

HOUSE BILL NO. 1237

Introduced by

Representative Klemin

1 A BILL for an Act to create and enact chapter 10-37 of the North Dakota Century Code, relating
2 to North Dakota public benefit corporations.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 10-37 of the North Dakota Century Code is created and enacted as
5 follows:

6 **10-37-01. Citation.**

7 This chapter may be cited as the "North Dakota Public Benefit Corporation Act."

8 **10-37-02. Definitions.**

9 For the purposes of this chapter, unless the context otherwise requires:

- 10 1. "General benefit corporation" means a public benefit corporation that elects in its
11 articles to pursue general public benefit and that may state in its articles a specific
12 public benefit purpose it elects to pursue.
- 13 2. "General public benefit" means a net material positive impact from the business and
14 operations of a general benefit corporation on society, the environment, and the
15 well-being of present and future generations.
- 16 3. "Independent" means having no material relationship with a public benefit corporation
17 or a parent, a subsidiary, or other affiliate of a public benefit corporation.
- 18 4. "Minimum status vote" means that the shareholders shall take action by the affirmative
19 vote of the holders of at least two-thirds of all of the issued and outstanding shares.
- 20 5. "Organization" means whether domestic or foreign, a corporation, limited liability
21 company, general partnership, limited partnership, limited liability partnership, limited
22 liability limited partnership, or any other person subject to a governing statute, but
23 excludes any:

- 1 a. Nonprofit corporation, whether a domestic nonprofit corporation which is
2 incorporated under chapter 10-33 or a foreign nonprofit corporation which is
3 incorporated in another jurisdiction, or
4 b. Nonprofit limited liability company whether a domestic nonprofit limited liability
5 company which is organized under chapter 10-36 or a foreign nonprofit limited
6 liability company which is organized in another jurisdiction
- 7 6. "Public benefit corporation" means a corporation formed under chapter 10-19.1:
8 a. Which has elected to become subject to this chapter; and
9 b. Whose status as a public benefit corporation has not been terminated or revoked.
- 10 7. "Specific benefit corporation" means a public benefit corporation that states in its
11 articles a specific public benefit purpose it elects to pursue, but does not include a
12 general benefit corporation that states in its articles a specific public benefit purpose it
13 elects to pursue.
- 14 8. "Specific public benefit" means one or more positive impacts, or reduction of a
15 negative impact, on specified categories of natural persons, entities, communities, or
16 interests, other than shareholders in their capacity as shareholders, as enumerated in
17 the articles of a public benefit corporation.
- 18 9. "Third-party standard" means a publicly available standard or guideline for defining,
19 reporting, and assessing the performance of a business enterprise as a social or
20 benefit corporation which is:
21 a. Promulgated by a natural person or an organization; and
22 b. Independent of the public benefit corporation.

23 **10-37-03. Application and effect of chapter.**

24 With respect to application and effect:

- 25 1. This chapter applies to all public benefit corporations.
26 2. Chapter 10-19.1 applies to all public benefit corporations and all statutes and rules of
27 law that apply to a corporation formed under chapter 10-19.1 also apply to a public
28 benefit corporation. If chapter 10-19.1 conflicts with sections 10-37-01 through
29 10-37-10, then sections 10-37-01 through 10-37-10 govern. This chapter does not
30 affect a statute or rule of law that applies to a corporation formed under chapter
31 10-19.1 which is not a public benefit corporation.

1 3. A provision of the articles, shareholder control agreement or bylaws of a public benefit
2 corporation may not limit, be inconsistent with, or supersede a provision of this
3 chapter.

4 **10-37-04. Incorporation of a public benefit corporation.**

5 With respect to the incorporation of a public benefit corporation:

6 1. A public benefit corporation must be incorporated in accordance with chapter 10-19.1,
7 and its articles also must state the public benefit corporation is a:

8 a. General benefit corporation;

9 b. General benefit corporation that also elects to pursue a specific public benefit
10 purpose as stated in its articles; or

11 c. A specific benefit corporation that elects to pursue a specific public benefit
12 purpose as stated in its articles.

