



March 31, 2015

ENGROSSED HOUSE BILL No. 1015

DIGEST OF HB 1015 (Updated March 30, 2015 12:00 pm - DI 106)

Citations Affected: IC 23-1; IC 23-1.3 ; IC 34-30.

Synopsis: Benefit corporations. Allows a business entity to incorporate as a benefit corporation under Indiana law.

Effective: January 1, 2016.

Cox, DeLaney, Steuerwald, Dvorak
(SENATE SPONSORS — MERRITT, HEAD, BRODEN)

January 6, 2015, read first time and referred to Committee on Judiciary.
February 10, 2015, amended, reported — Do Pass.
February 23, 2015, read second time, amended, ordered engrossed.
February 24, 2015, engrossed. Read third time, passed. Yeas 92, nays 0.

SENATE ACTION

March 2, 2015, read first time and referred to Committee on Civil Law.
March 30, 2015, reported favorably — Do Pass.

EH 1015—LS 6144/DI 110



March 31, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1015

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1-18-3, AS AMENDED BY P.L.63-2014,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2016]: Sec. 3. (a) The secretary of state shall collect the
4 following fees when the documents described in this subsection are
5 delivered to the secretary of state for filing:

| | Document | Electronic Filing Fee | Fee (Other than electronic filing) |
|----|-----------------------------------|--------------------------|---|
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | (1) Articles of incorporation | \$75 | \$90 |
| 11 | (2) Application for use of | | |
| 12 | indistinguishable name | \$10 | \$20 |
| 13 | (3) Application for reserved name | \$10 | \$20 |
| 14 | (4) Application for renewal | | |
| 15 | of reservation | \$10 | \$20 |

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| | | | | |
|----|------|--------------------------------|--------|--------|
| 1 | (5) | Notice of transfer of | | |
| 2 | | reserved name | \$10 | \$20 |
| 3 | (6) | Application for registered | | |
| 4 | | name | \$20 | \$30 |
| 5 | (7) | Application for renewal of | | |
| 6 | | registered name | \$20 | \$30 |
| 7 | (8) | Corporation's statement of | | |
| 8 | | change of registered agent | | |
| 9 | | or registered office or both | No Fee | No Fee |
| 10 | (9) | Agent's statement of change | | |
| 11 | | of registered office for each | | |
| 12 | | affected corporation | No Fee | No Fee |
| 13 | (10) | Agent's statement of | | |
| 14 | | resignation | No Fee | No Fee |
| 15 | (11) | Amendment of articles of | | |
| 16 | | incorporation | \$20 | \$30 |
| 17 | (12) | Restatement of articles of | | |
| 18 | | incorporation | \$20 | \$30 |
| 19 | | with amendment of articles | \$20 | \$30 |
| 20 | (13) | Articles of merger or share | | |
| 21 | | exchange | \$75 | \$90 |
| 22 | (14) | Articles of dissolution | \$20 | \$30 |
| 23 | (15) | Articles of revocation of | | |
| 24 | | dissolution | \$20 | \$30 |
| 25 | (16) | Certificate of administrative | | |
| 26 | | dissolution | No Fee | No Fee |
| 27 | (17) | Application for reinstatement | | |
| 28 | | following administrative | | |
| 29 | | dissolution | \$20 | \$30 |
| 30 | (18) | Certificate of reinstatement | No Fee | No Fee |
| 31 | (19) | Certificate of judicial | | |
| 32 | | dissolution | No Fee | No Fee |
| 33 | (20) | Application for certificate of | | |
| 34 | | authority | \$75 | \$90 |
| 35 | (21) | Application for amended | | |
| 36 | | certificate of authority | \$20 | \$30 |
| 37 | (22) | Application for certificate of | | |
| 38 | | withdrawal | \$20 | \$30 |
| 39 | (23) | Certificate of revocation of | | |
| 40 | | authority to transact business | No Fee | No Fee |
| 41 | (24) | Biennial report | \$20 | \$30 |
| 42 | (25) | Articles of correction | \$20 | \$30 |



| | | | | |
|----|-----------------------------|---------------------------------|-------------|-------------|
| 1 | (26) | Application for certificate | | |
| 2 | | of existence or authorization | \$15 | \$15 |
| 3 | (27) | Annual benefit report | \$10 | \$15 |
| 4 | (27) (28) | Any other document | | |
| 5 | | required or permitted to | | |
| 6 | | be filed by this article, | | |
| 7 | | including an application | | |
| 8 | | for any other certificates | | |
| 9 | | or certification certificate | | |
| 10 | | (except for any such other | | |
| 11 | | certificates that the secretary | | |
| 12 | | of state may determine to | | |
| 13 | | issue without additional fee | | |
| 14 | | in connection with particular | | |
| 15 | | filings) and a request for | | |
| 16 | | other facts of record under | | |
| 17 | | section 9(b)(6) of this | | |
| 18 | | chapter | \$20 | \$30 |

19 The secretary of state shall prescribe the electronic means of filing
 20 documents to which the electronic filing fees set forth in this section
 21 apply.

22 (b) The fee set forth in subsection (a)(24) for filing a biennial report
 23 is:

- 24 (1) fifteen dollars (\$15) per year, for a filing in writing; and
 - 25 (2) ten dollars (\$10) per year, for a filing by electronic means;
- 26 to be paid biennially.

