



January 18, 2012

SENATE BILL No. 62

DIGEST OF SB 62 (Updated January 13, 2012 2:19 pm - DI dj)

Citations Affected: IC 23-1; IC 23-19; IC 23-21; IC 34-30.

Synopsis: Securities and flexible purpose corporations. Exempts the offering or sale of certain securities from the registration, notice, and prospectus requirements of the Indiana Uniform Securities Act if the aggregate amount of the securities sold annually does not exceed \$1,000,000 and the aggregate amount sold annually to any one investor does not exceed \$10,000. Requires that certain information must be disclosed and certain warnings be given to the purchaser by the issuer or by the intermediary through whom the exempt securities are sold. Requires that the intermediary through whom these exempt securities may be sold must be registered as a broker-dealer or as a funding portal. Defines "funding portal". Places certain restrictions on the transfer of these securities by the purchaser for one year after purchase. Allows the securities commissioner to establish rules by which potential issuers of these exempt securities would be disqualified from issuing the exempt securities. Permits a corporation to be established as a flexible purpose corporation, and provides that a flexible purpose corporation has as its corporate purpose the provision of public
(Continued next page)

Effective: July 1, 2012.

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January 4, 2012, read first time and referred to Committee on Rules and Legislative Procedure.

January 17, 2012, amended; reassigned to Committee on Commerce and Economic Development.

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benefits. Defines a "public benefit" to include: (1) a material, positive impact on society or the environment as a whole; or (2) furthering public welfare, religious, charitable, scientific, literary, or educational purposes beyond the strict interest of the corporation's shareholders. Requires a flexible purpose corporation to consider the public in taking actions, and specifies that a flexible purpose corporation acts in the flexible purpose corporation's best interest when the flexible purpose corporation provides a public benefit. Grants civil immunity to an officer of a flexible purpose corporation who takes a good faith action to further the public benefit if the action meets certain requirements. Requires a flexible purpose corporation to issue an annual report. Makes a conforming amendment.

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January 18, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 62

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-1-44-8, AS AMENDED BY P.L.133-2009,
2 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 8. (a) A shareholder is entitled to dissent from,
4 and obtain payment of the fair value of the shareholder's shares in the
5 event of, any of the following corporate actions:
6 (1) Consummation of a plan of merger to which the corporation
7 is a party if:
8 (A) shareholder approval is required for the merger by
9 IC 23-1-40-3 or the articles of incorporation; and
10 (B) the shareholder is entitled to vote on the merger.
11 (2) Consummation of a plan of share exchange to which the
12 corporation is a party as the corporation whose shares will be
13 acquired, if the shareholder is entitled to vote on the plan.
14 (3) Consummation of a sale or exchange of all, or substantially
15 all, of the property of the corporation other than in the usual and
16 regular course of business, if the shareholder is entitled to vote on
17 the sale or exchange, including a sale in dissolution, but not

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1 including a sale pursuant to court order or a sale for cash pursuant
 2 to a plan by which all or substantially all of the net proceeds of
 3 the sale will be distributed to the shareholders within one (1) year
 4 after the date of sale.

5 (4) The approval of a control share acquisition under IC 23-1-42.

6 (5) Any corporate action taken pursuant to a shareholder vote to
 7 the extent the articles of incorporation, bylaws, or a resolution of
 8 the board of directors provides that voting or nonvoting
 9 shareholders are entitled to dissent and obtain payment for their
 10 shares.

11 **(6) The adoption of an amendment to the articles of**
 12 **incorporation of:**

13 **(A) a corporation that is not a flexible purpose corporation**
 14 **to convert the corporation into a flexible purpose**
 15 **corporation under IC 23-21-4; or**

16 **(B) a flexible purpose corporation to terminate the**
 17 **corporation's status as a flexible purpose corporation**
 18 **under IC 23-31-5.**

19 (b) This section does not apply to the holders of shares of any class
 20 or series if, on the date fixed to determine the shareholders entitled to
 21 receive notice of and vote at the meeting of shareholders at which the
 22 merger, plan of share exchange, or sale or exchange of property is to be
 23 acted on, the shares of that class or series were a covered security under
 24 Section 18(b)(1)(A) or 18(b)(1)(B) of the Securities Act of 1933, as
 25 amended.

