A BILL FOR

1 An Act allowing the formation of certain for-profit
2 corporations as benefit corporations authorized to do
3 business in this state under certain conditions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. NEW SECTION. 490.1801 Application of subchapter — definitions.

1. If a corporation elects to become a benefit corporation under this subchapter in the manner prescribed in this subchapter, it is subject in all respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such requirements apply. The inclusion of a provision in this subchapter does not imply that a contrary or different rule of law applies to a corporation that is not a benefit corporation. This subchapter does not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.

2. As used in this subchapter:

a. "Benefit corporation" means a corporation that includes in its articles of incorporation a statement that the corporation is subject to this subchapter.

b. "Public benefit" means a positive effect, or reduction of negative effects, on one or more communities or categories of persons or entities, other than shareholders solely in their capacity as shareholders, or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social, ecological, or scientific nature.

c. "Public benefit provision" means a provision in the articles of incorporation which states that the corporation shall pursue one or more identified public benefits.

d. "Responsible and sustainable manner" means a manner that does all of the following:

(1) Pursues through the business of the corporation the creation of a positive effect on society and the environment, taken as a whole, that is material taking into consideration the corporation's size and the nature of its business.

(2) Considers, in addition to the interests of shareholders, the interests of stakeholders known to be affected by the conduct of the business of the corporation.
Sec. 2. NEW SECTION. 490.1802 Name — share certificates.
1. The name of a benefit corporation may contain the
words "benefit corporation", the abbreviation "B.C.", or the
designation "BC", any of which shall be deemed to satisfy the
requirements of section 490.401, subsection 1, paragraph "a".
2. Any share certificate issued by a benefit corporation,
and any information statement delivered by a benefit
corporation pursuant to section 490.626, subsection 2,
must note conspicuously that the corporation is a benefit
corporation subject to this subchapter.

Sec. 3. NEW SECTION. 490.1803 Certain amendments and
transactions — votes required.
1. Unless the articles of incorporation or bylaws require
a greater vote, the approval of at least two-thirds of the
voting power of the outstanding shares of the corporation
entitled to vote thereon, and, if any class or series of shares
is entitled to vote as a separate group on any such amendment
or transaction, the approval of at least two-thirds of the
outstanding shares of each such separate voting group entitled
to vote thereon, shall be required for a corporation that is
not a benefit corporation to do any of the following:
   a. Amend its articles of incorporation to include a
      statement that it is subject to this subchapter.
   b. Merge with or into, or enter into a share exchange with,
      another entity, or effect a domestication or conversion, if,
      as a result of the merger, share exchange, domestication, or
      conversion, the shares of any voting group would become, or be
      converted into or exchanged for the right to receive, shares
      of a benefit corporation or shares or interests in an entity
      subject to provisions of organic law analogous to those in
      this subchapter; provided, however, that in the case of this
      paragraph "b", if the shares of one or more, but not all,
      voting groups are so affected, then only the shares in the
      voting groups so affected shall be entitled to vote under this
      subsection.
2. Unless the articles of incorporation or bylaws require a greater vote, the approval of at least two-thirds of the voting power of the outstanding shares of the corporation entitled to vote thereon and, if any class or series of shares is entitled to vote as a separate group on any such amendment or transaction, the approval of at least two-thirds of the voting power of the outstanding shares of each such separate voting group, shall be required for a benefit corporation to do any of the following:
   a. Amend its articles of incorporation to eliminate a statement that the corporation is subject to this subchapter.
   b. Merge with or into, or enter into a share exchange with, another entity, or effect a domestication or conversion if, as a result of the merger, share exchange, domestication, or conversion, the shares of any voting group would become, or be converted into or exchanged for the right to receive, shares or interests in an entity that is neither a benefit corporation nor an entity subject to provisions of organic law analogous to those in this subchapter; provided, however, that in the case of this paragraph "b", if the shares of one or more, but not all, voting groups are so affected, then only the shares in the voting groups so affected shall be entitled to vote under this subsection.
3. The vote required under subsections 1 and 2 is in addition to any vote otherwise required under this chapter.

Sec. 4. NEW SECTION. 490.1804 Duties of directors.
1. Each member of the board of directors of a benefit corporation, when discharging the duties of a director, shall act according to all of the following:
   a. In a responsible and sustainable manner.
   b. In a manner that pursues the public benefit or benefits identified in any public benefit provision.
2. In fulfilling the duties under subsection 1, a director shall consider, to the extent affected, in addition to the interests of shareholders generally, the separate interests
1 of stakeholders known to be affected by the business of the corporation including all of the following:

3   a. The employees and workforces of the corporation, its subsidiaries, and its suppliers.
5   b. Customers.
6   c. Communities or society, including those of each community in which offices or facilities of the corporation, its subsidiaries, or its suppliers are located.
9   d. The local and global environment.

3. A director of a benefit corporation shall not, by virtue of the duties imposed by subsections 1 and 2, owe any duty to a person other than the benefit corporation due to any interest of the person in the status of the corporation as a benefit corporation or in any public benefit provision.

