

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2125

As Recommended by House Committee on
Judiciary

Brief*

HB 2125 would create and amend law within the Kansas General Corporation Code (GCC) and amend related statutes to create a type of business entity known as a “public benefit corporation” (PBC).

Applicability

The new sections of law created by the bill would apply only to PBCs and would not affect a statute or rule of law applicable to non-PBCs, except for those provisions regarding conversion to or from a PBC. Existing provisions of the GCC would apply to PBCs, except to the extent the new sections impose additional or different requirements.

Definitions

The bill would define “public benefit corporation” as a for-profit corporation organized under and subject to the requirements of the GCC that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner. A PBC would be managed in a manner balancing the stockholders’ pecuniary interests, the best interests of those materially affected by the PBC’s conduct, and the public benefit or benefits identified in its articles of incorporation. The PBC must identify specific public benefit or benefits and state it is a PBC within its articles of incorporation, and these provisions would constitute “public benefit provisions.”

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would define “public benefit” to mean a positive effect, or reduction of negative effects, on one or more categories of persons, entities, communities, or interests (other than stockholders in their capacities as stockholders), including various exemplary effects listed in the bill.

Conversion To or From a PBC

The approval of two-thirds of the outstanding stock of a non-PBC would be required to either amend its articles of incorporation to include PBC provisions or merge or consolidate with or into another entity if such merger or consolidation would result in shares becoming shares or other equity interests in a domestic or foreign PBC. These restrictions would not apply prior to the time the corporation has received payment for any of its capital stock.

Similarly, the approval of two-thirds of the outstanding stock of a PBC corporation would be required to either amend its articles of incorporation to delete or amend PBC provisions or merge or consolidate with or into another entity if such merger or consolidation would result in shares becoming share or other equity interests in a domestic or foreign corporation that is not a PBC and the articles of incorporation does not contain the identical PBC provisions or requirements.

Under any of the above scenarios, a stockholder who holds stock of the corporation immediately prior to the effective time of the amendment, merger, or consolidation, and who has not voted for or consented to such amendment, merger, or consolidation, would be entitled to an appraisal by the district court of the fair value of the stockholder’s shares of stock. Such appraisal would not be available for shares or depository receipts that, at the record date fixed to determine stockholders entitled to notice of the meeting to act upon the agreement of merger, consolidation, or amendment, were listed on a national securities exchange or held of record by more than 2,000 holders unless (in case of a merger or

consolidation) the holders of such stock or depository receipts would be forced to accept for such stock or depository receipts anything except shares of stock or depository receipts meeting the same conditions or cash in lieu of fractional shares or fractional depository receipts meeting these conditions.

The existing GCC statute governing appraisal rights and procedures would be amended to accommodate the above provisions.

Stock Certificates and Notice

The bill would require stock certificates and notices regarding uncertificated stock issued by a PBC to note conspicuously the corporation is a PBC.

Board of Directors

The board of directors of a PBC would be required to manage or direct the business and affairs of the PBC in a manner balancing the pecuniary interests of the stockholders, the best interests of those materially affected by the PBC's conduct, and the specific public benefits identified in the articles of incorporation.

Stockholders of a PBC owning individually or collectively at least 2 percent of the PBC's outstanding shares (or the lesser of such percentage of shares of at least \$2 million in market value, if the PBC has shared listed on a national securities exchange), could maintain a derivative lawsuit to enforce these requirements.

A director would have no duty, by virtue of the public benefit provisions, to any person due to such person's interest in the identified benefits or materially affected by the PBC's conduct. The director would be deemed to satisfy fiduciary duties to stockholders and the PBC if the director's

decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

The articles of incorporation could include a provision that any disinterested failure to satisfy the above requirements would not constitute an act or omission not in good faith, or a breach of the duty of loyalty.

Notices and Statements

A PBC would be required to include in every notice of a meeting of stockholders a statement that it is a PBC.

A PBC would be required to provide to stockholders, at least annually and at the time of the filing of the PBC's annual report, a statement regarding the PBC's promotion of the public benefits identified in the articles of incorporation and of the best interests of those materially affected by the corporation's conduct. This statement would have to include objectives and standards established by the board of directors, as well as objective factual information based on those standards regarding the PBC's success in meeting the objectives and an assessment of the PBC's success in meeting the objectives and promoting the public benefits and interests. The bill would require the statement be based on a third-party standard, as defined in this new section.

A PBC would be required to post its most recent statement on the public portion of its website. If the PBC does not have a website, it would be required to provide a copy of the statement, without charge, to any person requesting a copy, except that compensation paid to directors and any other financial or proprietary information could be omitted from any statement publicly posted or distributed.

The articles of incorporation or bylaws could require the PBC to obtain a periodic third-party certification addressing the PBC's promotion of its public benefits or the best interests of those materially affected by the corporation's conduct, or both.

Applicability to Nonstock Corporations

The GCC section providing for application of GCC provisions to nonstock corporations would be amended to exclude its application to the bill's new provisions regarding PBC stock certificate notation and notice, as well as to all of the bill's new provisions in the case of a nonprofit nonstock corporation.

Filings with Secretary of State

The statute requiring certain corporate documents be filed with the Secretary of State would be amended to include PBC articles of incorporation.

Name

The bill would amend the statute containing name requirements for corporations to require a PBC's name to contain one of the existing identifying words or abbreviations or one of three new words or abbreviations applicable only to PBCs.

Background

The bill was introduced by the House Committee on Judiciary at the request of the Kansas Bar Association (KBA). In the House Committee hearing, representatives of the KBA and a representative of B the Change Media testified in support of the bill. No opponent or neutral testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Secretary of State indicates enactment of the bill would have no fiscal effect.