

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0766.01 Thomas Morris x4218

HOUSE BILL 17-1200

HOUSE SPONSORSHIP

Wist and Gray, Lee

SENATE SPONSORSHIP

Tate and Kefalas,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATION OF THE LAWS REGULATING PUBLIC**
102 **BENEFIT CORPORATIONS, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill:

- ! Authorizes a limited cooperative association to operate as a public benefit corporation;
- ! Deletes the requirement that a public benefit corporation's entity name explicitly refer to its status as a public benefit

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 31, 2017

corporation, and instead requires that before issuing shares of stock or disposing of treasury shares that are not required to be federally registered, the public benefit corporation must provide notice to the person to whom the stock is issued or who acquires the treasury shares that it is a public benefit corporation (**section 1** of the bill);

! Subjects transactions to opt out of status as a public benefit corporation to the requirement to get shareholder approval (**section 2**);

! Clarifies the requirements applicable to the filing of the annual public benefit report (**section 4**); and

! Clarifies that the existence of a provision of the public benefit corporation law does not of itself create an implication that a contrary or different rule of law is or would be applicable to an entity that is not a public benefit corporation (**section 5**).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 7-101-503, **amend**
3 (1) introductory portion, (1)(a), and (4) as follows:

4 **7-101-503. Public benefit corporation - definitions - contents**
5 **of articles of incorporation.** (1) A public benefit corporation is a
6 for-profit corporation organized under and subject to the requirements of
7 the "Colorado Business Corporation Act", articles 101 to 117 of this ~~title~~
8 TITLE 7, or a domestic cooperative organized under article 55, ~~or~~ 56, OR
9 58 of this ~~title~~ TITLE 7 that is subject to the "Colorado Business
10 Corporation Act", that is intended to produce a public benefit or public
11 benefits and to operate in a responsible and sustainable manner. To that
12 end, a public benefit corporation shall be managed in a manner that
13 balances the shareholders' pecuniary interests, the best interest of those
14 materially affected by the corporation's conduct, and the public benefit
15 identified in its articles of incorporation. In its articles of incorporation,
16 a public benefit corporation shall:

1 (a) Identify within its statement of business or purpose pursuant
2 to section 7-103-101 (1) one or more specific public benefits to be
3 promoted by the PUBLIC BENEFIT corporation; and

4 (4) The domestic entity name of a public benefit corporation ~~must,~~
5 ~~without exception,~~ MAY contain the words "public benefit corporation",
6 the abbreviation "P.B.C." OR "PUB. BEN. CORP.", or the designation
7 "PBC", WHICH SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF
8 SECTION 7-90-601 (3)(a), and MUST otherwise satisfy the requirements of
9 section 7-102-102 (1)(a). IF THE NAME DOES NOT CONTAIN THE LANGUAGE
10 SPECIFIED IN THIS SUBSECTION (4), THE PUBLIC BENEFIT CORPORATION
11 SHALL, BEFORE ISSUING UNISSUED SHARES OF STOCK OR DISPOSING OF
12 TREASURY SHARES, PROVIDE NOTICE TO ANY PERSON TO WHOM THE STOCK
13 IS ISSUED OR WHO ACQUIRES THE TREASURY SHARES THAT IT IS A PUBLIC
14 BENEFIT CORPORATION; EXCEPT THAT THE NOTICE NEED NOT BE PROVIDED
15 IF THE ISSUANCE OR DISPOSAL IS PURSUANT TO AN OFFERING REGISTERED
16 UNDER THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77a ET
17 SEQ., AS AMENDED, OR IF, AT THE TIME OF ISSUANCE OR DISPOSAL, THE
18 PUBLIC BENEFIT CORPORATION HAS A CLASS OF SECURITIES THAT IS
19 REGISTERED UNDER THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934",
20 15 U.S.C. SEC. 78b ET SEQ., AS AMENDED.

21 **SECTION 2.** In Colorado Revised Statutes, 7-101-504, **amend**
22 (2), (4)(b), and (4)(c); and **add** (4)(d) as follows:

23 **7-101-504. Certain amendments and mergers - votes required**
24 **- dissenter's rights.** (2) The restrictions of this section do not apply
25 before the corporation has received payment for any of its capital stock.
26 In the case of a domestic cooperative formed under article 55, ~~or~~ 56, OR
27 58 of this ~~title~~ TITLE 7 that is subject to the "Colorado Business

1 Corporation Act", articles 101 to 117 of this ~~title~~ TITLE 7, an action
2 described in subsection (1) OR (4) of this section must be approved by
3 vote or consent of the holders of every class or series of equity interest in
4 the entity that are entitled to vote on the action by at least two-thirds of
5 the votes or consents that all of those holders are entitled to cast on the
6 action.