13 2. Other than subdivision b of subsection 1 of section 10-19.1-13, a public benefit
14 corporation name must comply with the requirements of section 10-19.1-13 and with
15 respect to:

16 a. A general benefit corporation contain the words "general benefit corporation";
17 and

18 b. A specific benefit corporation contain the words "specific benefit corporation".

19 **10-37-05. Election of public benefit corporation status.**

20 With respect to election of public benefit corporation status:

21 1. In accordance with the procedures stated in chapter 10-19.1 and with approval by the
22 minimum status vote, an existing corporation formed under chapter 10-19.1 may elect
23 to become a public benefit corporation under this chapter by amending its articles to
24 meet the requirements of section ~~10-37.04~~10-37-04.

25 2. With respect to a merger, exchange, conversion, or transfer:

26 a. This subsection applies if:

27 (1) An organization, other than a nonprofit corporation or nonprofit limited
28 liability company, which is not a public benefit corporation is a party to a
29 merger, exchange, or conversion, or a transfer in accordance with section
30 10-19.1-96; and

1 (2) The surviving organization in the merger, the acquiring organization in an
2 exchange, the converted organization in the conversion, or the transferee is
3 to be a public benefit corporation.

4 b. If this subsection applies, the transfer or the plan of merger, exchange, or
5 conversion must be adopted in accordance with the procedures stated in chapter
6 10-19.1 and with approval by the minimum status vote.

7 3. A shareholder of a corporation or the member of a limited liability company may
8 dissent from and obtain payment for the fair value of the shares of the shareholder or
9 the membership interests of the member pursuant to sections 10-19.1-87 and
10 10-19.1-88, or section 10-32.1-33, in the event of an election of public benefit
11 corporation status pursuant to this section.

12 **10-37-06. Termination of public benefit corporation status.**

13 With respect to the termination of public benefit corporation status:

14 1. In accordance with the procedures stated in chapter 10-19.1 and with approval by the
15 minimum status vote, a public benefit corporation may terminate its status as a public
16 benefit corporation and cease to be subject to this chapter by amending its articles to
17 delete the requirements of subsection 1 of section 10-37-04 and change its name to
18 remove the information required by subsection 2 of section 10-37-04.

19 2. If a merger, exchange, conversion, or transfer would have the effect of terminating the
20 status of a public benefit corporation under this chapter, the transfer or the plan of
21 merger, exchange, or conversion must be approved by the minimum status vote.

22 3. A shareholder of a public benefit corporation may dissent from and obtain payment for
23 the fair value of the shares of the shareholder pursuant to sections 10-19.1-87 and
24 10-19.1-88 in the event of a termination of public benefit corporation status pursuant to
25 this section.

26 4. A public benefit corporation that terminates its status as provided in this section may
27 not elect to become a public benefit corporation under this chapter until three years
28 have passed since the effective date of termination or revocation.

29 **10-37-07. Public benefit corporation purposes.**

30 With respect to public benefit corporation purposes:

- 1 1. A general benefit corporation has a purpose of pursuing general public benefit. A
2 general benefit corporation also may state in its articles one or more specific public
3 benefit purposes the general benefit corporation elects to pursue. Purposes under this
4 section are in addition to the purposes under section 10-19.1-08.
- 5 2. A specific benefit corporation shall have a purpose of pursuing one or more specific
6 public benefit purposes stated in its articles. Purposes under this subsection are in
7 addition to the purposes under section 10-19.1-08. The election to pursue a specific
8 public benefit purpose under this subsection does not require a specific benefit
9 corporation to pursue general public benefit under subsection 1.
- 10 3. In accordance with the procedures stated in chapter 10-19.1 and with approval by the
11 minimum status vote, a general benefit corporation or a specific benefit corporation
12 may amend its articles to add, amend, or delete a specific public benefit purpose
13 unless the amendment would cause a termination of public benefit corporation status
14 under section 10-37-06.

