

HB1138_L.006

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business, Labor, & Technology.

HB13-1138 be amended as follows:

1 Amend reengrossed bill, page 2, strike lines 5 through 20.

2 Strike pages 3 through 12.

3 Page 13, strike lines 1 through 25 and substitute:

4 "PUBLIC BENEFIT CORPORATIONS

5 **7-101-501. Short title.** THIS PART 5 SHALL BE KNOWN AND MAY
6 BE CITED AS THE "PUBLIC BENEFIT CORPORATION ACT OF COLORADO".

7 **7-101-502. Law applicable to public benefit corporations - how**
8 **formed.** THIS PART 5 APPLIES TO ALL PUBLIC BENEFIT CORPORATIONS. IF
9 A CORPORATION ELECTS TO BECOME A PUBLIC BENEFIT CORPORATION
10 UNDER THIS PART 5 IN THE MANNER PRESCRIBED IN THIS PART 5, IT IS
11 SUBJECT IN ALL RESPECTS TO THE "COLORADO BUSINESS CORPORATION
12 ACT", ARTICLES 101 TO 117 OF THIS TITLE, AND THE "COLORADO
13 CORPORATIONS AND ASSOCIATIONS ACT", ARTICLE 90 OF THIS TITLE,
14 EXCEPT TO THE EXTENT THIS PART 5 IMPOSES ADDITIONAL OR DIFFERENT
15 REQUIREMENTS, IN WHICH CASE SUCH ADDITIONAL OR DIFFERENT
16 REQUIREMENTS APPLY.

17 **7-101-503. Public benefit corporation - definitions - contents**
18 **of articles of incorporation.** (1) A PUBLIC BENEFIT CORPORATION IS A
19 FOR-PROFIT CORPORATION ORGANIZED UNDER AND SUBJECT TO THE
20 REQUIREMENTS OF THE "COLORADO BUSINESS CORPORATION ACT",
21 ARTICLES 101 TO 117 OF THIS TITLE, OR A DOMESTIC COOPERATIVE
22 ORGANIZED UNDER ARTICLE 55 OR 56 OF THIS TITLE THAT IS SUBJECT TO
23 THE "COLORADO BUSINESS CORPORATION ACT", THAT IS INTENDED TO
24 PRODUCE A PUBLIC BENEFIT OR PUBLIC BENEFITS AND TO OPERATE IN A
25 RESPONSIBLE AND SUSTAINABLE MANNER. TO THAT END, A PUBLIC
26 BENEFIT CORPORATION SHALL BE MANAGED IN A MANNER THAT BALANCES
27 THE SHAREHOLDERS' PECUNIARY INTERESTS, THE BEST INTEREST OF THOSE
28 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT, AND THE
29 PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION. IN ITS
30 ARTICLES OF INCORPORATION, A PUBLIC BENEFIT CORPORATION SHALL:

31 (a) IDENTIFY WITHIN ITS STATEMENT OF BUSINESS OR PURPOSE
32 PURSUANT TO SECTION 7-103-101 (1) ONE OR MORE SPECIFIC PUBLIC
33 BENEFITS TO BE PROMOTED BY THE CORPORATION; AND

34 (b) STATE AT THE BEGINNING OF THE ARTICLES OF INCORPORATION
35 THAT IT IS A PUBLIC BENEFIT CORPORATION.



1 (2) "PUBLIC BENEFIT" MEANS ONE OR MORE POSITIVE EFFECTS OR
2 REDUCTION OF NEGATIVE EFFECTS ON ONE OR MORE CATEGORIES OF
3 PERSONS, ENTITIES, COMMUNITIES, OR INTERESTS OTHER THAN
4 SHAREHOLDERS IN THEIR CAPACITIES AS SHAREHOLDERS, INCLUDING
5 EFFECTS OF AN ARTISTIC, CHARITABLE, CULTURAL, ECONOMIC,
6 EDUCATIONAL, ENVIRONMENTAL, LITERARY, MEDICAL, RELIGIOUS,
7 SCIENTIFIC, OR TECHNOLOGICAL NATURE.