26 (c) The articles of incorporation as originally filed or any
 27 amendment to the articles of incorporation may limit or eliminate the
 28 right to dissent and obtain payment for any class or series of preferred
 29 shares. However, any limitation or elimination contained in an
 30 amendment to the articles of incorporation that limits or eliminates the
 31 right to dissent and obtain payment for any shares:

32 (1) that are outstanding immediately before the effective date of
 33 the amendment; or

34 (2) that the corporation is or may be required to issue or sell after
 35 the effective date of the amendment under any exchange or other
 36 right existing immediately before the effective date of the
 37 amendment;

38 does not apply to any corporate action that becomes effective within
 39 one (1) year of the effective date of the amendment if the action would
 40 otherwise afford the right to dissent and obtain payment.

41 (d) A shareholder:

42 (1) who is entitled to dissent and obtain payment for the

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1 shareholder's shares under this chapter; or
 2 (2) who would be so entitled to dissent and obtain payment but for
 3 the provisions of subsection (b);
 4 may not challenge the corporate action creating (or that, but for the
 5 provisions of subsection (b), would have created) the shareholder's
 6 entitlement.

7 (e) Subsection (d) does not apply to a corporate action that was
 8 approved by less than unanimous consent of the voting shareholders
 9 under IC 23-1-29-4.5(b) if both of the following apply:

10 (1) The challenge to the corporate action is brought by a
 11 shareholder who did not consent and as to whom notice of the
 12 approval of the corporate action was not effective at least ten (10)
 13 days before the corporate action was effected.

14 (2) The proceeding challenging the corporate action is
 15 commenced not later than ten (10) days after notice of the
 16 approval of the corporate action is effective as to the shareholder
 17 bringing the proceeding.

18 SECTION 2. IC 23-19-2-2.5 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2012]: **Sec. 2.5. (a) The offer or sale of a security by an issuer is
 21 exempt from IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4
 22 if the offer or sale is conducted in accordance with each of the
 23 following requirements:**

24 (1) **The aggregate amount sold within the previous twelve (12)
 25 month period in reliance upon this exemption is not more
 26 than one million dollars (\$1,000,000).**

27 (2) **The aggregate amount sold to any investor in reliance
 28 upon this exemption within the previous twelve (12) month
 29 period does not exceed ten thousand dollars (\$10,000).**

30 (3) **In the case of a transaction involving an intermediary
 31 between the issuer and the investor, the intermediary
 32 complies with subsection (b).**

33 (4) **In the case of a transaction not involving an intermediary
 34 between the issuer and the investor, the issuer complies with
 35 subsection (c).**

36 **(b) If the issuer uses an intermediary, the intermediary shall:**

37 (1) **warn investors, including on the intermediary's Internet
 38 web site used for the offer and sale of a security that is exempt
 39 under subsection (a), of the speculative nature generally
 40 applicable to investments in startups, emerging businesses,
 41 and small issuers, including risks in the secondary market
 42 related to illiquidity;**



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- 1 (2) warn investors that they are subject to the restriction on
2 sales requirement described under subsection (d);
3 (3) take reasonable measures to reduce the risk of fraud with
4 respect to an offer or sale that is exempt under subsection (a);
5 (4) ensure that the issuer is organized in Indiana and is
6 subject to the laws of Indiana;
7 (5) provide the commissioner with the intermediary's physical
8 address, the intermediary's Internet web site address, and the
9 names of the intermediary and employees of the intermediary,
10 and keep this information up to date;
11 (6) provide the commissioner with continuous investor level
12 access to the intermediary's Internet web site;
13 (7) require each potential investor to answer questions
14 demonstrating:
15 (A) an understanding of the level of risk generally
16 applicable to investments in startups, emerging businesses,
17 and small issuers;
18 (B) an understanding of the risk of illiquidity; and
19 (C) an understanding of other areas as the commissioner
20 determines by rule;
21 (8) carry out a background check on the issuer's principals;
22 (9) provide the commissioner and potential investors with
23 notice of the offering, not later than the first day securities are
24 offered to potential investors, including:
25 (A) the issuer's name, legal status, physical address, and
26 Internet web site address;
27 (B) the names of the issuer's principals;
28 (C) the stated purpose and intended use of the proceeds of
29 the offering sought by the issuer; and
30 (D) the target offering amount and the deadline to reach
31 the target offering amount;
32 (10) outsource cash management functions to a qualified third
33 party custodian, such as a broker-dealer registered under
34 IC 23-19-4-1 or an insured depository institution;
35 (11) maintain such books and records as the commissioner
36 determines appropriate;
37 (12) make available on the intermediary's Internet web site a
38 method of communication that permits the issuer and
39 investors to communicate with each other;
40 (13) provide the commissioner with a notice upon completion
41 of the offering, which shall include the aggregate offering
42 amount and the number of purchasers; and

