



House of Representatives

General Assembly

File No. 449

February Session, 2012

Substitute House Bill No. 5466

House of Representatives, April 16, 2012

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SOCIAL ENTERPRISE BUSINESSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2013*) As used in this section
2 and sections 2 to 9, inclusive, of this act:

3 (1) "Social enterprise business" means a corporation, as defined in
4 section 33-602 of the general statutes, provided such corporation has
5 the primary purpose of creating a social benefit;

6 (2) "Social benefit" means a material positive impact on society or
7 the environment through one or more specific public benefits;

8 (3) "Specific public benefit" means:

9 (A) Providing low income or underserved individuals or
10 communities with beneficial products or services;

11 (B) Promoting economic opportunity for individuals or
12 communities beyond the creation of jobs in the normal course of

13 business;

14 (C) Preserving or improving the environment;

15 (D) Improving human health;

16 (E) Promoting the arts or sciences or the advancement of
17 knowledge;

18 (F) Increasing the flow of capital to entities with a social benefit
19 purpose;

20 (G) Accomplishing any other identifiable benefit for society or the
21 environment; or

22 (H) Significantly furthering the accomplishment of one or more
23 charitable, cultural, scientific, literary or educational purposes within
24 the meaning of section 170(c)(2)(B) of the Internal Revenue Code of
25 1986, or any subsequent corresponding internal revenue code of the
26 United States, as amended from time to time;

27 (4) "Subsidiary" means an entity that the social enterprise business
28 owns beneficially or of record fifty per cent or more of the equity
29 interests;

30 (5) "Independent", for purposes of third parties in relationship to a
31 social enterprise business, means having no material relationship with
32 a social enterprise business or any of its subsidiaries, other than the
33 relationship of serving as the director or officer of a social enterprise
34 business, either directly or as an owner or manager of an entity that
35 has a material relationship with the social enterprise business or any of
36 its subsidiaries;

37 (6) "Material relationship" means a relationship between a person
38 and a social enterprise business or any of its subsidiaries in which:

39 (A) The person is, or has been within the last three years, an
40 employee of the social enterprise business or any of its subsidiaries;

41 (B) An immediate family member of the person is, or has been
42 within the last three years, an executive officer of the social enterprise
43 business or any of its subsidiaries; or

44 (C) The person or an entity of which the person is a manager or in
45 which the person owns beneficially or of record five per cent or more
46 of the equity interests owns beneficially or of record five per cent or
47 more of the shares of the social enterprise business;

48 (7) "Third-party standard" means a recognized standard for
49 defining, reporting and assessing corporate social and environmental
50 performance that is: (A) Developed by an organization that is
51 independent of the social enterprise business; and (B) easily
52 understood because the following information concerning the
53 standard is publicly available: (i) The factors considered when
54 measuring the performance of a business; (ii) the relative weightings of
55 those factors; and (iii) the identity of the persons that develop and
56 control changes to the standard and the process by which those
57 changes are made; and

58 (8) "Benefit enforcement proceeding" means a claim or action
59 against a director or officer for:

60 (A) Failure to pursue the public social benefit purpose of the social
61 enterprise business or any specific public benefit purpose set forth in
62 its articles of incorporation; or

63 (B) Violation of a duty or standard of conduct under sections 1 to 9,
64 inclusive, of this act.

65 Sec. 2. (NEW) (*Effective January 1, 2013*) (a) Any corporation
66 organized pursuant to sections 33-635, 33-636, 33-637 and 33-639 of the
67 general statutes may become a social enterprise business, as defined in
68 section 1 of this act, by (1) amending its articles of incorporation and
69 bylaws, as appropriate, to add a statement of social benefit; or (2) being
70 a party to a plan of merger, adopted pursuant to chapter 601 of the
71 general statutes, or share exchange in which the surviving corporation

72 will be a social enterprise business.

73 (b) Such amendment or plan of merger shall be adopted and shall
74 become effective in accordance with sections 33-795 to 33-803,
75 inclusive, of the general statutes, provided:

76 (1) The notice of the shareholders' meeting to approve an
77 amendment or plan of merger made pursuant to this section shall
78 include a statement from the board of directors regarding (A) the
79 reason why the board is proposing the amendment or plan of merger;
80 and (B) the anticipated effect on shareholders of becoming a social
81 enterprise business; and

82 (2) The amendment or plan of merger shall be approved by the
83 higher of (A) the vote required by the articles of incorporation; or (B)
84 two-thirds of the votes entitled to be cast by the outstanding shares of
85 the corporation, provided if any class of shares is entitled to vote as a
86 group, approval shall also require the affirmative vote of the holders of
87 at least two-thirds of the votes entitled to be cast by the outstanding
88 shares of each voting group.