8 (3) "PUBLIC BENEFIT PROVISIONS" MEANS THE PROVISIONS OF
9 ARTICLES OF INCORPORATION CONTEMPLATED BY THIS PART 5.

10 (4) THE DOMESTIC ENTITY NAME OF A PUBLIC BENEFIT
11 CORPORATION MUST, WITHOUT EXCEPTION, CONTAIN THE WORDS "PUBLIC
12 BENEFIT CORPORATION", THE ABBREVIATION "P.B.C.", OR THE
13 DESIGNATION "PBC", AND OTHERWISE SATISFY THE REQUIREMENTS OF
14 SECTION 7-102-102 (1) (a).

15 **7-101-504. Certain amendments and mergers - votes required**
16 **- dissenter's rights.** (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF
17 THIS PART 5 OTHER THAN SUBSECTION (2) OF THIS SECTION, A
18 CORPORATION THAT IS NOT A PUBLIC BENEFIT CORPORATION SHALL NOT,
19 WITHOUT THE APPROVAL OF TWO-THIRDS OF THE OUTSTANDING SHARES
20 OF EACH CLASS OF SHARES OF THE CORPORATION OF WHICH THERE ARE
21 OUTSTANDING SHARES, WHETHER VOTING OR NON-VOTING:

22 (a) AMEND ITS ARTICLES OF INCORPORATION TO INCLUDE A
23 PROVISION AUTHORIZED BY SECTION 7-101-503 (1) (a);

24 (b) CONVERT INTO A DOMESTIC OR FOREIGN PUBLIC BENEFIT
25 CORPORATION OR SIMILAR ENTITY; OR

26 (c) MERGE WITH OR INTO ANOTHER ENTITY IF, AS A RESULT OF THE
27 MERGER, THE SHARES IN SUCH CORPORATION WOULD BECOME, OR BE
28 CONVERTED INTO OR EXCHANGED FOR THE RIGHT TO RECEIVE, SHARES OR
29 OTHER EQUITY INTERESTS IN A DOMESTIC OR FOREIGN PUBLIC BENEFIT
30 CORPORATION OR SIMILAR ENTITY.

31 (2) THE RESTRICTIONS OF THIS SECTION DO NOT APPLY BEFORE THE
32 CORPORATION HAS RECEIVED PAYMENT FOR ANY OF ITS CAPITAL STOCK.
33 IN THE CASE OF A DOMESTIC COOPERATIVE FORMED UNDER ARTICLE 55 OR
34 56 OF THIS TITLE THAT IS SUBJECT TO THE "COLORADO BUSINESS
35 CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, AN ACTION
36 DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST BE APPROVED BY
37 VOTE OR CONSENT OF THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY
38 INTEREST IN THE ENTITY THAT ARE ENTITLED TO VOTE ON THE ACTION BY
39 AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE
40 HOLDERS ARE ENTITLED TO CAST ON THE ACTION.



1 (3) A SHAREHOLDER OF A CORPORATION THAT IS NOT A PUBLIC
2 BENEFIT CORPORATION IS ENTITLED TO EXERCISE THE RIGHT TO DISSENT
3 PURSUANT TO ARTICLE 113 OF THIS TITLE IF THE SHAREHOLDER HAS
4 NEITHER VOTED IN FAVOR OF AN AMENDMENT, MERGER, OR CONVERSION
5 SPECIFIED IN THIS SUBSECTION (3) NOR CONSENTED THERETO IN WRITING
6 PURSUANT TO SECTION 7-107-104 AND HOLDS SHARES OF SUCH
7 CORPORATION IMMEDIATELY BEFORE THE EFFECTIVE TIME OF:

8 (a) AN AMENDMENT TO THE CORPORATION'S ARTICLES OF
9 INCORPORATION TO INCLUDE A PROVISION AUTHORIZED BY SECTION
10 7-101-503 (1) (a);

11 (b) A CONVERSION INTO A DOMESTIC OR FOREIGN PUBLIC BENEFIT
12 CORPORATION OR SIMILAR ENTITY; OR

13 (c) A MERGER THAT WOULD RESULT IN THE CONVERSION OF THE
14 CORPORATION'S SHARES INTO, OR EXCHANGE OF THE CORPORATION'S
15 SHARES FOR, THE RIGHT TO RECEIVE SHARES OR OTHER EQUITY INTERESTS
16 IN A DOMESTIC OR FOREIGN PUBLIC BENEFIT CORPORATION OR SIMILAR
17 ENTITY.

