



## 2026 South Dakota Legislature

# House Bill 1154

Introduced by: **Representative Muckey**

1 **An Act to establish public benefit corporations in South Dakota.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

4 This chapter, together with chapter 47-1A, applies to any public benefit  
 5 corporation, as defined in section 2 of this Act. If a corporation elects to become a public  
 6 benefit corporation under this chapter, the corporation is subject in all respects to the  
 7 requirements of chapter 47-1A, except to the extent this chapter imposes conflicting  
 8 requirements, in which case the requirements of this chapter supersede.

9 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

10 Terms used in this chapter mean:

- 11 (1) "General benefit corporation," a public benefit corporation with articles of  
 12 incorporation that expressly provide for a general public benefit purpose;
- 13 (2) "General public benefit," a public benefit that is:
- 14 (a) Intended to impact society, the environment, or the well-being of present  
 15 and future generations; and
- 16 (b) Not directed to any specific community, interest, or person;
- 17 (3) "Independent," having no material relationship with a public benefit corporation or  
 18 a parent, subsidiary, or other affiliate of a public benefit corporation;
- 19 (4) "Minimum status vote," a shareholder election in which a corporation takes action  
 20 by the affirmative vote of the holders of at least two-thirds of the corporation's  
 21 issued and outstanding shares;
- 22 (5) "Organization," a domestic or foreign business or nonprofit corporation, limited  
 23 liability company, partnership, limited partnership, joint venture, association, trust,  
 24 estate, enterprise, or other legal or commercial entity;

1 (6) "Public benefit," a positive effect, or reduction of a negative effect, on one or more  
2 categories of communities, interests, or persons, other than stockholders in their  
3 capacities as stockholders, of an artistic, charitable, cultural, economic,  
4 educational, environmental, literary, medical, religious, scientific, or technological  
5 nature;

6 (7) "Public benefit corporation," a for-profit corporation that is organized under chapter  
7 47-1A, subject to the requirements of chapter 47-1A to the extent described in  
8 section 1 of this Act, and intended to produce a public benefit;

9 (8) "Specific benefit corporation," a public benefit corporation with articles of  
10 incorporation that expressly provide for only a specific public benefit purpose;

11 (9) "Specific public benefit," a public benefit directed to a specific community, interest,  
12 or person; and

13 (10) "Third-party standard," a guideline that is:

14 (a) Publicly available;

15 (b) Used for assessing, defining, and reporting the performance of a business  
16 enterprise as a public benefit corporation; and

17 (c) Promulgated by a neutral person operating independently of the  
18 corporation.

19 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

20 A public benefit corporation's articles of incorporation must state that the  
21 corporation has made one of the following elections:

22 (1) To pursue only a general public benefit purpose;

23 (2) To pursue only a specific public benefit purpose; or

24 (3) To pursue both a general public benefit purpose and a specific public benefit  
25 purpose.

26 The name of a general benefit corporation must contain the words "general benefit  
27 corporation" or the abbreviation "GBC," and the name of a specific benefit corporation  
28 must contain the words "specific benefit corporation" or the abbreviation "SBC."

29 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

30 An existing corporation formed and acting under the requirements of chapter 47-  
31 1A may elect to become a public benefit corporation under this chapter upon approval by  
32 a minimum status vote and the amendment of the corporation's articles of incorporation  
33 to ensure compliance with section 3 of this Act.

1 If an organization, other than a nonprofit corporation or domestic nonprofit  
2 corporation as defined in § 47-1A-140, which is not a public benefit corporation, is a party  
3 to a merger, exchange, conversion, or transfer pursuant to the requirements of chapter  
4 47-1A, and the surviving organization in the merger, the acquiring organization in the  
5 exchange, the converted organization in the conversion, or the transferee in the transfer  
6 is to be a public benefit corporation, the transfer or the plan of merger, exchange, or  
7 conversion must be adopted pursuant to the requirements of chapter 47-1A upon approval  
8 by a minimum status vote.

9 Any shareholder of the merging, exchanging, converting, or transferring  
10 corporation, or member of a similarly situated limited liability company, may dissent from  
11 the merger, exchange, conversion, or transfer and obtain payment for the fair value of  
12 the shareholder's shares or the member's membership interest pursuant to §§ 47-1A-  
13 1301 to 47-1A-1331.2, inclusive, in the event of an election of public benefit corporation  
14 status pursuant to this section.

15 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

16 An existing corporation formed and acting under the requirements of chapter 47-  
17 1A may elect to terminate the corporation's status as a public benefit corporation and  
18 cease being subject to this chapter upon approval by a minimum status vote and the  
19 amendment of the corporation's articles of incorporation to change the name of the  
20 corporation and remove the statement of election required by section 3 of this Act.

21 Any shareholder of the corporation may dissent from and obtain payment for the  
22 fair value of the shareholder's shares pursuant to §§ 47-1A-1301 to 47-1A-1331.2,  
23 inclusive, in the event of a termination of public benefit corporation status pursuant to this  
24 section.

25 Any corporation that terminates the public benefit corporation status, or has the  
26 status revoked more than once pursuant to section 8 or 9 of this Act, may not elect to  
27 become a public benefit corporation under this chapter until three years have passed since  
28 the effective date of the termination or revocation.

29 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

30 The board of directors shall manage or direct the business and affairs of the public  
31 benefit corporation in a manner that balances the pecuniary interests of the stockholders,  
32 the best interests of those materially affected by the corporation's conduct, and the public  
33 benefit identified in the corporation's articles of incorporation.

