heights. Additionally, these Fellows will become ambassadors for the Bar and the greater good of the legal profession.

### **III. PROGRAM DESIGN**

In developing this program, the Planning Committee reviewed various leadership academies around the country. While there is great variation among each program, the Planning Committee pulled the components that best suited the needs of The Florida Bar and is not aware of any programs within Florida dedicated to the profession of law which meet the vision of the Academy.

The concept of a Leadership Academy has been tested on a number of levels. Not only has the Planning Committee studied closely and spoke with participants of other state Bar Academies, but also has reviewed a couple of examples of leadership programs within County Bars in Florida. One in particular, is the Orange County Bar Association (OCBA). Past President, Mayanne Downs was instrumental in the development of that Program and has also reviewed this proposal concept. She believes the Academy addresses a much needed subject matter and curriculum, which will only supplement efforts such as those of the OCBA.

It is believed that the effect of the Academy on the Bar will be a unifying force. It is designed to create involvement of every sector of The Bar, including voluntary bars, sections, divisions, law firms, large and small, as well as the judiciary. Moreover, as a part of the curriculum, each Fellow will designate a preference of where they would like to get involved after graduating from the Academy. Efforts will be made to establish a mentorship for Fellows to facilitate a smooth transition into their preferred committee, section or division.

The curriculum of the Academy is designed to address each of the objectives of the Bar's strategic plan. During the course of the year, there will be specific lessons designed to highlight the various goals and issues addressed by the plan and to create a fresh dialogue regarding solutions. Additionally, the curriculum will enhance the skills of the Fellows and hopefully ignite a passion in the participants to become a part of the solution.

The Planning Committee sought to formulate the proposed program with three criteria in mind: Will it work? Is it sustainable? And will it make a significant difference over time in its articulated goals? The Planning Committee believes this proposal meets these criteria and proposed the following program design:

Due to the size of our state and the hope that regional leaders would become more connected on a local level, the structure of the Academy was determined to include two regional branches:

1. South Florida ( Below Orlando: Dade, Broward, Palm Beach, and Naples areas)
2. North Florida ( Above Orlando: Orlando Tampa, Gainesville , Tallahassee, Jacksonville, and Pensacola areas)

The program will allow each branch to have one meeting in each of its main designated areas, rotating locations throughout its regional branch territory in order to maximize speakers/guest lecturers. The goal will be for each region to meet approximately once every other month, on the same designated date, for a total of six meetings and graduation. These group meetings will include three full group meetings of all of the branches at the Bar's Annual Convention, Fall meeting, and January Tallahassee meeting and three regional branch meetings. At the conclusion of the program the Fellows will participate in graduation at the Bar's Annual Convention.

Over the past five years, the Bar has observed a clear trend of decline with members willing or able to travel for Bar meetings. This is believed to be a function of cost and time. In order to minimize the pressures of travel, the Planning Committee hopes that the regional branches format will facilitate greater participation. A secondary benefit to three branches is that by dividing into regions, it will enhance the networking opportunities of Fellows among those individuals that they will spend most of their professional time with on the local level.

Each Fellow will receive a mentor who will be assigned by the Leadership Academy Committee (LAC). *See Request for Standing Committee, Appendix B.* The LAC will be charged with overseeing the activities of the Academy, the Fellows, and their activities. The President-elect of the Bar will appoint the Chairperson of the LAC and its members. The President-elect will also appoint two co-chairs for each regional branch who will work under the chairperson in the coordination and administration of the program. The members of the LAC should be reflective of the State, our profession, and the Bar's goal of inclusion. The Immediate Past-President of the Bar will also be invited to serve a year on the LAC. It is believed that this will bring a wealth of knowledge and continuity to the LAC and the Academy.

Further, the Academy will fit into the existing Bar organization structure as a leadership skills program. The Center for Professionalism will act as the curriculum program coordinator, and in cooperation with the LAC members, will be responsible for the curriculum for the annual Academy in an effort to maintain uniformity across its regional branches. Members of the LAC, along with assigned Bar staff, will be responsible for coordination of all of the activities therein on both the State and regional level. In addition, the Center for Professionalism and/or Manager of Diversity Initiatives for the Bar will be assigned to the Academy as a Staff Liaison and day to day coordinator of the Academy.

#### IV. PROGRAM FUNDING AND EXPENDITURES

Funding for the program will be primarily generated from scholarships, sections, divisions, law firms and attorneys. A secondary source of funding will come from general Bar revenue. Additionally, Fellows will each be asked to pay an Academy Participation fee of \$1000.00 to help offset their program costs.

The Planning Committee has already had very promising preliminary discussions with a few of the larger Sections regarding their financial contribution of scholarships to the Academy. They have stated a clear interest in participating and can expect there will be similar interest among other Sections and the two Divisions of the Bar. In return for scholarship participation, each of these entities will be able to submit candidates for consideration for Fellowship into the Academy.

Similarly, law firms and attorneys will be encouraged to make scholarship contributions to the Academy in return for submitting an applicant for consideration for Fellowship.

Another source of financial support for the Academy will come from corporate sponsorships. The Planning Committee has worked with Terry Hill who is most familiar with corporate sponsorships for bar activities on this issue. Terry Hill has identified several corporate organizations that he believes are prime candidates for support, including but not limited to, FLMIC, LexisNexis, West, and InReach for example. Terry Hill recently communicated with a representative from FLMIC and he learned that they have already set aside \$10,000.00 for sponsorship of the Academy. Apparently, many corporate sponsors are very interested in an activity such as this due to the substance of the Leadership Academy, as well as the length of the program. In fact, it is perceived that a program such as the Leadership Academy gives these corporate sponsors a higher profile for a significantly longer period than some of the Bar events which are a single day event.

The Planning Committee has worked with an assumption of 40 Fellows in the inaugural class and has also assumed that 20 of those individuals will need scholarship support. At a rate of \$3,500.00, inclusive of Academy Participate Fee of \$1000.00 and \$2,500.00 for travel and hotel reimbursement, that requires revenues of \$70,000.00. Additionally, the other 20 Fellows who are able to pay their own expenses, will generate an additional \$20,000.00, from the required \$1000.00 as an Academy Participation fee.

A conservative estimate for first year corporate sponsorships is \$30,000.00 to \$50,000.00. Scholarships from Sections and Divisions are estimated at \$40,000.00 to \$50,000.00 and scholarships from law firms/attorneys are \$40,000.00 to \$50,000.00. *See Memorandum of Terry Hill dated Nov. 30, 2012, Appendix C*

Based on all reasonable estimates, the impact on the Bar's General Revenue Fund will be

minimized by the above-referenced revenue sources. It is expected that the LAC will have a designated sub-committee that will be responsible for funding raising efforts year round. This way, it is believed the LAC can maximize our opportunities for contributions from all sources and generate the funding for the Leadership Academy. Neither Bar leadership or Board of Governors will be expected to take on fund raising responsibilities. The LAC will coordinate its efforts of fund raising to be in line with the Bar's budget process, so that any consideration of Bar funding will be considered during the Bar's normal budget development and review process.

A more detailed plan of the budget projections for the program has been compiled by the Bar's Budget Office. *See Proposed Budget Appendix D.* It is expected that after the first year, some of the projected line items will be reduced to account for first year costs, such as curriculum development and website development.

## V. PROGRAM IMPLEMENTATION

Implementing and administering the Academy will require more than a casual or ad hoc effort. While the Bar already has in place all necessary personnel, it will be required to allocate their staff time to develop and finalize the curriculum materials for the program and finalize meeting space for the full group meetings, attend full group and regional meetings, organize speakers, etc. A checklist for the anticipated time line for implementation of the program has been compiled. *See Implementation Checklist, Appendix E.*

There are three components to participation in the Leadership Academy:

1. Fellows will be required to attend meetings approximately every other month consisting of programs on topics to develop leadership skills and knowledge of the Bar. Generally, the program format will consist of a half-day session lasting 4 hours in duration, followed by a networking dinner and an overnight stay. The following day will consist of another 3-4 hour half-day program. This will provide for a 24 hour program format which will increase opportunities for comradery and networking. CLE credit for certain sessions will be sought and materials for these programs will be printed from the Academy website.

2. During the mid-point of a Fellow's Academy year, Fellows will be asked for two preferences of a Bar division, section, or committee they would like to participate in upon graduation from the Academy. The LAC will notify the Bar division, section, or the Bar President-elect designate of a Fellows desired request to participate so that the Fellow can be considered. The LAC will only facilitate introductions. The appointments will be at the sole discretion of the individual section, division or President-Elect.

3. Fellows, as a group, will be asked to create and implement a public service project to serve Florida. The project is to be developed by the Fellows. They will present their ideas to the Bar President and the LAC at the Fall joint meeting in September, and upon approval, the implementation of the project is the sole responsibility of the Fellows. Fellows will be responsible for assigning duties for the project to ensure that all necessary tasks are completed prior to the conclusion of the Academy program.

Attendance at meetings will be mandatory. While emergencies will always happen, attendance is expected at all events, as ample notice for meeting dates will be given. Fellows may be dropped from the program by the LAC for non-attendance. Excused absences by a Fellow must be sought in advance from the LAC Chair.

Meetings will be held on Fridays at the various locations throughout the state. In addition, Fellows will be required to attend the Annual Bar Convention in June from Friday-Saturday, the Fall Joint Meeting in September on Thursday, and the January Tallahassee Meeting on Friday.

Fellows will be responsible for their travel and accommodations to each meeting. A block of hotel rooms will be offered for reservations for the full group meetings. Meals will be provided during official meetings by the Academy.

A Leadership Academy Participation Fee of \$1000.00 will be due upon acceptance into the Academy. Limited financial aid and partial scholarships may be available, depending on resources. Law offices, Sections and Divisions of the Bar, and Bar leaders will be encouraged to sponsor Fellows of the Academy for \$3,500.00 each, which includes the Fellow's participation fee and reimbursement for travel to the joint meetings.

Starting in March of each year, individuals may submit an application online. It is highly encouraged that Bar Sections and Divisions, Voluntary and Specialty Bar Associations, and other members encourage individuals to submit applications for the Academy. Candidates may also be nominated by other Bar members, their firms, or any member of the Judiciary. It is also expected that members of the Bar's Board of Governors will encourage individuals from their circuit to seek application for Fellowship in the program. All Voluntary and Specialty Bar Associations will be sent information about the Leadership Academy and asked to inform their members about the program.

The deadline for the inaugural 2013-2014 Leadership Academy Class will be April 1, 2013. Applications received after April 1, 2013 will not be considered. Applications should be emailed to Arnell Bryant-Willis and will be reviewed by the LAC for inclusion recommendations for the program. The ultimate roster of Fellows accepted into the Academy will be decided by the President-elect of the

Bar in cooperation with the LAC, before the Academy year. Fellows can contact the office of Diversity Initiatives of The Florida Bar with questions regarding the application process.

There will be a number of challenges and uncertainties which the Planning Committee will need to address. One such challenge is to make sure that in order to select a diverse and inclusive class, there must be provisions in place for financial assistance for those that cannot afford the tuition so that money will not prohibit full inclusion. Through various scholarships and sponsorships, the Planning Committee believes this challenge can and will be addressed.

Another challenge will be to maintain uniformity of the curriculum across all branches. It is important that each Fellow receive a similar experience, no matter where they are participating. With the help of the Center of Professionalism, a strong curriculum is being designed which will make it easy for duplication and implementation across the state.

Each branch will utilize the wealth of leadership in the various communities to assist with the curriculum. Current and former Bar leaders, including past Presidents, BOG members and judicial members, will be asked to participate in the programming.

Thirdly, it will be important to work closely with law firms, sections and divisions to encourage and support their members to participate in the Academy. The Academy must be relevant even to those that may have already been involved in leadership at some point, but believe that their skills can be enhanced, and there is value to a statewide network.

## **VI. PROGRAM EVALUATION**

The Academy should be reviewed in detail annually by the LAC and by the Board of Governors overall at the three year mark to determine if its continuation is desirable. It is the hope of the planning committee to graduate 120 Fellows from the Academy within a three year period. The effectiveness and efficiency of the program can be measured annually through satisfaction surveys of the Fellows, the LAC, and other stakeholders who have participated in some manner.

Additionally, the LAC will work with sections and divisions to track whether there are demonstrative increases in their diversity and inclusion efforts which can be attributed to the Academy.

APPENDIX A

**PROPOSED DRAFT CURRICULUM**

**Sample Academy Curriculum (CLE hours TBD)  
working draft as of 11/13/12 by Center for Professionalism<sup>1</sup>**

**June, 2013**

Kick-off Retreat at 2013 Annual Bar Convention (Boca Raton)

**Full Group Meeting****Fri., June 28<sup>th</sup> (5.30)***Theme: "Lawyers as Leaders"*

10:30 a.m.

General Assembly (optional)

2:00 - 2:15 p.m.

Welcome: President Eugene Pettis

2:15 - 3:00 p.m.

Keynote: Lucas Boyce

3:00 – 3:15 p.m.

Program Overview: Goals, Process, How the Program Year will Unfold, Renee Thompson

3:15 - 3:30 p.m.

Break

3:30 - 3:50 p.m.

"Lawyers as Leaders" Steve Zack

3:50 - 4:20 p.m.

Overview of The Florida Bar: Its History and Structure, Mayanne Downs

4:20 - 5:00 p.m.

Harnessing the Power of Relationships: Mentors and Your Network, Jacina Parson

5:30 - 7:30 p.m.

President's Reception: Meet and mingle with Leadership Academy Fellows, LAC members and mentors

**Saturday, June 29<sup>th</sup> (3:00)**

8:40 - 10:00 a.m

Breakfast with Council of Sections Leaders

10:00 – 12:00 p.m.

Using Your DISC Analysis for Self-Awareness and to Lead a Team Collaboratively with those Who Possess Different Work Style Preferences and Personalities, Role Playing Exercise and Team Building Activity, Nora Bergman,

**July, 2013 (4:00),***Theme: "Your Leadership Journey Begins"*

Regional Meetings: Educational Session

30 mn

FL Bar 101: Focus on BOG &amp; 3 sections (Public Interest Law Section, Environmental and Land Use Law Section, Elder Law Section)

30 mn

Balancing Personal, Volunteer and Work Life as a Leader

30 mn

Achieving Workable Unity: The Art of Motivating Others &amp; Delegating

30 mn

Public Service Concept and Brainstorming Session

20 mn

Break

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<sup>1</sup> Modifications made by the Planning Committee for proposal purposes.

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50 mn	Resolving Conflict Professionally (dealing with difficult people.)
50 mn	The Legacy of a Leader: Footprints on our Legal Community (Panel discussion of lawyer accounts and the impact that they have had on legal community)
<b><u>Continued (4:00)</u></b>	<i>Theme: "Leading by Design: Project Management from A-Z"</i>
	Regional Meetings: Educational Session
30 mn	FL Bar 101: Focus on Divisions (YLD & Out of State) & 3 sections (Business Law, Appellate Practice, ADR Sections)
20 mn	TFB's Current Strategic Plan (2012-2015) and Annual Revision Process for Next Strategic Plan
40 mn	Strategic Planning: Identifying a Common Vision, Building Consensus and Synergy
40 mn	Measuring Outcomes, Assessing Resources, Work Flow Analysis, and Assessing Fiscal Impact
20 mn	Break
45 mn	Obtaining Stakeholders, Creating & Launching an Action Plan for Community Service Project
45 mn	Finalize Community Service Project for submission to LAC
<b><u>September, 2013 (4.5)</u></b>	<i>Theme: "Leading for Tomorrow"</i>
	<b>Full Group Meeting:</b>
30 mn	FL Bar 101: Focus on Committees, GPSSF, Equal Opportunity Law Section & Henry Latimer Center for Professionalism
50 mn	Leading Lawyers in a Diverse Society: Cultural Competency and Beyond, Wilhelmina Tribble
50 mn	Effective Facilitative Leadership Styles and Essentials of Leading a Team, Alexa Sherr Hartley
20 mn	Break
30 mn	Understanding Generational Expectations, Linda Calvert Hanson
60 mn	Future of the Legal Profession: Issues for New Leaders, Harrison Coerver
30 mn	Oral Presentation of three Regional Service Projects for Bar Leaders' Approval

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**November, 2013 (4.00)** *Theme: “Effective Interaction and Communication as Leaders”*

	Group Meeting: Educational Session
30 mn	FL Bar 101: Focus on Programs (LOMAS, LALP, Board Certification, Lawyer Referral) and 3 sections (Administrative Law Section, Government Lawyer Section, City, County and Local Government Law Section)
30 mn	Communicating for Leaders, Honing Your Active Listening & Non-Verbal Communication Skills (Speakers Bureau)
30 mn	Agenda Setting, Leading and Conducting a Productive Meeting
60 mn	360 Constructive Feedback: Asking for, Receiving and Providing Feedback with role playing exercises
20 mn	Break
60 mn	E-filing, Social Media, and Technology for Today’s Leader
30 mn	Service Project Planning Time

**Continued (4:15)** *Theme: “Finding your Role in the Legal Profession”*

	Group Meeting: Educational Session
30 mn	FL Bar 101: Focus on Specialty Bars & 3 sections (Real Property, Probate & Trust Law Section, Tax Law Section, International Law Section)
75 mn	Professionalism & Civility Matters with Value Cards Group Exercise
30 mn	Service Project Planning Time
20 mn	Break
60 mn	Panel: Exploring New Roles: Running for Public Office, Getting on the Bench, Serving on Committees, Seeking Endorsements & Appointments
40 mn	Process 360-Constructive Feedback Received from Peers with Group Discussion

**January, 2014 Tallahassee (7:30)****Full Group Meeting: Theme: “Laws for Leaders”**

8:15 – 9:00 a.m.	Breakfast with the Chief Justice
9:00 – 9:50 a.m.	Overview on The Florida Bar’s policy on legislative positions: interacting with legislators, legislative protocol, making presentations to legislative committees. Roles as committee members and as witnesses, taking positions in support and opposition to a house bill studied in advance, TFB white papers. Paul Hill and Bar Lobbyists

9:50-10:10 a.m. Break  
 10:10-10:40 a.m. Tour of The Florida Bar  
 10:40 – 11:00 a.m. Florida Supreme Court Historical Society  
 11:00 – 12:00 a.m. Observe BOG Meeting & hear Chief Justice’s talk  
 12:00- 1:00 p.m. Lunch with the Board of Governors;  
 1:15 – 1:45 p.m. Maximizing Your Media and Public Relations Efforts – Francine Walker  
 1:45 – 2:30 p.m. Tour of Florida Supreme Court

**March, 2014 (4.0)**

*Theme: “Guardians of the Legal Profession”*

Regional Group Meeting: Educational Session  
 30 mn FL Bar 101: Focus on Voluntary Bars & 3 sections (Labor & Employment Law Section, Trial Lawyers Section & Workers’ Compensation Law Section)  
 50 mn Avoiding Malpractice Claims (FLMIC Risk Manager & Directors)  
 25 mn Overview of TFB Discipline System and Grievance Process  
 20 mn Break  
 45 mn Service Project Planning Time  
 70 mn Grievance Committee Service: Perspectives from a Grievance Committee Chair and Members

**Continued (4.0)**

*Theme: “Leading by Example: Community Lawyering and Servant Leadership”*

Regional Group Meeting:  
 30 mn FL Bar 101: Focus on Pro Bono & 4 sections (Criminal Law Section, Entertainment, Arts & Sports Law Section, Family Law Section and Health Law Section)  
 15 mn Servant Leadership: One Campaign Video and Florida Bar Foundation  
 50 mn Panel of Local Community Service Providers: Benefits of Pro Bono Service  
 150 mn Community Service Project

**June, 2014**

**Full Group Meeting:** Fellows graduation at the Annual Bar Convention (in Orlando).

# Exhibit “B”

# Elder Law Section



THE FLORIDA BAR

## MEMORANDUM

**FROM:** Twyla L. Sketchley, Chair

**TO:** Florida Bar Section and Division Chairs  
Hon. Foster Scott Boyd  
Chester Burt Chance, Esq.  
Jack Roy Reiter, Esq.  
Brian Keith Gart, Esq.  
Mary Jewel White, Esq.  
H. Scott Fingerhut, Esq.  
Cassandra Elizabeth-Marie Willard, Esq.  
Erin Lee Deady, Esq.  
Lindsay N. Oyewale, Esq.  
Carin Marie Porras, Esq.  
Linda Susan Calvert-Hanson, Esq.  
Diana Kay Bock, Esq.  
Bernabe Antonio Icaza, Esq.  
Richard C. Lorenzo, Esq.  
Sherril May Colombo, Esq.  
Donal Alan Workman, Esq.  
T. Lorraine Johns Caldwell, Esq.  
William F. Belcher, Esq.  
Michael Allen Lampert, Esq.  
Wayne Lawrence Helsby, Esq.  
Dawn Traverson, Esq.  
Paige Adonna Greenlee, Esq.

**DATE:** December 11, 2012

**RE:** Legislative Position Request

Dear Section Leaders:

Attached please find a Legislative Position Request Form that the Elder Law Section is submitting to the Florida Bar Board of Governors with a proposed amendment to statute and a white paper on the removal of the right to bear arms in guardianship and the necessity of due process before the removal of constitutional rights, including the right to bear arms.

### CHAIR

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### CHAIR-ELECT

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Sandra Diamond  
Seminole, FL

### PROGRAM ADMINISTRATOR

Arlee J. Colman  
The Florida Bar  
(800) 342-8060, ext. 5625  
acolman@flabar.org

Please review these items and notify me via email on or before January 1, 2013, of your Section's support or opposition to [twyla@sketchleylaw.com](mailto:twyla@sketchleylaw.com).

If you have any questions, please do not hesitate to email or call me at your nearest convenience.

Thank you for your assistance.

TLS/tmr

cc: Paul Hill, Florida Bar

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

Submitted By Elder Law Section C/O Attorney Twyla Sketchley (Section Chair)

(List name of the section, division, committee, bar group or individual)

Address C/o The Sketchley Law Firm P.A  
The Professional Center at South Wood  
3689 Coolidge Court, Suite 8  
Tallahassee, FL 32311 (850) 894-0152

Position Type: Elder Law Section

## CONTACTS

Board & Legislation  
Committee Appearance To Be Determined

Appearances  
before Legislators To Be Determined

Meetings with  
Legislators/staff To Be Determined

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

NONE

If Applicable,  
List The Following

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical Assistance

Other

### Proposed Wording of Position for Official Publication:

Supports legislation which would include "The Right to Bear Arms" as one of the enumerated rights, to be addressed by the court, when determining which rights may be removed under Florida Statute 744.3215. The proposed legislation would also include "The Right to Bear Arms" as a right which may be restored under Florida Statute 744.464.

### Reasons For Proposed Advocacy:

See Attached White Paper

## ELDER LAW SECTION WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 744.3215 TO INCLUDE THE RIGHT TO OWN, CARRY, OR POSSESS WEAPONS OR FIREARMS, OR HAVE A LICENSE TO CARRY, OWN OR POSSESS WEAPONS OR FIREARMS AS A RIGHT THAT MAY BE REMOVED FROM A PERSON BY AN ORDER DETERMINING INCAPACITY

#### I. SUMMARY

The second amendment to the U.S. Constitution grants citizens a right to bear arms. Currently this Constitutional right is being removed by some Florida Circuit Courts without ever having the right judicially addressed and without due process.

