

THE ADVENT OF BENEFIT CORPORATIONS IN FLORIDA

Izi Pinho*

[T]here is one and only one social responsibility of business[—]
]to use its resources and engage in activities designed to
increase its profits.¹

I. INTRODUCTION

There are a growing number of entrepreneurs who are orienting themselves and their business models toward solving social and environmental problems.² Social entrepreneurs believe that profits can be achieved alongside social and environmental missions.³ To spur the growth of social enterprises, benefit corporations were created; like other business corporations, a benefit corporation is a for-profit corporation, but the profit is made through conducting the business in a socially and environmentally responsible way.⁴

Before the enactment of social enterprises, social entrepreneurs encountered a legal problem: modern corporate law emphasizes maximizing shareholder value as opposed to social responsibility.⁵ The sale of Ben & Jerry's Homemade, Inc. (Ben & Jerry's) to Unilever illustrates this issue. With a \$12,000 investment, Bennett Cohen and Jerry Greenfield opened their first ice cream store (originally, a gas station) in Burlington, Vermont,

* © 2018, Izi Pinho. All rights reserved. Notes & Comments Editor 2016, *Stetson Law Review*. J.D., Stetson University College of Law, 2016; B.A., *summa cum laude*, Rollins College, 2012. I would like to thank Professor Ciara Torres-Spelliscy for her guidance during the writing process. I would also like to thank my Notes and Comments Editor, Courtney Cox Hatcher, and the members of the *Stetson Law Review* for the time and energy they put into editing this Article.

1. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 112 (1982).

2. Jennifer Dasari et al., *Recognizing Social Entrepreneurship: Minnesota Embraces the Public Benefit Corporation*, 71 BENCH & B. MINN. Sept. 12, 2014, at 18, 19.

3. *Id.*

4. *Id.*

5. *Id.*

in 1978.⁶ Ben & Jerry's was successful from the beginning: by 1980 the company began distributing ice cream to grocery stores and restaurants, and by 1981 the company opened its first franchise.⁷ In 1984, the company went public to raise money for a new manufacturing plant.⁸ Since 1988, the company has embraced a "three-part mission"⁹ to create prosperity for those connected to Ben & Jerry's business, including "suppliers, employees, farmers, franchisees, customers, and neighbors alike,"¹⁰ Ben & Jerry's is considered a "social enterprise icon,"¹¹ and has advanced its social goals by making large charitable contributions, running in-store voter registration, and purchasing ingredients from local suppliers as well as suppliers that employ minorities and disadvantaged people.¹²

In 2000, the global giant Unilever acquired Ben & Jerry's for \$43.60 per share (a total value of \$326 million).¹³ Cohen and Greenfield have expressed concern that the company has moved away from its original social mission. As stated by Greenfield, "[i]t was a very difficult time. But we were a public company, and the Board of Directors' primary responsibility is the interest of the shareholder. So that is what the decision came down to. It was extremely difficult, heart-wrenching."¹⁴ At that time, there was not a for-profit social enterprise that embedded the interests of non-shareholder stakeholders, along with the interests of shareholders,

6. *Our History*, BEN & JERRY'S, <http://www.benjerry.com/about-us> (last visited June 12, 2016).

7. *Id.*

8. *Id.*

9. Ben & Jerry's three-part mission is composed of a Product Mission, Economic Mission, and Social Mission. *Our Values*, BEN & JERRY'S, <http://www.benjerry.com/values> (last visited June 12, 2016). First, the Product Mission focus on creating a "fantastic ice cream." Second, the Economic Mission focus on "sustainable financial growth." *Id.* Lastly, the Social Mission focus on using Ben & Jerry's "in innovative ways to make the world a better place." *Id.*

10. *Id.*

11. Antony Page & Robert A. Katz, *The Truth About Ben & Jerry's*, STAN. SOC. INNOVATION REV. (Fall 2012), http://ssir.org/articles/entry/the_truth_about_ben_and_jerrys.

12. Antony Page & Robert A. Katz, *Freezing out Ben & Jerry: Corporate Law and the Sale of a Social Enterprise Icon*, 35 VT. L. REV. 211, 211 (2010).

13. *Id.*

14. Mystica M. Alexander, *Benefit Corporations—The Latest Development in the Evolution of Social Enterprise: Are They Worthy of a Taxpayer Subsidy?*, 38 SETON HALL LEGIS. J. 219, 221 (2014) (internal quotation marks omitted). *But see* Page & Katz, *supra* note 12, at 213 (arguing that corporate law did not compel the sale of Ben & Jerry's to Unilever, and that the company could have taken additional steps to stay independent, such as testing out its anti-takeover and liability defenses).

to its core value that could have prevented the sale of Ben & Jerry's.¹⁵

Today, a number of states have adopted legislation that allows corporations to choose new legal structures that are focused not only on profit maximization but also on social and environmental goals, known as for-profit social enterprises.¹⁶ The benefit corporation is a for-profit social enterprise designed to provide legal freedom to corporations to pursue goals other than maximization of shareholder profit.¹⁷

Benefit corporations aim to merge traditional profit-making goals with social responsibility; their business models focuses on both profit, and social and environmental missions.¹⁸ The addition of social concerns into a company's purpose and goals facilitates a corporate rethinking of the relationship between traditional corporate investors and business management.¹⁹ Benefit

15. Alexander, *supra* note 14, at 221.

16. Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 61–63 (2010) (stating that new for-profit social enterprises include: low-profit limited liability companies (L3C), benefit corporations, and social purpose corporations). In the last five years, at least thirty-one states have adopted for-profit social enterprises legislation. B Lab, *State by State Status of Legislation*, BENEFIT CORP., <http://benefitcorp.net/policymakers/state-by-state-status> (last visited June 12, 2016) [hereinafter *State by State Status of Legislation*].

17. Katz & Page, *supra* note 12, at 86. The Benefit Corporation Model Legislation explains that benefit corporations “offer[] entrepreneurs and investors the option to build, and invest in, a business that operates with a corporate purpose broader than maximizing shareholder value and that consciously undertakes a responsibility to maximize the benefits of its operations for all stakeholders, not just shareholders.” MODEL BENEFIT CORP. LEGIS. § 101 cmt. (2014), available at http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf.

18. *From Fringe to Mainstream: Companies Integrate CSR Initiatives into Everyday Business*, THE WHARTON SCHOOL OF UNIV. PA. (May 23, 2012), <http://knowledge.wharton.upenn.edu/article/from-fringe-to-mainstream-companies-integrate-csr-initiatives-into-everyday-business/>. In 1970, Corporate America had a general skepticism toward corporate social responsibility, as indicated by Milton Friedman's view that the main purpose of a corporation is to maximize profit. *Id.* In the last ten years, Fortune 500 companies that issue corporate social responsibility and sustainability reports increased from only about twelve companies to the majority of companies on the list. *Id.* Corporate social responsibility models and ideals are even more so present in today's market and largely driven by consumer demands. *Id.*

19. *Id.* Since companies are pressured to maximize shareholder wealth in the short term, it is more difficult to focus resources to invest in social causes, especially in the long term. *Id.* With the advent of benefit corporation legislation, companies—even large, publicly traded firms—are freer to design their “vision and objectives” with “long-term investments for the social good.” *Id.* Additionally, the social enterprise movement has impacted business management training as a number of business schools already offer training in social enterprise. Alicia E. Plerhoples, *Can an Old Dog Learn New Tricks? Applying Traditional*

corporations emphasize public benefit goals, as opposed to solely focusing on profit maximization, making it easier for social entrepreneurs to undertake long-term social investments while also providing a shield for management against shareholder claims for breach of fiduciary duties due to the use of corporate revenue for social and environmental causes.²⁰

This Article provides a critical look at benefit corporations and argues that benefit corporations offers a sound business model for social enterprises. This Article first presents an overview of the history of the corporate social enterprise movement leading up to the passing of the benefit corporation statutes. Second, this Article analyzes the reasons why Florida enacted benefit corporation legislation, the statutes' key features, and examples of Florida's benefit corporations. Third, this Article discusses some concerns regarding benefit corporations and the potential issue of the use of benefit corporations as a form of greenwashing and provides some recommendations to Florida's benefit corporation legislation. This Article argues that because benefit corporation legislation provides more flexibility for social entrepreneurs and investors to engage in social and environmental causes, it drives positive developments in corporate law and positively impacts society and economy by creating innovation, increased revenue and investments, and flexibility for social entrepreneurs who seek solutions to social and environmental issues.

II. THE ADVENT OF BENEFIT CORPORATIONS: A HISTORICAL OVERVIEW

There is a growing market interest in corporations that are also good citizens, which raises the question: to what extent can for-profit corporations pursue a broader public goal?²¹ There are

Corporate Law Principles to New Social Enterprise Legislation, 13 TRANSACTIONS: TENN. J. BUS. L. 221, 224 (2012).

20. Stuart R. Cohn & Stuart D. Ames, *Now It's Easier Being Green: Florida's New Benefit and Social Purpose Corporations*, 88 FLA. B.J., Nov. 2014, at 38, 41. Since, generally, benefit corporation legislation requires that companies include in their corporate purposes a general public benefit purpose, management is less likely to be held liable for breach of fiduciary duties for pursuing such purposes. *Id.* at 39.

