

# SENATE BILL REPORT

## SB 6230

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As of January 24, 2012

**Title:** An act relating to social purpose corporations.

**Brief Description:** Establishing social purpose corporations.

**Sponsors:** Senators Frockt, Chase, Kilmer, Harper, Pflug and Keiser; by request of Washington State Bar Association.

**Brief History:**

**Committee Activity:** Judiciary: 1/24/12.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** The Washington Business Corporations Act (WBCA) provides requirements for the creation, organization, and operation of corporations and the relationship between the corporation's directors, officers, and shareholders. WBCA is based on the Model Business Corporation Act, prepared by the American Bar Association, which generally establishes default rules regarding the organization and operation of corporations.

Under WBCA, a corporation's directors and officers have a fiduciary duty to the corporation—an obligation to act in its best interests. This duty has been interpreted as a responsibility to maximize financial returns for shareholders. The risk of liability can arise for directors and officers if they make decisions on the basis of some mission at the expense of maximizing shareholder value. Such decisions could be interpreted as a breach of the duty to act solely in the corporation's best interests.

There is an emerging corporate model designed to permit a company to pursue a social mission in addition to maximizing shareholder value. The benefit corporation model has three main elements:

- the corporation must establish a general public benefit aimed at yielding material positive societal impacts;
- corporate directors must consider the corporation's public benefit when making decisions; and
- each year, the corporation must report on its social and environmental performance, as assessed by a third party standard.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Several states, including New Jersey, Vermont, Maryland, Virginia, California, and Hawaii, have adopted benefit corporation legislation. A number of other states are pursuing similar legislation that allows companies to combine the goals of pursuing a social or environmental purpose as well as returns for shareholders.

**Summary of Bill:** A social purpose corporation is established under WBCA. A social purpose corporation, while subject to all provisions applicable to other corporations, must be organized to promote a general social purpose, that is, it must be organized in a manner intended to positively affect certain constituencies. These constituencies must include one or more of:

- the corporation's employees, suppliers, or customers;
- the local, state, national, or world community; or
- the environment.

In addition, a social purpose corporation may set forth specific social purposes for which the corporation is organized.

Any person or persons may form a social purpose corporation by delivering articles of incorporation that conform to existing requirements for all corporations and clearly identify the corporation's intent to become a social purpose corporation. The articles of incorporation must set forth the general social purpose for which the corporation is organized. If the social purpose corporation has designated specific social purposes, the articles of incorporation must include these as well.

In addition to the required provisions, a social purpose corporation's articles of incorporation may set forth certain performance requirements for directors and officers. These include the requirements to:

- consider the impacts of any corporate action on the corporation's social purposes; and
- furnish shareholders with an assessment of the overall performance of the corporation with respect to its social purpose, prepared in accordance with a third-party standard.

Other provisions may be added to the articles of incorporation, including those relating to voting conditions, approval requirements, and limiting the duration of the corporation's existence to a specified time period.

An existing corporation may elect to become a social purpose corporation, subject to a two-thirds majority vote of eligible shareholders and any other voting conditions established by the board of directors. To elect to become a social purpose corporation, an electing corporation must amend its articles of incorporation according to the standard for forming a social purpose corporation. The election to become a social purpose corporation does not affect any obligations or liabilities incurred by the electing corporation.

A social purpose corporation may elect to cease being a social purpose corporation, subject to at least a two-thirds majority shareholder vote and any other voting conditions established by the board of directors. The corporation will thereafter continue to exist as a traditional corporation. The election to cease to be a social purpose corporation does not affect any

obligations or liabilities incurred by the social purpose corporation prior to its election to cease to become a social purpose corporation.

Directors and officers of social purpose corporations must discharge their duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they believe to be in the best interests of the corporation.

In discharging their duties, directors and officers may consider the social purposes of the corporation. Any action or inaction carried out as a result of such consideration will be deemed to be in the best interests of the corporation. No liability will attach to a director or officer who acted in the best interests of the corporation, and directors and officers are not responsible to any party other than the corporation and its shareholders.

Not later than four months after the close of the corporation's fiscal year, the board of directors of a social purpose corporation shall produce a social purpose report, to be furnished to the corporation's shareholders and made publically available on the corporation's website, free of charge. The social purpose report shall include a narrative description of the corporation's efforts to promote its social purposes. Failure to produce a report does not affect the validity of any corporate action. If a social purpose report has not been furnished to shareholders for at least two consecutive fiscal years, the superior court in which the social purpose corporation's registered office is located may order a social purpose report to be furnished to shareholders, after notice is given to the corporation.

Proposed amendments to a social purpose corporation's articles of incorporation that would materially change one or more of the corporation's social purposes must be approved by at least a two-thirds majority of eligible shareholders. Similarly, a plan of merger or share exchange whereby a social purpose corporation would not be the surviving corporation, or a sale of a social purpose corporation's assets, must be approved by at least a two-thirds majority. This requirement is mandatory unless the surviving corporation of the plan of merger or share exchange or the acquirer of the social corporation's property is a social purpose corporation whose social purposes are not materially different.

Provisions that establish requirements for notifying shareholders that the corporation is a social purpose corporation, that limit derivative proceedings, and that create dissenter's rights are also included. Language is added to the definitions section of WBCA that defines social purpose corporations and related elements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: There is a growing community of socially responsible or sustainable businesses that want to not only pursue financial gain, but also a

social or environmental purpose. The social purpose corporation is a way for corporations to accomplish these goals. Several other states have found this as an attractive business model and enacted similar statutes. This legislation will give corporations flexibility to pursue things other than profit in their corporate charters without the fear of liability from shareholders. It creates a completely permissive standard, it is in no way prescriptive. This legislation was worked on closely for two years with the Washington State Bar Association (WSBA). There may be ways to improve the bill that would make it more attractive to investors. Washington is a unique state in that it has great technology companies and many wealthy persons and entrepreneurs who ought to have the flexibility to create social purpose corporations.

This legislation will provide a flexible and transparent way in which a corporation can pursue financial, social and or environmental purposes. It permits corporations to determine how they want to structure themselves and how they will measure their success. Shareholders can require their directors and officers to consider social purposes in every decision made. It also permits the corporation to adopt a set of third party standards by which they will measure themselves and their progress, but it is not required.

The stock certificates are required to have a legend that indicates to the shareholder that the articles of incorporation, in which the social or environmental purposes of the corporation are set forth, are available on demand. There is also required at the end of the corporation's name a designation of the company, such as social purpose corporation, SPC, or S.P.C.

OTHER: The bill should be amended so that true benefit corporations can be adhered to. There are 517 companies that have pursued a benefit corporation status nationally. With some additions, the Washington economy could flourish by passing benefit corporation legislation. Corporations need the flexibility to pursue benefits even if it they aren't for the sole purpose of profit. They need directors who will take accountability for their actions. And, we need reporting mechanisms to assess the company's actions. This bill lacks three things, purpose, accountability, and transparency. A corporation will not have to do what they say they will do and there is no third party to determine whether the corporation has done what they have said they will do.

**Persons Testifying:** PRO: Senator Frockt, prime sponsor; John Reed, Michael Hutchins, WA State Bar Assn.; Drew Markham, WSGR.

OTHER: Michelle Rupp, NRG Insurance; Zack Butler, Global Green Energy Corp.; Stephanie Ryan, BLAB; Ronny Bell, Ideal Network.