Under existing law, the Florida Department of Law Enforcement is required to review any records available to determine if the potential buyer or transferee has been adjudicated mentally defective or has been committed to a mental institution and as a result is prohibited by federal law from purchasing a firearm. See § 790.065(2)(a)(4), Fla. Stat. Current law also prohibits the issuance of a license to carry concealed weapons or concealed firearms to persons who are unqualified including an individual who has been adjudicated incapacitated under §744.331, or similar laws of any other state unless restoration of capacity has been granted by court order and 5 years have elapsed since then. See § 790.06(2)(i), Fla. Stat.

This proposed legislation seeks to include the right to own, carry, or possess weapons or firearms, as a right that may be removed from a person by an order determining incapacity but not delegated to a guardian. Danger is presented when an individual already possesses a weapon/firearm or a license to carry a weapon/firearm and the safeguards implemented in Chapter 790 are not triggered. After researching

5. The right to determine their residence
6. The right to consent to medical and mental health treatment
7. The right to make decisions about their social environment.

Although the thirteen above listed "rights" are referred to as "rights" under F.S. 744.3215 only the right to vote is a constitutionally enumerated right. In actuality there is no right to have a drivers license, it is a privilege granted by the state. Similarly the "right to marry" is also a license granted by the state.

Although the second amendment to the U.S. Constitution grants citizens a right to bear arms, currently this Constitutional right is not being given the due process afforded to non-constitutional privileges. The right to bear arms is not one of the 13 rights addressed by F.S. 744.3215.

### **III. EFFECT OF PROPOSED CHANGES**

The proposed statutory changes amend Section 744.3215 to include the right to own, carry, or possess weapons or firearm as a right that may be removed from a person by an order determining incapacity but not delegated to a guardian. The possession of the actual weapons would be addressed as would any other property owned by the incapacitated person. The guardian should seek court approval before transferring weapons and assure that the transfer is in accordance with Bureau of Alcohol Tobacco and Firearms regulations, and in keeping with the incapacitated person's estate plan.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT**

3. The person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication.

In addition, this legislation promotes the public safety and general welfare of incapacitated individuals and those who come into contact with said individuals.

Therefore, the proposed amendments herein should withstand a challenge.

## **VI. OTHER PARTIES OF INTEREST**

### **Potential Partners:**

1. RPPTL Section of the Florida Bar
2. Department of Elder Affairs
3. The National Rifle Association

# Exhibit “C”

**DRAFT MINUTES OF THE MEETING  
OF THE EXECUTIVE COUNCIL OF THE BUSINESS LAW SECTION  
OF THE FLORIDA BAR AT THE SECTION'S RETREAT  
RITZ CARLTON HOTEL, NAPLES, FLORIDA**

**September 3, 2012 – 8:30 AM to 11:30 AM**

The meeting of the Executive Council (“EC”) of the Business Law Section (“BLS” or “Section”) of The Florida Bar during the fall retreat of the Section was called to order at 8:30 a.m. by **Brian Gart**, Section Chair.

**I. ATTENDANCE AND QUORUM**

The Chair requested those in attendance to briefly introduce themselves. In addition, a sign-in attendance sheet was circulated to confirm the presence of a quorum for transaction of business.

The Chair then recognized **Jeanie Seawald**, President of the Collier County Bar Association. Ms. Seawald welcomed the Section to Collier County and thanked the leadership of the Section for scheduling the retreat in Naples.

The Chair reminded the EC that Bankruptcy Judges **Mike Williamson** and **John Olsen**, both former BLS Chairs, were providing an opportunity for raising funds for the Florida Bar Foundation by participating in a contest between themselves to allow the members of the EC to pay a contribution to guess which of these two Judges had lost the most weight since the spring retreat in Buenos Aires, Argentina. It was advised that proceeds from the contest would be donated to the Florida Bar Foundation under the supervision of Long Range Planning Committee Chair, Greg Yadley. Mr. Yadley explained the contest rules and the members of the EC expressed their appreciation of the efforts by Judges Williamson and Olsen.

As the next order of business the Chair read the following standing Resolution of the BLS to remind and focus all attendees of the Section’s sustained continuing “commitment to support Pro Bono” efforts:

**Be it further resolved that as part of its efforts to further and support pro bono service, the Business Law Section supports the Pro Bono committee partnering with the CLE Committee and other committees of the Business Law Section to include a brief (3 to 5 minutes) presentation re-affirming the Business Law Section's support of and commitment to pro bono service at CLE programming and other appropriate Section events.**

The Chair then reintroduced **Greg Coleman**, a lawyer practicing in West Palm Beach and a member of the Florida Bar Board of Governors. Mr. Coleman discussed his exploratory efforts to run for The Florida Bar President, his interest in improving communications within the Board of Governors and Bar Sections and assisting new Bar members in becoming involved with Bar Sections as a type of mentor.

The Chair then called the EC's attention to the list of Committee appointments attached to the meeting agenda as Exhibit B and he invited comments concerning the appointments to be made to him, personally.

## **II. APPROVAL OF MINUTES OF THE EC MEETING ON JUNE 21, 2012**

As the next item of business, the Chair sought approval of the draft minutes of the June 21, 2012 EC meeting. The Chair observed that the minutes had been made available to all Section members on the Section's Web site and were included in the agenda materials distributed to the EC. The Chair recognized **Barbara Riesberg**, who moved to amend page 11 of the draft minutes to reflect that Judge Rodriguez was a judge of the Circuit Court of Florida's Eleventh Circuit. There was no objection to her proposed amendment. **Ms. Riesberg** then moved approval of the minutes as amended, which was **duly seconded by Rick Gross**. The minutes as amended **unanimously were approved by a voice vote of the EC**.

## **III. TREASURER'S REPORT AND**

## **APPROVAL OF FINANCIAL STATEMENT**

As the next item on the meeting agenda, the Chair requested the Treasurer to present a report of the status of the Section's finances. Judge **Bill Van Nortwick**, BLS Secretary/Treasurer, reported that the Section was financial healthy and had experienced a substantial increase in its fund balance from \$418,075 at the close of the 2010-11 fiscal year to \$501,527 at the close of the 2011-12 fiscal year.

The Secretary/Treasurer noted that his Treasurer's Report had been attached to the agenda materials as Exhibit D and had been made available to all BLS members on the Section's Web site. The Chair noted that (1) the Budget Committee had revised and recommended the proposed budget and (2) the reimbursement policy for judges and professors had been amended to include registration fees. **Following a discussion and a motion duly made and seconded, the Treasurer's Report was approved unanimously by the EC.**

## **IV. REPORTS OF SPECIAL COMMITTEES AND TASK FORCE**

### **A. REPORT OF THE LLC DRAFTING TASK FORCE**

The Chair called upon **Lou Conti**, chair of the LLC Drafting Task Force and former BLS Chair, who reported that the Florida Chapter 608 LLC Drafting Task Force had completed its final drafting session to date and that the draft statute was close to being completed.

### **B. THIRD PARTY OPINION STANDARDS TASK FORCE**

**Robert Barron** presented the report of the Third Party Opinion Standards Task Force. He noted that the report has been distributed to members of the Section and that the Task Force will continue work to address additional opinion issues.

### **C. TASK FORCE ON COVENANTS NOT TO COMPLETE**

In the absence of Hal Litchford, Task Force Chair, Task Force members **Sam Lewis** and **Jim Murphy** presented the Task Force report, that a subcommittee of the Task Force had worked through various comments by representatives of the Business Litigation Committee and the Committee and had made substantial revisions to the draft report. They anticipated a final work-product prior to the 2014 Legislative Session.

#### **D. SOCIAL MEDIA TASK FORCE**

The Chair reported that the Social Media Task Force conducted its initial meeting telephonically and advised that the Bar's recent social media policy was attached as Exhibit E to the agenda. The Chair noted several provisions in the Bar's policy, including those relating to public records, and noted that a draft survey concerning the use of social media by BLS Committees had been prepared by the BLS Communication Committee, which had requested comments and suggestions. The Chair stated that Sam Lewis would distribute the survey electronically within 30 days for which all EC members were requested to respond.

#### **V. SPECIAL RECOGNITION OF REP. KATHLEEN PASSIDOMO**

The Chair introduced **Bill Wiley**, BLS lead lobbyist who in turn introduced attorney **Kathleen Passidomo**, a member of the Florida House of Representatives who represented Naples. Mr. Wiley noted that Representative Passidomo had sponsored a Bill for the Section that revised Article 9 of the Uniform Commercial Code, and that it was one of only a small number of Bills passed during the 2012 Legislative Session.

The Chair presented a beautiful plaque to Representative Passidomo thanking and recognizing her and her leadership in the House of Representatives in adopting improved and enhanced business laws in the State of Florida. Representative Passidomo thanked the Section for its thorough work on the complex legislation it supports and discussed the foreclosure bill proposed in the 2012 session and to be re-filed in the 2013 session.

#### **VI. COMMITTEE REPORTS**

**A. ANTITRUST, FRANCHISE & TRADE REGULATION COMMITTEE**

The Chair called upon Committee Chair **Jude Cooper**, who discussed the meeting of the Committee at the Retreat; the Committee's proposed legislation; the Committee's CLE programs concerning the FTC, covenants not to compete and franchise law; and the Committee's outreach to law schools.

**B. BANKRUPTCY/UCC COMMITTEE**

Committee Chair **Jacob Brown** discussed the Committee's CLE program at the retreat, the receivership study group working with the Florida Bar RPTLS Section, several possible legislative matters which would be brought to the Executive Council at a future meeting, and upcoming CLE programs.

**C. BUSINESS LITIGATION**

Committee Chair **Barbara Riesberg** summarized the Committee's opposition to amending the implied covenant of good faith and dealing under the common law and its discussion and other comments concerning the current draft of proposed LLC Act revisions. Ms. Riesberg also discussed the CLE programs of the Committee, including E-Discovery; the Committee's activities with respect to the *Business Law Journal* case summaries; and the distribution of the case summaries prepared by Manny Farrach.

Ms. Riesberg requested EC approval to distribute Mr. Farrach's case summaries to the entire Section. Following a motion duly made and seconded, **the EC unanimously approved the distribution of the Business Litigation case summaries to the entire BLS membership.**

Finally, Ms. Riesberg advised that the Bus. Lit. Committee voted to approve \$1,000 to sponsor the Federal Judicial Round Table at the annual meeting of The Florida Bar. **Based on a motion made by John Polenber and duly seconded, the EC unanimously approved the \$1,000 sponsorship.**

#### **D. COMMUNICATIONS COMMITTEE**

Committee Chair **Lynn Sherman** reported that the 2011 *Business Law Journal* has gone to press and that the 2012 edition of the Journal will be published fully electronically. Ms. Sherman thanked the law firms who sponsored the 2011 Journal printing; Adams & Reese, LLP; Damian & Valori, LLP; Jennis & Bowen; McCabe & Rabin, P.A.; Polenberg Cooper, P.A.; and Berger Singerman. Ms. Sherman further reported that the Committee will work to improve the Section's Web site and the ability to link the Section's Web site to members' calendars.

Ms. Sherman requested all BLS Committees to submit their activities and photographs to add to the Section Web site and requested all Committee Chairs to update the Committee's Web page.

The Chair advised that EC members will receive Lexology test news e-mails as a means of enhancing communication within the Section. He noted that Lexology provides its services for the California Business Law Section Web site. Mr. Nagin advised that the Association of Corporate Counsel also provides the Lexology service to its members.

#### **F. COMPUTER AND TECHNOLOGY LAW COMMITTEE**

Committee Chair **Kevin Levy** reported that the Committee had good attendance at its Retreat meeting, including having six law students in attendance. Further, he reported that the Committee sponsored CLE programs in January and June on E-Discovery and the *Computer Fraud and Abuse Act*, 18 U.S.C. § 1030, dealing with computer hacking.

#### **G. THE CONTINUING LEGAL EDUCATION COMMITTEE**

CLE Committee Chair **Michael Chesal** reported that BLS substantive committees would be contacted concerning CLE programs and that CLE offerings would become available on the Section's Web site.

## **H. CORPORATIONS, SECURITIES & FINANCIAL SERVICES COMMITTEE**

Committee Chair **Laurie Green** reported that the Committee presented a CLE program by PCE at the retreat. Ms. Green also noted that there was a robust discussion at the Committee meeting concerning the proposed LLC Act and that, after the LLC Act revision is completed, the Committee intended to move to address revisions to Chapter 607, Florida Statutes, the Florida Business Corporations Act.

## **I. DIVERSITY COMMITTEE**

The Chair then recognized **Leaza Blanco**, Chair of the BLS Diversity Committee who reported that the Committee's meeting was well-attended. She reminded all Chairs of the other substantive Committees that a representative needed to be appointed to the Diversity Committee. She noted that only the Anti-Trust, Franchise, and Trade Regulation Committee failed to report a designated representative.

Ms. Blanco noted that the Committee had considered measuring the success of the BLS diversity efforts, including developing baselines for such measurement. She Moved the Executive Council to request the Board of Governors of The Florida Bar to include sexual orientation as a diversity element. **The motion to include sexual orientation duly was seconded, after which the Executive Council unanimously approved the request of the Committee by a voice vote.**

Ms. Blanco noted that The Florida Bar Report with respect to diversity initiatives included a recommendation that the Sections open membership in the Diversity Committee to third-year law students and that the Sections should waive fees for such students' participation. Ms. Blanco moved and Steph Nagin seconded a Motion to waive Section fees for third-year law students. Rick Gross requested that the motion be amended to include all law students. Ms. Blanco and Mr. Nagin accepted the amendment after which the Motion unanimously was approved by the Executive Council.

Ms. Blanco noted that the Koziac Minority Mentoring Picnic in Miami would be held in the near future. She encouraged Section members to volunteer to staff the Section's picnic booth.

#### **J. E-DISCOVERY SUBCOMMITTEE**

Committee Chair **Doug Cherry** reported that the E-Discovery amendments included all suggestions made by the Subcommittee and that the Subcommittee was moving forward to present a CLE program at the Annual Meeting of The Florida Bar in June 2013. In addition, the Subcommittee would prepare luncheon CLE programs and develop a CLE E-Disc.

The Chair noted that a report of the FICPA Committee had been presented in past meetings, but reminded the Executive Council that the FICPA terminated its affiliation with the BLS, and as a consequence, the FICPA Committee had been abolished. Former BLS Chair Diane Wells noted that abolishment of the Committee did not follow the Section's By Laws. **Based on a motion by Mr. Polenberg, which was duly seconded, the Executive Council unanimously approved that the FICPA Committee be abolished.**

#### **K. INTELLECTUAL PROPERTY COMMITTEE**

Committee Vice-Chair **Ury Fisher**, presented the Committee's report in the absence of Committee Chair Leora Herrmann. He discussed the Committee's legislative issues, including (1) a proposed revision of the Florida Covenants Not to Compete Statute, (2) public records laws (ch. 119, Fla. Stat.), and (3) State agency ownership of intellectual property. Mr. Fisher then advised that the IP Committee would present its annual IP Symposium in West Palm Beach.

#### **L. LEGISLATION COMMITTEE**

Committee Chair **Alan Howard** reported that the Committee had a "lively," well-attended meeting in which the Section's following legislative positions were discussed:

1. Court Funding
2. Civil Legal Assistance
3. Possible new initiatives, including the proposed LLC Act, and Amendments to Chapter 727, Florida Statutes

#### **M. LONG-RANGE PLANNING COMMITTEE**

Committee Chair **Greg Yadley** advised that the Long-Range Committee had nothing to report.

#### **N. MEMBERSHIP COMMITTEE**

Committee Chair **Jody Cooke** reported that the Committee was continuing its outreach initiative at all law schools in Florida, and that Peter Valori would be heading a more formal mentoring project with law students. In addition, the Committee was increasing the number of law students on the Committee's list serve. **Alan Aronson** reported that the Committee had reached out to all twelve law schools and that, on October 16, 2012 it would sponsor a luncheon meeting at the University of Florida College of Law facilitated by BLS member **Phil Kabler**.

#### **O. PRO BONO COMMITTEE**

Committee Chair **Mark Stein** discussed the various initiatives, including nonprofit clinics, model law firm pro bono policies, and was investigating ways to partner with other organizations. Mr. Stein reported that the nonprofit clinic efforts would be expanded in 2012-13.

#### **P. RETREATMENT AND SPONSORSHIP COMMITTEE**

Committee Chair **Lori Vaughan** reported that the turnout for current Retreat is the largest ever sponsored by the Section.

The Chair requested Comments on the 2012 Retreat and noted that the Retreat Committee would meet immediately following adjournment of the Executive Council, the Retreat Committee and **Mary Ann Obos**, the Section's

Program Administrator”, for their hard work to make the Retreat so successful. Ms. Vaughn thanked all BLS Retreat Sponsors for their support , without which the Section could not hold the Retreat.

#### **Q. BANKRUPTCY JUDICIAL LIAISON COMMITTEE**

Committee Chair U.S. Bankruptcy **Judge Paul Hyman** reported that the Committee meeting had been well-attended and that the Committee discussed the financial difficulties Federal District Courts would encounter if sequestration were to occur. The Committee also discussed whether to raise the registration fee for law students who attend the “View From the Bench” annual seminar.

#### **R. STATE/FEDERAL COURTS JUDICIAL LIAISON COMMITTEE**

Committee Chair **Mark Nichols** reported that all of the business court judges in Florida had attended the Retreat and participated in the Business Court Roundtable. He explained that BLS members had advised him that the Roundtable was well-received and resulted in a lively discussion.

### **VII. OTHER REPORTS:**

#### **A. HISTORIAN/PARLIAMENTARIAN**

The Chair announced that former BLS Chairs Phil Schwartz and Russell Blain had been appointed to prepare a history of the Section. Mr. Schwartz explained that the report would have both informal and formal components including information about Section trips and photographs and that they hoped to present the history of the Section at the January 2013 meeting.

#### **B. COUNCIL OF SECTIONS**

Chair Elect Stephen Nagin reported that, in 2011, he had attended the Counsel of Sections as the BLS representative and that a representative of every Section had attended the previous year’s Council of Sections a meeting, which held

a Leadership Conference, in Tallahassee, which was “phenomenal” and that he would recommend it to any future Section officer.

### **C. BOARD OF GOVERNORS**

The Chair announced that former BLS Chair and current member of the Board of Governors, Michael Higer, provided a timely report that was included in the agenda materials as Exhibit H. The Chair called on Florida Bar President **Gwynn Young**, who discussed Article V proposed amendments to the Florida Constitution, which related to the Florida Court System, including Judicial Nomination Committee changes, rules relating to the Judicial Qualification Committee confidentiality, and a 50% plus 1 vote to change Court Rules.

### **D. “RPPTL” LIAISON REPORT**

The Chair reported that the report concerning the Real Property, Probate, and Trust Law Section report would not be made because the representative to that Section, Marshe Rydberg, was not in attendance.

### **E. TAX LIAISON REPORT**

No report was presented by the liaison to the Tax Section.

### **F. LIAISON TO OUT-OF-STATE PRACTITIONERS**

No report was presented by the liaison to the Out-Of-State Practitioner’s Section, Don Workman.

### **G. YOUNG LAWYERS DIVISION**

The Chair reported that the leadership of the Young Lawyers Division of The Florida Bar attended the Section’s retreat in Naples and that the Section would increase its outreach to young lawyers and partner with them in an outreach to law schools.

## **VIII. REPORT BY THE CHAIR-ELECT**

The Chair requested that the Chair-Elect, **Stephen Nagin**, present his report out of order prior to Chairs report. Mr. Nagin reported that the members of the EC would be surveyed concerning preferred locations and events for the 2014 Spring Retreat.

## **IX. CHAIR'S REPORT**

The Chair thanked **Arnel Bryant Willis** a member of The Florida Bar staff, for assisting the Section's diversity efforts and for her work with the Retreat Committee. The Council recognized her with a round of applause.

The Chair then requested BLS members to submit articles for the Journal.

The Chair discussed the Spring Retreat to be held on April 17st to the 21st, 2013 at the Hotel Yountville, in Yountville, CA. He invited members to join him in travelling to Yountville on motorcycle. In addition, he advised that former Section Chair Hal Litchford would be organizing a bicycle trip at the event (and that the Hotel had bicycles for rent). The Spring Retreat activities would include an open air dinner in a vineyard and private tasting at several wineries.

The Chair reminded everyone that the BLS Mid-Year Meeting would be held on January 9th and 10th, 2013 at the Orlando Airport Marriot Hotel.

The Chair asked Mr. Yadley to report on the weight loss contest. He reported that both candidates were successful, with Judge Olson losing 35.5 pounds (11% of weight) and Judge Williamson losing 38.8 pounds (16% of weight), and that \$830.00 was raised for the benefit of the Florida Bar Foundation.

## **X. ADJOURNMENT**

Upon a motion duly made and seconded, the meeting unanimously adjourned at 11:25 a.m.