21. A recent study showed that "[f]ifty-five percent of . . . online consumers [from] sixty countries" were "willing to pay more for products and services provided by companies that are committed to positive social and environmental impact." *Global Consumers Are Willing to Put Their Money Where Their Heart Is When It Comes to Goods and Services from Companies Committed to Social Responsibility*, NIELSEN (June 17, 2014),

two competing models in corporate law.²² First, the shareholder primacy model embraces the view that corporations are purely private enterprises and each director's main goal is to increase shareholder profit.²³ Second, the stakeholder model embraces the view that corporations are private enterprises that have commitments to society, and directors' duties include the balancing of interests of non-shareholder stakeholders, in addition to shareholders' interests, such as the interests of employees, customers, creditors, the environment, and the community.²⁴

Because traditional corporate law is not appropriate to accommodate the increasing number of companies that have dual purposes, the social enterprise movement has flourished in recent years.²⁵ As a result, the advent of social enterprises, such as the benefit corporation, is a legislative, flexible approach to traditional corporations.²⁶ Benefit corporation statutes aim to remedy the limitations and legal uncertainty of traditional business entities

<http://www.nielsen.com/us/en/press-room/2014/global-consumers-are-willing-to-put-their-money-where-their-heart-is.html>. In North America, the likelihood of consumers to purchase socially responsible brands was forty-two percent. *Id.* The study also showed that forty percent of North American respondents had made a sustainable purchase in the previous six months. *Id.*

22. For a good discussion on the distinct corporate law's school of thought, see Lewis D. Solomon, *On the Frontier of Capitalism: Implementation of Humanomics by Modern Publicly Held Corporations: A Critical Assessment*, 50 WASH. & LEE L. REV. 1625 (1993).

23. Adolf A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1931) (explaining that, "all powers granted to a corporation or to the management of a corporation . . . are necessarily and at all times exercisable only for the ratable benefit of all the shareholders as their interest appears").

24. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1153–54 (1932) (suggesting that "there is in fact a growing feeling not only that business has responsibilities to the community but that our corporate managers who control business should voluntarily and without waiting for legal compulsion manage it in such a way as to fulfill those responsibilities").

25. Felicia R. Resor, Comment, *Benefit Corporation Legislation*, 12 WYO. L. REV. 91, 92–93 (2012).

26. See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2771 (2014) (recognizing that for-profit corporations may desire to promote social interests and that many states have passed legislation to allow for dual-purpose corporations). *Hobby Lobby* was the first Supreme Court decision to acknowledge social enterprises, specifically benefit corporations. Justice Alito stated:

In fact, recognizing the inherent compatibility between establishing a for-profit corporation and pursuing nonprofit goals, States have increasingly adopted laws formally recognizing hybrid corporate forms. Over half of the States [sic], for instance, now recognize the 'benefit corporation,' a dual-purpose entity that seeks to achieve both a benefit for the public and a profit for its owners.

Id. (footnote omitted).

while meeting the market demand for a for-profit corporation that is accountable for its sustainability or social responsibility claims.²⁷

This Part begins by examining the shareholder maximization norm. It then analyzes the creation of benefit corporations and the differences between benefit corporations and certified B Corps.

A. The Shareholder Maximization Norm

Traditionally, state corporate and federal tax laws require companies to elect either for-profit or not-for-profit status.²⁸ Traditional corporate law incorporates the shareholder wealth maximization norm or “the duty to maximize shareholder wealth,” which restricts corporate directors and officials from pursuing extensive social and environmental goals.²⁹ It is well established in corporate law that directors and officers, while performing their activities, owe fiduciary duties of care and loyalty to their shareholders and the corporation, and not to any non-shareholder stakeholders.³⁰ Critics of the benefit corporation legislation argue that many states have adopted constituency statutes, which expressly permit directors to consider the interests of non-

27. See William H. Clark, Jr. & Larry Vranka, *The Need and Rationale for the Benefit Corporation: Why It Is the Legal Form That Best Addresses the Needs of Social Entrepreneurs, Investors, and, Ultimately, the Public*, BENEFIT CORP. 2 (Jan. 18, 2013), <http://benefitcorp.net/sites/default/files/documents/Benefit%20Corporation%20White%20Paper.pdf> (“Accelerating consumer and investor demand has resulted in the formation of a substantial marketplace for companies that put purpose, not profit, at the center of the business.”). Since there are no transparency and accountability standards for corporate social responsibility in traditional corporations, some companies can make false social responsibility claims. Resor, *supra* note 25, at 99. Note, however, that there are voluntary third-party certifications that “evaluate business’ environmental and social policies and practices[,]” such as the non-profit company B-Lab. *Id.* at 100.

28. Resor, *supra* note 25, at 93–94 (explaining that within the traditional binary organizational system, there are some ways by which business entities “blur the boundaries” of the for-profit and not-for-profit system; for example: for-profit organizations can make charitable contributions to not-for-profit organizations, and not-for-profit organizations are allowed to earn some profits).

29. *Id.* at 95. Critics to benefit corporation legislation argue that corporate law does not prevent officers and directors from considering the interests of non-shareholder stakeholders, society, and the environment when making corporate decisions; and, therefore, benefit corporation legislation is unnecessary. See 1 JAMES D. COX & THOMAS LEE HAZEN, *THE LAW OF CORPORATIONS* § 2:14, 10 (3d ed. 2014) (pointing out that business entities can address charitable goals by including specific provisions addressing those goals in their articles).

30. D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277, 278 (1998) (“Corporate directors have a fiduciary duty to make decisions that are in the best interests of the shareholders.”).

shareholders, eliminating the need for the benefit corporation.”³¹ However, not all states have constituency statutes;³² and even for states that have constituency statutes, the benefit corporation legislation provides clarity in asserting that directors of a benefit corporation have the fiduciary duty to consider the interests of non-shareholder stakeholders and that shareholders have the right to enforce that directors comply with their duty.³³

As a result, if a corporation engages in activities traditionally performed by not-for-profit corporations (on a large scale), then directors can potentially be held responsible for breaching their fiduciary duties to shareholders.³⁴ Therefore, the applicability of the shareholder maximization norm to for-profit organizations can hinder corporations’ engagement in social and environmental policies and practices.³⁵

In the famous 1919 case of *Dodge v. Ford Motor Co.*,³⁶ Henry Ford wanted to employ more employees and provide price discounts to customers.³⁷ The Dodge Brothers resisted these changes seeking a larger dividend.³⁸ The Michigan Supreme Court explained that the directors’ powers must be employed primarily to generate shareholder profit, and that directors may not change that goal or “devote [profits] to other purposes.”³⁹ Ford’s decision to reduce dividends in order to reduce the price of cars to the general

31. COX & HAZEN, *supra* note 29. For example, the constituency statute in Florida states that a director may consider certain factors, including: “social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.” FLA. STAT. § 607.0830(3) (2015).

32. States that have not adopted constituency statutes include: Alaska, California, Delaware, Kansas, Maryland, Michigan, Nebraska, Oklahoma, and West Virginia. Ryan J. York, Comment, *Visages of Janus: The Heavy Burden of Other Constituency Anti-Takeover Statutes on Shareholders and the Efficient Market for Corporate Control*, 38 WILLAMETTE L. REV. 187, 189–90 n.13 (2002). In addition, the District of Columbia, Puerto Rico, and the Virgin Islands have also not adopted constituency statutes. *Id.*

33. Clark & Vranka, *supra* note 27, at 6.

34. *Id.* at 11.

35. B Lab, *Benefit Corporations Are Necessary*, BENEFIT CORP., <http://benefitcorp.net/attorneys/benefit-corporations-are-necessary> (last visited June 12, 2016) [hereinafter *Benefit Corporations Are Necessary*].

36. 170 N.W. 668 (Mich. 1919).

37. *Id.* at 683. Ford declared the policy of Ford Motor Company as follows: “My ambition . . . is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this we are putting the greatest share of our profits back in the business.” *Id.*

38. *Id.*

39. *Id.* at 684.

public was held improper.⁴⁰ The Court held that the purpose of the corporation is to maximize shareholder wealth and that the additional profit distributed to stakeholders belonged to its shareholders.⁴¹ This holding has, over time, led to the idea that a corporation's main purpose is to maximize profit and, consequently, shareholders' value.⁴² The shareholder profit-maximization concept is present in state corporate law and caselaw in the form of fiduciary duties owed by corporate officials to the corporation, including the duty of care, loyalty, and good faith.⁴³

The shareholder maximization norm expressed by the *Dodge* Court is still relevant in modern corporate law.⁴⁴ Courts still demand that directors place shareholders' interests ahead of those of non-shareholder stakeholders.⁴⁵ In the 2010 *eBay Domestic Holdings, Inc. v. Newmark*⁴⁶ decision, eBay, a minority shareholder of Craigslist, challenged certain defensive measures taken by the Craigslist board.⁴⁷ The Delaware court held: "The

40. *Id.* at 685.

41. *Id.* at 684. "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end." *Id.* The court also explained: "The discretion of directors . . . does not extend to a change in the end itself, to the reduction of profits or to the non-distribution of profits among stockholders in order to devote them to other purposes." *Id.*

42. See Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 WASH. & LEE L. REV. 1423, 1423–25 (1993) (stating that there has only been "a smattering of evidence" that is contrary to mainstream corporate law's commitment to the shareholder wealth maximization norm).