1           The conduct and liability of a director of a public benefit corporation is subject to  
2           §§ 47-1A-830 and 47-1A-831. The director does not, by virtue of the public benefit  
3           requirements of this chapter, owe any duty to any person solely by reason of the person's  
4           interest in a public benefit identified in the corporation's articles of incorporation or any  
5           interest materially affected by the corporation's conduct. With respect to a decision  
6           implicating the balance requirement in this section, the director is deemed to satisfy the  
7           director's fiduciary duties to stockholders and the corporation if the director's decision is  
8           disinterested, informed, and made objectively.

9           The director's ownership of or other interest in the stock of the corporation does  
10          not by itself create a conflict of interest on the part of the director, unless the interest  
11          would create a conflict of interest if the corporation were not a public benefit corporation.  
12          In the absence of a conflict of interest or action prohibited by § 47-1A-830 or 47-1A-831,  
13          any act, conduct, or omission of the director does not constitute bad faith or a breach of  
14          the director's duty of loyalty, unless otherwise provided in the articles of incorporation.

15       **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

16          Any shareholder of a public benefit corporation may assert a claim, under this  
17          chapter or chapter 47-1A, against the corporation or the corporation's directors or officers,  
18          based upon the failure of the directors or officers to create or pursue a general public  
19          benefit or a specific public benefit, as applicable. The corporation is not liable for monetary  
20          damages under this chapter for any failure to create or pursue a general public benefit or  
21          a specific public benefit.

22          In addition to the grounds for relief provided by § 47-1A-1430, a court may grant  
23          relief under this chapter if:

24          (1) Any director or other person in control of the corporation has breached the duties  
25             set forth in section 6 of this Act; or

26          (2) The corporation has, for a period of at least one year, failed to pursue:

27             (a) In the case of a general benefit corporation, a general public benefit purpose  
28                or any specific public benefit purpose stated in the corporation's articles of  
29                incorporation; or

30             (b) In the case of a specific benefit corporation, any specific public benefit  
31                purpose stated in the corporation's articles of incorporation.

32       **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

1 In an action under section 7 of this Act, a court may, in addition to granting any  
2 other equitable relief the court deems just and reasonable under the circumstances:

3 (1) Order the termination of the corporation's status as a public benefit corporation;

4 (2) Remove one or more directors from the corporation's board of directors and  
5 determine whether the vacancy is to be filled pursuant to § 47-1A-810 or by court  
6 appointment, with a court appointee to serve only until a qualified successor is  
7 elected by the shareholders at the next regular or special meeting of the  
8 shareholders; or

9 (3) Appoint a receiver to the corporation to:

10 (a) Carry on the business and activities of the corporation in a manner  
11 consistent with this chapter; or

12 (b) Conclude business operations, liquidate assets, pay creditors, and distribute  
13 any remaining moneys to shareholders.

14 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

15 Before April first of each year, a public benefit corporation shall deliver to the  
16 secretary of state for filing, in the form and manner determined by the secretary, a benefit  
17 report covering the prior calendar year and pay a fee of fifty dollars to the secretary.

18 If the corporation fails to file the report required by this section before April first of  
19 any calendar year, the secretary must revoke the corporation's status as a public benefit  
20 corporation under this chapter and must notify the corporation of the revocation.

21 If a corporation's status is revoked under this section, the corporation is not  
22 entitled to any of the benefits afforded to a public benefit corporation under this chapter,  
23 as of the date of the revocation, and must amend the articles of incorporation to reflect a  
24 name compliant with § 47-1A-401, which does not include any of the public benefit  
25 corporation designations provided for in section 3 of this Act.

26 Within thirty days of the revocation, the corporation may file an application for  
27 reinstatement and pay a reinstatement fee of three hundred dollars. Upon receipt of the  
28 completed application and fee, the secretary shall reinstate the corporation's status as a  
29 public benefit corporation, as of the date of the revocation.

30 If the corporation's public benefit status is revoked:

31 (1) Due to the intentional failure to file an annual benefit report, any shareholder of  
32 the corporation may obtain payment from the corporation for the fair value of the  
33 shareholder's shares; and

- 1        (2) If the corporation fails to change the corporate name as required in this section,  
2        the corporation is subject to administrative dissolution pursuant to § 47-1A-1421.

3        **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 47:**

4        An annual benefit report, as required by section 9 of this Act, must:

- 5        (1) State the name of the corporation and the corporation's statement of election  
6        pursuant to section 3 of this Act;  
7        (2) Identify the third-party standard adopted and applied by the corporation;  
8        (3) Describe, with reference to the third-party standard, the extent to which the  
9        corporation created or pursued:  
10       (a) A general public benefit, if applicable; and  
11       (b) Any specific public benefit identified in the articles of incorporation, if  
12       applicable;  
13       (4) Describe any circumstances that hindered the corporation's creation or pursuit of  
14       any applicable public benefit;  
15       (5) If the corporation adopted and applied a third-party standard that is different from  
16       the standard identified in the corporation's most recent prior report, explain the  
17       change;  
18       (6) If the third-party standard is the same standard identified in the corporation's most  
19       recent prior report:  
20       (a) State whether the third-party standard is being applied in the same manner  
21       as described in the prior report; or  
22       (b) If the third-party standard is being applied in a different manner than  
23       described in the prior report, explain the differing application;  
24       (7) Confirm that the corporation's board of directors has approved the report;  
25       (8) Contain a certification by the corporation's chief executive officer stating that the  
26       report is accurate and complete as of the date of certification; and  
27       (9) Be signed by the chief executive officer no more than thirty days before the report  
28       is delivered to the secretary of state for filing.

29       **Section 11. This Act is effective beginning July 1, 2027.**