



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 545

131st General Assembly  
(As Introduced)

Reps. Driehaus and Dever

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## BILL SUMMARY

- Allows a corporation to become a benefit corporation.
- Prohibits a corporation from using "benefit" or "b-" as a prefix to a corporation's name after the effective date.
- Allows a corporation to prioritize among purposes listed in the corporation's articles.
- Requires a report to be presented to the corporation's shareholders at the corporation's annual meeting that details the activities of the corporation toward the corporation's beneficial purposes.
- Specifies that a benefit corporation owes no duty to a beneficiary of the corporation's beneficial purpose because of that person's status as a beneficiary.
- Specifies that a benefit corporation director owes no duty to the beneficiary solely based on the status of being a beneficiary.
- Requires a benefit corporation director, in determining what is in the best interests of the corporation, to consider any beneficial purpose and related provisions set forth in the corporation's articles and any priority among the purposes set forth in the articles.
- Allows a benefit corporation to seek equitable relief to enforce the corporation's beneficial purposes.
- Allows the director or certain shareholders of a benefit corporation to seek equitable relief to enforce the corporation's beneficial purposes on behalf of the corporation.

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## CONTENT AND OPERATION

### Forming a benefit corporation

The bill expands the General Corporations Law to allow for the formation of benefit corporations, which are corporations created with a purpose of creating a general public benefit. Under continuing law, a corporation generally can be formed for any purpose that individuals can lawfully associate themselves. Under the bill, a corporation's purpose also may include a beneficial purpose. "Beneficial purpose" means seeking to have a bona fide positive effect or to reduce one or more bona fide negative effects on persons, entities, communities, or interests other than shareholders in their capacity as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature. To the extent that the articles of incorporation provide, both of the following apply:

- A beneficial purpose does not prevent a corporation from pursuing the other purposes for which it was formed, including pecuniary gain.
- Generally, no purpose has priority over another purpose.<sup>1</sup>

But, the articles of incorporation can, but are not required to, set a priority or method for balancing the corporation's purposes. Please note that this provision is not limited to benefit corporations; it applies to all corporations generally.<sup>2</sup>

A corporation that does not have a beneficial purpose is not required to operate strictly for profit or distribution of net earnings. In order to effectively form a beneficial purpose for a corporation, the purpose must be expressly stated in the corporation's articles of incorporation. Failure to do so, does not establish a beneficial purpose as a purpose of the corporation.<sup>3</sup>

### Benefit corporation name

The bill expands continuing law's provisions regulating corporate names. Continuing law requires a corporation to designate its incorporated status by including the type of business it is in its name. Some examples of this include "company," "co.," "corporation," "corp.," "incorporated," and "inc." As it relates to benefit corporations, the

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<sup>1</sup> R.C. 1701.01 and 1701.03(A)(2).

<sup>2</sup> R.C. 1701.04, with conforming changes made in R.C. 1151.38(D)(1) and 1151.61(D)(1).

<sup>3</sup> R.C. 1701.03(A)(3) and (4).

corporate name of a corporation can only include "benefit" or "b-" as a prefix if it is in fact a benefit corporation. This requirement does not apply to a corporation that had "benefit" or "b-" in their name prior to the bill's effective date.<sup>4</sup>

## **Benefit corporation reports**

Corporations, including benefit corporations under the bill, generally are required to have an annual meeting of shareholders. If a corporation becomes a benefit corporation, under the bill, the corporation may require in its articles, regulations, or a written agreement, that a written statement or report concerning the beneficial purposes of the corporation be presented to the corporation's shareholders at its annual meeting. The report may detail the activities of the corporation toward the corporation's beneficial purposes and related provisions set forth in the corporation's articles.

If the shareholder meeting is held solely by means of communications equipment, the corporation must make the benefit statement or report open to examination by any shareholder or proxyholder during the whole time of the meeting on a reasonably accessible electronic network.

Consistent with continuing law for other items that must be presented to shareholders at annual meetings, the written benefit statement or report must be sent to a shareholder who timely requests it. Under continuing law, a corporation that fails to present its shareholders a written benefit statement or report required by its articles is subject to a forfeiture of \$100. A corporation that fails to send such a written benefit statement or report to a requesting shareholder is subject to a \$100 forfeiture and an additional \$10 forfeiture for each day that the corporation fails to send the statement or report to the requesting shareholder.<sup>5</sup>

Under continuing law, a close corporation may dispense with an annual meeting through its close corporation agreement. In such a case, any required written benefit statement or report must be delivered to each shareholder on or before the last date the annual meeting could have been held.<sup>6</sup>

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<sup>4</sup> R.C. 1701.05.

<sup>5</sup> R.C. 1701.38 and 1701.94.

<sup>6</sup> R.C. 1701.591.



## **Duties relating to the beneficial purpose**

### **Duties of the benefit corporation to the beneficiary**

The bill provides that no duty is owed by the benefit corporation to a beneficiary of the beneficial purpose of the benefit corporation based solely on the beneficiary's status as a beneficiary.<sup>7</sup>

### **Duties of a benefit corporation director to the beneficiary**

The bill limits the duties a benefit corporation director owes to a beneficiary of the corporation's beneficial purpose. Continuing law requires that a director of a corporation perform the director's duties in good faith, in a manner that the director reasonably believes is in the corporation's best interest, or not opposed to the best interests of the corporation. It also requires the director to use the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

Under the bill, the director does not owe those duties to a beneficiary of the beneficial purpose of the benefit corporation, solely on the basis of that person's status as a beneficiary. In determining what the director reasonably believes to be in the best interests of the corporation, the bill requires the director to consider any beneficial purpose and related provisions set forth in the corporation's articles. The director also must consider any priority among purposes provided in the articles. Finally, the director may consider the long-term as well as the short-term interests of the corporation and its shareholders, including the possibility that the beneficial purpose may be best served by the continued interest of the corporation. Continuing law provides that the director must consider the interests of the corporation's shareholders.<sup>8</sup>

## **Obtaining relief from a benefit corporation**

Benefit corporations are not liable for damages for failure to seek, achieve, or comply with the beneficial purpose or any related provisions set forth in the articles. Benefit corporations can, however, be subject to equitable remedies such as injunction or specific performance for failure to seek, achieve, or comply with a beneficial purpose.

An action for equitable relief can only be brought by the benefit corporation itself or in a derivative action on behalf of the benefit corporation. Derivative suits may only be brought by certain people:

- A director of the corporation;

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<sup>7</sup> R.C. 1701.96(A).

<sup>8</sup> R.C. 1701.59.



- Persons who in the aggregate hold 25% of all outstanding shares and have voting power, unless the articles or regulations set a smaller proportion;
- Persons who in the aggregate hold shares of at least \$2 million in market value, if the benefit corporation has issued and has outstanding shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association;
- Any person granted that authority by the articles or regulations.

The provisions above do not alter the benefit corporation's obligation to comply with all other laws otherwise applicable to a domestic corporation or contracts that bind the corporation. Additionally, those provisions do not limit or restrict the imposition of any remedy granted under those laws or contracts.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	05-03-16

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<sup>9</sup> R.C. 1701.96(B) to (D).