43. See *e.g.*, FLA. STAT. § 607.0830 (2015) (stating a director must discharge his or her duties in good faith, with the care of a prudent person, and in the best interest of the corporation); *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 180 (Del. 1986) (explaining that, "[w]hile the business judgment rule may be applicable to the actions of corporate directors responding to takeover threats, the principles upon which it is founded—care, loyalty and independence—must first be satisfied" (footnote omitted)); *In re Trados Inc. Shareholder Litig.*, 73 A.3d 17, 37 (Del. Ch. 2013) (explaining that "in terms of the standard of conduct, the duty of loyalty . . . mandates that directors maximize the value of the corporation over the long-term for the benefit of the providers of equity capital"); Melvin A. Eisenberg, *The Duty of Good Faith in Corporate Law*, 31 DEL. J. CORP. L. 1, 3 (2006) (noting that "[a]n important development in corporate law is the explicit recognition in recent cases that corporate managers—directors and officers—owe a duty of good faith in addition to their duties of care and loyalty").

44. Plerhoples, *supra* note 19, at 242; *but cf.* Jonathan R. Macey, *A Close Read of an Excellent Commentary on Dodge v. Ford*, 3 VA. L. & BUS. REV. 177, 185 (2008) ("The goal of profit maximization for shareholders is the law, but it is only a default rule. If the shareholders and the other constituents of the corporate enterprise could agree on some other goal for the corporation, then the law clearly should not interfere.").

45. Plerhoples, *supra* note 19, at 242 (citing Bainbridge, *supra* note 42, at 1423–25).

46. 16 A.3d 1 (Del. Ch. 2010).

47. *Id.* at 6–7.

corporate form in which craigslist operates, however, is not an appropriate vehicle for purely philanthropic ends. . . . Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form.”⁴⁸ The court further stated that it could not accept as valid a “corporate policy that specifically, clearly, and admittedly seeks *not* to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders.”⁴⁹ As illustrated by these decisions, traditional corporate law requires companies to follow the shareholder maximization norm, which causes uncertainty as to when and to what extent corporate directors may consider the interests of other constituents.⁵⁰

B. The Creation of Benefit Corporations

Because of this uncertainty and the lack of appropriate legislation, the proponents of social enterprises have succeeded in passing legislation that allows companies to choose a corporate structure that blends elements of for-profit and not-for-profit organizations.⁵¹ In the United States, the enactment of social enterprise legislation started with the low-profit limited liability company (L3C), which was first implemented in Vermont in 2008.⁵² L3C is a variation of the limited liability company (LLC) that is designed to enable companies to conduct activities that further a charitable or educational purpose.⁵³

In 2010, Maryland took one step further and signed the first benefit corporation legislation into law.⁵⁴ Since then, benefit corporations have gradually spread to be legally acknowledged in thirty-one states with five additional states working on

48. *Id.* at 34.

49. *Id.*

50. See Barnali Choudhury, *Serving Two Masters: Incorporating Social Responsibility into the Corporate Paradigm*, 11 U. PA. J. BUS. L. 631, 631 (2009) (stating that the question of whether the corporation must serve only the interests of its shareholders remains unsettled).

51. Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591, 593 (2011).

52. *Id.* (describing that L3C’s must “significantly further the accomplishment of one or more charitable or educational purposes” and that the production of income or the appreciation of property is not a significant purpose of the company) (quoting VT. STAT. ANN. tit. 11, § 3001(27) (2011) (internal quotation marks omitted)).

53. *Id.*

54. *Our History*, B CORPORATION.NET, <https://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps/our-history> (last visited June 12, 2016).

legislation.⁵⁵ B Lab is the lobbying force behind benefit corporation legislation.⁵⁶ Benefit corporations are new business entities that by law “ha[ve] the purpose of creating general public benefit.”⁵⁷ A general public benefit is commonly defined as a “material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation.”⁵⁸

B Lab provides the Model Benefit Corporation Legislation (Model).⁵⁹ The Model represents the needs of entrepreneurs and investors that are engaged in “using the power of business to solve social and environmental problems.”⁶⁰ The Model alters the traditional corporate purpose, rejecting the premise that a corporation’s main goal is to maximize shareholder profit.⁶¹

While benefit corporation legislation has been quickly adopted by many states, alternatives exist to incorporating as a benefit corporation under state law. For example, certain states have adopted legislation that provides for other types of business

55. *State by State Status of Legislation*, *supra* note 16. States that have enacted benefit corporation legislation, to date are: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington-DC, and West Virginia. *Id.* Additional states working on legislation include Alaska, Kentucky, New Mexico, North Dakota, and Oklahoma. *Id.*

56. *About B Lab*, B CORPORATION.NET, <https://www.bcorporation.net/what-are-b-corps/about-b-lab> (last visited May 23, 2016) (explaining that benefit corporation legislation has been enacted through the effort of the B Lab community); see Kyle Westaway & Dirk Sampelle, *The Benefit Corporation: An Economic Analysis with Recommendations to Courts, Boards, and Legislatures*, 62 EMORY L.J. 999, 1010 (2013) (stating that “[b]enefit corporations are the brainchild of the nonprofit B Lab” (footnote omitted)).

57. FLA. STAT. § 607.606(1) (2015); accord MODEL BENEFIT CORP. LEG. § 201(a) (2014) (“A benefit corporation shall have a purpose of creating general public benefit.”); COX & HAZEN, *supra* note 29, at § 2:14 (“A benefit corporation . . . has a purpose of creating general public benefit.” (internal quotation omitted)).

58. FLA. STAT. § 607.602(5); accord MODEL BENEFIT CORP. LEG. § 102 (stating that “[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”).

59. See B Lab, *The Model Legislation*, BENEFIT CORP., <http://benefitcorp.net/attorneys/model-legislation> (last visited June 12, 2016) [hereinafter *The Model Legislation*] (stating that B Lab and a pro-bono attorney are available to draft state legislation tailored to that state’s corporate law).

60. *Id.*; accord *About B Lab*, *supra* note 56.

61. MODEL BENEFIT CORP. LEG. § 301 cmt. (explaining that Section 301 is “at the heart of what it means to be a benefit corporation. By requiring the consideration of interests of constituencies other than the shareholders, the [S]ection rejects the holdings in *Dodge v. Ford* . . . and *eBay Domestic Holdings, Inc. v. Newmark* . . . that directors must maximize the financial value of a corporation.” (citations omitted)).

entities—such as L3Cs,⁶² special-purpose corporations,⁶³ and flexible-purpose corporations⁶⁴—that also seek to accommodate businesses that wish to pursue the dual objective of making profit while providing a public benefit.

C. Differences Worth Noting: Benefit Corporations Versus Certified B Corps

The distinction between a certified B Corp and a benefit corporation is worth noting since the terms are often used interchangeably, although they are different. Founded in 2006, the private, non-profit company B Lab is “dedicated to using the power of business to solve social and environmental problems.”⁶⁵ B Lab offers B Corp certification to any for-profit entity (domestic or foreign) that “meet[s] the highest standards of verified, overall social and environmental performance, public transparency, and legal accountability.”⁶⁶ To date, there are already more than one thousand six hundred certified B Corps in over forty countries across one hundred thirty different industries,⁶⁷ including big companies like Ben & Jerry’s, Etsy, Patagonia, King Arthur Flour, and Seventh Generation.⁶⁸

To become a certified B Corp, a business must complete an impact assessment, submit supporting documentation, potentially amend its governing documents, agree to the terms of certification, and pay fees based on annual sales.⁶⁹ The certification term lasts

62. See Reiser, *supra* note 51, at 593 (noting that at least eight states have enacted L3C legislation, which provides for an LLC that considers charitable and education purposes).

63. See, e.g., WASH. REV. CODE § 23B.25 (2016) (Washington’s social purpose corporation statute).

64. See, e.g., CAL. CORP. CODE §§ 2500–3503 (2011) (California’s corporate flexibility statute).

65. *About B Lab*, *supra* note 56; accord B Lab, *Our History*, B CORPORATION.NET, <http://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps/our-history> (last visited June 12, 2016) (“B Lab is a nonprofit organization dedicated to using the power of business to solve social and environmental problems.”).

66. *About B Lab*, *supra* note 56.

67. B Lab, *Welcome*, B CORPORATION.NET., <https://www.bcorporation.net> (last visited June 12, 2016).

68. B Lab, *Find a B Corp*, BENEFIT CORP, <http://www.bcorporation.net/community/find-a-b-corp> (last visited June 12, 2016).

69. B Lab, *How to Become a B Corp*, B CORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp> (last visited June 12, 2016). First, in order to qualify for a certification, a business needs to score a least eighty out of two hundred points in the impact assessment. B Lab, *Performance Requirements*, B CORPORATION.NET, <https://www.bcorporation.net/>

two years, after which the company must be recertified.⁷⁰ Once a business becomes certified, it is subject to an annual review.⁷¹

A certified B Corp is not a legal entity, but rather a voluntary form of certification, available to every business, that promotes higher standards of transparency, accountability, and performance.⁷² B Lab has also been at the forefront of the benefit corporation movement, promoting benefit corporation legislation and the adoption of the Model by state legislatures.⁷³

Unlike certified B Corps, benefit corporations are for-profit businesses incorporated as benefit corporations under state law, provided that the states of incorporation offer benefit corporation legislation.⁷⁴ Benefit corporations are independent from B Lab, and as such, benefit corporations do not need to be B Corp certified.⁷⁵ Moreover, it is important to note that B Corps and benefit corporations are not mutually exclusive and that many benefit corporations also choose to be certified B Corps.