4. Unless otherwise provided in the articles of incorporation, the violation by a director of the duties imposed by subsections 1 and 2 shall not constitute an intentional infliction of harm on the corporation or the shareholders for the purposes of sections 490.202, subsection 2, paragraphs “d” and “e”.

Sec. 5. NEW SECTION. 490.1805 Annual benefit report.
1. No less than annually, a benefit corporation shall prepare a benefit report addressing the efforts of the corporation during the preceding year to operate in a responsible and sustainable manner, to pursue any public benefit or benefits identified in any public benefit provision, and to consider the interests described in section 490.1804, subsection 2. The annual benefit report must include all of the following:

30   a. The objectives that the board of directors has established for the corporation to operate in a responsible and sustainable manner, to pursue any public benefit or benefits identified in any public benefit provision, and to consider the interests described in section 490.1804, subsection 2.
35   b. The standards the board of directors has adopted
1 to measure the corporation’s progress in operating in a
2 responsible and sustainable manner, in pursuing the public
3 benefit or benefits identified in any public benefit provision,
4 and in considering the interests described in section 490.1804,
5 subsection 2.
6  c. If the articles of incorporation or bylaws require
7 that the corporation use an independent third-party standard
8 in reporting on the corporation’s progress in operating in a
9 responsible and sustainable manner, in pursuing any public
10 benefit or benefits identified in any public benefit provision,
11 or in considering the interests described in section 490.1804,
12 subsection 2, or if the board of directors has chosen to use
13 such a standard, the applicable standard so required or chosen.
14  d. An assessment of the corporation’s success in meeting
15 the objectives and standards identified in paragraphs “a” and
16 “b”, and, if applicable, paragraph “c”, and the basis for that
17 assessment.
18  2. The benefit corporation shall deliver to each
19 shareholder, or make available and provide written notice to
20 each shareholder of the availability of, the annual benefit
21 report required by subsection 1 on or before the earlier of the
22 following:
23  a. One hundred twenty days following the end of the fiscal
24 year of the benefit corporation.
25  b. The time that the benefit corporation delivers any
26 other annual reports or annual financial statements to its
27 shareholders.
28  3. Any shareholder that has not received or been given
29 access to an annual benefit report within the time required by
30 subsection 2 may make a written request that the corporation
31 deliver or make available the annual benefit report to the
32 shareholder. If a benefit corporation does not deliver or make
33 available an annual benefit report to the shareholder within
34 five business days of receiving such request, the requesting
35 shareholder may apply to the district court of the county
where the corporation's principal office or, if none in this
state, its registered office, is located for an order requiring
delivery of or access to the annual benefit report. The court
shall dispose of an action under this subsection 3 on an
expedited basis.

4. A benefit corporation shall post all of its annual
benefit reports on the public portion of its internet site,
if any. If a benefit corporation does not have an internet
site, the benefit corporation shall provide a copy of its most
recent annual benefit report, without charge, to any person
that requests a copy in writing.

Sec. 6. NEW SECTION. 490.1806 Rights of action.
1. Except in a proceeding authorized under section
490.1805, subsection 3, or this section, no person other
than the corporation, or a shareholder in the right of the
corporation pursuant to subsection 2, may bring an action
or assert a claim with respect to the violation of any duty
applicable to a benefit corporation or any of its directors
under this subchapter.

2. Except for a proceeding brought under section 490.1805,
subsection 3, a proceeding by a shareholder of a benefit
corporation claiming violation of any duty applicable to
a benefit corporation or any of its directors under this
subchapter is subject to all of the following:

a. The proceeding must be brought in a derivative proceeding
pursuant to subchapter VII, part 4.

b. The proceeding may be brought only by a shareholder
of the benefit corporation that at the time of the act or
omission complained of either individually, or together with
other shareholders bringing such action collectively, owned
directly or indirectly at least five percent of a class of
the corporation's outstanding shares or, in the case of a
corporation with shares traded on an organized market as
described in section 490.1302, subsection 2, paragraph "a",
subparagraph (2), either that percentage of shares or shares

H.F. 145
1 with a market value of at least five million dollars at the
time the proceeding is commenced.
3 A suit under subsection 2 shall not be maintained if,
during the pendency of the suit, the shareholder individually
fails, or the shareholders collectively fail, to continue to
own directly or indirectly the lesser of the number of shares
owned at the time the proceeding is commenced or five percent
of a class of the corporation's shares.

EXPLANATION

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

This bill amends the "Iowa Business Corporation Act"
codified in Code chapter 490 by creating a new subchapter
allowing for the creation of benefit corporations. A benefit
corporation is an entity formed as a corporation but requires
directors to consider, in addition to shareholder interests,
the social, environmental, and other effects of corporate
activity, and allows business decisions to be based on such
effects, even where those decisions may be contrary to the
financial interests of shareholders (new Code sections 490.1801
through 490.1806). In order to become or stop from being a
benefit corporation, the articles of incorporation must be
amended by a two-thirds vote of all outstanding shares of the
corporation entitled to vote on the question (new Code section
490.1803). A benefit corporation is required to prepare
an annual benefit report that addresses the efforts of the
corporation during the preceding year, which may be based on a
third-party standard (new Code section 490.1805).