27 (c) The secretary of state shall collect a fee of ten dollars (\$10) each
 28 time process is served on the secretary of state under this article. If the
 29 party to a proceeding causing service of process prevails in the
 30 proceeding, then that party is entitled to recover this fee as costs from
 31 the nonprevailing party.

32 (d) The secretary of state shall collect the following fees for copying
 33 and certifying the copy of any filed document relating to a domestic or
 34 foreign corporation:

- 35 (1) Per page for copying \$ 1
- 36 (2) For a certification stamp \$15

37 SECTION 2. IC 23-1-44-8, AS AMENDED BY P.L.133-2009,
 38 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JANUARY 1, 2016]: Sec. 8. (a) A shareholder is entitled to dissent
 40 from, and obtain payment of the fair value of the shareholder's shares
 41 in the event of, any of the following corporate actions:

- 42 (1) Consummation of a plan of merger to which the corporation



- 1 is a party if:
- 2 (A) shareholder approval is required for the merger by
- 3 IC 23-1-40-3 or the articles of incorporation; and
- 4 (B) the shareholder is entitled to vote on the merger.
- 5 (2) Consummation of a plan of share exchange to which the
- 6 corporation is a party as the corporation whose shares will be
- 7 acquired, if the shareholder is entitled to vote on the plan.
- 8 (3) Consummation of a sale or exchange of all, or substantially
- 9 all, of the property of the corporation other than in the usual and
- 10 regular course of business, if the shareholder is entitled to vote on
- 11 the sale or exchange, including a sale in dissolution, but not
- 12 including a sale pursuant to court order or a sale for cash pursuant
- 13 to a plan by which all or substantially all of the net proceeds of
- 14 the sale will be distributed to the shareholders within one (1) year
- 15 after the date of sale.
- 16 (4) The approval of a control share acquisition under IC 23-1-42.
- 17 (5) Any corporate action taken pursuant to a shareholder vote to
- 18 the extent the articles of incorporation, bylaws, or a resolution of
- 19 the board of directors provides that voting or nonvoting
- 20 shareholders are entitled to dissent and obtain payment for their
- 21 shares.
- 22 **(6) Election to become a benefit corporation under**
- 23 **IC 21-1.3-3-2.**
- 24 (b) This section does not apply to the holders of shares of any class
- 25 or series if, on the date fixed to determine the shareholders entitled to
- 26 receive notice of and vote at the meeting of shareholders at which the
- 27 merger, plan of share exchange, or sale or exchange of property is to be
- 28 acted on, the shares of that class or series were a covered security under
- 29 Section 18(b)(1)(A) or 18(b)(1)(B) of the Securities Act of 1933, as
- 30 amended.
- 31 (c) The articles of incorporation as originally filed or any
- 32 amendment to the articles of incorporation may limit or eliminate the
- 33 right to dissent and obtain payment for any class or series of preferred
- 34 shares. However, any limitation or elimination contained in an
- 35 amendment to the articles of incorporation that limits or eliminates the
- 36 right to dissent and obtain payment for any shares:
- 37 (1) that are outstanding immediately before the effective date of
- 38 the amendment; or
- 39 (2) that the corporation is or may be required to issue or sell after
- 40 the effective date of the amendment under any exchange or other
- 41 right existing immediately before the effective date of the
- 42 amendment;



1 does not apply to any corporate action that becomes effective within
 2 one (1) year of the effective date of the amendment if the action would
 3 otherwise afford the right to dissent and obtain payment.

4 (d) A shareholder:

5 (1) who is entitled to dissent and obtain payment for the
 6 shareholder's shares under this chapter; or

7 (2) who would be so entitled to dissent and obtain payment but for
 8 the provisions of subsection (b);

9 may not challenge the corporate action creating (or that, but for the
 10 provisions of subsection (b), would have created) the shareholder's
 11 entitlement.

12 (e) Subsection (d) does not apply to a corporate action that was
 13 approved by less than unanimous consent of the voting shareholders
 14 under IC 23-1-29-4.5(b) if both of the following apply:

15 (1) The challenge to the corporate action is brought by a
 16 shareholder who did not consent and as to whom notice of the
 17 approval of the corporate action was not effective at least ten (10)
 18 days before the corporate action was effected.

19 (2) The proceeding challenging the corporate action is
 20 commenced not later than ten (10) days after notice of the
 21 approval of the corporate action is effective as to the shareholder
 22 bringing the proceeding.

23 SECTION 3. IC 23-1.3 IS ADDED TO THE INDIANA CODE AS
 24 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 2016]:

26 **ARTICLE 1.3. BENEFIT CORPORATIONS**

27 **Chapter 1. Application**

28 **Sec. 1. This article is applicable to all benefit corporations.**

29 **Sec. 2. This article does not of itself create an implication that**
 30 **a contrary or different rule of law is applicable to a corporation**
 31 **that is not a benefit corporation.**

32 **Sec. 3. This article does not affect a statute or rule of law that is**
 33 **applicable to a corporation that is not a benefit corporation.**

34 **Sec. 4. Except as otherwise provided in this article, IC 23-1 is**
 35 **generally applicable to all benefit corporations.**

36 **Sec. 5. The articles of incorporation or bylaws of a benefit**
 37 **corporation may not limit, be inconsistent with, or supersede this**
 38 **article.**