# Exhibit “D”



# THE FLORIDA BAR

BUSINESS LAW SECTION

NOVEMBER 2012 FINANCIAL STATEMENT

## YEAR TO DATE OVERVIEW

YTD REVENUE:	\$455,961
YTD EXPENSES:	\$328,114
YTD NET:	\$127,847
BEGINNING FUND BALANCE:	\$501,523
TOTAL CURRENT FUND BALANCE:	\$629,370

TOTAL CURRENT MEMBERSHIP: 5027

# Exhibit “E”

	10-11 Actual	11-12 Actual	12-13 Budget	12-13 Projected Actual	13-14 Proposed Budget
<b>Business Law Revenue</b>	320,209	316,238	314,198	322,796	326,291
31431 Dues	199,530	243,620	247,500	253,000	253,000
31432 Affiliate Dues	1,930	2,530	1,920	2,500	2,500
31433 Dues-Retained TFB Ge	(78,507)	(79,867)	(80,030)	(80,500)	(80,500)
31435 Admin Fee Adj	8,632	6,204	0	0	0
32191 CLE Courses	81,762	96,223	70,000	70,000	70,000
32293 Section Differential	15,580	19,309	9,625	9,625	9,625
35003 Ticket Events	1,587	2,014	2,625	2,625	3,000
35208 Journal Sponsor	0	9,000	17,500	0	2,500
35601 Bankruptcy Judge Rec	0	0	5,500	5,500	5,500
35606 Judl Liaison Dinner	0	0	0	20,000	20,000
35721 Retreat/Registration	44,869	23,815	25,000	25,000	25,000
38499 Investment Allocatio	44,826	(6,610)	14,558	15,046	15,666
<b>Business Law Expense</b>	214,043	232,351	267,825	267,214	314,161
71001 Telephone/Direct	615	1,182	760	760	760
71005 Internet Charges	283	237	700	700	700
51101 Employee Travel	2,725	5,131	3,463	3,463	3,881
36998 Credit Card Fees	861	511	900	900	900
84001 Postage	153	172	400	400	400
84002 Printing	0	48	350	350	350
84007 Membership	1,000	750	4,500	4,500	4,500
84009 Supplies	31	132	120	120	150
84010 Photocopying	49	71	250	250	250
84014 Journal Printing	0	0	17,500	17,500	0
84040 Judges Trav Annl Mtg	0	0	3,000	3,000	7,000
84041 Judges Trav Napl Ret	0	0	8,000	10,000	10,000
84042 Judges Trav Sprg Ret	0	0	15,000	15,000	15,000
84043 Judges Trav Fall Mtg	0	0	5,000	5,000	5,000
84044 Judl Liaison Dinner	0	0	0	20,000	20,000
84052 Meeting Travel Expen	40,108	28,129	8,000	8,000	8,000
84054 CLE Speaker Expense	682	0	2,000	2,000	2,000
84101 Committee Expenses	10,876	6,662	10,000	10,000	10,000
84107 Diversity Initiative	0	2,800	2,500	2,500	25,000
84201 Board Or Council Mee	58,788	43,707	50,000	50,000	40,000
84202 Annual Meeting	8,804	11,838	10,000	10,000	12,000
84204 Midyear Meeting	0	0	0	0	10,000
84216 Strategic Planning				0	2,000
84264 Social Media & Other				0	10,000
84282 Law School Program	0	0	500	500	500
84301 Awards	1,789	4,340	4,000	4,000	4,000

	10-11 Actual	11-12 Actual	12-13 Budget	12-13 Projected Actual	13-14 Proposed Budget
84422 Website	13,266	12,917	15,000	15,000	15,000
84501 Legislative Consulta	70,000	75,000	75,000	75,000	75,000
84701 Council Of Sections	300	0	300	300	300
84991 Special Projects	2,397	500	2,500	2,500	2,500
84998 Operating Reserve	0	0	24,348	0	23,378
84999 Miscellaneous	175	0	100	100	100
85085 Comp Book Expense	0	28,882	0	0	0
<b>Admin &amp; Internal Svcs</b>	1,141	9,342	3,634	5,371	5,492
<b>Beginning Fund Balance</b>	313,599	418,075	485,263	501,523	522,186
<b>Business Law Retreat Revenue</b>	196,532	193,151	158,750	197,875	167,000
32001 Registrations	0	0	0	0	0
35201 Sponsorships	95,000	110,750	80,000	100,000	80,000
35604 Sections Registratio	101,532	82,401	78,750	97,875	87,000
<b>Business Law Retreat Expense</b>	198,220	193,585	171,855	232,794	210,034
61201 Equipment Rental	8,211	11,121	12,000	15,000	15,000
51101 Employee Travel	580	84	1,137	2,266	2,232
36998 Credit Card Fees	2,247	1,995	2,000	2,000	2,000
81411 Promotional Printing	2,275	0	0	500	500
81412 Promotional Mailing	2,251	0	100	0	0
84001 Postage	419	82	120	124	150
84002 Printing	382	328	350	77	350
84009 Supplies	99	221	75	92	100
84010 Photocopying	120	72	200	200	200
84052 Meeting Travel Expen	0	12,209	0	0	0
84061 Reception	21,822	29,298	25,000	40,000	30,000
84062 Luncheons	7,081	7,701	7,500	10,100	10,000
84063 Family Dinner	104,326	88,732	80,000	113,000	100,000
84064 Golf Tourn Expenses	1,413	0	0	0	0
84066 Golf Tourn Gifts/Awa	2,783	0	0	0	0
84237 Entertainment Expens	16,428	13,332	13,000	13,000	15,000
84999 Miscellaneous	146	362	500	533	600
88265 Refreshment Breaks	1,298	2,907	3,500	8,000	8,000
88269 Breakfast	25,176	24,709	25,000	27,000	25,000
<b>Admin &amp; Internal Svcs</b>	1,163	432	1,373	902	902

# Exhibit “F”

## Carissa Long - Bio

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Carissa Long  
Director of Public Relations & Social Media  
Indiana State Bar Association  
One Indiana Square, #530  
Indianapolis, IN 46204  
317.639.5465 (W)  
317.946.4939 (C)  
clong@inbar.org

Carissa D. Long, Indianapolis, is the director of public relations and social media at the Indiana State Bar Association, where she also serves as liaison to its Young Lawyers Section and Public Relations Committee. She is a frequent presenter at national bar conferences on the topic of social media. Most recently Long was recognized at the National Association of Bar Executives annual communications workshop in Denver, Colo., where she received two first-place Luminary Awards for excellence in marketing and social media. She received her B.A. in journalism and political science from Franklin College in 2006. Before joining the ISBA, Long was one of only seven selected to Gov. Mitch Daniel's Fellowship, a yearlong graduate program.

## 2013 Orlando, Fla. Presentation

### Carissa's Outline:

- **Intro: Show Xtranormal video “Bar Leader Naysayer”**
- **Discuss ISBA (& perhaps Florida Bar) survey results on social media**
- **Focus on Facebook**
  - Best for: Interacting on a more personal level with contacts
  - Secret Weapons: FB pages house all of the information about your brand or company in one place
  - What to Share: Blog posts, videos, photos, questions and answers
- **Focus on Twitter**
  - Best for: Short updates, headlines; monitoring conversations about your bar association
  - Secret Weapons: Brands like Comcast and H&R Block are using instant status updates to address customer concerns in front of an audience
  - What to Share: Links to content relevant to your audience, questions & conversations to interact one on one with followers
- **Focus on LinkedIn**
  - Best for: Showing off your professional accomplishments & linking to others
  - Secret Weapons: Create a group you can lead and create discussions about your bar association
  - What to Share: Relevant content with all followers or just members of a group and answers to questions others ask
- **Focus on Google+**
  - Best for: Starting conversations & adding specific people to it
  - Secret Weapons: Circles. You can organize your contacts into groups & target your messages to each group separately
  - What to Share: Insight, blog posts & questions and answers related to your bar association
- **Defining A Purpose: ISBA Answers 3 Questions**
  - Why do we want a Facebook page?
  - How will our fan page differ from our website?
  - What is our “it” factor?
- **Creating Editorial Guidelines**
  - **#1 Posting Strategy: Decide on the Consistency of Your Posts**
    - There's no magic number; however, research does suggest that 2-5 times per day is key
    - How often – or when – you post is far less important than WHAT you post.
    - Anyone can handle this posting schedule for a week or two, but the real winners are those that keep it up - every single day (at minimum M-F)
    - Posting once a day is simply not enough – most fans won't even see it; stagger your posts at different times to reach more fans
    - Consistency is key; once you establish how much time you are willing and able to dedicate, be consistent whether its two posts a day ... two posts a week, etc.

ISBA SPOTLIGHT: For the ISBA Fan Page, my partner in crime, Director of Communications Susan Ferrer, and I engage with our fans at all times throughout the day. As much as I like the idea of “scheduling” posts, our posts are always timely. We typically never hang on to information, photos,

videos, and articles. I would rather risk posting a few too many times in a single day than post old news. NOTE: The consistency of your posts will be determined by how much time you have to commit to social media. For the ISBA, the biggest time sucker is getting out to more events in order to get original content (photos, videos of supreme court justice interviews, etc.) Being an aggregator of information fills in the gaps but offering fans original content is key to our success.

- **#2 Content Strategy: Decide What Type of Content You'll Be Posting**
  - By defining this from the start, you will have a much easier time finding appropriate content for your page. Identify websites, resources to use regularly to find the latest and greatest news in the legal community. If you have a list of tried and true sites for great content, you'll never be at a loss for adding value.
  - Be sure your content educates, entertains and empowers your fans to keep them engaged. Mix up your media by posting text, video, photos, links, etc.
  - Don't forget to give your page a human touch. The most successful companies using social media are those that step out from behind their logo. The goal is to let your personality come through in each post. So, change things up a bit and share details about your experiences and everyday life (within reason). Test out the 80/20 rule. 80% focus on business, 20% focus on personal side.

ISBA SPOTLIGHT: Content for the ISBA Fan Page is a mix of original content and aggregating legal news from other resources (e.g., popular, local law blog, Supreme Court, etc.). We rarely post anything that does not have a link, photo or video. We almost always try to make sure there is a visual with our post.

- **#3 Formatting Strategy: Define What A Post Should Look Like**
  - It's SO important to make sure that you know how you want to craft your posts. Some Fan Page posts are more conversational; others are more informative and read like newspaper headlines. Define your style!

ISBA SPOTLIGHT: My partner in crime and I are very much in sync with our posting style. We do not shorthand anything. Grammar, AP Style all still matter. Despite being a more social, relaxing type of communication, it is still the reputation of the Bar Association and ultimately the legal profession as a whole at stake.

- **#4 Engagement Strategy: How Will You Approach Fan Comments?**
  - The key is making your fans know that you are listening and interested in what they have to say. Fans are more inclined to come back and engage if they feel there is an even exchange of information.
  - For engagement – always try to include a call to action-words like “click here,” “comment,” “share,” etc.
  - Do not be afraid of asking a question for fear of no responses

ISBA SPOTLIGHT: Engagement takes us back to the idea that fans like to think that there is a face behind the logo. It is so important to respond to all positive, neutral and negative comments. As a manager of social media accounts, there are certain settings that make this easy to keep up with like text message alerts, etc.

- **Topic | Negative Posts**
  - Will discuss ways to handle less-than-positive feedback & provide a couple of screenshot examples
    - First step is to RESPOND
    - Emphasize that people want to know they are having an exchange with a person, not a logo. It's very important to respond, whether it's positive or negative
    - A negative post should be looked at as an opportunity to provide helpful information, additional information. E.g., if someone were to say “your conference sucked.” One response could be to provide a link to the evaluation

survey (assuming there is one) and tell them that their feedback is valuable and it would be helpful to learn more about their experience via the survey. Not only do you show your responsiveness, but others see it too.

- It can be very valuable to have a small team of attorney members who are social media savvy to help with responding to negative comments, etc.
- **Topic | Marketing: You're up & running ... no what?**
  - Will provide examples of various marketing ideas from the Indiana State Bar, etc.
    - Will encourage a marketing plan
    - Will discuss the importance of marketing the fact that you are on FB, Twitter, etc. to gain an audience; they should not expect a magical, large audience to flock to their sites.
    - Discuss ideas such as share icons, email signature, business cards, letterhead, e-newsletter announcements, etc.
    -
- **Topic | Who will manage the work load?**
  - Will touch on the topic of "ghost writing"
  - Will discuss the importance of creating a "voice" that audience comes to recognize, rely upon
  - Will encourage them that if they have any expectations of the Bar staff to assist with the ongoing management of their SM sites, to talk to them BEFORE you create the accounts and be considerate of their work load and ability to take this on

\*\*\* TRANSITION TO BRIEF INTRO TO PINTEREST \*\*\*

- **What is Pinterest?**
- **How are bar communicators reacting to Pinterest?**
- **Statistics, facts & demographics**
- **What are people pinning?**
- **Getting Started: Demo of personal Pinterest account**
- **Is @indianastatebar on Pinterest? Why or why not?**
- **What are Bar Association's pinning?**



**THE FLORIDA BAR**

# **Results of the 2012 Business Law Section Survey on Social Media**

**December 2012**

**2012 Business Law Section Executive Council Survey on Social Media**

A link to an electronic survey was e-mailed to the on November 26, 2012 to 94 members of the Business Law Section. By the December 20, 2012 cut-off date, 21 completed surveys were received for a response rate of 22%.

In reporting the results, all percentages were rounded to the nearest whole percent (example 34.5% equals 35%). For this reason, totals may vary from 99 to 101 percent. Note that several questions are "multiple response questions." This means that respondents were encouraged to check all responses which apply to a given situation. Thus, multiple response questions will not total 100 percent.

**1. For each item listed below, please indicate your committee's frequency of usage in communicating with members:**

<u>Category</u>	<u>Daily Percent</u>	<u>Weekly Percent</u>	<u>Monthly Percent</u>	<u>A Few Times Per Year Percent</u>	<u>Never Percent</u>
Group e-mails	0	24	33	43	0
Individual e-mails	10	25	45	15	5
Conference calls	0	6	21	68	5
BLS Website	0	0	41	47	12
List serve	6	18	12	18	46
Blogs	0	0	6	31	63
Other	0	0	0	20	80
GoTo Meeting/online collaboration software	0	0	6	6	88
Video conferencing	0	0	6	6	88
Twitter	0	0	0	0	100

**1a. If "Other", please specify:**

- \* Committee meetings at BLS meetings.
- \* Communication activity varies depending on what is going on.
- \* Face to Face meetings.
- \* I have been co-Liaison to the RPPTL Committee.
- \* In-person meetings.
- \* Three meetings per year.

**2. Which mode of communication has been most useful for your committee?**

<b><u>Category</u></b>	(n=20)	<b><u>Percent</u></b>
Group e-mails		40
Conference calls		30
List serve		15
Business Law Section website		5
Individual e-mails		5
Other		5
Blogs		0
GoTo Meeting/online collaboration software		0
Twitter		0
Video conferencing		0

**2a. What were the reasons that prompted you to select that mode of communication?**

- \* Convenience. (Conference calls)
- \* Ease of communicating with all fast and efficiently, as well as allow for others to respond and continue the dialogue. (List serve)
- \* Ease of use and frequency. (List serve)
- \* Easy, wide distribution. (Group emails)
- \* Email permits members to participate without having to be together at one time. (Group emails)
- \* Most commonly used and employed by greatest amount of people. (Group emails)
- \* The listserv is used sporadically for all sorts of practice issues brought-up by individual members, and to comment on responses by other members. It is topical, current, and ad hoc. The members who subscribe tend either to participate in the IP Committee or the Computer Law & Technology Committee, and the listserv does not limit or moderate discussions. (List serve)
- \* We have email lists set up for our committee and subcommittee that appear to be effective. Emails noting updated information on the website are also helpful. (Group emails)

**3. What types of information does your committee disseminate to its members?  
(Multiple Response Question -- Select All That Apply)**

<u>Category</u>	(n=20)	<u>Percent</u>
Agendas for future meetings		95
Dates of upcoming events		85
Minutes of past meetings		75
Drafts of written projects/reports/committee legislation projects		65
Case law/legal updates		45
Pending litigation		20
Other		10

**3a. If “Other”, please specify:**

\* E mails and other communications.

\* This question does not differentiate between in-person, BLS e-mails, or the listserv. Consequently, it is not clear what the intent is for the inquiry.

**4. Do your committee members use any of the following online/social media services to communicate with each other? (Multiple Response Question -- Select All That Apply)**

<u>Category</u>	(n=20)	<u>Percent</u>
LinkedIn		18
Facebook		0
Twitter		0
Other social media		0

**5. Are any committee communications confidential or not suitable for a public website or blog?**

<u>Category</u>	(n=20)	<u>Percent</u>
No		40
Yes		20
Not sure		40

**6. Would your committee benefit from using some form of media that would facilitate an ongoing dialogue or discussion in between periodic meetings?**

<u>Category</u>	(n=20)	<u>Percent</u>
Yes		40
No		5
Not sure		55

**7. Would your committee utilize video conferencing or online collaboration software (e.g., GoTo Meeting) if it were made available through the Business Law Section?**

<u>Category</u>	(n=20)	<u>Percent</u>
Yes		45
No		10
Not sure		45

**7a. If “Yes”, how frequently would you use this, and how many members would you anticipate participating on a call?**

- \* A few times a year; maybe every other month.
- \* As frequently as possible.
- \* Depending on the issue, there may be as many as a dozen participants, possibly more.
- \* I think this could be helpful for smaller groups meeting on specific projects. Frequency would depend on the activity, but it could be monthly or weekly.

**8. What software, services or social media can the communications committee provide to your committee which would facilitate communications or committee business during the periods between regularly scheduled Business Law Section meetings?**

- \* Conference calls.
- \* Continued use of listserv, video conferencing or online collaboration software (e.g., GoTo Meeting).
- \* I like the videoconferencing concept to facilitate face to face communications when we are not meeting in person. I am not 100% sure all members would use it, but I think it could be helpful in advancing my committee's projects.

- \* Multi-member Skype or equivalent perhaps for Legislation Committee, especially during session.
- \* None; currently working fine now.
- \* Not sure.
- \* The Bar should serve as Web master for the listserv, rather than one Committee member.
- \* Unknown.
- \* WebEx.

**9. Are there any features or aspects of the Business Law Section website that your committee finds useful?**

<u>Category</u>	(n=14)	<u>Percent</u>
Yes		57
No		43

**9a. If “Yes”, please list those features or aspects:**

- \* Access to Opinions Report.
- \* Agenda, updates, and committee assignments.
- \* Meeting dates. Posted documents.
- \* Meeting notifications.
- \* Minutes of past meetings; notice of upcoming meetings and events.
- \* Posted agendas, draft minutes of meetings, and upcoming CLE materials posted for presenters. However, the repository is incomplete, lacks historical inclusiveness, and there is no record of past Committee Chairs and their years of service in that capacity.
- \* Posting committee information for later review. Credibility for recruiting new members.
- \* Pretty much all of it.
- \* Seems membership information is not necessarily accurate.

**10. Please list any features which, if added to the Business Law Section website, would be useful to your committee?**

- \* Highlight member benefits.
- \* If it were to provide links to other organizations and resources, it might be more useful. Also, the historical accomplishments of the Committee would be nice to know (especially for new members).
- \* Mentoring link with information about becoming a mentor or a mentee.
- \* Not sure.
- \* Unsure at this time.

**11. Please provide any suggestions or comments for improving the Business Law Section website:**

- \* I think the communications committee is doing a great job keeping up with advances in technology and social media. Keep up the good work.
- \* Make it current, keep it fresh, add pictures (and audio/video) from Committee meetings and CLE programs.
- \* Unsure at this time.

**12. Which committee(s) of the Business Law Section do you currently serve as Chair?**

- \* None/Not a Committee Chair. **(7 Responses)**
- \* Bankruptcy Judicial Liaison Committee.
- \* Bankruptcy/UCC.
- \* Business Litigation, Judicial Chair.
- \* CLE/Retreat.
- \* Co-chair of Membership.
- \* Co-liaison to RPPTL Committee.

- \* Computer and Technology Law.
- \* Diversity Committee.
- \* Federal & State Judicial Liaison.
- \* Legislation Committee.
- \* Membership.

# Exhibit “G”

To: Corporations, Securities & Financial Institutions Committee

From: Subcommittee on Benefit Corporations:  
Stuart Cohn, Stuart Ames, James Glover

Re: Revision of the Subcommittee's Recommendation to Allow for Adoption of Legislation Creating Both (1) a Social Purpose Corporation and (2) a Benefit Corporation

Date: January 7, 2013

Preliminary Note

By Memorandum dated December 26, 2012 (the "December Memorandum") and accompanying materials, the Subcommittee recommended adoption of legislation allowing for the creation of a so-called "benefit" corporation. In the December Memorandum the Subcommittee explained that:

1. Senator Jeff Clemens had prepared and has a House sponsor for, a proposed "benefit corporation" bill that substantially followed a model act prepared under the auspices of B-Lab and Bill Clark, an attorney prominently active in this subject.
2. The Subcommittee retained most of the basic elements of Sen. Clemens proposal, with the principal change being made to the mandate to consider the "general public benefit" with regard to any corporate action or inaction by revising the "general public benefit" standard to a so-called "public benefit" standard.
3. The Subcommittee's reasons for revising the "general public benefit" standard to a so-called "public benefit" standard principally involved the desire to give directors and officers more flexibility in determining benefit goals and to protect management from claims that one or more broad, unspecified societal goals were not being pursued by the corporation.

As a result of the recommended revisions, the proposed legislation initially presented by the Subcommittee was more closely analogous to a so-called "Social Purpose Corporation," a term used in the State of Washington to describe its similar legislation, and to California's so-called Flexible Purpose Corporation. Nevertheless, the proposed legislation initially presented by the Subcommittee retained the nomenclature of "benefit corporation" for this new form of corporation.

After further recent discussions, the Subcommittee was persuaded that, because of the more limited standard of public benefit in the proposal, the proposal was really not analogous to the so-called "benefit corporation" model adopted in a number of other states and thus there might be confusion created between Florida's "benefit corporation" and "benefit corporations" in other states. Moreover, there is a belief that those investors who are promoting, and investing in, "benefit corporations" of the type keyed into the broader general public benefit purpose will tend to discredit a Florida entity designated as a "benefit corporation" but without the general public benefit mandate. The Subcommittee therefore has revised its initial proposal to rename the new entity a "Social Purpose Corporation." The Subcommittee's recommendation regarding this new form of entity remains as previously submitted except for the name change and certain clean up

changes and limited additional substantive changes noted below.

In addition, given the recent further discussions, the Subcommittee now understands that there may be entrepreneurial and investor interest in the alternative “benefit corporation” model as proposed by Sen. Clemens. Although the Subcommittee did not initially accept the benefit corporation model, we now believe that there is merit in providing an entity choice for entrepreneurs and investors. The choice would be to incorporate or otherwise form either (1) a Social Purpose Corporation as we have proposed with more limited benefit goals or (2) a Benefit Corporation which follows the mandated “general public benefit” model adopted in a number of states.

Consequently, we are now recommending legislative adoption of both a Social Purpose Corporation and a Benefit Corporation. The Social Purpose Corporation statutory provisions would be set forth in ss. 607.1701 ff.; the Benefit Corporation statutory provisions would be set forth in ss. 607.1801ff, both of which are characterized as supplements to Chapter 607, the Florida Business Corporation Act. The principal difference between the two entities would be the distinction between a more limited or focused “public benefit” standard for Social Purpose Corporations and the broader “general public benefit” standard for Benefit Corporations. Except for that fundamental distinction, the statutory provisions for both forms of entities would be substantially identical and consistent with the description in our December Memorandum.

Therefore, along with this supplemental Memorandum we are providing:

1. The revised proposal for a **Social Purpose Corporation** supplement to Ch. 607.
2. A new proposal for the adoption of a **Benefit Corporation** supplement to Ch. 607.
3. A red-lined mark-up of the Social Purpose Corporation supplement showing how it differs from the Benefit Corporation supplement.
4. A red-lined mark-up of Sen. Clemens’ proposed bill for a new Benefit Corporation Act showing changes made by the supplement referred to in 2 above.

### The Social Purpose Corporation

The Subcommittee’s December Memorandum describes the background to this legislation, reasons for the recommendation to adopt this form of entity, and the substantive changes to Sen. Clemens proposed bill. Subsequent to distribution of the December Memorandum, the Subcommittee has made some additional changes to the proposal to provide clarity as to certain requirements and define more appropriately the standards for director and officers. Although some of the changes might be regarded as substantive, the fundamental elements of the proposal remain as provided in the December Memorandum. The additional changes that might be considered substantive are:

1. S. 1703(9): The definition of “specific public benefit” has been clarified to indicate that a Social Purpose Corporation can adopt a focused identified benefit that is within one or more listed general categories of specific benefits.

2. S. 1708(1): The mandate that directors consider various benefit objectives has been amended to read:

- (a) shall consider the effects of any action or inaction upon:
  - 1. the shareholders of the Social Purpose Corporation; and
  - 2. the ability of the Social Purpose Corporation to accomplish its public benefit and any specific public benefit purpose; and
- (b) may consider the effects of any action or inaction upon:
  - 1-5 (same as former items 2-6).