7 (4) Notwithstanding any other provision of this part 5, a
8 corporation that is a public benefit corporation shall not, without the
9 approval of two-thirds of the outstanding shares of each class of shares
10 of the corporation of which there are outstanding shares, whether voting
11 or nonvoting:

12 (b) Convert into another domestic or foreign entity that is not a
13 public benefit corporation or similar entity; ~~or~~

14 (c) Merge with or into another entity if, AS A RESULT OF THE
15 MERGER, THE SHARES IN THE PUBLIC BENEFIT CORPORATION WOULD
16 BECOME, BE CONVERTED INTO, OR BE EXCHANGED FOR THE RIGHT TO
17 RECEIVE:

18 (I) CASH;

19 ~~(H) (II) As a result of the merger, the shares in such corporation~~
20 ~~would become, be converted into, or be exchanged for the right to receive~~
21 Shares or other equity interests in a domestic or foreign corporation that
22 is not a public benefit corporation or similar entity; ~~and~~ OR

23 ~~(H) (III) SHARES OR OTHER EQUITY INTERESTS IN A DOMESTIC OR~~
24 FOREIGN PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY, the articles
25 of incorporation or similar governing instrument of ~~the domestic or~~
26 ~~foreign corporation that is not a public benefit corporation or similar~~
27 ~~entity~~ WHICH do not contain the identical provisions identifying the public

1 benefit pursuant to section 7-101-503 (1); OR

2 (d) SELL, LEASE, EXCHANGE, OR OTHERWISE DISPOSE OF ALL, OR
3 SUBSTANTIALLY ALL, OF THE PROPERTY OF THE PUBLIC BENEFIT
4 CORPORATION IN A TRANSACTION FOR WHICH A SHAREHOLDER VOTE IS
5 REQUIRED UNDER SECTION 7-112-102 (1).

6 **SECTION 3.** In Colorado Revised Statutes, 7-101-506, **amend**
7 (3) as follows:

8 **7-101-506. Duties of directors.** (3) The articles of incorporation
9 of a public benefit corporation may include a provision that a
10 disinterested director's failure to satisfy this section does not, for the
11 purposes of section 7-108-401 OR 7-108-402 or article 109 of this ~~title~~
12 TITLE 7, constitute an act or omission not in good faith or a breach of the
13 duty of loyalty.

14 **SECTION 4.** In Colorado Revised Statutes, 7-101-507, **amend**
15 (1)(a) as follows:

16 **7-101-507. Benefit report - definition.** (1) A public benefit
17 corporation shall prepare an annual report that includes:

18 (a) A narrative description of:

19 (I) The ways in which the public benefit corporation promoted the
20 public benefit identified in the articles of incorporation and the best
21 interests of those materially affected by the PUBLIC BENEFIT corporation's
22 conduct;

23 (II) Any circumstances that have hindered the public benefit
24 corporation's promotion of the identified public benefit and the best
25 interests of those materially affected by the PUBLIC BENEFIT corporation's
26 conduct; and

27 (III) The process and rationale for selecting or changing the

1 third-party standard used to ~~prepare the benefit report~~ COMPLETE THE
2 ASSESSMENT PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION; and

3 **SECTION 5.** In Colorado Revised Statutes, **amend** 7-101-509 as
4 follows:

5 **7-101-509. No effect on other corporations.** (1) EXCEPT AS
6 PROVIDED IN SECTION 7-101-504:

7 (a) THE EXISTENCE OF A PROVISION OF THIS PART 5 DOES NOT OF
8 ITSELF CREATE AN IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF
9 LAW IS OR WOULD BE APPLICABLE TO A CORPORATION OR OTHER ENTITY
10 THAT IS NOT A PUBLIC BENEFIT CORPORATION.

11 (b) This part 5 does not affect a statute or rule of law that applies
12 to a corporation that is not a public benefit corporation. ~~except as~~
13 ~~provided in section 7-101-504.~~

14 **SECTION 6.** In Colorado Revised Statutes, 7-90-601, **add** (3)(h)
15 as follows:

16 **7-90-601. Entity name.** (3) In addition to the requirements of
17 subsection (2) of this section:

18 (h) THE WORDS OR ABBREVIATIONS "PUBLIC BENEFIT
19 CORPORATION", "P.B.C.", "PBC", AND "PUB. BEN. CORP." MAY BE USED
20 IN AN ENTITY NAME ONLY BY CORPORATIONS AND COOPERATIVES THAT
21 ARE ORGANIZED AS PUBLIC BENEFIT CORPORATIONS UNDER PART 5 OF
22 ARTICLE 101 OF THIS TITLE 7.

23 **SECTION 7. Appropriation.** For the 2017-18 state fiscal year,
24 \$30,488 is appropriated to the department of state. This appropriation is
25 from the department of state cash fund created in section 24-21-104
26 (3)(b), C.R.S. To implement this act, the department may use this
27 appropriation for personal services related to information technology

1 services.

2 **SECTION 8. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly (August 9, 2017, if adjournment sine die is on May 10,
6 2017); except that, if a referendum petition is filed pursuant to section 1
7 (3) of article V of the state constitution against this act or an item, section,
8 or part of this act within such period, then the act, item, section, or part
9 will not take effect unless approved by the people at the general election
10 to be held in November 2018 and, in such case, will take effect on the
11 date of the official declaration of the vote thereon by the governor.
12 (2) This act applies to conduct occurring on or after the applicable
13 effective date of this act.