15 **10-37-08. Standard of conduct for directors.**

16 With respect to the standard of conduct for directors:

- 17 1. In discharging the duties of the position of director of a general benefit corporation, a
18 director:
- 19 a. Shall consider the effects of any proposed, contemplated, or actual conduct on:
- 20 (1) The ability of the general benefit corporation to pursue general public
21 benefit;
- 22 (2) If the articles also state a specific public benefit purpose, the ability of the
23 general benefit corporation to pursue its specific public benefit; and
- 24 (3) The interests of the constituencies stated in subsection 6 of section
25 10-19.1-50, including the pecuniary interests of its shareholders; and
- 26 b. May not give regular, presumptive, or permanent priority to:
- 27 (1) The pecuniary interests of the shareholders; or
- 28 (2) Any other interest or consideration unless the articles identify the interest or
29 consideration as having priority.
- 30 2. In discharging the duties of the position of director of a specific benefit corporation, a
31 director:

- 1 a. Shall consider the effects of any proposed, contemplated, or actual conduct on:
2 (1) The pecuniary interest of its shareholders; and
3 (2) The ability of the specific benefit corporation to pursue its specific public
4 benefit purpose;
- 5 b. May consider the interests of the constituencies stated in subsection 6 of section
6 10-19.1-50; and
- 7 c. May not give regular, presumptive, or permanent priority to:
8 (1) The pecuniary interests of the shareholders; or
9 (2) Any other interest or consideration unless the articles identify the interest or
10 consideration as having priority.
- 11 3. A director who performs the duties of a director stated in subsections 1 and 2 is not
12 liable by reason of being or having been a director of a public benefit corporation.
- 13 4. The conduct and liability of a director of a public benefit corporation is subject to
14 subsections 1, 2, 4 and 5 of section 10-19.1-50.
- 15 5. The articles of a public benefit corporation may include a provision that any
16 disinterested failure to satisfy subsection 1 or 2, for purposes of this section or
17 subsection 5 of section 10-19.1-50, does not constitute a breach of the duty of loyalty.

18 **10-37-09. Right of action.**

19 With respect to the right of action of a shareholder:

- 20 1. With respect to standing and grounds for claims:
21 a. No person other than a shareholder may assert a claim under this chapter or
22 chapter 10-19.1 against a public benefit corporation, its directors, or its officers on
23 account of the failure of the director or officer of the public benefit corporation to
24 pursue or create general public benefit or a specific public benefit.
- 25 b. A public benefit corporation is not liable for monetary damages under this chapter
26 for any failure of the public benefit corporation to pursue or create general public
27 benefit or a specific public benefit.
- 28 2. In addition to the grounds for relief stated in subdivision b of subsection 1 of section
29 10-19.1-115, a court may grant relief under this chapter when:

- 1 a. Directors or those in control of a public benefit corporation have breached the
2 duties stated in section 10-37-08 to a substantial extent and in a sustained
3 manner; or
- 4 b. The public benefit corporation has for an unreasonably long period of time failed
5 to pursue:
- 6 (1) In the case of a general benefit corporation:
- 7 (a) General public benefit; or
- 8 (b) Any specific public benefit purpose stated in its articles; and
- 9 (2) in the case of a specific benefit corporation, any specific public benefit
10 purpose stated in its articles.
- 11 3. With respect to particular relief available:
- 12 a. In an action under this chapter, in addition to granting any other equitable relief
13 the court deems just and reasonable in the circumstances, the court may:
- 14 (1) Order the public benefit corporation to terminate its status as a public
15 benefit corporation pursuant to subsection 1 of section 10-37-06;
- 16 (2) Remove one or more directors from the board of directors of the public
17 benefit corporation and determine whether the vacancy will be filled:
- 18 (a) As provided in section 10-19.1-42; or
- 19 (b) By court appointment, with the appointee to serve only until a qualified
20 successor is elected by the shareholders at the next regular or special
21 meeting of the shareholders;
- 22 (3) Appoint a receiver of the public benefit corporation to:
- 23 (a) Wind up and liquidate the activities and business of the public benefit
24 corporation; or
- 25 (b) Carry on the business and activities of the public benefit corporation in
26 a manner consistent with this chapter.
- 27 b. Subdivision a does not imply any limitations on the relief available in a
28 proceeding brought under section 10-19.1-115 without reference to this chapter.