The reason for this change is to make it clear that directors must consider items (a)1-2 but are not mandated to consider any and all of the (b) items (in the initial draft, there was a mandate to consider both the (a) items and the (b) items, which was actually somewhat inconsistent with the deletion of the “general public benefit” definition). This change gives directors more flexibility and is designed to protect them from potential claims that they might not have considered the interests of other specified constituencies and/or other social purposes that were not directly related to the Social Purpose Corporation’s public benefit purpose or specific public benefit purpose. (Note that for the Benefit Corporation there is a mandate for the directors to consider all of the (a) and (b) items, thereby reflecting the principal distinction between the Social Purpose and the Benefit corporations.)

3. S. 1708(5): A “business judgment” protection provision included in Sen. Clemens’ proposal, but deleted in our Subcommittee’s markup, has been reinstated. Given the unique nature of a Social Purpose Corporation, it was felt that this additional emphasis on the protections given to directors who pursue benefit goals in carrying out their duties is appropriate even if it might be the case that the linkage with current 607 provisions addressing duties of directors and standards of care would already operate to take that into account.

4.S. 1710(5): Similarly, a “business judgment” protection provision for officers initially deleted from Sen. Clemens’ proposal has been reinstated.

5.S. 1713(2): We reinstated a provision from Sen. Clemens’ proposal requiring disclosure in the annual benefit report of any removal or resignation of the benefit director occurring during the year to which the report relates.

6.S. 1714(3): To provide a mechanism for enforcement of the requirement to deliver the annual benefit report, we added a provision, analogous to Section 607.1620(4), allowing for an application by a shareholder to be made in circuit court to order that the Social Purpose Corporation deliver the report if the corporation has failed to do so.

Items 3-6 are also reflected in the newly proposed Benefit Corporation legislation.

Open Item: 1712(2): Minimum shareholder percentage interest threshold for bringing a benefit enforcement proceeding.

In the draft circulated to you, there is no minimum share ownership percentage required for a shareholder to bring a benefit enforcement proceeding. Sen. Clemens' proposal had included a 2% minimum ownership requirement. Some members of the committee favor including such a minimum percentage threshold. It was decided to raise the issue directly with the Committee.

### The Benefit Corporation

Although the Subcommittee's initial determination was to amend Sen. Clemens' proposal in the direction of what we now call the Social Purpose Corporation, Sen. Clemens' proposal, which is analogous to benefit corporation statutes in other states, might offer an attractive alternative for entrepreneurs and investors who want a corporation dedicated to broad public benefit goals as defined under the "general public benefit" standard. The Subcommittee has been advised by Bill Clark, who probably knows more about this movement than anyone in the United States, that there are a fair number of entrepreneurs and investors who prefer a corporation that is designed to pursue and create broad benefit policies.

An example will hopefully explain the difference between the Special Purpose Corporation and the Benefit Corporation. Suppose a for-profit corporation is formed to manufacture an anti-malarial drug and plans to distribute the drug at low or no cost in African countries. If that is the corporation's sole public benefit purpose, the corporation would appropriately be formed as a Special Purpose Corporation. However, if the corporation is also dedicated to creating favorable employee programs, running its operations pursuant to strict environmental and ecological policies, and undertaking activities to benefit the local community, in other words to pursue policies that have broad public and social welfare consequences, this corporation would qualify and should probably be formed as a Benefit Corporation.

The difference between the two corporations is basically one of degree. The Social Purpose Corporation is formed to pursue or create one or more fairly specific public benefits. The Benefit Corporation has a much broader purpose consistent with the definition of "general public benefit." A Benefit Corporation could also adopt a "specific public benefit" which has a focused purpose, but pursuit of that limited purpose would not relieve directors from the mandate to consider the "general public benefit" in each and every corporate action or inaction.

Therefore, the proposal set forth in our December Memorandum is now amended to recommend the adoption of two forms of corporate entities, the Social Purpose Corporation and the Benefit Corporation. This is the approach taken in California, which has adopted legislation allowing for both a Flexible Purpose Corporation (similar to what we have called a Social Purpose Corporation) and the standard form of Benefit Corporation.

The Benefit Corporation statute we are presenting is Sen. Clemens' proposal with substantive changes similar to those we have made in creating the Social Purpose Corporation. The principal difference between the two entities is that the Benefit Corporation must have, and the Social Purpose Corporation would generally not have, a "general public benefit" purpose.

For further discussion of changes to Sen. Clemens' proposal, and to other matters relative to the proposed legislation, please refer to the December Memorandum.

# FLORIDA ~~BENEFIT~~SOCIAL PURPOSE CORPORATION LEGISLATION

Sections ~~607.1801~~607.1701 et seq.

## ~~Benefit Corporations~~

### Social Purpose Corporation Supplement

#### ~~§ 607.1801~~§ 607.1701. Short Title.

This ~~section~~Section and ss. ~~607.1802~~607.1702 through ~~607.1814~~607.1714 shall be known and may be cited as the “~~Benefit~~Social Purpose Corporation Supplement” and is referred to in such sections as “this supplement”.

#### ~~§ 607.1802~~607.1702. Application and effect of ~~chapter~~supplement.

(1) This supplement shall be applicable to all ~~benefit~~social purpose corporations.

(2) The existence of a provision of this supplement shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a ~~benefit~~social purpose corporation. This supplement shall not affect a statute or rule of law that is applicable to a business corporation that is not a ~~benefit~~social purpose corporation.

(3) Except as otherwise provided in this supplement, all other provisions of this chapter shall be generally applicable to all ~~benefit~~social purpose corporations. The specific provisions of this supplement shall control over the general provisions of this chapter.

(4) A ~~benefit~~social purpose corporation may be subject simultaneously to this supplement and to one or more other chapters, including chapter 621. In such event, the provisions and sections of this supplement shall take precedence with respect to a ~~benefit~~social purpose corporation.

(5) Except as permitted by this supplement, a provision of the articles of incorporation or bylaws of a ~~benefit~~social purpose corporation may not limit, be inconsistent with, or supersede a provision of this supplement.

#### ~~§ 607.1803~~607.1703. Definitions.

As used in this supplement, unless the context otherwise requires, the term:

(1) “~~Benefit~~Social purpose corporation” means a business corporation:

- (a) which has elected to become subject to this supplement; and
- (b) the status of which as a ~~benefit~~social purpose corporation has not been terminated.

(2) “~~Benefit~~ director” means either:

- (a) the director designated as the benefit director of a ~~benefit~~social purpose corporation under

s. ~~607.1809~~607.1708; or

(b) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the articles of incorporation or bylaws under s. ~~607.1809~~607.1709.

(3) **“Benefit enforcement proceeding”** means any claim or action for:

(a) failure of a benefit social purpose corporation to pursue or create ~~general public benefit or a specific~~ public benefit purpose set forth in its articles of incorporation; or

(b) violation of any obligation, duty, or standard of conduct under this supplement.

(4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit social purpose corporation under s. ~~607.1811~~607.1711.

(5) **“Business corporation”** means a domestic corporation which is not a ~~benefit corporation or a~~ social purpose corporation.

(6) **“General public Public benefit”** means a ~~material~~ positive ~~impact on society and the environment~~ effect, or minimization of negative effects, taken as a whole, ~~assessed against a third party standard~~ on the environment or on one or more categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological or scientific nature, from the business and operations of a benefit social purpose corporation. ~~including without limitation:~~

(a) providing low-income or underserved individuals or communities with beneficial products or services;

(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) protecting or restoring the environment;

(d) improving human health;

(e) promoting the arts, sciences, or advancement of knowledge; and

(f) increasing the flow of capital to entities with a purpose to benefit society or the environment.

(7) **“Independent”** means having no material relationship with the benefit social purpose corporation or a subsidiary of the benefit social purpose corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit social purpose corporation or any of its subsidiaries will be conclusively presumed to exist, at the time independence is to be determined, if any of the following apply:

(a) The individual is, or has been within the prior three years, an employee other than a benefit officer of the benefit social purpose corporation or a subsidiary.

(b) An immediate family member of the individual is, or has been within the ~~prior three last~~ prior three years, an executive officer other than a benefit officer of the benefit social purpose corporation or a subsidiary.

(c) There is beneficial or record ownership of 5% or more of the outstanding shares of the ~~benefit corporation~~social purpose, calculated as if all outstanding rights to acquire equity interests in the ~~benefit~~social purpose corporation had been exercised, by:

1. the individual; or

2. an entity:

(A) of which the individual is a director, an officer, or a manager; or

(B) in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

**(8) “Minimum status vote”** means:

(a) In the case of (i) a business corporation that is to become a ~~benefit~~social purpose corporation, (ii) a ~~benefit~~social purpose corporation whose articles of incorporation are to be amended pursuant to subsection ~~607.1807(4)~~607.1707(4), or (iii) a ~~benefit~~social purpose corporation that is to cease being a ~~benefit~~social purpose corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

1. The shareholders of every class or series shall be entitled to vote as a separate voting group on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

2. The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action.

(b) In the case of a domestic entity, other than a business corporation, that simultaneously is to be converted to a corporation and become a ~~benefit~~social purpose corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

1. The holders of each class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled, as a separate voting group, to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

2. The action must be approved by vote or consent of the holders of each class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or consents of the class or series that all of those holders are entitled to cast on the action.

~~(9) [Reserved]~~

~~(10)~~**(9) “Specific public benefit”** ~~includes:~~means an indentified benefit goal of the social purpose corporation set forth in the articles of incorporation that is consistent with and within the definition of “public benefit” in this section.

~~(a) — providing low income or underserved individuals or communities with beneficial products or services;~~

~~(b) — promoting economic opportunity for individuals or communities beyond the creation of~~

~~jobs in the normal course of business;~~

~~(c) protecting or restoring the environment;~~

~~(d) improving human health;~~

~~(e) promoting the arts, sciences, or advancement of knowledge;~~

~~(f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and~~

~~(g) any more specific or focused public benefit.~~

**(11)(10) “Subsidiary”** means, in relation to a person, other than an individual, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

**(12)(11) “Third-party standard”** means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business that is:

(a) Comprehensive because the standard assesses the effect of the business and its operations upon the interests listed in ~~subsections 607.1808(1)(a)2, 3, 4 and 5~~ [subsection 607.1708\(1\)\(a\)](#).

(b) Developed by an entity that is not controlled by the ~~benefit~~ [social purpose](#) corporation.

(c) Credible because it is developed by an entity that both:

1. has access to necessary expertise to assess the overall societal and environmental performance of a business; and

2. uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period.

(d) Transparent because the following information is publicly available:

1. About the standard:

(A) The criteria considered when measuring the overall societal and environmental performance of a business.

(B) The relative weightings, if any, of those criteria.

2. About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard.

(B) The process by which revisions to the standard and changes to the membership of the governing body are made.

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

§ ~~607.1804~~ [607.1704](#). **Incorporation of ~~benefit~~ [social purpose](#) corporation.**

In order for a corporation to be formed as a ~~benefit~~ [social purpose](#) corporation, the corporation shall be

incorporated in accordance with this chapter, but the articles of incorporation filed to incorporate the corporation must state that the corporation is ~~to be a benefit~~ a social purpose corporation.

§ ~~607.1805~~ 607.1705. **Election of ~~benefit~~ social purpose corporation status.**

(1) An existing business corporation may become a ~~benefit~~ social purpose corporation under this supplement by amending its articles of incorporation so that they contain, in addition to the requirements of s. 607.0202, a statement that the corporation is a ~~benefit~~ social purpose corporation. In order to be effective, the amendment must be adopted by the minimum status vote.

(2) Subsection (3) applies if both of the following subparagraphs apply:

(a) An entity that is not a ~~benefit~~ social purpose corporation is:

1. a party to a merger or conversion; or
2. the exchanging entity in a share exchange.

(b) The surviving, new, or resulting entity in the merger, conversion or share exchange is to be a ~~benefit~~ social purpose corporation.

(3) In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by the minimum status vote.

(4) In the event of an election to become a ~~benefit~~ social purpose corporation by amendment of the articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity becoming a ~~benefit~~ social purpose corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the extent of, and in accordance with, such appraisal rights provisions.

§ ~~607.1806~~ 607.1706. **Termination of ~~benefit~~ social purpose corporation status.**

(1) A ~~benefit~~ social purpose corporation may terminate its status as such and cease to be subject to this supplement by amending its articles of incorporation to delete the provision required by s. ~~607.1804~~ 607.1704 or s. ~~607.1805-607.1705~~ to be stated in the articles of incorporation of a ~~benefit~~ social purpose corporation. In order to be effective, the amendment must be adopted by the minimum status vote.

(2) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a ~~benefit~~ social purpose corporation, the plan must be adopted by the minimum status vote in order to be effective~~l~~.

(3) If a corporation's status as a ~~benefit~~ social purpose corporation is terminated pursuant to subsections (1) or (2), shareholders of the corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the extent of, and in accordance with, such appraisal rights provisions.

---

~~1—We deleted the sentence “Any sale, lease, exchange, 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, shall not be effective unless the transaction is approved by at least the minimum status vote.” which we view as unnecessary because a sale will produce consideration that may be used to invest in new assets of the benefit corporation that can in turn be deployed for creating general public benefit and any specific public benefit purpose identified in its articles of incorporation.~~

§ ~~607.1807~~607.1707. Corporate purposes.

(1) A ~~benefit~~social purpose corporation shall have a purpose of creating general public benefit. This purpose is in addition to its ~~purpose~~purposes under s. 607.0301.

(2) The articles of incorporation of a ~~benefit~~social purpose corporation may identify one or more specific public benefits that it is the purpose of the ~~benefit~~social purpose corporation to create in addition to its purposes under s. 607.0301 and subsection (1).~~The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (1).~~

(3) The creation of ~~general~~ public benefit and ~~one or more~~ specific public ~~benefits~~benefit under subsections (1) and (2) is deemed to be in the best ~~interests~~interest of the ~~benefit~~social purpose corporation.

(4) A ~~benefit~~social purpose corporation may amend its articles of incorporation to add, amend, or delete the identification of any specific public benefit that it is the purpose of the ~~benefit~~social purpose corporation to create. In order to be effective, the amendment must be adopted by the minimum status vote.

(5) A professional corporation that is a ~~benefit~~social purpose corporation does not violate s. 621.08 by having the purpose to create ~~general~~ public benefit or a specific public benefit.

§ ~~607.1808~~607.1708. Standard of conduct for ~~director~~directors

(1) In discharging their duties and in considering the best interests of the ~~benefit~~social purpose corporation, the directors of a ~~benefit~~social purpose corporation:

(a) shall consider the effects of any action or inaction upon:

1. ~~1.~~ the shareholders of the ~~benefit~~social purpose corporation;

2. ~~2.~~ The ability of the social purpose corporation to accomplish its public benefit purpose; and

(b) may consider the effects of any action or inaction upon any or all of the following:

1. the employees and work force of the ~~benefit~~social purpose corporation, its subsidiaries, and its suppliers;

2. the interests of customers and suppliers as beneficiaries of the ~~general~~ public benefit ~~and as beneficiaries of each of its or~~ specific public benefit purposes, ~~if any,~~ of the ~~benefit~~social purpose corporation;

3. community and societal factors, including those of each community in which offices or facilities of the ~~benefit~~social purpose corporation, its subsidiaries, or its suppliers are located;

4. the local and global environment; and

5. the short-term and long-term interests of the ~~benefit~~social purpose corporation, including benefits that may accrue to the ~~benefit~~social purpose corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the ~~benefit~~social purpose corporation;

~~and 7. the ability of the benefit corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes, if any; and~~

~~(b)(c)~~ may consider other pertinent factors or the interests of any other group that they deem appropriate; but

~~(e)(d)~~ need not give priority to the interests of a particular person or group referred to in paragraphs (a) ~~or (b) or (c)~~ over the interests of any other person or group unless the ~~benefit~~ social purpose corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its ~~general~~ public benefit purpose or of any one or more ~~of the~~ specific public benefit purposes, if any, identified in its articles of incorporation; and

~~(d)(3)~~ need not give equal weight to the interests of a particular person or group referred to in paragraphs (a) ~~or (b) or (c)~~ unless the ~~benefit~~ social purpose corporation has stated in its articles of incorporation its intention to give such equal weight related to its accomplishment of its ~~general~~ public benefit purpose or of any one or more ~~of the~~ specific public benefit purposes, if any, identified in its articles of incorporation.

(2) Except as otherwise provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages to the corporation or to any other person for the failure of the ~~benefit~~ social purpose corporation to pursue or create ~~general~~ a public benefit or ~~any one or more~~ a specific public ~~benefits identified in its articles of incorporation~~ benefit.

(3) Except as otherwise provided in the articles of incorporation or bylaws, a director does not have a duty to a person that is a beneficiary of the ~~general~~ public benefit purpose or any one or more specific public benefit purposes of ~~the benefit~~ a social purpose corporation arising from the status of the person as a beneficiary.

(4) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) is not interested in the subject of the business judgment;

(b) is informed with respect to the subject of the business judgment to the extent reasonably believed by the director to be appropriate under the circumstances; and

(c) rationally believes that the business judgment is in the best interests of the ~~benefit~~ social purpose corporation.

#### § ~~607.1809~~ 607.1709. Benefit director.

(1) If the articles of incorporation so provide, the board of directors of a ~~benefit~~ social purpose corporation may include a director who shall be designated as the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the ~~benefit~~ social purpose corporation, the powers, duties, rights, and immunities provided in this supplement.

(2) The benefit director shall be elected, and may be removed, in the manner provided by this chapter. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws may prescribe additional qualifications of the benefit director.

(3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director shall prepare, and the ~~benefit~~ social purpose corporation shall include in the annual benefit report to shareholders required by s. ~~607.1813~~ 607.1713, the opinion of the benefit director on all of the following:

(a) Whether the ~~benefit~~ social purpose corporation acted in accordance with its ~~general~~ public benefit purpose and any specific public benefit purpose in all material respects during the period covered by

the report.

(b) Whether the directors and officers complied with ss. ~~607.1808(1)~~607.1708(1) and ~~607.1810(1)~~607.1710(1), respectively.

(c) If, in the opinion of the benefit director, the ~~benefit~~social purpose corporation or its directors or officers failed to comply with paragraph (a) or ss. ~~607.1808(1)~~607.1708(1) or ~~607.1810(1)~~607.1710(1), a description of the ways in which the ~~benefit~~social purpose corporation or its directors or officers failed to comply.

(4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the ~~benefit~~social purpose corporation.

(5) The benefit director of a corporation formed under chapter 621 does not need to be independent.

#### § ~~607.1810~~607.1710. Standard of conduct for officers.

(1) Each officer of a ~~benefit~~social purpose corporation shall consider the interests and factors described in s. ~~607.1808(1)~~607.1708(1) in the manner provided in that subsection if:

(a) the officer has discretion to act with respect to a matter; and

(b) it reasonably appears to the officer that the matter may have a material effect on the creation by the ~~benefit~~social purpose corporation of ~~general~~ public benefit or any one or more ~~of the~~ specific public benefits identified in the articles of incorporation.

(2) The consideration of interests and factors in the manner described in subsection (1) shall not constitute a violation of s. 607.0841.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages to the corporation or to any other person for the failure of the ~~benefit~~social purpose corporation to pursue or create ~~general~~a public benefit or any of its specific public benefits.

(4) An officer does not have a duty to a person that is a beneficiary of the ~~general~~ public benefit purpose or a beneficiary of any of the specific public benefit purposes of ~~the benefit~~a social purpose corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) ~~(a)~~ is not interested in the subject of the business judgment;

(b) ~~(b)~~ is informed with respect to the subject of the business judgment to the extent reasonably believed by the officer to be appropriate under the circumstances; and

(c) ~~(c)~~ rationally believes that the business judgment is in the best interests of the ~~benefit~~social purpose corporation.

#### § ~~607.1811~~607.1711. Benefit officer.

(1) A ~~benefit~~social purpose corporation may have an officer designated the benefit officer.

(2) A benefit officer shall have the powers and duties set forth in the bylaws or determined by the board of directors, which may include but not be limited to:

(a) the powers and duties relating to the purpose of the corporation to create ~~general~~ public benefit or ~~any one or more~~ specific public ~~benefits~~benefit; and

(b) the duty to prepare the annual benefit report required by s. ~~607.1813~~607.1713.

§ ~~607.1812~~607.1712. **Right of action.**

(1) (a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a ~~benefit~~social purpose corporation or its directors or officers with respect to:

1. failure to pursue or create ~~general~~ public benefit or ~~any specific~~a specific public benefit set forth in its articles of incorporation; or

2. violation of an obligation, duty, or standard of conduct under this supplement.

(b) A ~~benefit~~social purpose corporation shall not be liable for monetary damages under this supplement for any failure of the ~~benefit~~social purpose corporation to pursue or create ~~general~~ public benefit or any specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) directly by the ~~benefit~~social purpose corporation; or

(b) derivatively by:

1. a shareholder of record on the date of the action complained of in the benefit enforcement proceeding;

2. a director;

3. a person or group of persons that owns beneficially or of record 5% or more of the outstanding equity interests in an entity of which the ~~benefit~~social purpose corporation is a subsidiary on the date of the action complained of in the benefit enforcement proceeding; or

4. other persons as specified in the articles of incorporation or bylaws of the ~~benefit~~social purpose corporation.

§ ~~607.1813~~607.1713. **Preparation of annual benefit report.**

(1) An annual benefit report shall be prepared by the board of directors unless prepared by a benefit director, ~~if~~if any, or a benefit officer, if any. The report shall include the following:

(a) A narrative description of:

1. The ways in which the ~~benefit~~social purpose corporation pursued ~~general~~ public benefit during the year and the extent to which ~~general~~ public benefit was created.

~~2. — Both:~~

~~(A) — the ways in which the benefit corporation pursued each of the specific public~~

benefits, if any, that the articles of incorporation state it is the purpose of the benefit corporation to create; and

~~(B) the extent to which those specific public benefits were created.~~

~~32.~~ Any circumstances that have hindered the creation by the ~~benefit~~ social purpose corporation of ~~general~~ public benefit ~~or any of its specific public benefits~~.

~~43. The~~ If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, the process and rationale for selecting or changing the third-party standard used to prepare the ~~annual~~ benefit report.

~~(b) An~~ If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, an assessment of the overall societal and environmental performance of the ~~benefit~~ social purpose corporation against a third-party standard:

1. applied consistently with any application of that standard in prior annual benefit reports; or
2. accompanied by an explanation of the reasons for:
  - (A) any inconsistent application; or
  - (B) the change to that standard from the one used in the immediately prior report.

(c) The name of the benefit director, if any, and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(d) If the corporation has a benefit director, the statement of the benefit ~~director described in~~ director described in s. 607.1809(3) 607.1709(3).

(e) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5 percent or more of the governance interests in the organization, and the ~~benefit~~ social purpose corporation or its directors, officers or any holder of 5 percent or more of the outstanding shares of the ~~benefit~~ social purpose corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by an annual benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the ~~benefit~~ social purpose corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the annual benefit report shall include that correspondence as an exhibit.

(3) Neither the annual benefit report nor the assessment of the performance of the ~~benefit~~ social purpose corporation in the annual benefit report required by paragraph (b) of subsection (1) needs to be audited or certified by a third-party ~~standards~~ standard provider.