III. SOCIAL ENTREPRENEURSHIP AND THE BENEFIT CORPORATION

The social enterprise movement emphasizes the need for businesses to consider the interests of all stakeholders, including non-shareholders, while addressing social and environmental

become-a-b-corp/how-to-become-a-b-corp/performance-requirements (last visited June 12, 2016). Second, a business may need to amend its governing documents, depending on the business's legal structure and state of incorporation, to include language aimed at expanding traditional for-profit corporate responsibilities by requiring consideration of non-shareholder stakeholder interests. B Lab, *Protect Your Mission*, BCORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/why-become-a-b-corp/protect-your-mission> (last visited June 12, 2016).

70. B Lab, *Make It Official*, BCORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/make-it-official> (last visited June 12, 2016).

71. *Id.* Each year ten percent of certified B Corps are randomly selected to participate in on-site reviews. *Id.*

72. B Lab, *Why B Corps Matter*, BCORPORATION.NET, <https://www.bcorporation.net/what-are-b-corps/why-b-corps-matter> (last visited June 12, 2016); B Lab, *Businesses*, BENEFIT CORP., <http://benefitcorp.net/businesses> (last visited June 12, 2016).

73. *About B Lab*, *supra* note 56; B Lab, *How to Pass Benefit Corporation Legislation*, B CORP, <http://benefitcorp.net/policymakers/how-pass-benefit-corporation-legislation> (last visited June 12, 2016) [hereinafter *How to Pass Benefit Corporation Legislation*].

74. B Lab, *Common Misconceptions*, BENEFIT CORP, <http://benefitcorp.net/businesses> (last visited June 12, 2016) [hereinafter *Common Misconceptions*].

75. *Id.*

problems.⁷⁶ It seeks to implement change by providing new legislation—for example, benefit corporation legislation—that can allow a company to be a for-profit business while advancing social and environmental goals.⁷⁷ In doing so, social enterprises' social and environmental benefit purposes are embedded in the companies' core objectives.⁷⁸ Social enterprises focus mostly on “budding social entrepreneurs,”⁷⁹ composed of non-dividend, social benefit-maximizing companies.⁸⁰ Social entrepreneurs pursue challenging social problems, including poverty, at-risk youth, education, hunger, and recidivism.⁸¹

Although social entrepreneurship has gained widespread acceptance and recognition over the years, social entrepreneurs' biggest challenge is securing investment capital.⁸² Benefit corporation legislation is a creative way to offer social entrepreneurs a for-profit entity that attempts to shield directors from liability for failing to maximize financial return and that provides investors a return on their investments.⁸³ Moreover, by allowing social entrepreneurs to substantially engage in social and environmental missions, the benefit corporation statutes in Florida positively impact society and the economy by furthering innovation, increasing revenue and investments, and allowing social entrepreneurs to use the power of business to find solutions to pressing social and environmental issues.

The next section analyzes the reasons Florida enacted the benefit corporation statutes, examines the statutes' key features, and offers examples of Florida's benefit corporations.

76. Ezgi Yildirim Saatci & Ceyda Urper, *Corporate Social Responsibility Versus Social Business*, 1 J. ECON. BUS. & MGMT. 62, 64 (2013), <http://www.joebm.com/papers/15-E00038.pdf>.

77. Antony Page & Robert A. Katz, *Is Social Enterprise the New Corporate Social Responsibility?*, 34 SEATTLE U. L. REV. 1351, 1353 (2011).

78. Anja Cheriakova, *The Emerging Social Enterprise*, BROKER (Oct. 28, 2013), <http://thebrokeronline.eu/Articles/The-emerging-social-enterprise>.

79. Page & Katz, *supra* note 77, at 1379.

80. Saatci & Urper, *supra* note 76, at 64.

81. See Steven J. Haymore, Note, *Public(Ly Oriented) Companies: B Corporations and the Delaware Stakeholder Provision Dilemma*, 64 VAND. L. REV. 1311, 1319 (2011) (explaining that social entrepreneurs “attempt to tackle some of the most challenging social problems, including poverty, access to clean water, and the lack of adequate healthcare” (footnotes omitted)).

82. *Id.* at 1318–19 (noting that a recent study, which surveyed one hundred social entrepreneurs, showed that the most pressing challenge to social entrepreneurship was the access to investing capital).

83. *Id.* at 1313, 1342.

A. Reasons for Enacting Benefit Corporation Legislation in Florida

In 2014, Florida enacted its benefit corporation legislation.⁸⁴ Florida, like most states, has based its benefit corporation statute on the Model.⁸⁵ The new law intends to address the needs of entrepreneurs and investors who want to engage in substantial social and environmental causes in ways that may surpass what is allowed by traditional for-profit corporations.⁸⁶ Thus, one of the advantages of benefit corporations is that companies are legally protected to pursue social and environmental goals. Additionally, a benefit corporation can differentiate itself from others in the market as being truly committed to pursuing public benefit goals.

Before enactment of its benefit corporation statutes, Florida law did not have a provision that explicitly allowed traditional for-profit corporations to engage in public benefit goals concurrently with generating profit and protecting directors from liability.⁸⁷ However, Florida did have a constituency statute.⁸⁸

Thus, by providing a statute that allows companies to substantially engage in social and environmental missions, Florida has created a flexible platform for social entrepreneurs to engage in such missions and potentially spur innovation, while increasing revenue and investments.

84. See FLA. STAT. §§ 607.601–607.613 (2015) (creating Florida's benefit corporation system). In addition, Florida has enacted the social purpose corporation statutes simultaneously with the benefit corporation statutes. See *id.* §§ 607.501–607.513 (establishing Florida's social purpose corporation framework). A social purpose corporation has the purpose of creating a public benefit, while a benefit corporation has the purpose of creating a general public benefit. *Id.* §§ 607.506(1), 607.606(1). Similar to benefit corporations, social purpose corporations may also elect to create one or more specific public benefits. *Id.* § 607.506(2). Thus, Florida allows business owners to choose either a benefit corporation that has broader general public benefit or a social purpose corporation that has a narrower public benefit. Cohn & Ames, *supra* note 20, at 38.

85. See *The Model Legislation*, *supra* note 59 (explaining the benefits of basing state benefit corporation statutes on the Model).

86. MODEL BENEFIT CORP. LEG. § 101 cmt. (2014). Critics note that states could have expanded existing corporate law to provide an opt-in provision that would allow companies to articulate their preference of social goals instead of creating a different corporate form. Reiser, *supra* note 51, at 595.

87. H.R. STAFF ANALYSIS, BILL NO. CS/HB 685, 114th Reg. Sess. 2 (Fla. 2015).

88. FLA. STAT. § 607.0830(3).

B. Florida's Benefit Corporation Statute: Key Features

Chapter 607, Part III of the Florida Statutes (Sections 607.601–607.613), entitled “Benefit Corporations”, took effect on July 1, 2014.⁸⁹ Florida law historically authorized two types of corporations: for-profit and not-for-profit.⁹⁰ A corporation, by its definition, is a for-profit corporation.⁹¹ The purposes of not-for-profit corporations must be not for profit, such as educational, religious, or cultural.⁹² Under Florida's benefit corporation laws, benefit corporations are for-profit, taxable corporations.⁹³ Benefit corporations engage, as part of their central purpose, in public benefit goals.⁹⁴ The basic distinctions from traditional corporations are that benefit corporations have statutory public benefit purposes and require transparency through their annual benefit reports to shareholders, which describe the companies' efforts to achieve their social purposes or benefits.⁹⁵

Furthermore, the benefit corporation statutes are integrated with Florida's general corporation statutes. This provides an advantage to benefit corporations since it allows Florida's general corporations law to apply to benefit corporations and therefore reduces the uncertainty and legal risks of how courts will interpret the statutes.⁹⁶

The Florida benefit corporation statutes address the need for a new for-profit entity that changes the shareholder maximization norm and, in addition, attempts to meet the market demand for a for-profit entity that meets the needs of socially and

89. *Id.* §§ 607.601–607.613. Chapter 607 of Florida's benefit corporation statutory scheme has three parts. *Id.* §§ 607.0101–607.613. Part I contains general provisions as well as traditional corporate statutes, Part II contains social purpose corporation statutes, and Part III contains benefit corporation statutes. *Id.* Part II and III are integrated with Part I, so Part I's general provisions also apply to social purpose corporations and benefit corporations. *Id.* §§ 607.503, 607.633.

90. *Id.* §§ 607.01401(5), 617.01401(4)–(5).

91. *Id.* § 607.01401(5).

92. *Id.* § 617.0301.

93. *Id.* § 607.01401(5) (defining a corporation); see Cohn & Ames, *supra* note 20, at 38 (distinguishing benefit and social purpose corporations from non-profit organizations because of a benefit corporation's profit-generating function and ability to distribute dividends to shareholders).

94. See FLA. STAT. § 607.0301 (“Corporations may be organized under this act for any lawful purpose or purposes. . . .”); *Id.* § 607.606(1) (“A benefit corporation has the purpose of creating general public benefit. This purpose is in addition to its purpose under [Section] 607.0301.”).

