HB1039 FA1 GrauRa-EK
3/9/2016 2:17:59 pm

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1039

Of the printed Bill

Pages 2-11 Sections 1-4 Lines 16

Of the Engrossed Bill

By deleting Sections 1, 2, 3 and 4 in their entirety and inserting in lieu thereof: [SEE ATTACHED - Sections 1, 2, 3 and 4]

And Pages 12-25 Sections 6-13 Lines 3

By deleting Sections 6, 7, 8, 9, 10, 11, 12 and 13 in their entirety and inserting in lieu thereof: [SEE ATTACTED - Sections 6, 7, 8, 9 and 10]

And by renumbering the subsequent section.

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Randy Grau

Adopted: _____

_____
Reading Clerk

"SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1201 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Benefit Corporation Act". This act shall be applicable to all benefit corporations.

B. The existence of a provision of this act shall not of itself create an implication that a contrary or different rule is applicable to a corporation that is not a benefit corporation. This act shall not affect a statute or rule that is applicable to a corporation that is not a benefit corporation.

C. Except as otherwise provided in this act, the Oklahoma General Corporation Act shall be generally applicable to all benefit corporations that are not state banks or trust companies. A benefit corporation that is not a state bank or trust company may be subject simultaneously to this act and the Oklahoma General Corporation Act, Professional Entity Act, and other applicable business formation statutes; however, the provisions of this act shall control over the provisions of the Oklahoma General Corporation Act, Professional Entity Act, and other applicable business formation statutes where there is a conflict.

D. Except as otherwise provided in this act, the Oklahoma Banking Code shall be generally applicable to all benefit corporations that are state banks or trust companies. A benefit

corporation that is a state bank or trust company may be subject simultaneously to this act and the Oklahoma Banking Code; however, the provisions of this act shall control over the provisions of the Oklahoma Banking Code where there is a conflict.

E. A provision of the certificate of incorporation or bylaws of a benefit corporation shall not limit, be inconsistent with or supersede a provision of this act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1202 of Title 18, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Benefit Corporation Act:

1. "Benefit corporation" means:

a. a business corporation incorporated under the Oklahoma General Corporation Act that is subject to this act, or

b. a state bank or trust company incorporated under Title 6 of the Oklahoma Statutes that is subject to this act;

2. "Benefit enforcement proceeding" means any claim or action or proceeding for:

a. failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its certificate of incorporation, or

b. violation of any obligation, duty, or standard of conduct under this act;

3. "General public benefit" means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

4. "Minimum status vote" means:

a. in the case of a business corporation or a state bank or trust company, in addition to any other required approval or vote, the satisfaction of the following conditions:

(1) the shareholders of every class or series shall be entitled to vote as a class on the corporate action regardless of a limitation stated in the certificate of incorporation or bylaws on the voting rights of any class or series, and

(2) the corporate action shall be approved by the affirmative vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action,

b. in the case of a domestic entity other than a corporation or state bank or trust company, in

addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(1) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series, and

(2) the action shall be approved by the affirmative vote or consent of the holders described in division (1) of this subparagraph entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action; and

5. "Specific public benefit" includes:

a. providing low-income or underserved individuals or communities with beneficial products or services,

b. promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business,

c. protecting or restoring the environment,

d. improving human health,

e. promoting the arts, sciences or advancement of knowledge,

f. increasing the flow of capital to entities with a purpose to benefit society or the environment, and

g. conferring any other particular benefit on society or the environment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1203 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A benefit corporation that is not a state bank or trust company shall be incorporated in accordance with the Oklahoma General Corporation Act, except that its certificate of incorporation shall also state that it is a benefit corporation.

B. A benefit corporation that is a state bank or trust company shall be incorporated in accordance with the Oklahoma Banking Code, except that its certificate of incorporation shall also state that it is a benefit corporation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1204 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. An existing business corporation may become a benefit corporation under the Oklahoma Benefit Corporation Act by amending its certificate of incorporation so that it contains, in addition to the requirements of Title 6 or Title 18 of the Oklahoma Statutes, a

statement that the corporation is a benefit corporation. In order to be effective, the amendment shall be adopted by at least the minimum status vote.

B. 1. Except as provided in paragraph 2 of this subsection, if a domestic entity that is not a benefit corporation is a party to a merger, consolidation or conversion and the surviving, new or resulting entity in the merger, consolidation or conversion is to be a benefit corporation, the plan of merger, consolidation or conversion shall be adopted or approved by the domestic entity by at least the minimum status vote.

2. Paragraph 1 of this subsection shall not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 1083 of Title 18 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1206 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under the Oklahoma General Corporation Act or the Oklahoma Banking Code.

B. The certificate of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its

purposes under the Oklahoma General Corporation Act or the Oklahoma Banking Code and subsection A of this section. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection A of this section.

C. The creation of general public benefit and specific public benefit under subsections A and B of this section shall be in the best interests of the benefit corporation.

D. A benefit corporation may amend its certificate of incorporation to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment shall be adopted by at least the minimum status vote.