#### § ~~607.1814~~ 607.1714. Availability of annual benefit report.

- (1) A ~~benefit~~ social purpose corporation shall send its annual benefit report to each shareholder:

(a) within 120 days following the end of the fiscal year of the ~~benefit~~social purpose corporation; or

(b) at the same time that the ~~benefit~~social purpose corporation delivers any other annual report to its shareholders.

(2) A ~~benefit~~social purpose corporation shall post all of its annual benefit reports on the public portion of its Internet website, if any.

(3) If a ~~benefit~~social purpose corporation does not have an Internet website, the ~~benefit~~ corporation shall provide a copy of its most recent annual benefit report, without charge, to any person that requests a copy.

(4) If a ~~benefit~~social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the ~~benefit~~social purpose corporation's principal office (or, if none in this state, its registered office) is located may, upon application of a shareholder of the ~~benefit~~social purpose corporation, summarily order the corporation to furnish the report. If the court orders the report to be furnished, the court may also order the ~~benefit~~social purpose corporation to pay the shareholder's costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise enforce its rights under this section.

\* \* \* \* \*

#### Amendment to Section 607.1302 Relating to Appraisal Rights

### § 607.1302. Right of shareholders to appraisal

Add to § 607.1302 new subsections (1)(g) through (1)(j) to read as follows:

(g) An amendment of the articles of incorporation of a social purpose corporation to which s. 607.1706 applies;

(h) An amendment of the articles of incorporation of a benefit corporation to which s. 607.1806 applies;

(i) ~~(h)~~A merger, conversion or share exchange of a social purpose corporation to which s. 607.1705 applies; or

(j) A merger, conversion or share exchange of a benefit corporation to which s. ~~608.1805~~607.1805 applies.

Delete "or" at the end of § 607.1302(e) and delete the period and ~~add~~ad a semicolon at the end of § 607.1302(f).

Comparison Details	
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Date & Time	1/8/2013 9:38:32 AM
Comparison Time	2.40 seconds
compareDocs version	v3.4.8.13

Sources	
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Modified Document	[#2608113] [v1] FLORIDA SOCIAL PURPOSE CORPORATION LEGISLATION - 1 8 13.docDMS information

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Balloons	[Use Balloons option only]

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Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False

1 **FLORIDA BENEFIT CORPORATION LEGISLATION**

2  
3 **Sections 607.1801 et seq.**

4  
5 **Benefit Corporations**

6  
7  
8  
9 **§ 607.1801. Short Title.**

10  
11 This section and ss. 607.1802 through 607.1814 shall be known and may be cited as the “Benefit  
12 Corporation Supplement” and is referred to in such sections as “this supplement”.

13  
14 **§ 607.1802. Application and effect of chapter.**

15  
16 (1) This supplement shall be applicable to all benefit corporations.

17  
18 (2) The existence of a provision of this supplement shall not of itself create an implication  
19 that a contrary or different rule of law is applicable to a business corporation that is not a benefit  
20 corporation. This supplement shall not affect a statute or rule of law that is applicable to a business  
21 corporation that is not a benefit corporation.

22  
23 (3) Except as otherwise provided in this supplement, all other provisions of this chapter  
24 shall be generally applicable to all benefit corporations. The specific provisions of this supplement  
25 shall control over the general provisions of this chapter

26  
27 (4) A benefit corporation may be subject simultaneously to this supplement and one or  
28 more other chapters, including chapter 621. In such event, the provisions and sections of this  
29 supplement shall take precedence with respect to a benefit corporation.

30  
31 (5) Except as permitted by this supplement, a provision of the articles of incorporation or  
32 bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of this  
33 supplement.

34  
35 **§ 607.1803. Definitions.**

36  
37 As used in this supplement, unless the context otherwise requires, the term:

38  
39 (1) **“Benefit corporation”** means a business corporation:

- 40  
41 (a) which has elected to become subject to this supplement; and  
42  
43 (b) the status of which as a benefit corporation has not been terminated.

44  
45 (2) **“Benefit director”** means either:

- 46  
47 (a) the director designated as the benefit director of a benefit corporation under s.  
48 607.1809; or

49  
50 (b) a person with one or more of the powers, duties or rights of a benefit director to  
51 the extent provided in the articles of incorporation or bylaws under s. 607.1809.

52  
53 (3) **“Benefit enforcement proceeding”** means any claim or action for:

54  
55 (a) failure of a benefit corporation to pursue or create general public benefit or a  
56 specific public benefit purpose set forth in its articles of incorporation; or

57  
58 (b) violation of any obligation, duty, or standard of conduct under this supplement.

59  
60 (4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit  
61 corporation under s. 607.1811.

62  
63 (5) **“Business corporation”** means a domestic corporation which is not a benefit corporation  
64 or a social purpose corporation.

65  
66 (6) **“General public benefit”** means a material positive impact on society and the  
67 environment, taken as a whole, assessed against a third-party standard, from the business and  
68 operations of a benefit corporation.

69  
70 (7) **“Independent”** means having no material relationship with the benefit corporation or a  
71 subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make  
72 an individual not independent. A material relationship between an individual and a benefit  
73 corporation or any of its subsidiaries will be conclusively presumed to exist, at the time  
74 independence is to be determined, if any of the following apply:

75  
76 (a) The individual is, or has been within the prior three years, an employee other  
77 than a benefit officer of the benefit corporation or a subsidiary.

78  
79 (b) An immediate family member of the individual is, or has been within the  
80 prior three years, an executive officer other than a benefit officer of the benefit corporation or a  
81 subsidiary.

82  
83 (c) There is beneficial or record ownership of 5% or more of the outstanding shares  
84 of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the  
85 benefit corporation had been exercised, by:

86  
87 1. the individual; or

88  
89 2. an entity:

90 (A) of which the individual is a director, an officer, or a manager; or

91  
92 (B) in which the individual owns beneficially or of record 5% or more of  
93 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in  
94 the entity had been exercised.

95  
96  
97 (8) **“Minimum status vote”** means:  
98

99 (a) In the case of (i) a business corporation that is to become a benefit corporation,  
100 (ii) a benefit corporation whose articles of incorporation are to be amended pursuant to subsection  
101 607.1807(4), or (iii) a benefit corporation that is to cease being a benefit corporation, in addition to  
102 any other required approval or vote, the satisfaction of the following conditions:  
103

104 1. The shareholders of every class or series shall be entitled to vote as a  
105 separate voting group on the corporate action regardless of any limitation stated in the articles of  
106 incorporation or bylaws on the voting rights of any class or series.  
107

108 2. The corporate action must be approved by vote of the shareholders of each  
109 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or  
110 series are entitled to cast on the action.  
111

112 (b) In the case of a domestic entity, other than a business corporation, that  
113 simultaneously is to be converted to a corporation and become a benefit corporation, in addition to  
114 any other required approval, vote, or consent, the satisfaction of the following conditions:  
115

116 1. The holders of each class or series of equity interest in the entity that are  
117 entitled to receive a distribution of any kind from the entity shall be entitled, as a separate voting  
118 group, to vote on or consent to the action regardless of any otherwise applicable limitation on the  
119 voting or consent rights of any class or series.  
120

121 2. The action must be approved by vote or consent of the holders of each  
122 class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or  
123 consents of the class or series that all of those holders are entitled to cast on the action.  
124

125 **(9)** [Reserved].  
126

127 **(10)** “**Specific public benefit**” includes:  
128

129 (a) providing low-income or underserved individuals or communities with beneficial  
130 products or services;  
131

132 (b) promoting economic opportunity for individuals or communities beyond the  
133 creation of jobs in the normal course of business;  
134

135 (c) protecting or restoring the environment;  
136

137 (d) improving human health;  
138

139 (e) promoting the arts, sciences, or advancement of knowledge;  
140

141 (f) increasing the flow of capital to entities with a purpose to benefit society or the  
142 environment; and  
143

144 (g) any more specific or focused public benefit.  
145

146 **(11)** “**Subsidiary**” means, in relation to a person, other than an individual, an entity in which  
147 the person owns beneficially or of record 50% or more of the outstanding equity interests.  
148

149           **(12) “Third-party standard”** means a recognized standard for defining, reporting, and  
150 assessing the societal and environmental performance of a business that is:

151  
152           (a) Comprehensive because the standard assesses the effect of the business and its  
153 operations upon the interests listed in subsections 607.1808(1)(a)2, 3, 4 and 5.

154  
155           (b) Developed by an entity that is not controlled by the benefit corporation.

156  
157           (c) Credible because it is developed by an entity that both:

158  
159                 1. has access to necessary expertise to assess the overall societal and  
160 environmental performance of a business; and

161  
162                 2. uses a balanced multistakeholder approach to develop the standard,  
163 including a reasonable public comment period.

164  
165           (d) Transparent because the following information is publicly available:

166  
167                 1. About the standard:

168                         (A) The criteria considered when measuring the overall societal and  
169 environmental performance of a business.

170  
171                         (B) The relative weightings, if any, of those criteria.

172  
173                 2. About the development and revision of the standard:

174                         (A) The identity of the directors, officers, material owners, and the  
175 governing body of the entity that developed and controls revisions to the standard.

176  
177                         (B) The process by which revisions to the standard and changes to the  
178 membership of the governing body are made.

179                         (C) An accounting of the revenue and sources of financial support for  
180 the entity, with sufficient detail to disclose any relationships that could reasonably be considered to  
181 present a potential conflict of interest.

182  
183  
184  
185  
186 **§ 607.1804. Incorporation of benefit corporation.**

187  
188           In order for a corporation to be formed as a benefit corporation, the corporation shall be  
189 incorporated in accordance with this chapter, but the articles of incorporation filed to incorporate  
190 the corporation must state that the corporation is to be a benefit corporation.

191  
192 **§ 607.1805. Election of benefit corporation status.**

193  
194           **(1)** An existing business corporation may become a benefit corporation under this  
195 supplement by amending its articles of incorporation so that they contain, in addition to the  
196 requirements of s. 607.0202, a statement that the corporation is a benefit corporation. In order to  
197 be effective, the amendment must be adopted by the minimum status vote.  
198

199 (2) Subsection (3) applies if both of the following subparagraphs apply:  
200

201 (a) An entity that is not a benefit corporation is:  
202

- 203 1. a party to a merger or conversion; or
- 204 2. the exchanging entity in a share exchange.

205  
206  
207 (b) The surviving, new, or resulting entity in the merger, conversion or share  
208 exchange is to be a benefit corporation.  
209

210 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this  
211 subsection must be adopted by the minimum status vote.  
212

213 (4) In the event of an election to become a benefit corporation by amendment of the  
214 articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity  
215 becoming a benefit corporation shall be entitled to the appraisal rights in ss. 607.1301-.1333 to the  
216 extent of, and in accordance with, such appraisal rights provisions  
217

#### 218 **§ 607.1806. Termination of benefit corporation status.**

219  
220 (1) A benefit corporation may terminate its status as such and cease to be subject to this  
221 supplement by amending its articles of incorporation to delete the provision required by s.  
222 607.1804 or s. 607.1805 to be stated in the articles of incorporation of a benefit corporation. In  
223 order to be effective, the amendment must be adopted by the minimum status vote.  
224

225 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating  
226 the status of a business corporation as a benefit corporation, the plan must be adopted by the  
227 minimum status vote in order to be effective.<sup>1</sup>  
228

229 (3) If a corporation's status as a benefit corporation is terminated pursuant to subsections  
230 (1) or (2), shareholders of the corporation shall be entitled to the appraisal rights in ss. 607.1301-  
231 1333 to the extent of, and in accordance with, such appraisal rights provisions.  
232

#### 233 **§ 607.1807. Corporate purposes.**

234  
235 (1) A benefit corporation shall have a purpose of creating general public benefit. This  
236 purpose is in addition to its purpose under s. 607.0301.  
237

238 (2) The articles of incorporation of a benefit corporation may identify one or more specific  
239 public benefits that it is the purpose of the benefit corporation to create in addition to its purposes

5\_\_\_\_\_

<sup>1</sup> We deleted the sentence "Any sale, lease, exchange, 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, shall not be effective unless the transaction is approved by at least the minimum status vote." which we view as unnecessary because a sale will produce consideration that may be used to invest in new assets of the benefit corporation that can in turn be deployed for creating general public benefit and any specific public benefit purpose identified in its articles of incorporation.

240 under s. 607.0301 and subsection (1). The identification of a specific public benefit under this  
241 subsection does not limit the obligation of a benefit corporation under subsection (1).  
242

243 (3) The creation of general public benefit and one or more specific public benefits under  
244 subsections (1) and (2) is deemed to be in the best interests of the benefit corporation.  
245

246 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete  
247 the identification of any specific public benefit that it is the purpose of the benefit corporation to  
248 create. In order to be effective, the amendment must be adopted by the minimum status vote.  
249

250 (5) A professional corporation that is a benefit corporation does not violate s. 621.08 by  
251 having the purpose to create general public benefit or a specific public benefit.  
252

253 **§ 607.1808. Standard of conduct for director**  
254

255 (1) In discharging their duties and in considering the best interests of the benefit  
256 corporation, the directors of a benefit corporation:  
257

258 (a) shall consider the effects of any action or inaction upon:

- 259 1. the shareholders of the benefit corporation;
- 260 2. the employees and work force of the benefit corporation, its subsidiaries,  
261 and its suppliers;
- 262 3. the interests of customers and suppliers as beneficiaries of the general  
263 public benefit and as beneficiaries of each of its specific public benefit purposes, if any, of the  
264 benefit corporation;
- 265 4. community and societal factors, including those of each community in  
266 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;  
267 5. the local and global environment;
- 268 6. the short-term and long-term interests of the benefit corporation, including  
269 benefits that may accrue to the benefit corporation from its long-term plans and the possibility that  
270 these interests may be best served by the continued independence of the benefit corporation; and  
271 7. the ability of the benefit corporation to accomplish its general public  
272 benefit purpose and each of its specific public benefit purposes, if any; and  
273

274 (b) may consider other pertinent factors or the interests of any other group that they  
275 deem appropriate; but  
276

277 (c) need not give priority to the interests of a particular person or group referred to  
278 in paragraphs (a) or (b) over the interests of any other person or group unless the benefit  
279 corporation has stated in its articles of incorporation its intention to give priority to certain interests  
280 related to its accomplishment of its general public benefit purpose or of any one or more of the  
281 specific public benefit purposes, if any, identified in its articles of incorporation; and  
282  
283  
284  
285  
286  
287  
288  
289

290 (d) need not give equal weight to the interests of a particular person or group  
291 referred to in paragraphs (a) or (b) unless the benefit corporation has stated in its articles of  
292 incorporation its intention to give such equal weight related to its accomplishment of its general  
293 public benefit purpose or of any one or more of the specific public benefit purposes, if any,  
294 identified in its articles of incorporation.  
295

296 (2) Except as otherwise provided in the articles of incorporation or bylaws, a director is  
297 not personally liable for monetary damages for the failure of the benefit corporation to pursue or  
298 create general public benefit or any one or more specific public benefits identified in its articles of  
299 incorporation.  
300

301 (3) Except as provided in the articles of incorporation or bylaws, a director does not have a  
302 duty to a person that is a beneficiary of the general public benefit purpose or any one or more  
303 specific public benefit purposes of the benefit corporation arising from the status of the person as a  
304 beneficiary.  
305

306 (4) A director who makes a business judgment in good faith fulfills the duty under this  
307 section if the director:  
308

309 (a) is not interested in the subject of the business judgment;  
310

311 (b) is informed with respect to the subject of the business judgment to the extent  
312 reasonably believed by the director to be appropriate under the circumstances; and  
313

314 (c) rationally believes that the business judgment is in the best interests of the  
315 benefit corporation.  
316

317 **§ 607.1809. Benefit director.**  
318

319 (1) If the articles of incorporation so provide, the board of directors of a benefit  
320 corporation may include a director who shall be designated as the benefit director and who shall  
321 have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit  
322 corporation, the powers, duties, rights, and immunities provided in this supplement.  
323

324 (2) The benefit director shall be elected, and may be removed, in the manner provided by  
325 this chapter. The benefit director shall be an individual who is independent. The benefit director  
326 may serve as the benefit officer at the same time as serving as the benefit director. The articles of  
327 incorporation or bylaws may prescribe additional qualifications of the benefit director.  
328

329 (3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director  
330 shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders  
331 required by s. 607.1813, the opinion of the benefit director on all of the following:  
332

333 (a) Whether the benefit corporation acted in accordance with its general public  
334 benefit purpose and any specific public benefit purpose in all material respects during the period  
335 covered by the report.  
336

337 (b) Whether the directors and officers complied with ss. 607.1808(1) and  
338 607.1810(1), respectively.  
339

340 (c) If, in the opinion of the benefit director, the benefit corporation or its directors or  
341 officers failed to comply with paragraph (a) or ss. 607.1808(1) or 607.1810(1), a description of the  
342 ways in which the benefit corporation or its directors or officers failed to comply.  
343

344 (4) The act or inaction of an individual in the capacity of a benefit director shall constitute  
345 for all purposes an act or inaction of that individual in the capacity of a director of the benefit  
346 corporation.  
347

348 (5) The benefit director of a corporation formed under chapter 621 does not need to be  
349 independent.  
350

351 **§ 607.1810. Standard of conduct for officers.**  
352

353 (1) Each officer of a benefit corporation shall consider the interests and factors described  
354 in s. 607.1808(1) in the manner provided in that subsection if:

355 (a) the officer has discretion to act with respect to a matter; and  
356

357 (b) it reasonably appears to the officer that the matter may have a material effect on  
358 the creation by the benefit corporation of general public benefit or any one or more of the specific  
359 public benefits identified in the articles of incorporation.  
360

361 (2) The consideration of interests and factors in the manner described in subsection (1)  
362 shall not constitute a violation of s. 607.0841.  
363

364 (3) Except as provided in the articles of incorporation or bylaws, an officer is not  
365 personally liable for monetary damages to the corporation or to any other person for the failure of  
366 the benefit corporation to pursue or create general public benefit or any of its specific public  
367 benefits.  
368

369 (4) An officer does not have a duty to a person that is a beneficiary of the general public  
370 benefit purpose or a beneficiary of any of the specific public benefit purposes of the benefit  
371 corporation arising from the status of the person as a beneficiary.  
372

373 (5) An officer who makes a business judgment in good faith fulfills the duty under this  
374 section if the officer:  
375

376 (a) is not interested in the subject of the business judgment;  
377

378 (b) is informed with respect to the subject of the business judgment to the extent  
379 reasonably believed by the officer to be appropriate under the circumstances; and  
380

381 (c) rationally believes that the business judgment is in the best interests of the  
382 benefit corporation.  
383

384 **§ 607.1811. Benefit officer.**  
385

386 (1) A benefit corporation may have an officer designated the benefit officer.  
387

388 (2) A benefit officer shall have the powers and duties set forth in the bylaws or determined  
389

390 by the board of directors, which may include but not be limited to:

391  
392 (a) the powers and duties relating to the purpose of the corporation to create general  
393 public benefit or any one or more specific public benefits; and

394  
395 (b) the duty to prepare the annual benefit report required by s. 607.1813.

396  
397 **§ 607.1812. Right of action.**

398  
399 (1) (a) Except in a benefit enforcement proceeding, no person may bring an action or  
400 assert a claim against a benefit corporation or its directors or officers with respect to:

401  
402 1. failure to pursue or create general public benefit or any specific public  
403 benefit set forth in its articles of incorporation; or

404  
405 2. violation of an obligation, duty, or standard of conduct under this  
406 supplement.

407  
408 (b) A benefit corporation shall not be liable for monetary damages under this  
409 supplement for any failure of the benefit corporation to pursue or create general public benefit or  
410 any specific public benefit.

411  
412 (2) A benefit enforcement proceeding may be commenced or maintained only:

413  
414 (a) directly by the benefit corporation; or

415  
416 (b) derivatively by:

417  
418 1. a shareholder of record on the date of the action complained of in the  
419 benefit enforcement proceeding;

420  
421 2. a director;

422  
423 3. a person or group of persons that owns beneficially or of record 5% or  
424 more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary  
425 on the date of the action complained of in the benefit enforcement proceeding; or

426  
427 4. other persons as specified in the articles of incorporation or bylaws of the  
428 benefit corporation.

429  
430 **§ 607.1813. Preparation of annual benefit report.**

431  
432 (1) An annual benefit report shall be prepared by the board of directors unless prepared by  
433 a benefit director, if any, or a benefit officer, if any. The report shall include the following:

434  
435 (a) A narrative description of:

436  
437 1. The ways in which the benefit corporation pursued general public benefit  
438 during the year and the extent to which general public benefit was created.

439

440                           2.    Both:  
441  
442                            (A)   the ways in which the benefit corporation pursued each of the  
443 specific public benefits, if any, that the articles of incorporation state it is the purpose of the benefit  
444 corporation to create; and  
445  
446                            (B)   the extent to which those specific public benefits were created.  
447  
448                           3.    Any circumstances that have hindered the creation by the benefit  
449 corporation of general public benefit or any of its specific public benefits.  
450  
451                           4.    The process and rationale for selecting or changing the third-party standard  
452 used to prepare the annual benefit report.  
453  
454                           (b)   An assessment of the overall societal and environmental performance of the  
455 benefit corporation against a third-party standard:  
456  
457                            1.    applied consistently with any application of that standard in prior annual  
458 benefit reports; or  
459  
460                            2.    accompanied by an explanation of the reasons for:  
461  
462                                (A)   any inconsistent application; or  
463  
464                                (B)   the change to that standard from the one used in the immediately  
465 prior report.  
466  
467                           (c)   The name of the benefit director, if any, and the benefit officer, if any, and the  
468 address to which correspondence to each of them may be directed.  
469  
470                           (d)   If the corporation has a benefit director, the statement of the benefit  
471 director described in s. 607.1809(3).  
472  
473                           (e)   A statement of any connection between the organization that established the  
474 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance  
475 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5  
476 percent or more of the outstanding shares of the benefit corporation, including any financial or  
477 governance relationship which might materially affect the credibility of the use of the third-party  
478 standard.  
479  
480                           (2)   If, during the year covered by an annual benefit report, a benefit director resigned from  
481 or refused to stand for reelection to the position of benefit director, or was removed from the  
482 position of benefit director, and the benefit director furnished the benefit corporation with any  
483 written correspondence concerning the circumstances surrounding the resignation, refusal, or  
484 removal, the annual benefit report shall include that correspondence as an exhibit.  
485  
486                           (3)   Neither the annual benefit report nor the assessment of the performance of the benefit  
487 corporation in the annual benefit report required by paragraph(b) of subsection (1) needs to be  
488 audited or certified by a third-party standards provider.  
489

490 § 607.1814. Availability of annual benefit report.  
491

492 (1) A benefit corporation shall send its annual benefit report to each shareholder:  
493

494 (a) within 120 days following the end of the fiscal year of the benefit corporation; or  
495

496 (b) at the same time that the benefit corporation delivers any other annual report to  
497 its shareholders.  
498

499 (2) A benefit corporation shall post all of its annual benefit reports on the public portion of  
500 its Internet website, if any.  
501

502 (3) If a benefit corporation does not have an Internet website, the benefit corporation shall  
503 provide a copy of its most recent annual benefit report, without charge, to any person that requests  
504 a copy.  
505

506 (4) If a benefit corporation does not comply with the annual benefit report delivery  
507 requirement, the circuit court in the county in which the benefit corporation's principal office (or, if  
508 none in this state, its registered office) is located may, upon application of a shareholder of the  
509 benefit corporation, summarily order the corporation to furnish the report. If the court orders the  
510 report to be furnished, the court may also order the benefit corporation to pay the shareholder's  
511 costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise  
512 enforce its rights under this section.  
513

514 \* \* \* \* \*

515  
516 Amendment to Section 607.1302 Relating to Appraisal Rights  
517

518  
519 § 607.1302. Right of shareholders to appraisal  
520

521 Add to § 607.1302 new subsections (1)(g) through (j) to read as follows:  
522

523 (g) An amendment of the articles of incorporation of a social purpose  
524 corporation to which s. 607.1706 applies;

525  
526 (h) An amendment of the articles of incorporation of a benefit corporation to  
527 which s. 607.1806 applies;

528  
529 (i) A merger, conversion or share exchange of a social purpose corporation  
530 to which s. 607.1705 applies; or

531  
532 (j) A merger, conversion or share exchange of a benefit corporation to  
533 which s. 608.1805 applies.  
534

535 Delete "or" at the end of § 607.1302(e) and delete the period and add a semicolon at the end of §  
536 607.1302(f).

1 **FLORIDA BENEFIT CORPORATION LEGISLATION**

2  
3 **Chapter 611**  
4 Sections 607.1801 et seq.