18 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, A
19 CORPORATION THAT IS A PUBLIC BENEFIT CORPORATION SHALL NOT,
20 WITHOUT THE APPROVAL OF TWO-THIRDS OF THE OUTSTANDING SHARES
21 OF EACH CLASS OF SHARES OF THE CORPORATION OF WHICH THERE ARE
22 OUTSTANDING SHARES, WHETHER VOTING OR NONVOTING:

23 (a) AMEND ITS ARTICLES OF INCORPORATION TO DELETE OR AMEND
24 A PROVISION AUTHORIZED BY SECTION 7-101-503 (1) (a);

25 (b) CONVERT INTO ANOTHER DOMESTIC OR FOREIGN ENTITY THAT
26 IS NOT A PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY; OR

27 (c) MERGE WITH OR INTO ANOTHER ENTITY IF:

28 (I) AS A RESULT OF THE MERGER, THE SHARES IN SUCH
29 CORPORATION WOULD BECOME, BE CONVERTED INTO, OR BE EXCHANGED
30 FOR THE RIGHT TO RECEIVE SHARES OR OTHER EQUITY INTERESTS IN A
31 DOMESTIC OR FOREIGN CORPORATION THAT IS NOT A PUBLIC BENEFIT
32 CORPORATION OR SIMILAR ENTITY; AND

33 (II) THE ARTICLES OF INCORPORATION OR SIMILAR GOVERNING
34 INSTRUMENT OF THE DOMESTIC OR FOREIGN CORPORATION THAT IS NOT A
35 PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY DO NOT CONTAIN THE
36 IDENTICAL PROVISIONS IDENTIFYING THE PUBLIC BENEFIT PURSUANT TO
37 SECTION 7-101-503 (1).

38 (5) A NONPROFIT CORPORATION CANNOT BE A CONSTITUENT
39 CORPORATION IN CONNECTION WITH A MERGER OR CONVERSION
40 GOVERNED BY THIS SECTION.

41 **7-101-505. Share certificates - notices regarding uncertificated**

1 **shares.** A SHARE CERTIFICATE ISSUED BY A PUBLIC BENEFIT CORPORATION
2 MUST NOTE CONSPICUOUSLY THAT THE CORPORATION IS A PUBLIC BENEFIT
3 CORPORATION FORMED PURSUANT TO THIS PART 5. A STATEMENT SENT BY
4 A PUBLIC BENEFIT CORPORATION PURSUANT TO SECTION 7-106-207 MUST
5 STATE CONSPICUOUSLY THAT THE CORPORATION IS A PUBLIC BENEFIT
6 CORPORATION FORMED PURSUANT TO THIS PART 5.

7 **7-101-506. Duties of directors.** (1) THE BOARD OF DIRECTORS
8 SHALL MANAGE OR DIRECT THE BUSINESS AND AFFAIRS OF A PUBLIC
9 BENEFIT CORPORATION IN A MANNER THAT BALANCES THE PECUNIARY
10 INTERESTS OF THE SHAREHOLDERS, THE BEST INTERESTS OF THOSE
11 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT, AND THE
12 SPECIFIC PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION.