95. Cohn & Ames, *supra* note 20, at 41.

96. Westaway & Sampselle, *supra* note 56, at 1033.

environmentally minded entrepreneurs, investors, and consumers.⁹⁷

1. *Differences Between Florida's Benefit Corporation Statutes and the Model*

The benefit corporation statutes in Florida are very similar to the Model, with some minor differences. For example, in Florida, shareholders are entitled to appraisal rights,⁹⁸ the law omits provisions relating to business judgment⁹⁹ and permits the articles of incorporation or bylaws to relieve the benefit director of the duty to provide the annual benefit report,¹⁰⁰ and there is no ownership requirement for a shareholder to bring a benefit enforcement proceeding.¹⁰¹

2. *The Benefit Corporation Purpose: General and Specific Public Benefits*

The first innovation provided by the benefit corporation statutes, and their fundamental part, is that benefit corporations are required to create general public benefit and, if the corporations choose, specific public benefits. Florida's benefit

97. William H. Clark, Jr. & Elizabeth K. Babson, *How Benefit Corporations Are Redefining the Purpose of Business Corporations*, 38 WM. MITCHELL L. REV. 817, 838 (2012).

98. FLA. STAT. § 607.604(3) ("If an entity elects to become a benefit corporation by amendment of the articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights. . ."). This section is not present in the Model.

99. MODEL BENEFIT CORP. LEG. § 301(e) (2014). Under the Model's Section 301 "Standard of conduct for directors," subsection (e) is designated "Business judgments." *Id.* This subsection states that if a director has made a business judgment in good faith, she has fulfilled her duties under the Section if she is not interested in the subject, she is informed about the subject, and she "rationally believes that the business judgment is in the best interests of the benefit corporation." *Id.* There is no similar provision in the Florida statutes.

100. In Florida, this is a default rule that can be provided for differently in the benefit corporation's articles of incorporation. FLA. STAT. § 607.608(3). In the Model, if a benefit officer is elected, the benefit officer has "the duty to prepare the benefit report." MODEL BENEFIT CORP. LEG. § 304.

101. Compared to the Model, the Florida statutes add to the "Right of action" section, by providing that "[a] shareholder of record on the date of the action or inaction complained of in the benefit enforcement proceeding." FLA. STAT. § 607.611(2)(b)(1). This provision is not present in the Model. *See* MODEL BENEFIT CORP. LEG. § 305 (providing for commencing or maintaining a benefit enforcement proceeding derivatively only where the person is a director, or owns either two percent of total shares of a series or class or five percent of outstanding equity interests at the time of the act or omission, or as the articles of incorporation or bylaws of the benefit corporation otherwise provide).

corporations, like traditional corporations, can engage in “any lawful purpose.”¹⁰² In addition, benefit corporations have the purpose of creating a general public benefit.¹⁰³ A general public benefit is defined as “a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation.”¹⁰⁴ Although a “material, positive effect” is not defined in the statute, the language of the statute indicates that a “material, positive effect” is a function of the third-party standard.¹⁰⁵

The statute also allows a benefit corporation to identify one or more specific public benefits.¹⁰⁶ A specific public benefit can be a variety of activities, including providing services for low-income individuals, improving human health, and promoting the arts.¹⁰⁷ Once specific public benefits are adopted, the benefit corporation can only amend them by minimum status vote.¹⁰⁸ A benefit corporation’s obligation to pursue its general public benefit purpose is not limited by the adoption of specific public benefits.¹⁰⁹ Thus, the creation of a specific public benefit gives benefit corporations the flexibility and protection to pursue other purposes in addition to its general public benefit purpose.¹¹⁰

The statute also provides that “[t]he creation of general public benefit and a specific public benefit . . . is deemed to be in the best interest of the benefit corporation,”¹¹¹ and the corporation does not violate Section 621.08 by having the creation of general and

102. FLA. STAT. § 607.0301.

103. *Id.* § 607.606(1).

104. *Id.* § 607.602(5).

105. Ian Kanig, Note, *Sustainable Capitalism Through the Benefit Corporation: Enforcing the Procedural Duty of Consideration to Protect Non-Shareholder Interests*, 64 HASTINGS L.J. 863, 893 (2013); see Clark, Jr. & Babson, *supra* note 97, at 839 (noting that the definition of a general public benefit was meant to be comprehensive and flexible). “What is meant by general public benefit is significantly informed by two other provisions of the benefit corporation statutes: the redefined duties of directors and the differing treatment of general public benefit and specific public benefit.” *Id.*

106. FLA. STAT. § 607.606(2).

107. *Id.* § 607.602(8).

108. *Id.* § 607.606(2). Minimum status vote is achieved by at least two-thirds of the total votes. *Id.* § 607.602(7).

109. *Id.* § 607.606(2).

110. See Clark, Jr. & Babson, *supra* note 97, at 841 (explaining that specific benefit purposes ensure “that a benefit corporation can pursue any specific mission, but that the company as a whole is also working toward general public benefit”).

111. FLA. STAT. § 607.606(3).

specific public benefits as its purpose.¹¹² Section 621.08 states, in part, that a corporation cannot “engage in any business other than the rendering of the professional services for which it was specifically organized.”¹¹³ These sections provide flexibility in corporate decision-making by assuring that the financial interests of the corporation do not take precedent over its public benefit purposes, and that its public benefit purposes are being pursued and created.¹¹⁴ Furthermore, the required consideration of non-shareholder stakeholder’s interest is important in distinguishing benefit corporation statute from constituency statutes. While the benefit corporation statutes mandate that non-shareholder stakeholder’s interest be considered, the constituency statute only permits the consideration of non-shareholder interests.¹¹⁵

3. *Directors’ and Officers’ Duties*

The second innovation brought by the benefit corporation statutes is the expansion of directors’ and officers’ fiduciary duties to consider the interests of non-shareholder stakeholders to ensure that the benefit corporation will pursue its stated corporate purposes. In Florida, in addition to directors’ general standards of conduct required by traditional for-profit corporations,¹¹⁶ directors of benefit corporations, in discharging their duties, are required to consider: (1) the shareholders, (2) the employees, (3) the customers and suppliers, (4) the community and societal factors where the company is located, (5) the local and global environment, (6) the short-term and long-term interests of the corporation, and (7) the corporation’s ability to accomplish its general public benefit and any specifically adopted public benefit purposes.¹¹⁷ Officers are also subject to a standard of conduct.¹¹⁸ Officers are encouraged to

112. *Id.* § 607.606(4).

113. *Id.* § 621.08.

114. Clark, Jr. & Babson, *supra* note 97, at 841–42.

115. *Id.* at 840.

116. *See* FLA. STAT. § 607.0830 (articulating directors’ regular duties).

117. *Id.* § 607.607. “The stakeholder consideration mandate is an important distinguishing feature that from the basic corporation statutes in ‘constituency’ states.”

Clark, Jr. & Babson, *supra* note 97, at 840. “[U]nder ‘constituency’ statutes, the consideration of non-shareholder interests is permissive, while under the benefit corporation statutes it is mandatory.” *Id.* (footnote omitted).

118. FLA. STAT. § 607.609.

take action if they reasonably believe that a matter may hinder the corporation's ability to create a general or specific public benefit.¹¹⁹

Directors and officers enjoy protection under the benefit corporation statute. First, except as provided in the articles of incorporation, directors and officers are not personally liable if the corporation does not pursue or create general or specific public benefits.¹²⁰ Second, the corporation is not monetarily liable for failure to pursue or create its general benefit purpose or specific purposes.¹²¹ These provisions eliminate the legal uncertainty, due to lack of court precedent, of how the award for monetary liability for failure to create or pursue public benefits could be quantified.¹²² They also push courts to award injunctive relief, in which the benefit corporation would be required to pursue its stated purposes.¹²³ If, on the other hand, a benefit corporation bore monetary liability, it could harm its overall profitability, which, in turn, would decrease its ability to pursue general or specific public benefits, negatively affect shareholders' economic interests, and ultimately hinder the adoption and expansion of benefit corporations.¹²⁴

4. *The Benefit Enforcement Proceeding*

The third innovation brought by benefit corporation statutes is that they provide for a new right of action to keep benefit corporations accountable—the benefit enforcement proceeding.¹²⁵ A benefit enforcement proceeding is defined as any claim or action for failure “to pursue or create general public benefit or a specific public benefit purpose set forth in [the corporation's] articles of incorporation” or “[a] violation of any obligation, duty, or standard of conduct” pursuant to the benefit corporation statutes.¹²⁶ In Florida, the benefit corporation, directors, shareholders, a person or group of persons (minimum of five percent ownership) that owns beneficially or of record, or any other person specified in the

119. *Id.* § 607.609(1).

120. *Id.* §§ 607.607(3), 607.609(4).

121. *Id.* § 607.611(1)(b).

122. Clark, Jr. & Babson, *supra* note 97, at 848–49.

123. *Id.*

124. Westaway & Sampselle, *supra* note 56, at 1041.

125. FLA. STAT. §§ 607.602(3), 607.611.

126. *Id.* § 607.602(3).

articles of incorporation can commence or maintain a benefit enforcement proceeding.¹²⁷

Generally, the benefit corporation and its directors and officers are not monetarily liable for the failure to create or pursue the company's general or specific public purpose.¹²⁸ Also, non-shareholder stakeholders are ineligible to bring a benefit enforcement proceeding, unless authorized under the company's articles of incorporation.¹²⁹ The exclusion of liability and lack of third-party standing to bring a benefit enforcement proceeding protects the corporation from liability and uncertainties that would otherwise disincentivize companies from becoming benefit corporations.¹³⁰

5. *The Annual Benefit Report*

Lastly, Florida's benefit corporation statutes innovate by instituting a reporting requirement—the annual benefit report. The requirement that the annual benefit report assess the benefit corporation's social and environmental performance against a third-party standard is an essential part of Florida's benefit corporation statutes.¹³¹ To increase accountability and transparency, benefit corporations are required to provide an annual benefit report to their shareholders and to make it available to the general public.¹³² The corporation, through the board of directors, must apply the third-party standard to itself.¹³³ A third-party standard is defined as “a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business.”¹³⁴ The third-party standard enables

127. *Id.* § 607.611(2).