5  
6 **Benefit Corporations**

7  
8  
9  
10 **§ ~~611.01~~607.1801. Short Title.**

11  
12 This ~~act~~ section and ss. 607.1802 through 607.1814 shall be known and may be cited as the  
13 “~~Florida~~ Benefit Corporation ~~Act.~~” Supplement” and is referred to in such sections as “this  
14 supplement”.

15  
16 **§ ~~611.02~~607.1802. Application and effect of chapter.**

17  
18 (1) This ~~chapter~~ supplement shall be applicable to all benefit corporations.

19  
20 (2) The existence of a provision of this ~~chapter~~ supplement shall not of itself create an  
21 implication that a contrary or different rule of law is applicable to a business corporation that is not  
22 a benefit corporation. This ~~chapter~~ supplement shall not affect a statute or rule of law that is  
23 applicable to a business corporation that is not a benefit corporation.

24  
25 (3) Except as otherwise provided in this supplement, all other provisions of this chapter,  
26 ~~chapter 607~~ shall be generally applicable to all benefit corporations. The specific provisions of  
27 this ~~chapter~~ supplement shall control over the general provisions of this ~~chapter~~607.

28  
29 (4) A benefit corporation may be subject simultaneously to this ~~chapter~~ supplement and  
30 one or more other chapters, including chapter 621. In such event, the provisions and sections of  
31 this ~~act~~ supplement shall take precedence with respect to a benefit corporation.

32  
33 (5) ~~A~~ Except as permitted by this supplement, a provision of the articles of incorporation  
34 or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of  
35 this ~~chapter~~ supplement.

36  
37 **§ ~~611.02~~607.1803. Definitions.**

38  
39 As used in this ~~chapter~~ supplement, unless the context otherwise requires, the term:

40  
41 (1) “Benefit corporation” means a business corporation:

- 42  
43 (a) which has elected to become subject to this ~~chapter~~ supplement; and  
44  
45 (b) the status of which as a benefit corporation has not been terminated.

46  
47 (2) “Benefit director” means either:

48  
49 (a) the director designated as the benefit director of a benefit corporation under  
50 ~~section 611.08~~s. 607.1809; or

51  
52 (b) a person with one or more of the powers, duties or rights of a benefit director to  
53 the extent provided in the articles of incorporation or bylaws under ~~section 611.08(6)~~s. 607.1809.

54  
55 (3) **“Benefit enforcement proceeding”** means any claim or action for:

56  
57 (a) failure of a benefit corporation to pursue or create general public benefit or a  
58 specific public benefit purpose set forth in its articles of incorporation; or

59  
60 (b) violation of any obligation, duty, or standard of conduct under this  
61 ~~chapter~~supplement.

62  
63 (4) **“Benefit officer”** means the individual designated as the benefit officer of a benefit  
64 corporation under ~~section 611.10~~s. 607.1811.

65  
66 (5) **“Business corporation”** means a domestic corporation which is not a benefit corporation  
67 or a social purpose corporation.

68  
69 (6) **“General public benefit”** means a material positive impact on society and the  
70 environment, taken as a whole, assessed against a third-party standard, from the business and  
71 operations of a benefit corporation.

72  
73 (7) **“Independent”** means having no material relationship with ~~a~~the benefit corporation or  
74 a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make  
75 an individual not independent. A material relationship between an individual and a benefit  
76 corporation or any of its subsidiaries will be conclusively presumed to exist, at the time  
77 independence is to be determined, if any of the following apply:

78  
79 (a) The individual is, or has been within the ~~last~~prior three years, an employee other  
80 than a benefit officer of the benefit corporation or a subsidiary.

81  
82 (b) An immediate family member of the individual is, or has been within the ~~last~~  
83 ~~three~~priorthree years, an executive officer other than a benefit officer of the benefit corporation or  
84 a subsidiary.

85  
86 (c) There is beneficial or record ownership of 5% or more of the outstanding shares  
87 of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the  
88 benefit corporation had been exercised, by:

89  
90 1. the individual; or

91  
92 2. an entity:

93  
94 (A) of which the individual is a director, an officer, or a manager; or

95  
96 (B) in which the individual owns beneficially or of record 5% or more of  
97 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in

98 the entity had been exercised.

99  
100 ~~(7)~~(8) “Minimum status vote” means:

101  
102 (a) In the case of (i) a business corporation that is to become a benefit corporation,  
103 (ii) a benefit corporation whose articles of incorporation are to be amended pursuant to subsection  
104 607.1807(4), or (iii) a benefit corporation that is to cease being a benefit corporation, in addition to  
105 any other required approval or vote, the satisfaction of the following conditions:

106  
107 1. The shareholders of every class or series shall be entitled to vote as a  
108 separate voting group on the corporate action regardless of ~~a~~any limitation stated in the articles of  
109 incorporation or bylaws on the voting rights of any class or series.

110  
111 2. The corporate action must be approved by vote of the shareholders of each  
112 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or  
113 series are entitled to cast on the action.

114  
115 (b) In the case of a domestic entity ~~-,~~ other than a business corporation, that  
116 simultaneously is to be converted to a corporation and become a benefit corporation, in addition to  
117 any other required approval, vote, or consent, the satisfaction of the following conditions:

118  
119 1. The holders of ~~every~~each class or series of equity interest in the entity that  
120 are entitled to receive a distribution of any kind from the entity shall be entitled ~~-,~~ as a separate  
121 voting group, to vote on or consent to the action regardless of any otherwise applicable limitation  
122 on the voting or consent rights of any class or series.

123  
124 2. The action must be approved by vote or consent of the holders of each  
125 class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or  
126 consents of the class or series that all of those holders are entitled to cast on the action.

127  
128 ~~(8) “Publicly traded corporation” means a business corporation that has shares listed on a~~  
129 ~~national securities exchange or traded in a market maintained by one or more members of a~~  
130 ~~national securities association.~~

131  
132 ~~(9)~~ [Reserved].

133  
134 ~~(9)~~(10) “Specific public benefit” includes:

135  
136 (a) providing low-income or underserved individuals or communities with beneficial  
137 products or services;

138  
139 (b) promoting economic opportunity for individuals or communities beyond the  
140 creation of jobs in the normal course of business;

141  
142 (c) protecting or restoring the environment;

143  
144 (d) improving human health;

145  
146 (e) promoting the arts, sciences, or advancement of knowledge;

147

148 (f) increasing the flow of capital to entities with a purpose to benefit society or the  
149 environment; and

150 ~~(g) conferring any other particular benefit on society or the environment.~~

151  
152 (g) any more specific or focused public benefit.

153  
154  
155 ~~(10)(11)~~ **“Subsidiary”** means, in relation to a person, other than an individual, an entity in  
156 which the person owns beneficially or of record 50% or more of the outstanding equity interests.

157  
158 ~~(11)(12)~~ **“Third-party standard”** means a recognized standard for defining, reporting, and  
159 assessing ~~corporate social~~ the societal and environmental performance of a business that is:

160  
161 (a) Comprehensive because ~~it~~ the standard assesses the effect of the business and its  
162 operations upon the interests listed in ~~section 611.07(1)(a)2~~ subsections 607.1808(1)(a)2, 3, 4 and 5.

163  
164 (b) Developed by an entity that is not controlled by the benefit corporation.

165  
166 (c) Credible because it is developed by an entity that both:

167  
168 1. has access to necessary expertise to assess the overall ~~corporate social~~  
169 societal and environmental performance of a business; and

170  
171 2. uses a balanced multistakeholder approach to develop the standard,  
172 including a reasonable public comment period.

173  
174 (d) Transparent because the following information is publicly available:

175  
176 1. About the standard:

177  
178 (A) The criteria considered when measuring the overall ~~social~~ societal  
179 and environmental performance of a business.

180  
181 (B) The relative weightings, if any, of those criteria.

182  
183 2. About the development and revision of the standard:

184  
185 (A) The identity of the directors, officers, material owners, and the  
186 governing body of the entity that developed and controls revisions to the standard.

187  
188 (B) The process by which revisions to the standard and changes to the  
189 membership of the governing body are made.

190  
191 (C) An accounting of the revenue and sources of financial support for  
192 the entity, with sufficient detail to disclose any relationships that could reasonably be considered to  
193 present a potential conflict of interest.

194  
195 § ~~611.03~~ 607.1804. **Incorporation of benefit corporation.**

196  
197 ~~A~~ In order for a corporation to be formed as a benefit corporation, the corporation shall be

198 incorporated in accordance with [this](#) chapter ~~607~~, but ~~its~~ [the](#) articles of incorporation [filed to](#)  
199 [incorporate the corporation](#) must ~~also~~ state that ~~it is~~ [the corporation is to be](#) a benefit corporation.

200  
201 **§ ~~611.04~~[607.1805](#). Election of benefit corporation status.**

202  
203 (1) An existing business corporation may become a benefit corporation under this ~~chapter~~  
204 [supplement](#) by amending its articles of incorporation so that they contain, in addition to the  
205 requirements of ~~section s.~~ [607.0202](#), a statement that the corporation is a benefit corporation. In  
206 order to be effective, the amendment must be adopted by ~~at least~~ the minimum status vote.

207  
208 (2) Subsection (3) applies if both of the following subparagraphs apply:

209 (a) An entity that is not a benefit corporation is:

- 210 1. a party to a merger or conversion; or
- 211 2. the exchanging entity in a share exchange.

212  
213  
214 (b) The surviving, new, or resulting entity in the merger, conversion or share  
215 exchange is to be a benefit corporation.

216  
217 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this  
218 subsection must be adopted by ~~at least~~ the minimum status vote.

219  
220  
221  
222 (4) [In the event of an election to become a benefit corporation by amendment of the](#)  
223 [articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity](#)  
224 [becoming a benefit corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the](#)  
225 [extent of, and in accordance with, such appraisal rights provisions](#)

226  
227 **§ ~~611.05~~[607.1806](#). Termination of benefit corporation status.**

228  
229 (1) A benefit corporation may terminate its status as such and cease to be subject to this  
230 ~~chapter~~ [supplement](#) by amending its articles of incorporation to delete the provision required by  
231 ~~section 611.03 or 611.04~~ [s. 607.1804 or s. 607.1805](#) to be stated in the articles of [incorporation of](#) a  
232 benefit corporation. In order to be effective, the amendment must be adopted by ~~at least~~ the  
233 minimum status vote.

234  
235 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating  
236 the status of a business corporation as a benefit corporation, the plan must be adopted by ~~at least~~  
237 the minimum status vote in order to be effective. ~~Any sale, lease, exchange, or other disposition of~~  
238 ~~all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual~~

5 \_\_\_\_\_  
<sup>1</sup> [We deleted the sentence “Any sale, lease, exchange, 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, shall not be effective unless the transaction is approved by at least the minimum status vote.” which we view as unnecessary because a sale will produce consideration that may be used to invest in new assets of the benefit corporation that can in turn be deployed for creating general public benefit and any specific public benefit purpose identified in its articles of incorporation.](#)

239 ~~and regular course of business, shall not be effective unless the transaction is approved by at least~~  
240 ~~the minimum status vote.~~

241  
242 (3) If a corporation's status as a benefit corporation is terminated pursuant to subsections  
243 (1) or (2), shareholders of the corporation shall be entitled to the appraisal rights in ss. 607.1301-  
244 1333 to the extent of, and in accordance with, such appraisal rights provisions.

245  
246 ~~§ 611.06~~ § 607.1807. **Corporate purposes.**

247  
248 (1) A benefit corporation shall have a purpose of creating general public benefit. This  
249 purpose is in addition to its purpose under ~~section s.~~ 607.0301.

250  
251 (2) The articles of incorporation of a benefit corporation may identify one or more specific  
252 public benefits that it is the purpose of the benefit corporation to create in addition to its purposes  
253 under ~~section s.~~ 607.0301 and subsection (1). The identification of a specific public benefit under  
254 this subsection does not limit the obligation of a benefit corporation under subsection (1).

255  
256 (3) The creation of general public benefit and one or more specific public ~~benefit~~ benefits  
257 under subsections (1) and (2) is deemed to be in the best interests of the benefit corporation.

258  
259 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete  
260 the identification of ~~a~~ any specific public benefit that it is the purpose of the benefit corporation to  
261 create. In order to be effective, the amendment must be adopted by ~~at least~~ the minimum status  
262 vote.

263  
264 (5) A professional corporation that is a benefit corporation does not violate ~~section s.~~ 607.1808  
265 621.08 by having the purpose to create general public benefit or a specific public benefit.

266  
267 ~~§ 611.07~~ § 607.1808. **Standard of conduct for director**

268  
269 (1) In discharging ~~the their~~ their duties ~~of their respective positions~~ and in considering the best  
270 interests of the benefit corporation, the ~~board of directors, committees of the board, and individual~~  
271 directors of a benefit corporation:

272  
273 (a) shall consider the effects of any action or inaction upon:

- 274  
275 1. the shareholders of the benefit corporation;
- 276  
277 2. the employees and work force of the benefit corporation, its subsidiaries,  
278 and its suppliers;
- 279  
280 3. the interests of customers and suppliers as beneficiaries of the general  
281 public benefit ~~or~~ and as beneficiaries of each of its specific public benefit purposes, if any, of the  
282 benefit corporation;
- 283  
284 4. community and societal factors, including those of each community in  
285 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- 286  
287 5. the local and global environment;
- 288

289 6. the short-term and long-term interests of the benefit corporation, including  
290 benefits that may accrue to the benefit corporation from its long-term plans and the possibility that  
291 these interests may be best served by the continued independence of the benefit corporation; and  
292

293 7. the ability of the benefit corporation to accomplish its general public  
294 benefit purpose and ~~any~~ each of its specific public benefit ~~purpose~~ purposes, if any; and  
295

296 ~~1. — the interests referred to in section 607.0830(3); and~~  
297

298 ÷

299 (b) may consider ~~2.~~ other pertinent factors or the interests of any other group that  
300 they deem appropriate; but  
301

302 (c) need not give priority to the interests of a particular person or group referred to  
303 in ~~paragraph~~ paragraphs (a) or (b) over the interests of any other person or group unless the benefit  
304 corporation has stated in its articles of incorporation its intention to give priority to certain interests  
305 related to its accomplishment of its general public benefit purpose or of ~~a~~ any one or more of the  
306 specific public benefit ~~purpose~~ purposes, if any, identified in its articles ~~of incorporation; and~~  
307

308 (d) need not give equal weight to the interests of a particular person or group  
309 referred to in paragraphs (a) or (b) unless the benefit corporation has stated in its articles of  
310 incorporation its intention to give such equal weight related to its accomplishment of its general  
311 public benefit purpose or of any one or more of the specific public benefit purposes, if any,  
312 identified in its articles of incorporation.  
313

314 ~~(2) — The consideration of interests and factors in the manner required by subsection (1):~~

315 ~~(a) — does not constitute a violation section 607.0830; and~~

316 ~~(b) — is in addition to the ability of directors to consider interests and factors as~~  
317 ~~provided in section 607.0830(3).~~

318 ~~(3)~~ (2) Except as otherwise provided in the articles of incorporation or bylaws, a director is  
319 not personally liable for monetary damages for ~~the failure of the benefit corporation to pursue or~~  
320 ~~create general public benefit or any one or more specific public benefits identified in its articles of~~  
321 ~~incorporation.~~

322 ~~(a) — any action or inaction in the course of performing the duties of a director under~~  
323 ~~subsection (a) if the director performed the duties of office in compliance with section 607.0830; or~~  
324

325 ~~(b) — failure of the benefit corporation to pursue or create general public benefit~~  
326 ~~or specific public benefit.~~  
327

328 ~~(4)~~ (3) ~~A~~ Except as provided in the articles of incorporation or bylaws, a director does not  
329 have a duty to a person that is a beneficiary of the general public benefit purpose or ~~a~~ any one or  
330 more specific public benefit ~~purpose of a~~ purposes of the benefit corporation arising from the status  
331 of the person as a beneficiary.  
332

333 ~~(5)~~ (4) A director who makes a business judgment in good faith fulfills the duty under this  
334 section if the director:  
335

336 (a) is not interested in the subject of the business judgment;

337 (b) is informed with respect to the subject of the business judgment to the extent  
338

339 reasonably believed by the director ~~reasonably believes~~ to be appropriate under the circumstances;  
340 and

341  
342 (c) rationally believes that the business judgment is in the best interests of the  
343 benefit corporation.

344  
345 § ~~611.08~~607.1809. **Benefit director.**

346 (a) ~~shall be designated the benefit director; and~~

347  
348  
349 ~~, who:~~

350 (1) ~~The~~ If the articles of incorporation so provide, the board of directors of a benefit  
351 corporation ~~that is a publicly traded corporation shall, and the board of any other benefit~~  
352 ~~corporation may, may~~ include a director ~~(b) who shall be designated as the benefit director and who~~  
353 shall have, in addition to the powers, duties, rights, and immunities of the other directors of the  
354 benefit corporation, the powers, duties, rights, and immunities provided in this ~~chapter~~supplement.

355  
356 (2) The benefit director shall be elected, and may be removed, in the manner provided by  
357 this chapter ~~607~~. ~~Except as provided in subsections (6) and (7), the~~ The benefit director shall be an  
358 individual who is independent. The benefit director may serve as the benefit officer at the same  
359 time as serving as the benefit director. The articles of incorporation or bylaws ~~of a benefit~~  
360 ~~corporation~~ may prescribe additional qualifications of the benefit director ~~not inconsistent with this~~  
361 ~~subsection~~.

362  
363 (3) ~~The~~ Unless the articles of incorporation or bylaws provide otherwise, the benefit  
364 director shall prepare, and the benefit corporation shall include in the annual benefit report to  
365 shareholders required by ~~section 611.12s. 607.1813~~, the opinion of the benefit director on all of the  
366 following:

367  
368 (a) Whether the benefit corporation acted in accordance with its general public  
369 benefit purpose and any specific public benefit purpose in all material respects during the period  
370 covered by the report.

371  
372 (b) Whether the directors and officers complied with ~~sections 611.07(1ss.~~  
373 607.1808(1) and ~~611.09(a)607.1810(1)~~, respectively.

374  
375 (c) If, in the opinion of the benefit director, the benefit corporation or its directors or  
376 officers failed to comply with paragraph ~~(b)~~ or ss. 607.1808(1) or 607.1810(1), a description of  
377 the ways in which the benefit corporation or its directors or officers failed to comply.

378  
379 (4) The act or inaction of an individual in the capacity of a benefit director shall constitute  
380 for all purposes an act or inaction of that individual in the capacity of a director of the benefit  
381 corporation.

382  
383 ~~(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation~~  
384 ~~include a provision eliminating or limiting the personal liability of directors authorized by section~~  
385 ~~607.0831, a benefit director shall not be personally liable for an act or omission in the capacity of a~~  
386 ~~benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a~~  
387 ~~knowing violation of law.~~

388 (6) ~~(a) The articles of incorporation or bylaws of a benefit corporation must provide that~~

389 ~~the persons or shareholders who perform the duties of the board of directors include a person with~~  
390 ~~the powers, duties, rights and immunities of a benefit director if the articles of incorporation or~~  
391 ~~bylaws of the benefit corporation provide that the powers and duties conferred or imposed upon the~~  
392 ~~board of directors shall be exercised or performed by a person other than the directors under~~  
393 ~~607.0732.~~

394 (b) ~~—A person that exercises one or more of the powers, duties or rights of a benefit~~  
395 ~~director under this subsection:~~

396 1. ~~—does not need to be independent of the benefit corporation;~~  
397 2. ~~—shall have the immunities of a benefit director;~~  
398 3. ~~—may share the powers, duties, and rights of a benefit director with one or~~  
399 ~~more other persons; and~~

400 4. ~~—shall not be subject to the procedures for election or removal of directors~~  
401 ~~in chapter 607 unless:~~

402 (A) ~~—the person is also a director of the benefit corporation; or~~

403 (B) ~~—the articles or bylaws make those procedures applicable.~~

404 ~~(7) The benefit director of a professional corporation~~ (5) The benefit director of a  
405 corporation formed under chapter 621 does not need to be independent.

406  
407 ~~§ 611.09~~ § 607.1810. **Standard of conduct for officers.**

408 (1) Each officer of a benefit corporation shall consider the interests and factors described  
409 in ~~section 611.07(1)~~ s. 607.1808(1) in the manner provided in that subsection if:

410 (a) the officer has discretion to act with respect to a matter; and

411 (b) it reasonably appears to the officer that the matter may have a material effect on  
412 the creation by the benefit corporation of general public benefit or ~~a~~ any one or more of the specific  
413 public ~~benefit~~ benefits identified in the articles of incorporation ~~of the benefit corporation.~~

414 (2) The consideration of interests and factors in the manner described in subsection (1)  
415 shall not constitute a violation of ~~section s.~~ 607.0841.

416 (3) Except as provided in the articles of incorporation or bylaws, an officer is not  
417 personally liable for monetary damages ~~for~~ to the corporation or to any other person for the failure  
418 of the benefit corporation to pursue or create general public benefit or any of its specific public  
419 benefits.

420 (a) ~~—an action or inaction as an officer in the course of performing the duties of an~~  
421 ~~officer under subsection (1) if the officer performed the duties of the position in compliance with~~  
422 ~~section 607.0841 and this section; or~~

423 (b) ~~—failure of the benefit corporation to pursue or create general public benefit~~  
424 ~~or specific public benefit.~~

425 (4) An officer does not have a duty to a person that is a beneficiary of the general public  
426 benefit purpose or a beneficiary of any of the specific public benefit ~~purpose of a~~ purposes of the  
427 benefit corporation arising from the status of the person as a beneficiary.