39 **Chapter 2. Definitions**

40 **Sec. 1. The definitions in IC 23-1-20 apply throughout this**
 41 **article.**

42 **Sec. 2. The definitions in this chapter apply throughout this**



- 1 article.
- 2 **Sec. 3. "Benefit corporation" means a corporation to which both**
- 3 **the following apply:**
- 4 (1) The corporation has elected to become subject to this
- 5 article.
- 6 (2) The status of the corporation as a benefit corporation has
- 7 not been terminated.
- 8 **Sec. 4. "Benefit director" refers to an individual designated as**
- 9 **the benefit director of a benefit corporation under IC 23-1.3-6.**
- 10 **Sec. 5. "Benefit enforcement proceeding" means any claim,**
- 11 **action, or proceeding for:**
- 12 (1) the failure of a benefit corporation to pursue or create:
- 13 (A) general public benefit; or
- 14 (B) a specific public benefit if the benefit corporation
- 15 identified a specific public benefit purpose in its articles of
- 16 incorporation; or
- 17 (2) a violation of any obligation, duty, or standard of conduct
- 18 under this article.
- 19 **Sec. 6. "Benefit officer" means an individual designated as the**
- 20 **benefit officer of a benefit corporation under IC 23-1.3-8.**
- 21 **Sec. 7. "General public benefit" means a material positive**
- 22 **impact on society and the environment, taken as a whole, assessed**
- 23 **against a third party standard, from the business and operations**
- 24 **of a benefit corporation.**
- 25 **Sec. 8. "Independent" means a person that has no material**
- 26 **relationship with a benefit corporation or a subsidiary of the**
- 27 **benefit corporation.**
- 28 **Sec. 9. "Minimum status vote" means the following:**
- 29 (1) For a corporation, in addition to any other required
- 30 approval or vote, a vote in which:
- 31 (A) the shareholders of every class or series of shares are
- 32 entitled to vote as a separate voting group on the corporate
- 33 action regardless of a limitation stated in the articles of
- 34 incorporation or bylaws on the voting rights of any class or
- 35 series; and
- 36 (B) the corporate action is approved by vote of the
- 37 shareholders of each class or series of shares entitled to
- 38 cast at least ninety percent (90%) of the votes that all
- 39 shareholders of the class or series are entitled to cast on
- 40 the action.
- 41 (2) For a domestic business entity other than a corporation, in
- 42 addition to any other required approval, vote, or consent, a



- 1 **vote in which:**
2 **(A) the holders of every class or series of equity interest in**
3 **the entity that are entitled to receive a distribution of any**
4 **kind from the entity are entitled to vote on or consent to**
5 **the action regardless of any otherwise applicable limitation**
6 **on the voting or consent rights of any class or series; and**
7 **(B) the action is approved by vote or consent of the holders**
8 **described in clause (A) entitled to cast at least ninety**
9 **percent (90%) of the votes or consents that all of the**
10 **holders are entitled to cast on the action.**
- 11 **Sec. 10. (a) "Specific public benefit" means a benefit that serves:**
12 **(1) one (1) or more public welfare, religious, charitable,**
13 **scientific, literary, or educational purposes; or**
14 **(2) other purposes or benefits beyond the strict interests of the**
15 **shareholders of the benefit corporation.**
- 16 **(b) The term includes the following:**
17 **(1) Providing low income or underserved individuals or**
18 **communities with beneficial products or services.**
19 **(2) Promoting economic opportunity for individuals or**
20 **communities beyond the creation of jobs in the normal course**
21 **of business.**
22 **(3) Protecting or restoring the environment.**
23 **(4) Improving human health.**
24 **(5) Promoting the arts, sciences, or advancement of**
25 **knowledge.**
26 **(6) Increasing the flow of capital to entities with a purpose to**
27 **benefit society or the environment.**
28 **(7) Conferring any other particular benefit on society or the**
29 **environment.**
- 30 **Sec. 11. "Subsidiary" means, in relation to a person, a business**
31 **entity in which the person owns at least fifty percent (50%) of the**
32 **outstanding equity interests, calculated as if all outstanding rights**
33 **to acquire equity interests in the entity had been exercised.**
- 34 **Sec. 12. "Third party standard" means a recognized standard**
35 **for defining, reporting, and assessing corporate social and**
36 **environmental performance that is:**
37 **(1) comprehensive because it assesses the effect of the benefit**
38 **corporation and the benefit corporation's operations upon the**
39 **interests listed in IC 23-1.3-5-1(1)(B) through**
40 **IC 23-1.3-5-1(1)(E);**
41 **(2) developed by an entity that is not controlled by a benefit**
42 **corporation;**