128. *Id.* §§ 607.607(1)(d)(2), 607.609(3), 607.611(2)(b). Directors and officers could be held monetarily liable for not pursuing the benefit corporation's general and specific benefit purpose if otherwise stated in the company's article of incorporation. *Id.* §§ 607.607(1)(d)(2), 607.609(3).

129. *Id.* § 607.611(2).

130. Clark, Jr. & Babson, *supra* note 97, at 845.

131. FLA. STAT. § 607.612(2).

132. *Id.* § 607.612.

133. *Id.* § 607.612(1).

134. *Id.* § 607.602(10). The annual report must identify the provider of the third-party standard, but does not require that the provider audit or certify the annual report. *Id.* § 607.612(4). There are several companies that provide third-party standards, such as B Lab, ULE 880, and GreenSeal. Neetal Parekh & David Jaber, *Third Party Standards for Benefit Corporations*, TRIPLEPUNDIT (Mar. 6, 2012), <http://www.triplepundit.com/2012/03/third-party-standards-benefit-corporations/>.

shareholders and the public to monitor the performance of the benefit corporation and its directors.¹³⁵ Because, to date, there is not a standardized way to report on social and environmental performance, the benefit corporation can choose the third-party standard to assess its performance.¹³⁶

The annual benefit report must contain a narrative description of how the company achieved, and the extent to which the company achieved, its public benefits purposes.¹³⁷ In addition, the annual benefit report must contain an assessment against a third-party standard, chosen by the benefit corporation, of its social and environmental performance.¹³⁸ The government does not interfere with the corporation's choice.¹³⁹ The annual benefit report does not need to be audited or certified by a third party,¹⁴⁰ but it must contain a statement that discloses any connection between the corporation and the entity that originated the third-party standard.¹⁴¹

The annual benefit report must be sent to each shareholder either within one hundred twenty days after the fiscal year ends or at the time of delivery of any other annual reports to shareholders.¹⁴² The annual benefit report must also be available to the public either through the organization's website or upon any person's request.¹⁴³ If the organization fails to provide the report to its shareholders, the circuit court can order the corporation to pay for the shareholders' costs in obtaining the report.¹⁴⁴

The annual benefit report, through assessment and disclosure, provides shareholders and the public a tool to evaluate the benefit corporation's ability to achieve, or failure to achieve, its

135. Clark, Jr. & Babson, *supra* note 97, at 842.

136. *Id.*

137. MODEL BENEFIT CORP. LEG. § 401(a)(1) (2014).

138. *Id.* § 401(a)(2). Other requirements include “[t]he compensation paid by the benefit corporation during the year to each director in the capacity of a director.” *Id.* § 401(a)(4). Note that this Section is absent from Florida's statutes. Further, the annual benefit report must include a statement of the connections between the organization that establishes the third-party standard and the benefit corporation, or any person that may affect credibility of the use of the standard. *Id.* § 401(a)(6).

139. B Lab, *General Questions*, BENEFIT CORP., <http://benefitcorp.net/faq> (last visited June 11, 2016) [hereinafter *General Questions*].

140. *Id.*; see FLA. STAT. § 607.612(4) (2015) (stating that annual benefit reports “are not required to be audited or certified by a third-party standards provider”).

141. FLA. STAT. § 607.602(10).

142. *Id.* § 607.613(1).

143. *Id.* § 607.613(3).

144. *Id.* § 607.613(4).

corporate goals. Further, the annual benefit report provides courts with the necessary tools to analyze whether the benefit corporation's elected third-party standard satisfies the statutory requirements and the corporate purposes.¹⁴⁵ This accountability tool has the potential to reward benefit corporations that demonstrate higher levels of social and environmental performance by facilitating investments and improving customer loyalty.¹⁴⁶

C. Leading by Example: Florida Benefit Corporations

Clean the World Management Inc. (Clean the World Management) was the first Florida business to become a benefit corporation.¹⁴⁷ Located in Orlando, Florida, the company offers business services to Clean the World Foundation, Inc., a non-profit organization that provides recycled, discarded soaps and other hygiene products from hotels to homeless shelters and impoverished nations to prevent deadly diseases, such as pneumonia and diarrhea.¹⁴⁸ To date, the company has provided over “[thirty] million bars of soap to [one hundred] countries.”¹⁴⁹ Clean the World Foundation, Inc. added the for-profit branch to obtain better financing and involve more investors.¹⁵⁰ The company's co-founder, Shawn Seipler, explained: “We wanted it to be a [benefit corporation] because we wanted people to understand that this is a social organization with a mission. . . .”¹⁵¹

SEQUIL Systems, Inc. (SEQUIL) has also adopted benefit corporation status in Florida.¹⁵² The company also is a certified B Corp.¹⁵³ Located in Delray Beach, Florida, SEQUIL is a consulting

145. Westaway & Sampselle, *supra* note 56, at 1039.

146. Clark, Jr. & Babson, *supra* note 97, at 845.

147. Paul Brinkmann, *Clean the World Becomes Florida 'B' Corporation*, ORLANDO SENTINEL (July 15, 2014, 6:00 AM), <http://www.orlandosentinel.com/business/brinkmann-on-business/os-clean-world-florida-benefit-corporation-20140714-post.html>.

148. *Id.*; see CLEAN THE WORLD, <https://www.cleantheworld.org/foundation/> (last visited May 23, 2016) (explaining that hand washing with soap is a great, cost effective way of reducing the number of people killed by diarrhea each year).

149. *Home Page*, CLEAN THE WORLD, <https://cleantheworld.org> (last visited June 11, 2016).

150. Brinkmann, *supra* note 147.

151. *Id.*

152. Julie Fahnstock, *Florida Affirms B Corp Status as SEQUIL Systems Leads the Way*, JUSTMEANS (May 29, 2014, 11:30 AM), <http://www.justmeans.com/blogs/florida-affirms-b-corp-status-as-sequil-systems-leads-the-way>.

153. *SEQUIL Systems Inc.*, B CORPORATION.NET, <http://www.bcorporation.net/>

firm that provides sustainability advice to the construction industry.¹⁵⁴ The company is one hundred percent employee-owned, and its “team of architects and engineers are dedicated to optimizing building performance from design through construction.”¹⁵⁵ The company provides a collaborative work environment, flexible work schedules, generous benefits, retirement programs, and a “no policy” vacation policy in which employees can take as much time off as they want, provided they give notice.¹⁵⁶ In the community, over thirty percent of the company’s projects are designed for non-profit companies and social enterprises.¹⁵⁷ In addition, thirty percent of the company’s completed projects are for low-income housing, and another thirty percent of the projects are located on brownfield or urban infill sites.¹⁵⁸

B Storytelling, Inc. (B Storytelling) is a start-up company, incorporated as a benefit corporation with the purpose of helping other social enterprises build “a brand [and] content strategy around their extraordinary work,” and empower women by telling their stories.¹⁵⁹ More specifically, the company strives to encourage young women’s professional and creative growth and mentor women that have survived human trafficking.¹⁶⁰ The company is located in West Palm Beach, Florida, and it is currently a “pending” certified B Corp—a pending status is given by B Lab to companies on a path to full certification that have been in operation for less than twelve months.¹⁶¹

Clean the World Management, SEQUIL, and B Storytelling are examples of Florida’s benefit corporations’ positive impact on the society and the economy. The benefit corporation statutes have provided Florida’s social entrepreneurs and investors a corporate

community/sequil-systems-inc (last visited June 11, 2016).

154. *Services*, SEQUIL, http://www.sequil.com/index.php?option=com_content&view=article&id=210&Itemid=66 (last visited June 11, 2016).

155. *Id.*

156. *SEQUIL Systems Inc.*, *supra* note 153.

157. *Id.*

158. *Id.*

159. *Our Story*, B STORYTELLING, <http://www.bstorytelling.com/#about> (last visited June 11, 2016).

160. *Id.*

161. *See id.* (including the certified B Corp pending logo on the company’s website); *Steps for Start Ups*, BCORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/steps-start-ups> (last visited June 11, 2016) (describing the process of becoming a certified B Corporation).

form that allows them to focus on generating profit while pursuing their social and environmental missions.

IV. BENEFIT CORPORATION CONCERNS, RECOMMENDATIONS, AND IMPACT ON THE SOCIETY

Consumers, employees, and investors increasingly choose to buy, work, and invest in companies that are committed to social responsibility.¹⁶² Traditional corporate law lacks definitive guidance and permission for companies to pursue their social, environmental, and economic goals.¹⁶³ Without clear authority that expressly permits directors to pursue both profit and social and environmental missions, then even the companies that are socially responsible and driven may hesitate to consider their social and environmental missions for fear of breaching their fiduciary duty.¹⁶⁴ The benefit corporation offers an innovative solution to the inadequacy of traditional corporate form applicability to social enterprises.