13 (2) A DIRECTOR OF A PUBLIC BENEFIT CORPORATION:

14 (a) DOES NOT, BY VIRTUE OF THE PUBLIC BENEFIT PROVISIONS OF
15 SECTION 7-101-503 (1), HAVE A DUTY TO ANY PERSON ON ACCOUNT OF AN
16 INTEREST OF THE PERSON IN THE PUBLIC BENEFIT IDENTIFIED IN THE
17 ARTICLES OF INCORPORATION OR ON ACCOUNT OF AN INTEREST
18 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT; AND

19 (b) WITH RESPECT TO A DECISION IMPLICATING THE BALANCE
20 REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, WILL BE DEEMED TO
21 SATISFY THE DIRECTOR'S FIDUCIARY DUTIES TO SHAREHOLDERS AND THE
22 CORPORATION IF THE DIRECTOR'S DECISION IS BOTH INFORMED AND
23 DISINTERESTED AND NOT SUCH THAT NO PERSON OF ORDINARY, SOUND
24 JUDGMENT WOULD APPROVE.

25 (3) THE ARTICLES OF INCORPORATION OF A PUBLIC BENEFIT
26 CORPORATION MAY INCLUDE A PROVISION THAT A DISINTERESTED
27 DIRECTOR'S FAILURE TO SATISFY THIS SECTION DOES NOT, FOR THE
28 PURPOSES OF SECTION 7-108-401 OR ARTICLE 109 OF THIS TITLE,
29 CONSTITUTE AN ACT OR OMISSION NOT IN GOOD FAITH OR A BREACH OF
30 THE DUTY OF LOYALTY.

31 **7-101-507. Benefit report - definition.** (1) A PUBLIC BENEFIT
32 CORPORATION SHALL PREPARE A REPORT THAT INCLUDES:

33 (a) A NARRATIVE DESCRIPTION OF:

34 (I) THE WAYS IN WHICH THE PUBLIC BENEFIT CORPORATION
35 PROMOTED THE PUBLIC BENEFIT IDENTIFIED IN THE ARTICLES OF
36 INCORPORATION AND THE BEST INTERESTS OF THOSE MATERIALLY
37 AFFECTED BY THE CORPORATION'S CONDUCT;

38 (II) ANY CIRCUMSTANCES THAT HAVE HINDERED THE PUBLIC
39 BENEFIT CORPORATION'S PROMOTION OF THE IDENTIFIED PUBLIC BENEFIT
40 AND THE BEST INTERESTS OF THOSE MATERIALLY AFFECTED BY THE
41 CORPORATION'S CONDUCT; AND

1 (III) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING
2 THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT; AND
3 (b) AN ASSESSMENT OF THE OVERALL SOCIAL AND
4 ENVIRONMENTAL PERFORMANCE OF THE PUBLIC BENEFIT CORPORATION
5 AGAINST A THIRD-PARTY STANDARD:
6 (I) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT
7 STANDARD IN PRIOR BENEFIT REPORTS; OR
8 (II) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY
9 INCONSISTENT APPLICATION. THE ASSESSMENT DOES NOT NEED TO BE
10 PERFORMED, AUDITED, OR CERTIFIED BY A THIRD PARTY.
11 (2) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION,
12 "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,
13 REPORTING, AND ASSESSING THE OVERALL CORPORATE SOCIAL AND
14 ENVIRONMENTAL PERFORMANCE, WHICH STANDARD IS DEVELOPED BY AN
15 ORGANIZATION THAT IS NOT CONTROLLED BY THE PUBLIC BENEFIT
16 CORPORATION OR ANY OF ITS AFFILIATES AND THAT MAKES PUBLICLY
17 AVAILABLE THE FOLLOWING INFORMATION:
18 (a) THE CRITERIA CONSIDERED WHEN MEASURING THE SOCIAL AND
19 ENVIRONMENTAL PERFORMANCE OF A BUSINESS, THE RELATIVE
20 WEIGHTINGS OF THOSE CRITERIA, IF ANY, AND THE PROCESS FOR
21 DEVELOPMENT AND REVISION OF THE STANDARD; AND
22 (b) ANY MATERIAL OWNERS OF THE ORGANIZATION THAT
23 DEVELOPED THE THIRD-PARTY STANDARD, THE MEMBERS OF ITS
24 GOVERNING BODY AND HOW THEY ARE SELECTED, AND THE SOURCES OF
25 FINANCIAL SUPPORT FOR THE ORGANIZATION, IN SUFFICIENT DETAIL TO
26 DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED
27 TO COMPROMISE ITS INDEPENDENCE.
28 (3) A PUBLIC BENEFIT CORPORATION THAT PREPARES A REPORT
29 PURSUANT TO THIS SECTION SHALL SEND IT TO EACH SHAREHOLDER.
30 (4) A PUBLIC BENEFIT CORPORATION SHALL POST ALL OF ITS
31 REPORTS PREPARED PURSUANT TO THIS SECTION ON THE PUBLIC PORTION
32 OF ITS WEB SITE, IF ANY, BUT THE PUBLIC BENEFIT CORPORATION MAY
33 OMIT FROM THE POSTED REPORTS ANY FINANCIAL OR PROPRIETARY
34 INFORMATION INCLUDED IN THE REPORTS.
35 (5) IF A PUBLIC BENEFIT CORPORATION DOES NOT HAVE A WEB
36 SITE, THE PUBLIC BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS
37 MOST RECENT REPORT, WITHOUT CHARGE, TO A PERSON THAT REQUESTS
38 A COPY, BUT THE PUBLIC BENEFIT CORPORATION MAY OMIT ANY FINANCIAL
39 OR PROPRIETARY INFORMATION FROM THE COPY OF THE BENEFIT REPORT
40 SO PROVIDED.
41 **7-101-508. Derivative suits.** (1) SHAREHOLDERS OF A PUBLIC