E. A professional corporation that is a benefit corporation shall not violate the Professional Entity Act by having the purpose to create general public benefit or a specific public benefit.

F. A state bank or trust company that is a benefit corporation shall not violate the Oklahoma Banking Code by having the purpose to create general public benefit or a specific public benefit, but nothing in the Oklahoma Benefit Corporation Act shall eliminate, diminish, or supersede the duties of a benefit corporation that is a state bank or trust company to operate safely and soundly in accordance with applicable regulatory requirements.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1207 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board and individual directors of a benefit corporation:

1. Shall consider the effects of any action or inaction upon:

a. the shareholders of the benefit corporation,

b. the employees and work force of the benefit corporation, its subsidiaries and its suppliers,

c. the interests of customers as beneficiaries of the general public benefit or a specific public benefit purpose of the benefit corporation,

d. community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries or its suppliers are located,

e. the local and global environment,

f. the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by

the continued independence of the benefit corporation, and

g. the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose; and

2. May consider other pertinent factors or the interests of any other group that they deem appropriate; but

3. Need not give priority to a particular interest or factor referred to in paragraphs 1 or 2 of this subsection over any other interest or factor unless the benefit corporation has stated in its certificate of incorporation its intention to give priority to certain interests or factors related to the accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its certificate.

B. The consideration of interests and factors in the manner provided by subsection A of this section shall not constitute a violation of the duties of directors under the Oklahoma General Corporation Act or, except as provided in subsection F of Section 6 of the act, the Oklahoma Banking Code.

C. Except as provided in the certificate of incorporation or bylaws, a director is not personally liable for monetary damages for:

1. Any action or inaction in the course of performing the duties of a director under subsection A of this section if the

director was not interested with respect to the action or inaction; or

2. Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

D. A director shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

E. A director who makes a business judgment in good faith fulfills the duty under this section if the director:

1. Is not interested in the subject of the business judgment;

2. Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

3. Rationally believes that the business judgment is in the best interests of the benefit corporation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1208 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Each officer of a benefit corporation shall consider the interests and factors described in paragraph 1 of subsection A of Section 7 of this act in the manner provided in paragraph 3 of subsection A of Section 7 of this act if:

1. The officer has discretion to act with respect to a matter; and

2. It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the certificate of incorporation of the benefit corporation.

B. The consideration of interests and factors in the manner provided in subsection A of this section shall not constitute a violation of the duties of an officer, except as provided in subsection F of Section 6 of this act.

C. Except as provided in the certificate of incorporation or bylaws, an officer shall not be personally liable for monetary damages for:

1. An action or inaction as an officer in the course of performing the duties of an officer under subsection A of this section if the officer was not interested with respect to the action or inaction; or

2. Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

D. An officer shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

E. An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

1. Is not interested in the subject of the business judgment;

2. Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

3. Rationally believes that the business judgment is in the best interests of the benefit corporation.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1209 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. Except in a benefit enforcement proceeding, no person shall bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

1. Failure to pursue or create general public benefit or a specific public benefit set forth in its certificate of incorporation; or

2. Violation of an obligation, duty or standard of conduct under the Oklahoma Benefit Corporation Act or the Oklahoma Banking Code.

B. A benefit corporation shall not be liable for monetary damages under the Oklahoma Benefit Corporation Act or the Oklahoma Banking Code for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

C. A benefit enforcement proceeding may be commenced or maintained only:

1. Directly by the benefit corporation; or

2. Derivatively in accordance with the Oklahoma General Corporation Act or the Oklahoma Banking Code, as applicable:

a. a person or group of persons that owned beneficially or of record at least two percent (2%) of the total number of shares of a class or series outstanding at the time of the act or omission complained of,

b. a director,

c. a person or group of persons that owned beneficially or of record five percent (5%) or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of, or

d. other persons as specified in the certificate of incorporation or bylaws of the benefit corporation.

D. For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. A benefit corporation shall annually provide its shareholders with a statement as to the corporation's promotion of general public benefit and any specific public benefit identified in the certificate of incorporation. The statement shall include:

1. The objectives the board of directors has established to promote general public benefit and any specific public benefit;

2. The standards the board of directors has adopted to measure the corporation's progress in promoting general public benefit and any specific public benefit;

3. Objective factual information based on those standards regarding the corporation's success in meeting the objectives for promoting general public benefit and any specific public benefit; and

4. An assessment of the corporation's success in meeting the objectives and promoting general public benefit and any specific public benefit.

B. The certificate of incorporation or bylaws of a benefit corporation may require that the corporation:

1. Make the statement described in subsection A of this section available to the public; and

2. Use a third-party standard in connection with or attain a periodic third-party certification addressing the corporation's promotion of general public benefit and any specific public benefit identified in the certificate of incorporation.

C. The benefit statement and the assessment of the performance of the benefit corporation in the benefit statement required by subsection A of this section are not required to be audited or certified by a third party.

D. A benefit corporation shall send its annual benefit statement to each shareholder on the earlier of:

1. One hundred twenty (120) days following the end of the fiscal year of the benefit corporation; or

2. The same time that the benefit corporation delivers any other annual report to its shareholders."

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