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- 1 (14) not offer investment advice.
- 2 (c) If an issuer does not use an intermediary, the issuer shall:
- 3 (1) warn investors, including on the issuer's Internet web site
- 4 used for the offer and sale of such securities, of the speculative
- 5 nature generally applicable to investments in startups,
- 6 emerging businesses, and small issuers, including risks in the
- 7 secondary market related to illiquidity;
- 8 (2) warn investors that they are subject to the restriction on
- 9 sales requirement described under subsection (d);
- 10 (3) take reasonable measures to reduce the risk of fraud with
- 11 respect to such transaction;
- 12 (4) be organized in Indiana and subject to the laws of Indiana;
- 13 (5) provide the commissioner with the issuer's physical
- 14 address, the issuer's Internet web site address, and the names
- 15 of the principals and employees of the issuer, and keep such
- 16 information up to date;
- 17 (6) provide the commissioner with continuous investor level
- 18 access to the issuer's Internet web site;
- 19 (7) require each potential investor to answer questions
- 20 demonstrating:
- 21 (A) an understanding of the level of risk generally
- 22 applicable to investments in startups, emerging businesses,
- 23 and small issuers;
- 24 (B) an understanding of the risk of illiquidity; and
- 25 (C) an understanding of other areas the commissioner
- 26 determines appropriate by rule;
- 27 (8) provide the commissioner with notice of the offering, not
- 28 later than the first day securities are offered to potential
- 29 investors, including:
- 30 (A) the stated purpose and intended use of the proceeds of
- 31 the offering sought by the issuer; and
- 32 (B) the target offering amount and the deadline to reach
- 33 the target offering amount;
- 34 (9) outsource cash management functions to a qualified third
- 35 party custodian, such as a broker-dealer registered under
- 36 IC 23-19-4-1 or an insured depository institution;
- 37 (10) maintain books and records as the commissioner
- 38 determines appropriate;
- 39 (11) make available on the issuer's Internet web site a method
- 40 of communication that permits the issuer and investors to
- 41 communicate with each other;
- 42 (12) not offer investment advice;

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- 1 (13) provide the commissioner with a notice upon completion
- 2 of the offering, which must include the aggregate offering
- 3 amount and the number of purchasers; and
- 4 (14) disclose to potential investors, on the issuer's Internet
- 5 web site, that the issuer has an interest in the issuance.

6 (d) With respect to a transaction involving the issuance of
 7 securities described under this section, a purchaser may not
 8 transfer the securities during the one (1) year period beginning on
 9 the date of purchase, unless the securities are sold to:

- 10 (1) the issuer; or
- 11 (2) an accredited investor.

12 (e) With respect to a transaction described under this section
 13 involving an intermediary, the intermediary may not be required
 14 to register as a broker-dealer under IC 23-19-4-1 solely because of
 15 participation in the transaction.

16 (f) This section may not be construed as preventing an issuer
 17 from raising capital through methods not described under this
 18 section.

19 (g) The commissioner may by rule establish disqualification
 20 provisions under which an issuer is not eligible to use the
 21 exemption under this section based on the disciplinary history of
 22 the issuer or the issuer's predecessors, affiliates, officers, directors,
 23 or persons fulfilling similar roles. The commissioner may also
 24 establish disqualification provisions under which an intermediary
 25 is not eligible to act as an intermediary in connection with an
 26 offering using the exemption under this section based on the
 27 disciplinary history of the intermediary or the intermediary's
 28 predecessors, affiliates, officers, directors, or persons fulfilling
 29 similar roles.

30 SECTION 3. IC 23-21 IS ADDED TO THE INDIANA CODE AS
 31 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 32 2012]:

33 **ARTICLE 21. FLEXIBLE PURPOSE CORPORATIONS**

34 **Chapter 1. Definitions**

35 Sec. 1. (a) The definitions set forth in this chapter apply
 36 throughout this article.

37 (b) The definitions set forth in IC 23-1-20 apply throughout this
 38 article unless the context clearly denotes otherwise.