- 1 **(3) developed by an entity that:**
 2 **(A) has access to necessary expertise to assess overall**
 3 **corporate social and environmental performance;**
 4 **(B) uses a balanced multistakeholder approach to develop**
 5 **the standard, including a reasonable public comment**
 6 **period;**
 7 **(C) was not materially financed by any of the following**
 8 **organizations and not more than one-third (1/3) of the**
 9 **members of the governing body of the entity are**
 10 **representatives of:**
 11 **(i) associations or businesses operating in the same**
 12 **industry, the performance of whose members is**
 13 **measured by the standard; or**
 14 **(ii) businesses from the same industry or an association**
 15 **of businesses in that industry; and**
 16 **(4) transparent because all the following information is**
 17 **publicly available:**
 18 **(A) The criteria considered when measuring the overall**
 19 **social and environmental performance of a business.**
 20 **(B) The relative weightings, if any, of the criteria described**
 21 **in clause (A).**
 22 **(C) The identity of the directors, officers, material owners,**
 23 **and governing body of the entity that developed and**
 24 **controls revisions to the standard.**
 25 **(D) The process by which revisions to the standard and**
 26 **changes to the membership of the governing body are**
 27 **made.**
 28 **(E) An accounting of the revenue and sources of financial**
 29 **support for the entity, with sufficient detail to disclose any**
 30 **relationships that could reasonably be considered to**
 31 **present a potential conflict of interest.**

32 **Chapter 3. Benefit Corporation Status**

33 **Sec. 1. A benefit corporation shall be incorporated in**
 34 **accordance with IC 23-1-21, except that its articles of**
 35 **incorporation must state that it is a benefit corporation.**

36 **Sec. 2. (a) Subject to subsection (b), an existing corporation may**
 37 **become a benefit corporation under this article by amending its**
 38 **articles of incorporation to contain, in addition to any content**
 39 **requirements for articles of incorporation under IC 23-1, the**
 40 **following:**

- 41 **(1) A statement that the corporation is a benefit corporation.**
 42 **(2) A statement reading "By enacting this article, the State of**



1 **Indiana does not endorse any particular benefit corporation,**
2 **or approve or disapprove any of the purposes of a benefit**
3 **corporation or any claimed general public benefit or specific**
4 **public benefit, and no inference should be drawn from the**
5 **acceptance of any filings with respect to a benefit corporation**
6 **under IC 23-1.3, that the benefit corporation has or will in**
7 **fact provide any general public benefit or specific public**
8 **benefit.**

9 **(b) An amendment to the articles of incorporation under**
10 **subsection (a) is not effective unless the amendment is adopted by**
11 **at least a minimum status vote.**

12 **Sec. 3. (a) This section does not apply to a corporation that is a**
13 **party to a merger if the shareholders of the corporation are not**
14 **entitled to vote on the merger under IC 23-1-40.**

15 **(b) If:**

16 **(1) a domestic entity that is not a benefit corporation is a**
17 **party to:**

18 **(A) a merger, consolidation, or conversion; or**

19 **(B) the exchanging entity in a share exchange; and**

20 **(2) the surviving entity in the merger, consolidation,**
21 **conversion, or share exchange is to be a benefit corporation;**
22 **the plan of merger, consolidation, conversion, or share exchange**
23 **must be adopted by the domestic entity by at least the minimum**
24 **status vote.**

25 **Sec. 4. (a) Subject to subsection (b), a benefit corporation may**
26 **terminate its status as a benefit corporation and cease to be subject**
27 **to this article by amending its articles of incorporation to delete the**
28 **statement in its articles of incorporation required under sections**
29 **1 and 2 of this chapter.**

30 **(b) An amendment to the articles of incorporation under**
31 **subsection (a) is not effective unless the amendment is adopted by**
32 **at least a minimum status vote.**

33 **Sec. 5. (a) This section does not apply to a corporation that is a**
34 **party to a merger if the shareholders of the corporation are not**
35 **entitled to vote on the merger under IC 23-1-40.**

36 **(b) If a plan of merger, consolidation, conversion, or share**
37 **exchange would have the effect of terminating the status of a**
38 **corporation as a benefit corporation, the plan must be adopted by**
39 **at least a minimum status vote in order to be effective.**

40 **Sec. 6. Any sale, lease, exchange, or other disposition of all or**
41 **substantially all of the assets of a benefit corporation is not**
42 **effective unless one (1) or more of the following apply:**



1 (1) The transaction is in the usual and regular course of
2 business.

3 (2) The transaction is approved by at least a minimum status
4 vote.

5 **Chapter 4. Purpose of a Benefit Corporation**

6 **Sec. 1.** A benefit corporation shall have a purpose of creating
7 general public benefit. The purpose under this section is in addition
8 to a benefit corporation's purpose under IC 23-1-21-2.

9 **Sec. 2. (a)** A benefit corporation may identify in its articles of
10 incorporation one (1) or more specific public benefits that it is the
11 purpose of the benefit corporation to create in addition to the
12 benefit corporation's purposes under IC 23-1-21-2 and section 1 of
13 this chapter.

14 (b) The identification of a specific public benefit under
15 subsection (a) does not limit the purpose of a benefit corporation
16 to create general public benefit under section 1 of this chapter.

17 **Sec. 3.** The creation of general public benefit and a specific
18 public benefit under sections 1 and 2 of this chapter is in the best
19 interests of a benefit corporation.

20 **Sec. 4. (a)** Subject to subsection (b), a benefit corporation may
21 amend its articles of incorporation to add, amend, or delete the
22 identification of a specific public benefit described in section 2 of
23 this chapter.

24 (b) An amendment to the articles of incorporation under
25 subsection (a) is not effective unless the amendment is adopted by
26 a vote of the shareholders of each class or series of shares entitled
27 to cast at least two-thirds (2/3) of the votes that all shareholders of
28 the class or series are entitled to cast on the amendment.