However, the benefit corporation legislation is not free of critics and concerns.¹⁶⁵ This Part explores some concerns regarding benefit corporation legislation followed by some recommendations

162. See John Peloza & Jingzhi Shang, *Investing in Corporate Social Responsibility to Enhance Customer Value*, HARV. L. SCH. F. CORP. GOVERNANCE & FIN. REG. (Feb. 28, 2011), <http://corpgov.law.harvard.edu/2011/02/28/>

investing-in-corporate-social-responsibility-to-enhance-customer-value/ (focusing on the impact of corporate social responsibility on consumer value). The research showed that investments in corporate social responsibility could lead “to outcomes such as increased customer loyalty, willingness to pay premium prices, and lower reputational risks in times of crisis.” *Id.* (footnotes omitted).

163. Choudhury, *supra* note 50, at 631. The debate over the purpose of the corporation has persisted in modern corporate law since the 1930s. *Id.* “[T]he question of whether the purpose of the corporation is to serve the interests of shareholders . . . or whether it can also consider the interests of other corporate constituencies remains unsettled.” *Id.*

164. Katz & Page, *supra* note 12, at 85 (noting that “[a] recent survey showed that 71% of social entrepreneurs believed that the choice of legal structure was the single greatest challenge for their ventures” (footnote omitted)).

165. See Sean W. Brownridge, *Canning Plum Organics: The Avant-Garde Campbell Soup Company Acquisition and Delaware Public Benefit Corporations Wandering Revlon-Land*, 39 DEL. J. CORP. L. 703, 709 (2015) (noting that although advocates of benefit corporation legislation claim that traditional corporate law makes it hard for companies to consider social and environmental goals, critics of the social enterprise movement claim that directors are not legally restricted to consider the interests of other stakeholders). Furthermore, critics claim that most states have enacted constituency statutes that allow directors to consider the interests of other stakeholders. *Id.* However, with the additional powers explicitly stated in the benefit corporation statutes, companies have greater freedom in decision-making and less risk of litigation. *Benefit Corporations Are Necessary*, *supra* note 35.

to Florida's statutes. This Part concludes with an analysis of the benefit corporation statutes' impact on society.

A. Concerns

Commentators of the benefit corporation legislation have criticized some of its statutory provisions. While some critics argue that the benefit corporation legislation is unnecessary because traditional for-profit corporate law is adequate to accommodate companies with social and environmental missions;¹⁶⁶ others are concerned with the benefit corporation's ability to attract investors and capital—since most investors are concerned with maximizing their investments—and with the possibility that companies can brand themselves as being socially responsible without pursuing social or environmental missions—called “greenwashing.”

1. Access to Investment and Capital

Benefit corporations have been criticized for their potential inability to attract and secure capital because the majority of investors are primarily interested in maximizing returns on their investments.¹⁶⁷ Because benefit corporations are a new corporate form, one potential drawback is that courts have not yet interpreted the statutes' mandates to consider potential benefits to society in addition to generating profit.¹⁶⁸ Further, the impact of benefit corporations on raising capital and the reaction of investors and venture capitalists are still unsettled.¹⁶⁹ Even though there is a growing percentage of investors that are concerned and involved with corporate responsibility and social entrepreneurship, many investors may still want a big return on their investment that benefit corporations may be unable to provide. Therefore, there is

166. Mark A. Underberg, *Benefit Corporations vs. “Regular” Corporations: A Harmful Dichotomy*, HARV. L. SCH. F. CORP. GOVERNANCE & FIN. REG. (May 13, 2012), <http://corpgov.law.harvard.edu/2012/05/13/benefit-corporations-vs-regular-corporations-a-harmful-dichotomy/> (taking the position that for “the vast majority of corporate decisions, there is no legal restriction on directors' ability to consider the interests of other stakeholders, including the groups listed in the [benefit corporation] statutes”).

167. Ashley Schoenjahn, Note, *New Faces of Corporate Responsibility: Will New Entity Forms Allow Businesses to Do Good?*, 37 J. CORP. L. 453, 471–72 (2012).

168. Doug Bend & Alex King, *Why Consider a Benefit Corporation?*, FORBES (May 30, 2014, 9:00 AM), <http://www.forbes.com/sites/theyec/2014/05/30/why-consider-a-benefit-corporation/>.

169. *Id.*

a possibility that benefit corporations may attract only a small percentage of investors and that the benefit corporation will not be disseminated as a widespread corporate form. However, benefit corporation legislation does not prevent companies from going public; “[i]n fact, the benefit corporation legal structure was created to enable companies to go public and maintain their social mission.”¹⁷⁰

While this Article concurs with this concern and acknowledges that there are no publicly held benefit corporations at this moment, there are a number of large, privately held corporations that have adopted benefit corporation status, including Method Home Products, King Arthur Flour, and Patagonia.¹⁷¹ Further, at least one benefit corporation may be “paving the way” for publicly held corporations to adopt benefit corporation status.¹⁷² Plum Organics, a benefit corporation and a certified B Corp, is the leading organic baby food company.¹⁷³ In 2013, Campbell Soup Company, a publicly held corporation, acquired Plum Organics.¹⁷⁴ Later that same year, with the help of Campbell Soup Company, Plum Organics obtained benefit corporation status and became the first benefit corporation to be owned by a public company.¹⁷⁵ Thus, with increasing awareness of benefit corporations, more legal certainty, and a legal framework, there is a possibility public companies will be more inclined to adopt benefit corporation status.

2. Greenwashing

In today’s market, an increasing number of companies choose to use terms such as “sustainable,” “green,” and “socially responsible” to describe their companies culture and products.¹⁷⁶ A

170. B Lab, *FAQ*, BENEFIT CORP, <http://benefitcorp.net/faq> (last visited June 11, 2016).

171. *Id.*

172. Ariel Schwartz, *Inside Plum Organics, the First Benefit Corporation Owned by a Public Company*, FAST COMPANY (Jan. 22, 2014 8:08 AM), <http://www.fastcoexist.com/3024991/world-changing-ideas/inside-plum-organics-the-first-benefit-corporation-owned-by-a-public-co>.

173. *Our Story*, PLUM ORGANICS, <http://www.plumorganics.com/mission/about-us> (last visited June 11, 2016).

174. Schwartz, *supra* note 172.

175. *Id.*

176. Raphael Bemporad & Mitch Baranowski, *Conscious Consumers Are Changing the Rules of Marketing. Are You Ready?*, FMI (Nov. 2007), https://www.fmi.org/docs/sustainability/BBMG_Conscious_Consumer_White_Paper.pdf (noting that conscious consumer’s language and labels have become a component of consumer culture). “Americans readily self-identify as ‘conscious consumers’ (88% well, 37%

2013 survey showed about sixty-three percent of customers do not always believe in a company's claims of social responsibility.¹⁷⁷ Because of the marketing benefits of association with corporate social responsibility policies and practices, there is a concern that companies can potentially brand themselves as socially responsible without, or by only minimally, pursuing their social goals—the so-called “greenwashing” phenomenon.¹⁷⁸

Greenwashing has a negative impact on companies that are actually committed to social responsibility.¹⁷⁹ Companies that are genuinely socially and environmentally committed lose competitive advantage, which, in turn, affects conscious-minded consumers, employees, and investors.¹⁸⁰ On the other hand, truthful advertisement improves the quality of decision-making, reduces uncertainty, facilitates consumer satisfaction, and promotes competition.¹⁸¹ The same concern applies to social enterprises, more specifically to benefit corporations. Although greenwashing is a potential issue within the benefit corporation movement, this new legislation provides tools that may help reduce greenwashing among benefit corporations: “The accountability and third-party verification elements could prove a strong antidote to greenwashing, as the incentives to greenwash decrease with oversight and accountability.”¹⁸²

very well), ‘socially responsible’ (88% well, 39% very well) and ‘environmentally-friendly’ (86% well, 34% very well).” *Id.* The word “green’ (65% well, 18% very well) . . . continues to be viewed as more exclusive and harder to achieve.” *Id.*

177. Michelle Goodman, *Everything You Need to Know About B Corporation Certification*, ENTREPRENEUR (Aug. 6, 2013), <http://www.entrepreneur.com/article/227099>.

178. Jacob Vos, *Actions Speak Louder Than Words: Greenwashing in Corporate America*, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 673, 673–75 (2009) (illustrating that the Ford Motors practices social responsibility through, inter alia, advertisements for hybrid and electric cars). However, one can make the argument that Ford is greenwashing its reputation through those advertisements since it has not delivered its promise to increase fuel efficiency of its sports cars and has joined other companies in their efforts to impede California legislation that would limit emission of global warming gases. *Id.*; see Devika Kewalramani & Richard J. Sobelsohn, *Are You Being Greenwashed?*, 84 N.Y. ST. B.J. 10, 10 (2012) (explaining that “[g]reenwashing . . . merges the concepts of ‘green’ (environmentally sound) and ‘whitewashing’ (to gloss over wrongdoing) to describe the deceptive use of ‘green marketing’ to promote a misleading perception” of a company).

179. Miriam A. Cherry, *The Law and Economics of Corporate Social Responsibility and Greenwashing*, 14 U.C. DAVIS BUS. L. J. 281, 294 (2014).

180. See *id.* at 300–03 (explaining that greenwashing is a challenge to corporate social responsibility since it undermines the social responsibility movement by making the movement less trustworthy).