39 Sec. 2. "Benefit enforcement proceeding" means a claim or an
 40 action brought directly by a flexible purpose corporation, or
 41 derivatively on behalf of a flexible purpose corporation, against a
 42 director or officer for:

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- 1 (1) failure to pursue the general public benefit purpose of the
- 2 flexible purpose corporation or any specific public benefit
- 3 purpose set forth in the articles of incorporation or bylaws of
- 4 the flexible purpose corporation or otherwise adopted by the
- 5 board of directors of the flexible purpose corporation; or
- 6 (2) a violation of a duty or standard of conduct under this
- 7 article.

8 Sec. 3. "Flexible purpose corporation" means a corporation
 9 organized under this article that:

- 10 (1) has elected to become subject to this article; and
- 11 (2) has not terminated its status as a flexible purpose
- 12 corporation under IC 23-21-5.

13 Sec. 4. "General public benefit" means a material, positive
 14 impact on society or the environment taken as a whole.

15 Sec. 5. "Public benefit" means a general or specific public
 16 benefit.

17 Sec. 6. "Specific public benefit" means a benefit that serves one
 18 (1) or more public welfare, religious, charitable, scientific, literary,
 19 or educational purposes, or other purpose or benefit beyond the
 20 strict interest of the shareholders of the flexible purpose
 21 corporation, including:

- 22 (1) providing low income or underserved individuals or
- 23 communities with beneficial products or services;
- 24 (2) promoting economic opportunity for individuals or
- 25 communities beyond the creation of jobs in the normal course
- 26 of business;
- 27 (3) preserving or improving the environment;
- 28 (4) improving human health;
- 29 (5) promoting the arts, sciences, or advancement of
- 30 knowledge;
- 31 (6) increasing the flow of capital to entities with a public
- 32 benefit purpose; and
- 33 (7) conferring any other particular benefit on society or the
- 34 environment.

35 Sec. 7. "Subsidiary" means, in relation to an individual, an
 36 entity in which the individual either:

- 37 (1) owns, directly or indirectly, equity interests that entitle the
- 38 individual to cast a majority of the votes entitled to be cast
- 39 generally in an election of directors or members of the
- 40 governing body of the entity; or
- 41 (2) otherwise owns or controls voting or contractual power to
- 42 exercise effective governing control of the entity.

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1 **The percentage of ownership of equity interests or ownership or**
 2 **control of power to exercise control shall be calculated as if all**
 3 **outstanding rights to acquire equity interests in the entity had been**
 4 **exercised.**

5 **Chapter 2. Application**

6 **Sec. 1. This article applies to every corporation that has elected**
 7 **to become a flexible purpose corporation in accordance with this**
 8 **article.**

9 **Sec. 2. The existence of a provision of this article does not itself**
 10 **create an implication that a contrary or different rule of law**
 11 **applies to a corporation that is not a flexible purpose corporation.**
 12 **This article may not be construed to affect a statute or rule of law**
 13 **that applies to a corporation that is not a flexible purpose**
 14 **corporation.**

15 **Sec. 3. IC 23-1 (the Indiana business corporation law) applies to**
 16 **a corporation that has elected to become a flexible purpose**
 17 **corporation under this article, unless a provision of IC 23-1**
 18 **conflicts with a provision of this article. In that case, the provisions**
 19 **of this article control over IC 23-1.**

20 **Chapter 3. Formation of a Flexible Purpose Corporation**

21 **Sec. 1. A flexible purpose corporation may be formed in**
 22 **accordance with IC 23-1 and this article. The articles of**
 23 **incorporation, as initially filed or as amended, must state that the**
 24 **corporation is a flexible purpose corporation.**

25 **Chapter 4. Election of Status After Formation**

26 **Sec. 1. (a) A corporation that was not formed as a flexible**
 27 **purpose corporation may become a flexible purpose corporation by**
 28 **amending the corporation's articles of incorporation so that the**
 29 **articles contain, in addition to matters required by IC 23-1, a**
 30 **statement that the corporation is a flexible purpose corporation.**
 31 **An amendment to the articles of incorporation to create a flexible**
 32 **purpose corporation shall be submitted to the shareholders in**
 33 **accordance with the procedures set forth in IC 23-1-38. To be**
 34 **adopted, the amendment must receive the affirmative votes of**
 35 **two-thirds (2/3) of the members entitled to vote.**