29 **Sec. 5.** A professional corporation that is a benefit corporation
30 does not violate IC 23-1.5-2-3 by having the purpose to create
31 general public benefit or a specific public benefit.

32 **Chapter 5. Standard of Conduct for Directors**

33 **Sec. 1.** The following apply to the board of directors, committees
34 of the board of directors, and individual directors of a benefit
35 corporation in discharging the duties of their respective positions
36 and in considering the best interests of the benefit corporation:

37 (1) The board of directors, committees of the board of
38 directors, and individual directors shall consider the effects of
39 any action or inaction upon all the following:

40 (A) The shareholders of the benefit corporation.

41 (B) The employees and workforce of the:

42 (i) benefit corporation;



- 1 (ii) subsidiaries of the benefit corporation; and
- 2 (iii) suppliers of the benefit corporation.
- 3 (C) The interests of customers as beneficiaries of the
- 4 general public benefit or specific public benefit purposes of
- 5 the benefit corporation.
- 6 (D) Community and societal factors, including the factors
- 7 of each community in which:
- 8 (i) offices or facilities;
- 9 (ii) subsidiaries; or
- 10 (iii) suppliers;
- 11 of the benefit corporation are located.
- 12 (E) The local and global environment.
- 13 (F) The short term and long term interests of the benefit
- 14 corporation, including benefits that may accrue to the
- 15 benefit corporation from its long term plans and the
- 16 possibility that the interests may be best served by the
- 17 continued independence of the benefit corporation.
- 18 (G) The ability of the benefit corporation to accomplish its
- 19 general public benefit purpose and any specific public
- 20 benefit purpose.
- 21 (2) The board of directors, committees of the board of
- 22 directors, and individual directors may consider other
- 23 pertinent factors or the interests of any other group that the
- 24 board of directors, committees of the board of directors, or
- 25 individual directors consider appropriate.
- 26 (3) The board of directors, committees of the board of
- 27 directors, and individual directors are not required to give
- 28 priority to a particular interest or factor listed in subdivision
- 29 (1) or (2) over any other interest or factor unless the benefit
- 30 corporation has stated in its articles of incorporation its
- 31 intention to give priority to certain interests or factors related
- 32 to its accomplishment of its general public benefit purpose or
- 33 of a specific public benefit purpose identified in its articles of
- 34 incorporation.
- 35 Sec. 2. The consideration of interests and factors provided in
- 36 section 1 of this chapter:
- 37 (1) does not constitute a violation of IC 23-1-35; and
- 38 (2) is in addition to the ability of directors to consider
- 39 interests and factors under IC 23-1-35-1.
- 40 Sec. 3. Except as otherwise provided in the bylaws of a benefit
- 41 corporation, a director is not personally liable for monetary
- 42 damages for:



- 1 (1) any action or inaction in the course of performing the
- 2 duties of a director under section 1 of this chapter if the
- 3 director performed the duties in compliance with IC 23-1-35
- 4 and this chapter; or
- 5 (2) the failure of the benefit corporation to pursue or create
- 6 general public benefit or a specific public benefit.
- 7 Sec. 4. A director does not have a duty to a person that is a
- 8 beneficiary of the general public benefit purpose or a specific
- 9 public benefit purpose of a benefit corporation arising from the
- 10 status of the person as a beneficiary.
- 11 Chapter 6. Benefit Director
- 12 Sec. 1. The board of directors of a benefit corporation must
- 13 include a director who:
- 14 (1) is designated the benefit director; and
- 15 (2) has, in addition to the powers, duties, rights, and
- 16 immunities of the other directors of the benefit corporation,
- 17 the powers, duties, rights, and immunities provided in this
- 18 chapter.
- 19 Sec. 2. (a) A benefit director shall be elected, and may be
- 20 removed, in the manner provided under IC 23-1-33.
- 21 (b) Except as provided in section 6 or 7 of this chapter, a benefit
- 22 director shall be an individual who is independent. An individual
- 23 is conclusively presumed not independent under this subsection if
- 24 any of the following apply:
- 25 (1) The individual:
- 26 (A) is; or
- 27 (B) has been within the past three (3) years;
- 28 an employee, other than a benefit officer, of the benefit
- 29 corporation or a subsidiary of the benefit corporation.
- 30 (2) An immediate family member of the individual:
- 31 (A) is; or
- 32 (B) has been within the past three (3) years;
- 33 an executive officer, other than a benefit officer, of the benefit
- 34 corporation or a subsidiary of the benefit corporation.
- 35 (3) There is ownership of at least five percent (5%) of the
- 36 outstanding shares of the benefit corporation, calculated as if
- 37 all outstanding rights to acquire equity interests in the benefit
- 38 corporation had been exercised, by:
- 39 (A) the individual; or
- 40 (B) an entity:
- 41 (i) of which the individual is a director, an officer, or a
- 42 manager; or



1 (ii) in which the individual owns at least five percent
 2 (5%) of the outstanding equity interests, calculated as if
 3 all outstanding rights to acquire equity interests in the
 4 business entity had been exercised.

5 (c) An individual serving as a benefit director or benefit officer
 6 does not in itself make the individual not independent.

7 (d) A benefit director may serve as the benefit officer at the
 8 same time as serving as the benefit director.

