

**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.

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 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          **10-37-10. Foreign public benefit corporation.**

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        **10-37-11. 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.