36 **(b) A corporation's board of directors, or the incorporators if**
 37 **a board of directors has not been selected, may not amend the**
 38 **corporation's articles of incorporation to create a flexible purpose**
 39 **corporation without shareholder action.**

40 **(c) Action taken under this chapter may entitle a shareholder to**
 41 **dissenters' rights under IC 23-1-44.**

42 **Chapter 5. Termination of Status**



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1 **Sec. 1. (a)** A flexible purpose corporation may terminate its
 2 status as a flexible purpose corporation and cease to be subject to
 3 this article by amending the flexible purpose corporation's articles
 4 of incorporation in accordance with IC 23-1-38. An amendment to
 5 terminate a corporation's status as a flexible purpose corporation
 6 must receive the affirmative votes of two-thirds (2/3) of the
 7 members entitled to vote. A flexible purpose corporation's board
 8 of directors, or the incorporators if a board of directors has not
 9 been selected, may not amend the flexible purpose corporation's
 10 articles of incorporation to remove its status as a flexible purpose
 11 corporation without shareholder action.

12 **(b)** Action taken under this chapter may entitle a shareholder to
 13 dissenters' rights under IC 23-1-44.

14 **Chapter 6. Corporate Purposes**

15 **Sec. 1.** A flexible purpose corporation must have as one (1) of its
 16 purposes the purpose of providing a general public benefit. The
 17 articles of incorporation of a flexible purpose corporation may also
 18 identify one (1) or more specific public benefits that is the purpose
 19 of the flexible purpose corporation to provide. A public benefit
 20 may also be set forth in the bylaws or in a resolution adopted by
 21 the board of directors. This public purpose is in addition to the
 22 flexible purpose corporation's public purpose under IC 23-1-22-1
 23 and any other purpose set forth in the articles of incorporation.

24 **Sec. 2.** The provision of a public benefit under section 1 of this
 25 chapter is in the best interests of the flexible purpose corporation.

26 **Sec. 3.** A flexible purpose corporation may amend its articles of
 27 incorporation in accordance with IC 23-1-38 to add, amend, or
 28 delete the identification of a specific public benefit that is the
 29 purpose of the flexible purpose corporation to provide. An
 30 amendment to the articles of incorporation under this section must
 31 receive the affirmative votes of two-thirds (2/3) of the members
 32 entitled to vote.

33 **Chapter 7. Standard of Conduct for Directors**

34 **Sec. 1. (a)** Subject to IC 23-1-35, in discharging the duties of
 35 their respective positions and in considering the best interests of
 36 the flexible purpose corporation, the board of directors, a
 37 committee of the board, and an individual director of a flexible
 38 purpose corporation:

39 **(1)** shall consider the effects of any corporate action upon:

40 **(A)** the shareholders of the flexible purpose corporation;

41 **(B)** the:

42 **(i)** employees and workforce of the flexible purpose

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- 1 corporation; and
- 2 (ii) subsidiaries and suppliers of the flexible purpose
- 3 corporation;
- 4 (C) the interests of customers as beneficiaries of the
- 5 general or specific public benefit purposes of the flexible
- 6 purpose corporation;
- 7 (D) the community, including each community in which an
- 8 office or facility of the flexible purpose corporation, its
- 9 subsidiaries, or its suppliers are located;
- 10 (E) the local and global environment;
- 11 (F) the short term and long term interests of the flexible
- 12 purpose corporation, including benefits that may accrue to
- 13 the flexible purpose corporation from the flexible purpose
- 14 corporation's long term plans, and the possibility that
- 15 these interests and the general and specific public benefit
- 16 purposes of the flexible purpose corporation may be best
- 17 served by the continued independence of the flexible
- 18 purpose corporation; and
- 19 (G) the ability of the flexible purpose corporation to
- 20 accomplish its general and specific public benefit purpose;
- 21 (2) may consider:
- 22 (A) the resources, intent, and potential future conduct of
- 23 any person seeking to acquire control of the flexible
- 24 purpose corporation; and
- 25 (B) other pertinent factors or the interests of any other
- 26 person that they consider appropriate; and
- 27 (3) are not required to give priority to a particular interest
- 28 referred to in subdivisions (1) and (2) over another interest,
- 29 unless the flexible purpose corporation has stated its intention
- 30 to give priority to that interest in connection with a specific
- 31 public benefit purpose identified in the flexible purpose
- 32 corporation's articles of incorporation.
- 33 (b) The consideration of interests in the manner required by
- 34 subsection (a) does not constitute a violation of IC 23-1-35 and does
- 35 not create a conflict of interest.
- 36 (c) In any proceeding brought by or on behalf of a flexible
- 37 purpose corporation or brought by or on behalf of the
- 38 shareholders of a flexible purpose corporation, a director is not
- 39 personally liable for monetary damages for:
- 40 (1) any action taken as a director if the director performed the
- 41 duties of the office in compliance with IC 23-1 and this
- 42 chapter; or