9 (e) A benefit corporation may prescribe in its articles of
 10 incorporation or bylaws additional qualification requirements for
 11 the benefit director if the additional qualification requirements are
 12 not inconsistent with this section.

13 Sec. 3. A benefit director shall prepare, and the benefit
 14 corporation shall include in the annual benefit report to
 15 shareholders required under IC 23-1.3-10, a report of the benefit
 16 director on all the following:

17 (1) Whether the benefit corporation acted in accordance with
 18 its general public benefit purpose and any specific public
 19 benefit purpose in all material respects during the period
 20 covered by the annual benefit report.

21 (2) Whether the:

22 (A) directors complied with IC 23-1.3-5-1; and

23 (B) officers complied with IC 23-1.3-7-1.

24 (3) If, in the opinion of the benefit director, the benefit
 25 corporation or its directors or officers failed to act or comply
 26 in the manner described in subdivision (1) or (2), a description
 27 of the ways in which the benefit corporation or its directors or
 28 officers failed to act or comply.

29 Sec. 4. The act or inaction of an individual in the individual's
 30 capacity as a benefit director shall constitute for all purposes an
 31 act or inaction of that individual in the capacity of a director of the
 32 benefit corporation.

33 Sec. 5. Regardless of whether the articles of incorporation or
 34 bylaws of a benefit corporation include a provision eliminating or
 35 limiting the personal liability of directors authorized by IC 23-1-37,
 36 a benefit director is not personally liable for an act or omission in
 37 the capacity of a benefit director unless the act or omission
 38 constitutes self-dealing (other than a conflict of interest transaction
 39 described in IC 23-1-35-2(a)), willful misconduct, recklessness, or
 40 a knowing violation of law.

41 Sec. 6. The benefit director of a professional corporation is not
 42 required to be independent.



1 **Sec. 7. (a) The articles of incorporation or bylaws of a benefit**
 2 **corporation must provide that the persons or shareholders who**
 3 **perform the duties of the board of directors include a person with**
 4 **the powers, duties, rights, and immunities of a benefit director if**
 5 **the articles of incorporation of the benefit corporation provide that**
 6 **the powers and duties conferred or imposed upon the board of**
 7 **directors shall be exercised or performed by a person other than**
 8 **the directors under IC 23-1-33-1(c).**

9 **(b) A person that exercises one (1) or more of the powers, duties,**
 10 **or rights of a benefit director under this section:**

11 **(1) does not need to be independent of the benefit corporation;**

12 **(2) has the immunities of a benefit director; and**

13 **(3) may share the powers, duties, and rights of a benefit**
 14 **director with one (1) or more persons.**

15 **Chapter 7. Standard of Conduct for Officers**

16 **Sec. 1. Each officer of a benefit corporation shall consider the**
 17 **interests and factors of the persons listed in IC 23-1.3-5-1 in the**
 18 **manner provided under IC 23-1.3-5-1 if:**

19 **(1) the officer has discretion to act with respect to a matter;**
 20 **and**

21 **(2) it reasonably appears to the officer that the matter may**
 22 **have a material effect on the creation by the benefit**
 23 **corporation of general public benefit or a specific public**
 24 **benefit identified in the articles of incorporation of the benefit**
 25 **corporation.**

26 **Sec. 2. The consideration of interests and factors in the manner**
 27 **described in section 1 of this chapter does not constitute a violation**
 28 **of any duties of an officer.**

29 **Sec. 3. Except as provided in the bylaws of the benefit**
 30 **corporation, an officer is not personally liable for monetary**
 31 **damages for:**

32 **(1) an action or inaction as an officer in the course of**
 33 **performing the duties of an officer under section 1 of this**
 34 **chapter if the officer performed the duties of the position in**
 35 **compliance with IC 23-1 and this chapter; or**

36 **(2) failure of the benefit corporation to pursue or create**
 37 **general public benefit or a specific public benefit.**

38 **Sec. 4. An officer does not have a duty to a person that is a**
 39 **beneficiary of the general public benefit purpose or a specific**
 40 **public benefit purpose of a benefit corporation arising from the**
 41 **status of the person as a beneficiary.**

42 **Chapter 8. Benefit Officer**



1 **Sec. 1. A benefit corporation may have an officer designated as**
 2 **the benefit officer.**
 3 **Sec. 2. A benefit officer shall have:**
 4 **(1) the powers and duties relating to the purpose of the benefit**
 5 **corporation to create general public benefit or a specific**
 6 **public benefit provided:**
 7 **(A) by the bylaws; or**
 8 **(B) absent controlling provisions in the bylaws, by**
 9 **resolutions or orders of the board of directors; and**
 10 **(2) the duty to prepare the benefit report required under**
 11 **IC 23-1.3-10.**
 12 **Chapter 9. Right of Action**
 13 **Sec. 1. A person may not, except in a benefit enforcement**
 14 **proceeding, bring an action or assert a claim against a benefit**
 15 **corporation or its directors or officers with respect to either of the**
 16 **following:**
 17 **(1) The failure to pursue or create:**
 18 **(A) general public benefit; or**
 19 **(B) a specific public benefit identified in the benefit**
 20 **corporation's articles of incorporation.**
 21 **(2) A violation of an obligation, duty, or standard of conduct**
 22 **under this article.**
 23 **Sec. 2. A benefit corporation is not liable for monetary damages**
 24 **under this article for any failure of the benefit corporation to**
 25 **pursue or create general public benefit or a specific public benefit.**
 26 **Sec. 3. A benefit enforcement proceeding may be commenced or**
 27 **maintained only:**
 28 **(1) directly by the benefit corporation; or**
 29 **(2) derivatively in accordance with IC 23-1-32 by:**
 30 **(A) a person or group of persons that owned at least two**
 31 **percent (2%) of the total number of shares of a class or**
 32 **series outstanding at the time of the act or omission**
 33 **complained of;**
 34 **(B) a director;**
 35 **(C) a person or group of persons that owned at least five**
 36 **percent (5%) of the outstanding equity interests in an**
 37 **entity of which the benefit corporation is a subsidiary at**
 38 **the time of the act or omission complained of; or**
 39 **(D) other persons as specified in the benefit corporation's**
 40 **articles of incorporation or bylaws.**
 41 **Chapter 10. Annual Benefit Report**
 42 **Sec. 1. A benefit corporation shall prepare an annual benefit**