428 (5) An officer who makes a business judgment in good faith fulfills the duty under this  
429 section if the officer:

430  
431  
432  
433  
434  
435  
436  
437  
438

- 439 (a) is not interested in the subject of the business judgment;  
440  
441 (b) is informed with respect to the subject of the business judgment to the extent  
442 reasonably believed by the officer ~~reasonably believes~~ to be appropriate under the circumstances;  
443 and  
444  
445 (c) rationally believes that the business judgment is in the best interests of the  
446 benefit corporation.  
447

448 § ~~611.10~~607.1811. **Benefit officer.**  
449

450 (1) A benefit corporation may have an officer designated the benefit officer.  
451

452 (2) A benefit officer shall have the powers and duties set forth in the bylaws or determined  
453 by the board of directors, which may include but not be limited to:  
454

455 (a) the powers and duties relating to the purpose of the corporation to create general  
456 public benefit or any one or more specific public ~~benefit provided:~~benefits; and  
457

458 ~~1. —by the bylaws; or~~  
459

460 ~~2. —absent controlling provisions in the bylaws, by resolutions or orders of the~~  
461 ~~board of directors.~~  
462

463 (b) the duty to prepare the annual benefit report required by ~~section 611.12s.~~  
464 607.1813.  
465

466 § ~~611.11~~607.1812. **Right of action.**  
467

468 (1) (a) Except in a benefit enforcement proceeding, no person may bring an action or  
469 assert a claim against a benefit corporation or its directors or officers with respect to:  
470

471 1. failure to pursue or create general public benefit or ~~a specific~~any specific  
472 public benefit set forth in its articles of incorporation; or  
473

474 2. violation of an obligation, duty, or standard of conduct under this  
475 ~~chapter~~supplement.  
476

477 (b) A benefit corporation shall not be liable for monetary damages under this ~~chapter~~  
478 supplement for any failure of the benefit corporation to pursue or create general public benefit or ~~a~~  
479 any specific public benefit.  
480

481 (2) A benefit enforcement proceeding may be commenced or maintained only:  
482

483 (a) directly by the benefit corporation; or  
484

485 (b) derivatively by:  
486

487 1. ~~a person or group of persons that owns beneficially or of record at least 2%~~  
488 ~~of the total number of shares of all classes and series outstanding~~ shareholder of record on the date

489 of the action complained of in the benefit enforcement proceeding ~~is commenced~~;

490

491 2. a director;

492

493 3. a person or group of persons that owns beneficially or of record 5% or  
494 more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary  
495 on the date of the action complained of in the benefit enforcement proceeding; or

496

497 4. other persons as specified in the articles of incorporation or bylaws of the  
498 benefit corporation.

499

500 ~~(3) For purposes of this section, a person is the beneficial owner of shares or equity~~  
501 ~~interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the~~  
502 ~~beneficial owner.~~

503

504

505 ~~§ 611.12~~ § 607.1813. Preparation of annual benefit report.

506

507 (1) ~~A benefit corporation shall prepare an~~ An annual benefit report ~~including all of~~ shall be  
508 prepared by the board of directors unless prepared by a benefit director, if any, or a benefit officer,  
509 if any. The report shall include the following:

510

511 (a) A narrative description of:

512

513 1. The ways in which the benefit corporation pursued general public benefit  
514 during the year and the extent to which general public benefit was created.

515

516 2. Both:

517

518 (A) the ways in which the benefit corporation pursued ~~a~~ each of the  
519 specific public ~~benefit~~ benefits, if any, that the articles of incorporation state it is the purpose of the  
520 benefit corporation to create; and

521

522 (B) the extent to which ~~that those~~ specific public ~~benefit was~~ benefits  
523 were created.

524

525 3. Any circumstances that have hindered the creation by the benefit  
526 corporation of general public benefit or any of its specific public ~~benefit~~ benefits.

527

528 4. The process and rationale for selecting or changing the third-party standard  
529 used to prepare the annual benefit report.

530

531 (b) An assessment of the overall ~~social~~ societal and environmental performance of  
532 the benefit corporation against a third-party standard:

533

534 1. applied consistently with any application of that standard in prior annual  
535 benefit reports; or

536

537 2. accompanied by an explanation of the reasons for:

538

539 (A) any inconsistent application; or  
540  
541 (B) the change to that standard from the one used in the immediately  
542 prior report.

543  
544 (c) The name of the benefit director, ~~if any,~~ and the benefit officer, if any, and the  
545 address to which correspondence to each of them may be directed.

546  
547 (d) ~~The compensation paid by~~ If the benefit corporation ~~during the year to each~~ has a  
548 benefit director ~~in~~, ~~the capacity of a director,~~ statement of the benefit director ~~described in s.~~  
549 607.1809(3).

550 ~~(e) The name of each person that owns 5% or more of the outstanding shares of the~~  
551 ~~benefit corporation either:~~

552  
553 1. ~~beneficially, to the extent known to the benefit corporation without~~  
554 ~~investigation; or~~

555  
556 2. ~~of record.~~

557  
558 ~~(f) The statement of the benefit director described in section 611.08(3).~~

559  
560 ~~(g)~~ (e) A statement of any connection between the organization that established the  
561 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance  
562 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5  
563 percent or more of the outstanding shares of the benefit corporation, including any financial or  
564 governance relationship which might materially affect the credibility of the use of the third-party  
565 standard.

566  
567 ~~(h) If the benefit corporation has dispensed with, or restricted the discretion or~~  
568 ~~powers of, the board of directors, a description of:~~

569  
570 1. ~~the persons that exercise the powers, duties, and rights and who have the~~  
571 ~~immunities of the board of directors; and~~

572  
573 2. ~~the benefit director, as required by section 611.08(6).~~

574 (2) If, during the year covered by a annual benefit report, a benefit director resigned  
575 from or refused to stand for reelection to the position of benefit director, or was removed from the  
576 position of benefit director, and the benefit director furnished the benefit corporation with any  
577 written correspondence concerning the circumstances surrounding the resignation, refusal, or  
578 removal, the annual benefit report shall include that correspondence as an exhibit.

579  
580 (3) Neither the annual benefit report nor the assessment of the performance of the benefit  
581 corporation in the annual benefit report required by paragraph(b) of subsection (1) ~~(b)~~ needs to be  
582 audited or certified by a third-party standards provider.

583  
584 **§ ~~611.13~~ 607.1814. Availability of annual benefit report.**

585  
586 (1) A benefit corporation shall send its annual benefit report to each shareholder:

587  
588 (a) within 120 days following the end of the fiscal year of the benefit corporation; or

589  
590 (b) at the same time that the benefit corporation delivers any other annual report to  
591 its shareholders.

592  
593 (2) A benefit corporation shall post all of its annual benefit reports on the public portion of  
594 its Internet website, if any; ~~but the compensation paid to directors and financial or proprietary~~  
595 ~~information included in the benefit reports may be omitted from the benefit reports as posted.~~

596  
597 (3) If a benefit corporation does not have an Internet website, the benefit corporation shall  
598 provide a copy of its most recent annual benefit report, without charge, to any person that requests  
599 a copy; ~~but the compensation paid to directors and financial or proprietary information included in~~  
600 ~~the benefit report may be omitted from the copy of the benefit report provided.~~

601  
602 ~~(4) (a) Concurrently with the delivery of the benefit report to shareholders under~~  
603 ~~subsection (3), the benefit corporation shall deliver a copy of the benefit report to the Department~~  
604 ~~of State for filing, but the compensation paid to directors and financial or proprietary information~~  
605 ~~included in the benefit report may be omitted from the benefit report as delivered to the~~  
606 ~~Department of State.~~

607  
608 ~~(b) The Department of State shall charge a fee of \$\_\_ for filing a benefit report.~~

609  
610  
611  
612  
613  
614  
615 (4) If a benefit corporation does not comply with the annual benefit report delivery  
616 requirement, the circuit court in the county in which the benefit corporation's principal office (or, if  
617 none in this state, its registered office) is located may, upon application of a shareholder of the  
618 benefit corporation, summarily order the corporation to furnish the report. If the court orders the  
619 report to be furnished, the court may also order the benefit corporation to pay the shareholder's  
620 costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise  
621 enforce its rights under this section.

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624 \* \* \* \* \*  
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Amendment to Section 607.1302 Relating to Appraisal Rights

§ 607.1302. Right of shareholders to appraisal

Add to § 607.1302 new subsections (1)(g) through (j) to read as follows:

(g) An amendment of the articles of incorporation of a social purpose corporation to which s. 607.1706 applies;

(h) An amendment of the articles of incorporation of a benefit corporation to which s. 607.1806 applies;

(i) A merger, conversion or share exchange of a social purpose corporation to which s. 607.1705 applies; or

(j) A merger, conversion or share exchange of a benefit corporation to which s. 608.1805 applies.

Delete “or” at the end of § 607.1302(e) and delete the period and add a semicolon at the end of § 607.1302(f).

Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
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Sources	
Original Document	[#2608088] [v1] Original Clemens Florida Benefit Corporation Draft (1258124_2).docDMS Information
Modified Document	[#2608112] [v1] Florida Benefit Corporation Draft (1258124_2) - Clemens Bill 1 8 13.docDMS information

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Insertions	72
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Changes	112
Moves	0
<b>TOTAL CHANGES</b>	<b>230</b>

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# FLORIDA SOCIAL PURPOSE CORPORATION LEGISLATION

## Sections 607.1701 et seq.

### Social Purpose Corporation Supplement

#### § 607.1701. Short Title.

This Section and ss. 607.1702 through 607.1714 shall be known and may be cited as the “Social Purpose Corporation Supplement” and is referred to in such sections as “this supplement”.

#### § 607.1702. Application and effect of supplement.

(1) This supplement shall be applicable to all social purpose corporations.

(2) The existence of a provision of this supplement shall not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a social purpose corporation. This supplement shall not affect a statute or rule of law that is applicable to a business corporation that is not a social purpose corporation.

(3) Except as otherwise provided in this supplement, all other provisions of this chapter shall be generally applicable to all social purpose corporations. The specific provisions of this supplement shall control over the general provisions of this chapter.

(4) A social purpose corporation may be subject simultaneously to this supplement and to one or more other chapters, including chapter 621. In such event, the provisions and sections of this supplement shall take precedence with respect to a social purpose corporation.

(5) Except as permitted by this supplement, a provision of the articles of incorporation or bylaws of a social purpose corporation may not limit, be inconsistent with, or supersede a provision of this supplement.

#### § 607.1703. Definitions.

As used in this supplement, unless the context otherwise requires, the term:

(1) **“Social purpose corporation”** means a business corporation:

- (a) which has elected to become subject to this supplement; and
- (b) the status of which as a social purpose corporation has not been terminated.

(2) **“Benefit director”** means either:

(a) the director designated as the benefit director of a social purpose corporation under s. 607.1708; or

(b) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the articles of incorporation or bylaws under s. 607.1709.

(3) **“Benefit enforcement proceeding”** means any claim or action for:

(a) failure of a social purpose corporation to pursue or create public benefit purpose set forth in its articles of incorporation; or

(b) violation of any obligation, duty, or standard of conduct under this supplement.

(4) **“Benefit officer”** means the individual designated as the benefit officer of a social purpose corporation under s. 607.1711.

(5) **“Business corporation”** means a domestic corporation which is not a social purpose corporation.

(6) **“Public benefit”** means a positive effect, or minimization of negative effects, taken as a whole, on the environment or on one or more categories of persons or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological or scientific nature, from the business and operations of a social purpose corporation, including without limitation:

(a) providing low-income or underserved individuals or communities with beneficial products or services;

(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) protecting or restoring the environment;

(d) improving human health;

(e) promoting the arts, sciences, or advancement of knowledge; and

(f) increasing the flow of capital to entities with a purpose to benefit society or the environment.

(7) **“Independent”** means having no material relationship with the social purpose corporation or a subsidiary of the social purpose corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a social purpose corporation or any of its subsidiaries will be conclusively presumed to exist, at the time independence is to be determined, if any of the following apply:

(a) The individual is, or has been within the prior three years, an employee other than a benefit officer of the social purpose corporation or a subsidiary.

(b) An immediate family member of the individual is, or has been within the last prior three years, an executive officer other than a benefit officer of the social purpose corporation or a subsidiary.

(c) There is beneficial or record ownership of 5% or more of the outstanding shares of the social purpose, calculated as if all outstanding rights to acquire equity interests in the social purpose corporation had been exercised, by:

1. the individual; or

2. an entity:

(A) of which the individual is a director, an officer, or a manager; or

(B) in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

**(8) “Minimum status vote”** means:

(a) In the case of (i) a business corporation that is to become a social purpose corporation, (ii) a social purpose corporation whose articles of incorporation are to be amended pursuant to subsection 607.1707(4), or (iii) a social purpose corporation that is to cease being a social purpose corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

1. The shareholders of every class or series shall be entitled to vote as a separate voting group on the corporate action regardless of any limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

2. The corporate action must be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action.

(b) In the case of a domestic entity, other than a business corporation, that simultaneously is to be converted to a corporation and become a social purpose corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

1. The holders of each class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled, as a separate voting group, to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

2. The action must be approved by vote or consent of the holders of each class and each series described in subparagraph 1 entitled to cast at least two-thirds of the votes or consents of the class or series that all of those holders are entitled to cast on the action.

**(9) “Specific public benefit”** means an indentified benefit goal of the social purpose corporation set forth in the articles of incorporation that is consistent with and within the definition of “public benefit” in this section.

**(10) “Subsidiary”** means, in relation to a person, other than an individual, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

**(11) “Third-party standard”** means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business that is:

(a) Comprehensive because the standard assesses the effect of the business and its operations upon the interests listed in subsection 607.1708(1)(a).

(b) Developed by an entity that is not controlled by the social purpose corporation.

(c) Credible because it is developed by an entity that both:

1. has access to necessary expertise to assess the overall societal and environmental performance of a business; and

2. uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period.

(d) Transparent because the following information is publicly available:

1. About the standard:

(A) The criteria considered when measuring the overall societal and environmental performance of a business.

(B) The relative weightings, if any, of those criteria.

2. About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard.

(B) The process by which revisions to the standard and changes to the membership of the governing body are made.

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

#### **§ 607.1704. Incorporation of social purpose corporation.**

In order for a corporation to be formed as a social purpose corporation, the corporation shall be incorporated in accordance with this chapter, but the articles of incorporation filed to incorporate the corporation must state that the corporation is a social purpose corporation.

#### **§ 607.1705. Election of social purpose corporation status.**

(1) An existing business corporation may become a social purpose corporation under this supplement by amending its articles of incorporation so that they contain, in addition to the requirements of s. 607.0202, a statement that the corporation is a social purpose corporation. In order to be effective, the amendment must be adopted by the minimum status vote.

(2) Subsection (3) applies if both of the following subparagraphs apply:

(a) An entity that is not a social purpose corporation is:

1. a party to a merger or conversion; or

2. the exchanging entity in a share exchange.

(b) The surviving, new, or resulting entity in the merger, conversion or share exchange is to be a social purpose corporation.

(3) In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by the minimum status vote.

(4) In the event of an election to become a social purpose corporation by amendment of the articles of incorporation or by a merger, conversion or share exchange, shareholders of the entity becoming a social

purpose corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the extent of, and in accordance with, such appraisal rights provisions.

#### **§ 607.1706. Termination of social purpose corporation status.**

(1) A social purpose corporation may terminate its status as such and cease to be subject to this supplement by amending its articles of incorporation to delete the provision required by s. 607.1704 or s. 607.1705 to be stated in the articles of incorporation of a social purpose corporation. In order to be effective, the amendment must be adopted by the minimum status vote.

(2) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a social purpose corporation, the plan must be adopted by the minimum status vote in order to be effective.

(3) If a corporation's status as a social purpose corporation is terminated pursuant to subsections (1) or (2), shareholders of the corporation shall be entitled to the appraisal rights in ss. 607.1301-1333 to the extent of, and in accordance with, such appraisal rights provisions.

#### **§ 607.1707. Corporate purposes.**

(1) A social purpose corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purposes under s. 607.0301.

(2) The articles of incorporation of a social purpose corporation may identify one or more specific public benefits that it is the purpose of the social purpose corporation to create in addition to its purposes under s. 607.0301 and subsection (1).

(3) The creation of public benefit and specific public benefit under subsections (1) and (2) is deemed to be in the best interest of the social purpose corporation.

(4) A social purpose corporation may amend its articles of incorporation to add, amend, or delete the identification of any specific public benefit that it is the purpose of the social purpose corporation to create. In order to be effective, the amendment must be adopted by the minimum status vote.

(5) A professional corporation that is a social purpose corporation does not violate s. 621.08 by having the purpose to create public benefit or a specific public benefit.

#### **§ 607.1708. Standard of conduct for directors**

(1) In discharging their duties and in considering the best interests of the social purpose corporation, the directors of a social purpose corporation:

(a) shall consider the effects of any action or inaction upon:

1. the shareholders of the social purpose corporation;
2. The ability of the social purpose corporation to accomplish its public benefit purpose; and

(b) may consider the effects of any action or inaction upon any or all of the following:

1. the employees and work force of the social purpose corporation, its subsidiaries, and its suppliers;

2. the interests of customers and suppliers as beneficiaries of the public benefit or specific public benefit purposes of the social purpose corporation;

3. community and societal factors, including those of each community in which offices or facilities of the social purpose corporation, its subsidiaries, or its suppliers are located;

4. the local and global environment; and

5. the short-term and long-term interests of the social purpose corporation, including benefits that may accrue to the social purpose corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the social purpose corporation;

(c) may consider other pertinent factors or the interests of any other group that they deem appropriate; but

(d) need not give priority to the interests of a particular person or group referred to in paragraphs (a), (b) or (c) over the interests of any other person or group unless the social purpose corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its public benefit purpose or of any one or more specific public benefit purposes, if any, identified in its articles of incorporation; and

(3) need not give equal weight to the interests of a particular person or group referred to in paragraphs (a), (b) or (c) unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight related to its accomplishment of its public benefit purpose or of any one or more specific public benefit purposes, if any, identified in its articles of incorporation.

(2) Except as otherwise provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages to the corporation or to any other person for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit.

(3) Except as otherwise provided in the articles of incorporation or bylaws, a director does not have a duty to a person that is a beneficiary of the public benefit purpose or any one or more specific public benefit purposes of a social purpose corporation arising from the status of the person as a beneficiary.

(4) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) is not interested in the subject of the business judgment;

(b) is informed with respect to the subject of the business judgment to the extent reasonably believed by the director to be appropriate under the circumstances; and

(c) rationally believes that the business judgment is in the best interests of the social purpose corporation.

#### **§ 607.1709. Benefit director.**

(1) If the articles of incorporation so provide, the board of directors of a social purpose corporation may include a director who shall be designated as the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the social purpose corporation, the powers, duties, rights, and immunities provided in this supplement.

(2) The benefit director shall be elected, and may be removed, in the manner provided by this

chapter. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws may prescribe additional qualifications of the benefit director.

(3) Unless the articles of incorporation or bylaws provide otherwise, the benefit director shall prepare, and the social purpose corporation shall include in the annual benefit report to shareholders required by s. 607.1713, the opinion of the benefit director on all of the following:

(a) Whether the social purpose corporation acted in accordance with its public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report.

(b) Whether the directors and officers complied with ss. 607.1708(1) and 607.1710(1), respectively.

(c) If, in the opinion of the benefit director, the social purpose corporation or its directors or officers failed to comply with paragraph (a) or ss. 607.1708(1) or 607.1710(1), a description of the ways in which the social purpose corporation or its directors or officers failed to comply.

(4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the social purpose corporation.

(5) The benefit director of a corporation formed under chapter 621 does not need to be independent.

#### **§ 607.1710. Standard of conduct for officers.**

(1) Each officer of a social purpose corporation shall consider the interests and factors described in s. 607.1708(1) in the manner provided in that subsection if:

(a) the officer has discretion to act with respect to a matter; and

(b) it reasonably appears to the officer that the matter may have a material effect on the creation by the social purpose corporation of public benefit or any one or more specific public benefits identified in the articles of incorporation.

(2) The consideration of interests and factors in the manner described in subsection (1) shall not constitute a violation of s. 607.0841.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages to the corporation or to any other person for the failure of the social purpose corporation to pursue or create a public benefit or any of its specific public benefits.

(4) An officer does not have a duty to a person that is a beneficiary of the public benefit purpose or a beneficiary of any of the specific public benefit purposes of a social purpose corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) is not interested in the subject of the business judgment;

(b) is informed with respect to the subject of the business judgment to the extent reasonably believed by the officer to be appropriate under the circumstances; and

(c) rationally believes that the business judgment is in the best interests of the social purpose corporation.

**§ 607.1711. Benefit officer.**

(1) A social purpose corporation may have an officer designated the benefit officer.

(2) A benefit officer shall have the powers and duties set forth in the bylaws or determined by the board of directors, which may include but not be limited to:

(a) the powers and duties relating to the purpose of the corporation to create public benefit or specific public benefit; and

(b) the duty to prepare the annual benefit report required by s. 607.1713.

**§ 607.1712. Right of action.**

(1) (a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a social purpose corporation or its directors or officers with respect to:

1. failure to pursue or create public benefit or a specific public benefit set forth in its articles of incorporation; or

2. violation of an obligation, duty, or standard of conduct under this supplement.

(b) A social purpose corporation shall not be liable for monetary damages under this supplement for any failure of the social purpose corporation to pursue or create public benefit or any specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) directly by the social purpose corporation; or

(b) derivatively by:

1. a shareholder of record on the date of the action complained of in the benefit enforcement proceeding;

2. a director;

3. a person or group of persons that owns beneficially or of record 5% or more of the outstanding equity interests in an entity of which the social purpose corporation is a subsidiary on the date of the action complained of in the benefit enforcement proceeding; or

4. other persons as specified in the articles of incorporation or bylaws of the social purpose corporation.

**§ 607.1713. Preparation of annual benefit report.**

(1) An annual benefit report shall be prepared by the board of directors unless prepared by a benefit director. If any, or benefit officer, if any. The report shall include the following:

(a) A narrative description of:

1. The ways in which the social purpose corporation pursued public benefit during the year and the extent to which public benefit was created.

2. Any circumstances that have hindered the creation by the social purpose corporation of public benefit.

3. If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(b) If the social purpose corporation's articles of incorporation requires, or the board of directors determines that, the annual benefit report shall be prepared in accordance with a third-party standard, an assessment of the overall societal and environmental performance of the social purpose corporation against a third-party standard:

1. applied consistently with any application of that standard in prior annual benefit reports; or

2. accompanied by an explanation of the reasons for:

(A) any inconsistent application; or

(B) the change to that standard from the one used in the immediately prior report.

(c) The name of the benefit director, if any, and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(d) If the corporation has a benefit director, the statement of the benefit director described in s. 607.1709(3).

(e) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5 percent or more of the governance interests in the organization, and the social purpose corporation or its directors, officers or any holder of 5 percent or more of the outstanding shares of the social purpose corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by an annual benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the social purpose corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the annual benefit report shall include that correspondence as an exhibit.