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1 (2) failure of the flexible purpose corporation to provide a
2 general public benefit or any specific public benefit specified
3 in the flexible purpose corporation's articles of incorporation,
4 bylaws, or resolution adopted by the board of directors.

5 **Chapter 8. Limitation of Liability**

6 **Sec. 1. (a) An officer of a flexible purpose corporation is not**
7 **liable for an action taken that the officer believes, in the officer's**
8 **good faith business judgment, is consistent with:**

- 9 (1) the public benefit specified in the articles of incorporation,
10 bylaws, or resolution adopted by the board of directors; and
11 (2) the requirements of any third-party standard that are in
12 effect for the corporation at the time the action is taken.

13 (b) The liability provided by this chapter is in addition to any
14 indemnification provided under IC 23-1-37.

15 **Chapter 9. Right of Action**

16 **Sec. 1. The:**

- 17 (1) duties of a director or officer under this article;
18 (2) obligation of a flexible purpose corporation to prepare and
19 make available the annual benefit report required under
20 IC 23-21-10; and
21 (3) duty of the flexible purpose corporation to provide a
22 public benefit;

23 may be enforced only in a benefit enforcement proceeding. A
24 person may bring an action or otherwise assert a claim only
25 against a flexible purpose corporation or its directors or officers in
26 connection with their duties under this article in a benefit
27 enforcement proceeding under section 2 of this chapter.

28 **Sec. 2. A benefit enforcement proceeding may be commenced or**
29 **maintained only:**

- 30 (1) directly by the flexible purpose corporation; or
31 (2) derivatively by:
32 (A) a shareholder of the flexible purpose corporation;
33 (B) a director of the flexible purpose corporation; or
34 (C) another person as specified in the flexible purpose
35 corporation's articles of incorporation, the flexible purpose
36 corporation's bylaws, or resolution adopted by the flexible
37 purpose corporation's board of directors.

38 **Chapter 10. Annual Benefit Report**

39 **Sec. 1. A flexible purpose corporation shall prepare an annual**
40 **benefit report that includes all the following:**

- 41 (1) A narrative description of the manner in which the flexible
42 purpose corporation provided or attempted to provide the

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1 public benefit set forth in the flexible purpose corporation's
2 articles of incorporation, the flexible purpose corporation's
3 bylaws, or resolution adopted by the flexible purpose
4 corporation's board of directors.

5 (2) The extent to which the public benefit was actually
6 provided.

7 (3) Any particular circumstances that hindered the flexible
8 purpose corporation in providing the public benefit.

9 Sec. 2. The benefit report shall be made available annually to
10 each shareholder of the flexible purpose corporation:

11 (1) not later than one hundred twenty (120) days after the end
12 of the flexible purpose corporation's fiscal year; or

13 (2) at the same time that the flexible purpose corporation
14 delivers any other annual report to its shareholders.

15 Sec. 3. A flexible purpose corporation shall post its most recent
16 benefit report on a publicly accessible portion of its Internet web
17 site, if any. If a flexible purpose corporation does not have an
18 Internet web site, it shall make a written or electronic copy of its
19 most recent benefit report available upon written request from any
20 person. A flexible purpose corporation is not required to publicly
21 disclose to persons other than its shareholders any proprietary,
22 confidential, or individual compensation information contained in
23 its benefit report if any third party standard adopted by the
24 directors of the flexible purpose corporation permits the omission
25 of this information from public disclosure.

26 SECTION 4. IC 34-30-2-96.1 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2012]: Sec. 96.1. IC 23-21 (Concerning the
29 liability of an officer and director of a flexible purpose corporation
30 for an action taken to provide a public benefit).

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 62, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Commerce and Economic Development.

(Reference is to SB 62 as introduced.)

LONG, Chairperson

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