1 report that includes all the following:

2 (1) A narrative description of:

3 (A) the ways in which the benefit corporation pursued
4 general public benefit during the year and the extent to
5 which general public benefit was created;

6 (B) both the:

7 (i) ways in which the benefit corporation pursued a
8 specific public benefit that the articles of incorporation
9 state is the purpose of the benefit corporation to create;
10 and

11 (ii) extent to which that specific public benefit was
12 created;

13 (C) any circumstances that have hindered the creation by
14 the benefit corporation of general public benefit or a
15 specific public benefit; and

16 (D) the process and rationale for selecting or changing the
17 third party standard used to prepare the benefit report.

18 (2) An assessment of the overall social and environmental
19 performance of the benefit corporation against a third party
20 standard:

21 (A) applied consistently with any application of that
22 standard in prior benefit reports; or

23 (B) accompanied by an explanation of the reasons for:

24 (i) any inconsistent application; or

25 (ii) the change to that standard from the standard used
26 in the immediate prior report.

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

30 (4) The compensation paid by the benefit corporation during
31 the year to each director in the capacity of a director.

32 (5) The report of the benefit director described in
33 IC 23-1.3-6-3.

34 (6) A statement regarding any connection between the
35 organization that established the third party standard, or its
36 directors, officers, or any holder of at least five percent (5%)
37 of the governance interests in the organization, and the
38 benefit corporation or its directors, officers, or any holder of
39 at least five percent (5%) of the outstanding shares of the
40 benefit corporation, including any financial or governance
41 relationship that might materially affect the credibility of the
42 use of the third party standard.



1 **Sec. 2. If, during the year covered by a benefit report:**

2 **(1) a benefit director:**

3 **(A) resigned from or refused to stand for reelection to the**
 4 **position of benefit director; or**

5 **(B) was removed from the position of benefit director; and**

6 **(2) the benefit director furnished the benefit corporation with**
 7 **any written correspondence concerning the circumstances**
 8 **surrounding the resignation, refusal, or removal;**

9 **the benefit report must include the correspondence described in**
 10 **subdivision (2) as an exhibit.**

11 **Sec. 3. The following are not required to be audited or certified**
 12 **by a third party:**

13 **(1) The benefit report.**

14 **(2) The assessment of the performance of the benefit**
 15 **corporation in the benefit report described in section 1(2) of**
 16 **this chapter.**

17 **Sec. 4. A benefit corporation shall send its annual benefit report**
 18 **to each shareholder on the earlier of:**

19 **(1) one hundred twenty (120) days following the end of the**
 20 **fiscal year of the benefit corporation; or**

21 **(2) the same date that the benefit corporation delivers any**
 22 **other annual report to its shareholders.**

23 **Sec. 5. If a benefit corporation has an Internet web site, a**
 24 **benefit corporation shall post all of its benefit reports on the public**
 25 **part of its Internet web site. However, the compensation paid to**
 26 **directors and financial or proprietary information included in the**
 27 **benefit reports may be omitted from the benefit reports posted on**
 28 **the Internet web site.**

29 **Sec. 6. (a) The benefit corporation shall deliver, concurrently**
 30 **with the delivery of the benefit report to shareholders under**
 31 **section 4 of this chapter, a copy of the benefit report to the**
 32 **secretary of state for filing. However, the compensation paid to**
 33 **directors and financial or proprietary information included in the**
 34 **benefit report may be omitted from the benefit report as delivered**
 35 **to the secretary of state.**

36 **(b) The fee established in IC 23-1-18-3(a)(27) applies to an**
 37 **annual benefit report delivered for filing under this section.**

38 **SECTION 4. IC 34-30-2-88.2 IS ADDED TO THE INDIANA**
 39 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 40 **[EFFECTIVE JANUARY 1, 2016]: Sec. 88.2. IC 23-1.3-6-5**
 41 **(Concerning personal liability of the directors of a benefit**
 42 **corporation).**



1 SECTION 5. IC 34-30-2-88.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2016]: **Sec. 88.3. IC 23-1.3-7-3**
4 **(Concerning personal liability of the officers of a benefit**
5 **corporation).**
6 SECTION 6. IC 34-30-2-88.4 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JANUARY 1, 2016]: **Sec. 88.4. IC 23-1.3-9**
9 **(Concerning action against a benefit corporation or its directors or**
10 **officers).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1015, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 5 with "[EFFECTIVE JANUARY 1, 2016]".