1 **10-37-10. Annual report.**

2 Each public benefit corporation and each foreign public benefit corporation authorized to
3 transact business in this state shall file an annual report and be subject to the provisions of
4 section 10-19.1-146. Additionally, the annual report must include:

5 1. For a specific benefit corporation:

6 a. A narrative description of:

7 (1) The ways in which the corporation pursued and created the specific public
8 benefit stated in its articles or certificate of authority application;

9 (2) The extent to which that specific public benefit purpose was pursued and
10 created; and

11 (3) Any circumstances that hindered efforts to pursue or create the specific
12 public benefit; and

13 b. A certification that its board of directors has reviewed and approved the report.

14 2. For a general benefit corporation:

15 a. A certification that its board of directors has:

16 (1) Chosen the third-party standard designated pursuant to paragraph 1 of
17 subdivision b;

18 (2) Determined the organization that promulgated the third-party standard is
19 independent; and

20 (3) Approved the report;

21 b. With regard to the period covered by the report:

22 (1) An identification of a third-party standard determined by the board; and

23 (2) With reference to that third-party standard, a narrative description of:

24 (a) How the corporation or foreign corporation has pursued general public
25 benefit;

26 (b) The extent to which and the ways in which the corporation or foreign
27 corporation has created general public benefit; and

28 (c) Any circumstances that hindered efforts to pursue or create general
29 public benefit;

- 1 c. If the report is the first delivered for filing by the general benefit corporation, an
2 explanation of how and why the board chose the third-party standard identified
3 under paragraph (1) of subdivision b;
- 4 d. If the third-party standard identified under paragraph (1) of subdivision b is the
5 same third-party standard identified in the immediately prior report:
- 6 (1) A statement addressing whether the third-party standard is being applied in
7 a manner consistent with the application of the third-party standard in the
8 prior reports; and
- 9 (2) If the third-party standard is not being so applied in a consistent manner, an
10 explanation of why it is not;
- 11 e. If the third-party standard identified under paragraph (1) of subdivision b is not
12 the same as the third-party standard identified in the immediately prior report, an
13 explanation of how and why the board chose a different third-party standard; and
- 14 f. If the general benefit corporation also has stated a specific public benefit purpose
15 in its articles, the information required in subdivision a of subsection 2.
- 16 3. A public benefit corporation or foreign public benefit corporation need not have its
17 annual report audited, certified, or otherwise evaluated by a third-party.
- 18 4. With respect to the effects of dissolution, revocation, and restatement, a public benefit
19 corporation that has lost its public benefit corporation status, or a foreign public benefit
20 corporation that has lost its certificate of authority for failure to timely file an annual
21 benefit report is not entitled to the benefits afforded to a public benefit corporation
22 under this chapter as of the date of dissolution or revocation.
- 23 5. A shareholder of the public benefit corporation may obtain payment for the fair value of
24 the shares of the shareholder pursuant to section 10-19.1-88 as a result of the
25 dissolution of public benefit corporation status pursuant to this section caused by the
26 intentional failure to file an annual report.

27 **10-37-11. Foreign public benefit corporation - Authority to transact business.**

28 A foreign public benefit corporation may transact business in this state and is subject to all
29 provisions of a foreign corporation as provided in chapter 10-19.1.

1 **10-37-12. Foreign public benefit corporation - Name.**

2 A foreign public benefit corporation may apply for a certificate of authority under any name
3 that would be available to a domestic public benefit corporation, whether or not the name is the
4 name under which it is authorized in its jurisdiction of incorporation. A trade name must be
5 registered as provided in chapter 47-25 when applying for a certificate of authority under a
6 name different from the name authorized in the jurisdiction of incorporation.