181. Vos, *supra* note 178, at 686.

182. Cherry, *supra* note 179, at 294.

There are different tools to avoid or decrease greenwashing within the benefit corporation framework. First, third-party certifications are an important instrument in addressing greenwashing.¹⁸³ Accordingly, there is a growing need for meaningful third-party certification. Generally, independent third-party certifications provide an extra level of assurance that companies are doing what they claim they are doing.¹⁸⁴

Second, benefit corporation statutes provide transparency through their required annual benefit report (with the exception of Delaware statutes, which require biennial reports) that require companies to show adherence to their public benefits purposes.¹⁸⁵ The annual benefit report serves to inform and help shareholders, directors, consumers, employees, and investors to determine whether the company has met its statutory benefit purposes.¹⁸⁶ Therefore, the annual report is a reporting obligation designed to ensure that companies do not deceptively market themselves as socially conscious.

B. Recommendations to Florida's Benefit Corporation Statutes

To make Florida's benefit corporation statutes more transparent and reliable, some provisions should be included in the statutes. First, benefit corporation statutes should have more stringent provisions as to the requirement that benefit corporations post their annual benefit reports in a public portion of their website (if any) or provide the benefit report free of charge to anyone who requests a copy.¹⁸⁷ As it stands, the Florida statutes provide that courts can order a benefit corporation to provide the annual report upon a shareholder's request and that companies may be liable for shareholder's cost in obtaining the report.¹⁸⁸ Unfortunately, Florida's statutory provisions are explicitly limited

183. *Id.*

184. *Common Misconceptions*, *supra* note 74.

185. *General Questions*, *supra* note 139; see DEL. CODE tit. 8, § 366(b) (2013) (stating that a benefit corporation "shall no less than biennially" provide its shareholders with a benefit report).

186. *General Questions*, *supra* note 139.

187. FLA. STAT. § 607.613(2)–(3) (2015); MODEL BENEFIT CORP. LEG. § 402(b)–(c) (2014).

188. FLA. STAT. § 607.613(4). In comparison, the Model has no enforcement provision related to the existence of the annual reports or the truthfulness related to the information contained in the reports. J. Haskell Murray, *Social Enterprise Innovation: Delaware's Public Benefit Corporation Law*, 4 HARV. BUS. L. REV. 345, 359 (2014).

to shareholders.¹⁸⁹ These provisions are problematic since they do not encourage companies to self-report; consequently, “a number of benefit corporations have chosen not to provide the benefit corporation reports, and little to no action seems to have been taken to correct these statutory violations.”¹⁹⁰ Thus, the Florida statutes should have more stringent enforcement provisions that would encourage companies to make available truthful annual benefit reports.

First, Florida’s benefit corporation statutes can be improved by requiring companies to forfeit their benefit corporation status if their annual reports are either untruthful or unavailable and the issue is not resolved within a certain timeframe. Further, Florida should also require benefit corporations to file a copy of their annual benefit report with the Attorney’s General office, as required by other states, such as Massachusetts.¹⁹¹ This would ensure that benefit corporations create and make available to the public their benefit report, and it would facilitate the access to benefit corporations’ benefit reports across the state.

Second, the Florida statutes do not specify the type or scope of disclosure concerning the open-ended nature of how benefit corporations may pursue its general and specific benefit goals. Because benefit corporations can use substantial corporate assets in activities that do not generate profit, shareholders’ return on their investment may be significantly affected by these corporate expenditures and management making such decisions may be protected from monetary liability.¹⁹² To avoid misconceptions and any violation of state and federal securities laws, the Florida statutes should require companies to make such information available to investors, unless it has already been included in the annual benefit report.¹⁹³

189. FLA. STAT. § 607.613(4) (“If the court orders the report to be furnished, the court may also order the benefit corporation to pay the shareholder’s costs.” (emphasis added)).

190. Murray, *supra* note 188, at 359 (footnote omitted).

191. MASS. GEN. LAWS ch. 156E, § 16(d) (2013) (“The benefit corporation shall deliver a copy of the benefit report to the state secretary . . . , but the compensation paid to directors and financial, confidential or proprietary information included in the benefit report may be omitted from the benefit report as filed.”).

192. Cohn & Ames, *supra* note 20, at 38–39.

193. *Id.* at 40 (explaining that the “[f]ailure to make adequate disclosure might result in state or federal securities law violations if investors are misled by misstatements or omissions of material facts regarding corporate goals, policies, and shareholder rights and limitations” (footnote omitted)).

C. Benefit Corporation Impact on the Society

In the last twenty years, social enterprise has become a “full-fledged sector of the American market.”¹⁹⁴ Social enterprises produce nearly 3.5% of the United States GDP and employ over ten million workers.¹⁹⁵ In addition, about 5% of the population reports being involved in social entrepreneurship.¹⁹⁶ The social enterprise movement is likely to keep growing as more consumers, employees, and investors continue to pressure the market for more socially conscious corporate policies and practices.¹⁹⁷ Therefore, “[i]n this socially conscious environment, the emergence of a corporate form designed to spur social innovation, the benefit corporation, was inevitable.”¹⁹⁸

Although traditional companies can engage in charitable and social purposes such as making donations for educational, cultural, scientific, and charitable purposes, the extent and the means to achieve those purposes can be achieved is unsettled.¹⁹⁹ Therefore, benefit corporation statutes provide for more clarity in corporate law.²⁰⁰ The statutes also enable corporate directors to freely engage in social missions without the fear of breaching their fiduciary duty to shareholders.²⁰¹ In a benefit corporation, shareholder and non-shareholder stakeholders are considered equal in the process of decision-making. For example, benefit corporations like Patagonia do not need to worry about shareholders or investors opposing their social and environmental purposes since those purposes are part of the corporate purpose.²⁰² Further, benefit corporations are less vulnerable to hostile takeovers because their status provides protection and discretion to the board of directors by allowing them to reject a hostile takeover if it would be against the shareholders’ and other stakeholders’ interests.²⁰³

194. Dasari et al., *supra* note 2, at 18.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* (footnote omitted).

199. Choudhury, *supra* note 50, at 643.

200. Reiser, *supra* note 51, at 595.

201. *Benefit Corporations Are Necessary*, *supra* note 35.

202. James Surowiecki, *Companies with Benefits*, NEW YORKER (Aug. 4, 2014), <http://www.newyorker.com/magazine/2014/08/04/companies-benefits>.

203. Clark, Jr. & Babson, *supra* note 97, at 829.

Benefit corporation legislation is also likely to reduce shareholder litigation and lower transactional costs.²⁰⁴ Since benefit corporation legislation requires companies to state their general benefit purpose, as well as other specific benefit purposes, in their articles of incorporation, shareholders are less likely to sue a corporation for pursuing its corporate goals.²⁰⁵ However, this assumption is untested since benefit corporations are a new legal entity, and so far no shareholder has attempted to sue. The provisions contained in the benefit corporation legislation provide for legal clarity regarding a benefit corporation's social and economic purposes.²⁰⁶ Further, benefit corporation legislation will likely lower transactional costs²⁰⁷ since benefit corporations and investors will not need to negotiate "specific contracts or investment devices" to protect the mission they are investing in the event of possible litigation because of the structure of the benefit corporation statutes.²⁰⁸

Lastly, benefit corporation statutes promote innovation, grow tax revenue, and increase investment in social and environmental issues.²⁰⁹ Benefit corporations have more freedom to invest in long-term social good and to develop new business strategies that appear less profitable in the short term but more responsible, which, in turn, can enhance innovation in solving social and environmental problems.²¹⁰ Since benefit corporations are for-profit, not tax-exempt entities, the creation and investment in benefit corporations will result in increased tax revenue for federal, state, and local governments.²¹¹ With the advent of benefit corporation statutes, companies can continue to expand the social enterprise movement and create a stronger sense of integration between commerce and social entrepreneurship. Society as a whole will benefit from more companies pursuing social and environmental missions that cannot be abandoned when directors see fit—for example, during periods of economic crisis.

Although benefit corporation statutes are not perfect, the statutes are relevant and should be adopted and promoted by

204. Westaway & Sampsele, *supra* note 56, at 1079.

205. Resor, *supra* note 25, at 110–11.

206. Westaway & Sampsele, *supra* note 56, at 1083–85.

207. *Id.* at 1079.

208. *Id.*

209. *Id.* at 1083–84.

210. *Id.* at 1084.

211. *Id.* at 1083.

states because they are the best solution to current corporate governance issues that limit companies from achieving their full social enterprise potential.²¹² Further, the benefit corporation statutes provide a good business model to social entrepreneurs by allowing social enterprises to be mission-oriented while pursuing profit.

V. CONCLUSION

Social enterprises are a new avenue for investors, consumers, and employees who are interested in companies focused on pursuing social and environmental missions. Benefit corporation legislation creates innovation by offering legal clarity, transparency, and accountability for benefit corporations.²¹³ Florida has modernized its corporate laws by enacting its own benefit corporation legislation. The new legislation intends to allow corporations to create or pursue benefit goals to a degree beyond what might otherwise be considered permissible for traditional corporations.

The innovative legal structure of the benefit corporation legislation creates legal clarity and accountability for benefit corporations through its annual benefit report and benefit enforcement proceeding. These measures allow investors, directors, and consumers to be aware of and act on a corporation's hybrid purpose. With over thirty states recognizing benefit corporations in only five years of legislative efforts, the benefit corporation movement has reached an important momentum and may well be the entity of choice for those who desire to both make money and further social and environmental missions.²¹⁴ Moreover, although benefit corporations are fairly new and untested, their framework provides social entrepreneurs with a good business model that permits social enterprises to pursue their social and environmental missions beyond what is otherwise permissible for traditional, for-profit corporations.

212. *Id.* at 1079.

213. Resor, *supra* note 25, at 113.

214. Cohn & Ames, *supra* note 20, at 41.