Page 3, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 2. IC 23-1-44-8, AS AMENDED BY P.L.133-2009, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party if:

(A) shareholder approval is required for the merger by IC 23-1-40-3 or the articles of incorporation; and

(B) the shareholder is entitled to vote on the merger.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale.

(4) The approval of a control share acquisition under IC 23-1-42.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(6) Election to become a benefit corporation under IC 21-1.3-3-2.

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to receive notice of and vote at the meeting of shareholders at which the merger, plan of share exchange, or sale or exchange of property is to be



acted on, the shares of that class or series were a covered security under Section 18(b)(1)(A) or 18(b)(1)(B) of the Securities Act of 1933, as amended.

(c) The articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate the right to dissent and obtain payment for any class or series of preferred shares. However, any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates the right to dissent and obtain payment for any shares:

- (1) that are outstanding immediately before the effective date of the amendment; or
- (2) that the corporation is or may be required to issue or sell after the effective date of the amendment under any exchange or other right existing immediately before the effective date of the amendment;

does not apply to any corporate action that becomes effective within one (1) year of the effective date of the amendment if the action would otherwise afford the right to dissent and obtain payment.

(d) A shareholder:

- (1) who is entitled to dissent and obtain payment for the shareholder's shares under this chapter; or
- (2) who would be so entitled to dissent and obtain payment but for the provisions of subsection (b);

may not challenge the corporate action creating (or that, but for the provisions of subsection (b), would have created) the shareholder's entitlement.

(e) Subsection (d) does not apply to a corporate action that was approved by less than unanimous consent of the voting shareholders under IC 23-1-29-4.5(b) if both of the following apply:

- (1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected.
- (2) The proceeding challenging the corporate action is commenced not later than ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding."

Page 5, line 10, delete "two-thirds (2/3)" and insert "**ninety percent (90%)**".

Page 5, line 22, delete "two-thirds" and insert "**ninety percent (90%)**".

Page 5, line 23, delete "(2/3)".



Page 5, delete lines 25 through 29.

Page 5, line 30, delete "11." and insert "10."

Page 6, line 7, delete "12." and insert "11."

Page 6, line 11, delete "13." and insert "12."

Page 6, line 22, delete "performance; and" and insert "performance;"

Page 6, line 25, delete "and".

Page 6, between lines 25 and 26, begin a new line double block indented and insert:

"(C) was not materially financed by any of the following organizations and not more than one-third (1/3) of the members of the governing body of the entity are representatives of:

(i) associations or businesses operating in the same industry, the performance of whose members is measured by the standard; or

(ii) businesses from the same industry or an association of businesses in that industry; and"

Page 8, line 26, delete "at least a minimum status vote." and insert "a vote of the shareholders of each class or series of shares entitled to cast at least two-thirds (2/3) of the votes that all shareholders of the class or series are entitled to cast on the amendment."

Page 10, line 19, delete "that is a".

Page 10, delete line 20.

Page 10, line 21, delete "other benefit corporation may, include" and insert "must include".

Page 10, run in lines 19 through 21.

Page 10, line 29, after "6" insert "or 7".

Page 11, line 23, delete "the opinion" and insert "a report".

Page 11, line 28, after "the" insert "annual benefit".

Page 12, between lines 7 and 8, begin a new paragraph and insert:

"Sec. 7. (a) The articles of incorporation or bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights, and immunities of a benefit director if the articles of incorporation of the benefit corporation provide that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors under IC 23-1-33-1(c).

(b) A person that exercises one (1) or more of the powers, duties, or rights of a benefit director under this section:

(1) does not need to be independent of the benefit corporation;



**(2) has the immunities of a benefit director; and
(3) may share the powers, duties, and rights of a benefit
director with one (1) or more persons."**

Page 14, line 34, delete "opinion" and insert "**report**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1015 as introduced.)

STEUERWALD

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1015 be amended to read as follows:

Page 8, line 39, delete "a" and insert "**the following:**

(1) A".

Page 8, between lines 40 and 41, begin a new line block indented and insert:

"(2) A statement reading "By enacting this article, the State of Indiana does not endorse any particular benefit corporation, or approve or disapprove any of the purposes of a benefit corporation or any claimed general public benefit or specific public benefit, and no inference should be drawn from the acceptance of any filings with respect to a benefit corporation under IC 23-1.3, that the benefit corporation has or will in fact provide any general public benefit or specific public benefit."

Page 12, delete lines 1 through 9.

Page 13, line 37, after "self-dealing" delete "," and insert "**(other than a conflict of interest transaction described in IC 23-1-35-2(a)),**".

Page 13, line 37, after "misconduct," insert "**recklessness,**".

Page 14, line 33, delete "IC 23-1-36" and insert "**IC 23-1**".

Page 14, delete lines 40 through 42.

Page 15, delete lines 1 through 6.

(Reference is to HB 1015 as printed February 10, 2015.)

COX



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred House Bill No. 1015, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1015 as reprinted February 24, 2015.)

ZAKAS, Chairperson

Committee Vote: Yeas 6, Nays 0