1 BENEFIT CORPORATION MAY MAINTAIN A DERIVATIVE LAWSUIT TO
2 ENFORCE THE REQUIREMENTS OF SECTION 7-101-506 (1) IF THE
3 SHAREHOLDERS OWN, INDIVIDUALLY OR COLLECTIVELY, AS OF THE DATE
4 OF INSTITUTING A DERIVATIVE SUIT, EITHER:

5 (a) AT LEAST TWO PERCENT OF THE CORPORATION'S OUTSTANDING
6 SHARES; OR

7 (b) IN THE CASE OF A CORPORATION WITH SHARES LISTED ON A
8 NATIONAL SECURITIES EXCHANGE, THE LESSER OF TWO PERCENT OF THE
9 CORPORATION'S OUTSTANDING SHARES OR SHARES OF AT LEAST TWO
10 MILLION DOLLARS IN MARKET VALUE.

11 **7-101-509. No effect on other corporations.** THIS PART 5 DOES
12 NOT AFFECT A STATUTE OR RULE OF LAW THAT APPLIES TO A CORPORATION
13 THAT IS NOT A PUBLIC BENEFIT CORPORATION, EXCEPT AS PROVIDED IN
14 SECTION 7-101-504.

15 **SECTION 2.** In Colorado Revised Statutes, 7-113-102, **amend**
16 (1) (d) and (1) (e); and **add** (1) (f) and (1) (g) as follows:

17 **7-113-102. Right to dissent.** (1) A shareholder, whether or not
18 entitled to vote, is entitled to dissent and obtain payment of the fair value
19 of the shareholder's shares in the event of any of the following corporate
20 actions:

21 (d) Consummation of a sale, lease, exchange, or other disposition
22 of all, or substantially all, of the property of an entity controlled by the
23 corporation if the shareholders of the corporation were entitled to vote
24 upon the consent of the corporation to the disposition pursuant to section
25 7-112-102 (2); and

26 (e) Consummation of a conversion in which the corporation is the
27 converting entity as provided in section 7-90-206 (2);

28 (f) AN AMENDMENT, CONVERSION, OR MERGER DESCRIBED IN
29 SECTION 7-101-504 (3); AND

30 (g) CONSUMMATION OF A PLAN BY WHICH A PUBLIC BENEFIT
31 CORPORATION TERMINATES PUBLIC BENEFIT CORPORATION STATUS BY
32 MERGER OR CONVERSION INTO A CORPORATION THAT HAS NOT ELECTED
33 PUBLIC BENEFIT CORPORATION STATUS AS PROVIDED IN SECTION
34 7-101-504 (4) OR BY AMENDMENT OF ITS ARTICLES OF INCORPORATION."

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