(3) Neither the annual benefit report nor the assessment of the performance of the social purpose corporation in the annual benefit report required by paragraph (b) of subsection (1) needs to be audited or certified by a third-party standard provider.

#### **§ 607.1714. Availability of annual benefit report.**

(1) A social purpose corporation shall send its annual benefit report to each shareholder:

(a) within 120 days following the end of the fiscal year of the social purpose corporation; or

(b) at the same time that the social purpose corporation delivers any other annual report to its shareholders.

(2) A social purpose corporation shall post all of its annual benefit reports on the public portion of its Internet website, if any.

(3) If a social purpose corporation does not have an Internet website, the corporation shall provide a copy of its most recent annual benefit report, without charge, to any person that requests a copy.

(4) If a social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the social purpose corporation's principal office (or, if none in this state, its registered office) is located may, upon application of a shareholder of the social purpose corporation, summarily order the corporation to furnish the report. If the court orders the report to be furnished, the court may also order the social purpose corporation to pay the shareholder's costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise enforce its rights under this section.

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#### Amendment to Section 607.1302 Relating to Appraisal Rights

#### **§ 607.1302. Right of shareholders to appraisal**

Add to § 607.1302 new subsections (1)(g) through (1)(j) to read as follows:

(g) An amendment of the articles of incorporation of a social purpose corporation to which s. 607.1706 applies;

(h) An amendment of the articles of incorporation of a benefit corporation to which s. 607.1806 applies;

(i) A merger, conversion or share exchange of a social purpose corporation to which s. 607.1705 applies; or

(j) A merger, conversion or share exchange of a benefit corporation to which s. 607.1805 applies.

Delete "or" at the end of § 607.1302(e) and delete the period and add a semicolon at the end of § 607.1302(f).

1                   **FLORIDA BENEFIT CORPORATION LEGISLATION**

2  
3                                   **Chapter 611**  
4                                   **Benefit Corporations**

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8   **§ 611.01. Short Title.**

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10 This act shall be known and may be cited as the “Florida Benefit Corporation Act.”

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12   **§ 611.02. Application and effect of chapter.**

13           (1) This chapter shall be applicable to all benefit corporations.

14  
15           (2) The existence of a provision of this chapter shall not of itself create an implication that  
16 a contrary or different rule of law is applicable to a business corporation that is not a benefit  
17 corporation. This chapter shall not affect a statute or rule of law that is applicable to a business  
18 corporation that is not a benefit corporation.

19  
20           (3) Except as otherwise provided in this chapter, chapter 607 shall be generally applicable  
21 to all benefit corporations. The specific provisions of this chapter shall control over the general  
22 provisions of chapter 607.

23  
24           (4) A benefit corporation may be subject simultaneously to this chapter and one or more  
25 other chapters, including chapter 621. In such event, the provisions and sections of this act shall  
26 take precedence with respect to a benefit corporation.

27  
28           (5) A provision of the articles of incorporation or bylaws of a benefit corporation may not  
29 limit, be inconsistent with, or supersede a provision of this chapter.

30  
31  
32   **§ 611.02. Definitions.**

33           As used in this chapter, unless the context otherwise requires, the term:

34           (1) **“Benefit corporation”** means a business corporation:

- 35  
36                   (a) which has elected to become subject to this chapter; and  
37  
38                   (b) the status of which as a benefit corporation has not been terminated.

39  
40           (2) **“Benefit director”** means either:

- 41  
42                   (a) the director designated as the benefit director of a benefit corporation under  
43 section 611.08; or  
44  
45                   (b) a person with one or more of the powers, duties or rights of a benefit director to  
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48 the extent provided in the bylaws under section 611.08(6).

49  
50 **(3) “Benefit enforcement proceeding”** means any claim or action for:

51  
52 (a) failure of a benefit corporation to pursue or create general public benefit or a  
53 specific public benefit purpose set forth in its articles of incorporation; or

54  
55 (b) violation of any obligation, duty, or standard of conduct under this chapter.

56  
57 **(4) “Benefit officer”** means the individual designated as the benefit officer of a benefit  
58 corporation under section 611.10.

59  
60 **(5) “General public benefit”** means a material positive impact on society and the  
61 environment, taken as a whole, assessed against a third-party standard, from the business and  
62 operations of a benefit corporation.

63  
64 **(6) “Independent”** means having no material relationship with a benefit corporation or a  
65 subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make  
66 an individual not independent. A material relationship between an individual and a benefit  
67 corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following  
68 apply:

69  
70 (a) The individual is, or has been within the last three years, an employee other than  
71 a benefit officer of the benefit corporation or a subsidiary.

72  
73 (b) An immediate family member of the individual is, or has been within the last  
74 three years, an executive officer other than a benefit officer of the benefit corporation or a  
75 subsidiary.

76  
77 (c) There is beneficial or record ownership of 5% or more of the outstanding shares  
78 of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the  
79 benefit corporation had been exercised, by:

80  
81 1. the individual; or

82  
83 2. an entity:

84  
85 (A) of which the individual is a director, an officer, or a manager; or

86  
87 (B) in which the individual owns beneficially or of record 5% or more of  
88 the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in  
89 the entity had been exercised.

90  
91 **(7) “Minimum status vote”** means:

92  
93 (a) In the case of a business corporation, in addition to any other required approval  
94 or vote, the satisfaction of the following conditions:

95  
96 1. The shareholders of every class or series shall be entitled to vote as a  
97 separate voting group on the corporate action regardless of a limitation stated in the articles of

98 incorporation or bylaws on the voting rights of any class or series.  
99

100 2. The corporate action must be approved by vote of the shareholders of each  
101 class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or  
102 series are entitled to cast on the action.  
103

104 (b) In the case of a domestic entity other than a business corporation, in addition to  
105 any other required approval, vote, or consent, the satisfaction of the following conditions:  
106

107 1. The holders of every class or series of equity interest in the entity that are  
108 entitled to receive a distribution of any kind from the entity shall be entitled to vote on or consent  
109 to the action regardless of any otherwise applicable limitation on the voting or consent rights of any  
110 class or series.  
111

112 2. The action must be approved by vote or consent of the holders described in  
113 subparagraph 1 entitled to cast at least two-thirds of the votes or consents that all of those holders  
114 are entitled to cast on the action.  
115

116 **(8) “Publicly traded corporation”** means a business corporation that has shares listed on a  
117 national securities exchange or traded in a market maintained by one or more members of a  
118 national securities association.  
119

120 **(9) “Specific public benefit”** includes:  
121

122 (a) providing low-income or underserved individuals or communities with beneficial  
123 products or services;  
124

125 (b) promoting economic opportunity for individuals or communities beyond the  
126 creation of jobs in the normal course of business;  
127

128 (c) protecting or restoring the environment;  
129

130 (d) improving human health;  
131

132 (e) promoting the arts, sciences, or advancement of knowledge;  
133

134 (f) increasing the flow of capital to entities with a purpose to benefit society or the  
135 environment; and  
136

137 (g) conferring any other particular benefit on society or the environment.  
138

139 **(10) “Subsidiary”** means, in relation to a person, an entity in which the person owns  
140 beneficially or of record 50% or more of the outstanding equity interests.  
141

142 **(11) “Third-party standard”** means a recognized standard for defining, reporting, and  
143 assessing corporate social and environmental performance that is:  
144

145 (a) Comprehensive because it assesses the effect of the business and its operations  
146 upon the interests listed in section 611.07(1)(a)2, 3, 4 and 5.  
147

- 148 (b) Developed by an entity that is not controlled by the benefit corporation.  
149  
150 (c) Credible because it is developed by an entity that both:  
151  
152 1. has access to necessary expertise to assess overall corporate social and  
153 environmental performance; and  
154  
155 2. uses a balanced multistakeholder approach to develop the standard,  
156 including a reasonable public comment period.  
157  
158 (d) Transparent because the following information is publicly available:  
159  
160 1. About the standard:  
161  
162 (A) The criteria considered when measuring the overall social and  
163 environmental performance of a business.  
164  
165 (B) The relative weightings, if any, of those criteria.  
166  
167 2. About the development and revision of the standard:  
168  
169 (A) The identity of the directors, officers, material owners, and the  
170 governing body of the entity that developed and controls revisions to the standard.  
171  
172 (B) The process by which revisions to the standard and changes to the  
173 membership of the governing body are made.  
174  
175 (C) An accounting of the revenue and sources of financial support for  
176 the entity, with sufficient detail to disclose any relationships that could reasonably be considered to  
177 present a potential conflict of interest.  
178

179 **§ 611.03. Incorporation of benefit corporation.**  
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181 A benefit corporation shall be incorporated in accordance with chapter 607, but its articles of  
182 incorporation must also state that it is a benefit corporation.  
183

184 **§ 611.04. Election of benefit corporation status.**  
185

186 (1) An existing business corporation may become a benefit corporation under this chapter  
187 by amending its articles of incorporation so that they contain, in addition to the requirements of  
188 section 607.0202, a statement that the corporation is a benefit corporation. In order to be effective,  
189 the amendment must be adopted by at least the minimum status vote.  
190

191 (2) Subsection (3) applies if both of the following subparagraphs apply:  
192

193 (a) An entity that is not a benefit corporation is:

- 194 1. a party to a merger or conversion; or  
195  
196 2. the exchanging entity in a share exchange.  
197

198  
199 (b) The surviving, new, or resulting entity in the merger, conversion or share  
200 exchange is to be a benefit corporation.

201  
202 (3) In order to be effective, a plan of merger, conversion, or share exchange subject to this  
203 subsection must be adopted by at least the minimum status vote.

204  
205 **§ 611.05. Termination of benefit corporation status.**

206  
207 (1) A benefit corporation may terminate its status as such and cease to be subject to this  
208 chapter by amending its articles of incorporation to delete the provision required by section 611.03  
209 or 611.04 to be stated in the articles of a benefit corporation. In order to be effective, the  
210 amendment must be adopted by at least the minimum status vote.

211  
212 (2) If a plan of merger, conversion, or share exchange would have the effect of terminating  
213 the status of a business corporation as a benefit corporation, the plan must be adopted by at least  
214 the minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of  
215 all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual  
216 and regular course of business, shall not be effective unless the transaction is approved by at least  
217 the minimum status vote.

218  
219 **§ 611.06. Corporate purposes.**

220  
221 (1) A benefit corporation shall have a purpose of creating general public benefit. This  
222 purpose is in addition to its purpose under section 607.0301.

223  
224 (2) The articles of incorporation of a benefit corporation may identify one or more specific  
225 public benefits that it is the purpose of the benefit corporation to create in addition to its purposes  
226 under section 607.0301 and subsection (1). The identification of a specific public benefit under  
227 this subsection does not limit the obligation of a benefit corporation under subsection (1).

228  
229 (3) The creation of general public benefit and specific public benefit under subsections (1)  
230 and (2) is in the best interests of the benefit corporation.

231  
232 (4) A benefit corporation may amend its articles of incorporation to add, amend, or delete  
233 the identification of a specific public benefit that it is the purpose of the benefit corporation to  
234 create. In order to be effective, the amendment must be adopted by at least the minimum status  
235 vote.

236  
237 (5) A professional corporation that is a benefit corporation does not violate section 621.08  
238 by having the purpose to create general public benefit or a specific public benefit.

239  
240 **§ 611.07. Standard of conduct for director**

241  
242 (1) In discharging the duties of their respective positions and in considering the best  
243 interests of the benefit corporation, the board of directors, committees of the board, and individual  
244 directors of a benefit corporation:

245  
246 (a) shall consider the effects of any action or inaction upon:  
247

- 248 1. the shareholders of the benefit corporation;  
249  
250 2. the employees and work force of the benefit corporation, its subsidiaries,  
251 and its suppliers;  
252  
253 3. the interests of customers as beneficiaries of the general public benefit or  
254 specific public benefit purposes of the benefit corporation;  
255  
256 4. community and societal factors, including those of each community in  
257 which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;  
258  
259 5. the local and global environment;  
260  
261 6. the short-term and long-term interests of the benefit corporation, including  
262 benefits that may accrue to the benefit corporation from its long-term plans and the possibility that  
263 these interests may be best served by the continued independence of the benefit corporation; and  
264  
265 7. the ability of the benefit corporation to accomplish its general public  
266 benefit purpose and any specific public benefit purpose; and  
267  
268 (b) may consider:  
269  
270 1. the interests referred to in section 607.0830(3); and  
271  
272 2. other pertinent factors or the interests of any other group that they deem  
273 appropriate; but  
274  
275 (c) need not give priority to the interests of a particular person or group referred to  
276 in paragraph (a) or (b) over the interests of any other person or group unless the benefit corporation  
277 has stated in its articles of incorporation its intention to give priority to certain interests related to  
278 its accomplishment of its general public benefit purpose or of a specific public benefit purpose  
279 identified in its articles.  
280  
281 (2) The consideration of interests and factors in the manner required by subsection (1):  
282  
283 (a) does not constitute a violation section 607.0830; and  
284  
285 (b) is in addition to the ability of directors to consider interests and factors as  
286 provided in section 607.0830(3).  
287  
288 (3) Except as provided in the articles of incorporation or bylaws, a director is not  
289 personally liable for monetary damages for:  
290  
291 (a) any action or inaction in the course of performing the duties of a director under  
292 subsection (a) if the director performed the duties of office in compliance with section 607.0830; or  
293  
294 (b) failure of the benefit corporation to pursue or create general public benefit or  
295 specific public benefit.  
296  
297 (4) A director does not have a duty to a person that is a beneficiary of the general public

298 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status  
299 of the person as a beneficiary.

300 (5) A director who makes a business judgment in good faith fulfills the duty under this  
301 section if the director:

302 (a) is not interested in the subject of the business judgment;

303 (b) is informed with respect to the subject of the business judgment to the extent the  
304 director reasonably believes to be appropriate under the circumstances; and

305 (c) rationally believes that the business judgment is in the best interests of the  
306 benefit corporation.

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311 **§ 611.08. Benefit director.**

312 (1) The board of directors of a benefit corporation that is a publicly traded corporation  
313 shall, and the board of any other benefit corporation may, include a director, who:

314 (a) shall be designated the benefit director; and

315 (b) shall have, in addition to the powers, duties, rights, and immunities of the other  
316 directors of the benefit corporation, the powers, duties, rights, and immunities provided in this  
317 chapter.

318 (2) The benefit director shall be elected, and may be removed, in the manner provided by  
319 chapter 607. Except as provided in subsections (6) and (7), the benefit director shall be an  
320 individual who is independent. The benefit director may serve as the benefit officer at the same  
321 time as serving as the benefit director. The articles of incorporation or bylaws of a benefit  
322 corporation may prescribe additional qualifications of the benefit director not inconsistent with this  
323 subsection.

324 (3) The benefit director shall prepare, and the benefit corporation shall include in the  
325 annual benefit report to shareholders required by section 611.12, the opinion of the benefit director  
326 on all of the following:

327 (a) Whether the benefit corporation acted in accordance with its general public  
328 benefit purpose and any specific public benefit purpose in all material respects during the period  
329 covered by the report.

330 (b) Whether the directors and officers complied with sections 611.07(1) and  
331 611.09(a), respectively.

332 (c) If, in the opinion of the benefit director, the benefit corporation or its directors or  
333 officers failed to comply with paragraph (b), a description of the ways in which the benefit  
334 corporation or its directors or officers failed to comply.

335 (4) The act or inaction of an individual in the capacity of a benefit director shall constitute  
336 for all purposes an act or inaction of that individual in the capacity of a director of the benefit  
337 corporation.

348  
349 (5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation  
350 include a provision eliminating or limiting the personal liability of directors authorized by section  
351 607.0831, a benefit director shall not be personally liable for an act or omission in the capacity of a  
352 benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a  
353 knowing violation of law.  
354

355 (6) (a) The articles of incorporation or bylaws of a benefit corporation must provide that  
356 the persons or shareholders who perform the duties of the board of directors include a person with  
357 the powers, duties, rights and immunities of a benefit director if the articles of incorporation or  
358 bylaws of the benefit corporation provide that the powers and duties conferred or imposed upon the  
359 board of directors shall be exercised or performed by a person other than the directors under  
360 607.0732.  
361

362 (b) A person that exercises one or more of the powers, duties or rights of a benefit  
363 director under this subsection:

- 364 1. does not need to be independent of the benefit corporation;  
365  
366 2. shall have the immunities of a benefit director;  
367  
368 3. may share the powers, duties, and rights of a benefit director with one or  
369 more other persons; and  
370  
371 4. shall not be subject to the procedures for election or removal of directors  
372 in chapter 607 unless:  
373 (A) the person is also a director of the benefit corporation; or  
374 (B) the articles or bylaws make those procedures applicable.  
375  
376  
377  
378

379 (7) The benefit director of a professional corporation does not need to be independent.  
380  
381

382 **§ 611.09. Standard of conduct for officers.**  
383

384 (1) Each officer of a benefit corporation shall consider the interests and factors described  
385 in section 611.07(1) in the manner provided in that subsection if:

- 386 (a) the officer has discretion to act with respect to a matter; and  
387  
388 (b) it reasonably appears to the officer that the matter may have a material effect on  
389 the creation by the benefit corporation of general public benefit or a specific public benefit  
390 identified in the articles of incorporation of the benefit corporation.  
391  
392

393 (2) The consideration of interests and factors in the manner described in subsection (1)  
394 shall not constitute a violation of section 607.0841.  
395

396 (3) Except as provided in the articles of incorporation or bylaws, an officer is not  
397 personally liable for monetary damages for:

398  
399 (a) an action or inaction as an officer in the course of performing the duties of an  
400 officer under subsection (1) if the officer performed the duties of the position in compliance with  
401 section 607.0841 and this section; or

402  
403 (b) failure of the benefit corporation to pursue or create general public benefit or  
404 specific public benefit.

405  
406 (4) An officer does not have a duty to a person that is a beneficiary of the general public  
407 benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status  
408 of the person as a beneficiary.

409  
410 (5) An officer who makes a business judgment in good faith fulfills the duty under this  
411 section if the officer:

412  
413 (a) is not interested in the subject of the business judgment;

414  
415 (b) is informed with respect to the subject of the business judgment to the extent the  
416 officer reasonably believes to be appropriate under the circumstances; and

417  
418 (c) rationally believes that the business judgment is in the best interests of the  
419 benefit corporation.

420  
421 **§ 611.10. Benefit officer.**

422  
423 (1) A benefit corporation may have an officer designated the benefit officer.

424  
425 (2) A benefit officer shall have:

426  
427 (a) the powers and duties relating to the purpose of the corporation to create general  
428 public benefit or specific public benefit provided:

429  
430 1. by the bylaws; or

431  
432 2. absent controlling provisions in the bylaws, by resolutions or orders of the  
433 board of directors.

434  
435 (b) the duty to prepare the benefit report required by section 611.12.

436  
437 **§ 611.11. Right of action.**

438  
439 (1) (a) Except in a benefit enforcement proceeding, no person may bring an action or  
440 assert a claim against a benefit corporation or its directors or officers with respect to:

441  
442 1. failure to pursue or create general public benefit or a specific public  
443 benefit set forth in its articles of incorporation; or

444  
445 2. violation of an obligation, duty, or standard of conduct under this chapter.

446  
447 (b) A benefit corporation shall not be liable for monetary damages under this chapter

448 for any failure of the benefit corporation to pursue or create general public benefit or a specific  
449 public benefit.

450 (2) A benefit enforcement proceeding may be commenced or maintained only:

451 (a) directly by the benefit corporation; or

452 (b) derivatively by:

453 1. a person or group of persons that owns beneficially or of record at least 2%  
454 of the total number of shares of all classes and series outstanding on the date the benefit  
455 enforcement proceeding is commenced;

456 2. a director;

457 3. a person or group of persons that owns beneficially or of record 5% or  
458 more of the outstanding equity interests in an entity of which the benefit corporation is a  
459 subsidiary; or

460 4. other persons as specified in the articles of incorporation or bylaws of the  
461 benefit corporation.

462 (3) For purposes of this section, a person is the beneficial owner of shares or equity  
463 interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the  
464 beneficial owner.

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475 **§ 611.12. Preparation of annual benefit report.**

476 (1) A benefit corporation shall prepare an annual benefit report including all of the  
477 following:

478 (a) A narrative description of:

479 1. The ways in which the benefit corporation pursued general public benefit  
480 during the year and the extent to which general public benefit was created.

481 2. Both:

482 (A) the ways in which the benefit corporation pursued a specific public  
483 benefit that the articles of incorporation state it is the purpose of the benefit corporation to create;  
484 and

485 (B) the extent to which that specific public benefit was created.

486 3. Any circumstances that have hindered the creation by the benefit  
487 corporation of general public benefit or specific public benefit.

488 4. The process and rationale for selecting or changing the third-party standard  
489 used to prepare the benefit report.

498  
499 (b) An assessment of the overall social and environmental performance of the  
500 benefit corporation against a third-party standard:  
501  
502 1. applied consistently with any application of that standard in prior benefit  
503 reports; or  
504  
505 2. accompanied by an explanation of the reasons for:  
506  
507 (A) any inconsistent application; or  
508  
509 (B) the change to that standard from the one used in the immediately  
510 prior report.  
511  
512 (c) The name of the benefit director and the benefit officer, if any, and the address to  
513 which correspondence to each of them may be directed.  
514  
515 (d) The compensation paid by the benefit corporation during the year to each  
516 director in the capacity of a director.  
517  
518 (e) The name of each person that owns 5% or more of the outstanding shares of the  
519 benefit corporation either:  
520  
521 1. beneficially, to the extent known to the benefit corporation without  
522 investigation; or  
523  
524 2. of record.  
525  
526 (f) The statement of the benefit director described in section 611.08(3).  
527  
528 (g) A statement of any connection between the organization that established the  
529 third-party standard, or its directors, officers or any holder of 5 percent or more of the governance  
530 interests in the organization, and the benefit corporation or its directors, officers or any holder of 5  
531 percent or more of the outstanding shares of the benefit corporation, including any financial or  
532 governance relationship which might materially affect the credibility of the use of the third-party  
533 standard.  
534  
535 (h) If the benefit corporation has dispensed with, or restricted the discretion or  
536 powers of, the board of directors, a description of:  
537  
538 1. the persons that exercise the powers, duties, and rights and who have the  
539 immunities of the board of directors; and  
540  
541 2. the benefit director, as required by section 611.08(6).  
542  
543 (2) If, during the year covered by a benefit report, a benefit director resigned from or  
544 refused to stand for reelection to the position of benefit director, or was removed from the position  
545 of benefit director, and the benefit director furnished the benefit corporation with any written  
546 correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the  
547 benefit report shall include that correspondence as an exhibit.

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(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subsection (1)(b) needs to be audited or certified by a third party standards provider.

**§ 611.13. Availability of annual benefit report.**

(1) A benefit corporation shall send its annual benefit report to each shareholder:

(a) within 120 days following the end of the fiscal year of the benefit corporation; or

(b) at the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet website, if any; but the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4) (a) Concurrently with the delivery of the benefit report to shareholders under subsection (3), the benefit corporation shall deliver a copy of the benefit report to the Department of State for filing, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the Department of State.

(b) The Department of State shall charge a fee of \$\_\_ for filing a benefit report.