89 (c) Any shareholder not voting in favor of an amendment or plan of
90 merger pursuant to this section may require the social enterprise
91 business to purchase for cash at their fair market value the shares
92 owned by such shareholder.

93 Sec. 3. (NEW) (*Effective January 1, 2013*) (a) The articles of
94 incorporation of a social enterprise business, as defined in section 1 of
95 this act, may identify one or more specific public benefits in addition to
96 the social enterprise business's purposes under section 33-645 of the
97 general statutes. The adoption of a specific public benefit purpose
98 under this section shall not limit the obligation of a social enterprise
99 business to create a social benefit.

100 (b) A social enterprise business may amend its articles of
101 incorporation to add, amend or delete a specific public benefit,
102 provided there shall always be at least one specific public benefit. Any

103 such amendment shall be adopted and become effective in accordance
104 with sections 33-795 to 33-803, inclusive, of the general statutes.

105 (c) No social enterprise business shall have as a specific public
106 benefit a political or legislative purpose, as defined in Section
107 170(c)(2)(D) of the Internal Revenue Code of 1986, or any subsequent
108 corresponding internal revenue code of the United States, as amended
109 from time to time.

110 (d) A social enterprise business shall at all times maintain and
111 enforce an ethical code of conduct and conflict of interest policy
112 consistent with the highest and best business practices in the industry
113 in which it conducts its business.

114 Sec. 4. (NEW) (*Effective January 1, 2013*) A social enterprise business
115 shall distribute at least twenty per cent of any distributed profits to a
116 charitable organization that serves the business's specific public
117 benefit.

118 Sec. 5. (NEW) (*Effective January 1, 2013*) (a) Each director of a social
119 enterprise business, as defined in section 1 of this act, in discharging
120 his or her duties as a director:

121 (1) Shall, in determining what the director reasonably believes to be
122 in the best interests of the social enterprise business, consider the
123 effects of any action or inaction upon the:

124 (A) Shareholders of the social enterprise business;

125 (B) Employees and workforce of the social enterprise business and
126 its subsidiaries and suppliers;

127 (C) Interests of customers to the extent they are beneficiaries of the
128 social benefit or specific public benefit purposes of the social enterprise
129 business;

130 (D) Community and social considerations, including those of any
131 community in which offices or facilities of the social enterprise

132 business or its subsidiaries or suppliers are located;

133 (E) Local and global environment; and

134 (F) Long-term and short-term interests of the social enterprise
135 business, including the possibility that those interests may be best
136 served by the continued independence of the social enterprise
137 business;

138 (2) Shall not be required to give priority to the interests of any
139 particular person or group referred to in this subsection over the
140 interests of any other person or group unless the social enterprise
141 business has stated its intention to give priority to interests related to
142 its specific public benefit purpose in its articles of incorporation; and

143 (3) Shall not be subject to a different or higher standard of care
144 when an action or inaction might affect control of the social enterprise
145 business.

146 (b) The consideration of interests and factors as described in
147 subsection (a) of this section shall not constitute a violation of section
148 33-756 of the general statutes.

149 (c) A director shall not be liable if a social enterprise business fails to
150 create a social benefit or specific public benefit.

151 (d) A director shall not be liable to the social enterprise business or
152 any person entitled to bring a benefit enforcement proceeding for any
153 action or failure to take action in his or her official capacity if such
154 director performed the duties of his or her office in compliance with
155 this section and section 33-756 of the general statutes.

156 (e) A director of a social enterprise business shall have a fiduciary
157 duty only to those persons entitled to bring a benefit enforcement
158 proceeding against the social enterprise business. A director of a social
159 enterprise business shall not have any fiduciary duty to a person who
160 is a beneficiary of a social benefit or specific public benefit purpose of
161 the social enterprise business arising only from the person's status as a

162 beneficiary.

163 Sec. 6. (NEW) (*Effective January 1, 2013*) (a) An officer of a social
164 enterprise business shall consider the interests and factors described in
165 subsection (a) of section 5 of this act in the manner provided in said
166 subsection (a) when:

167 (1) The officer has discretion in how to act or not act with respect to
168 a matter; and

169 (2) It reasonably appears to the officer that the matter may have a
170 material effect on:

171 (A) The creation of a social benefit or specific public benefit by the
172 social enterprise business; or

173 (B) Any of the interests or factors referred to in subsection (a) of
174 section 5 of this act.

175 (b) The consideration of interests and factors in the manner
176 described in subsection (a) of this section shall not constitute a
177 violation of the fiduciary duty of an officer to the social enterprise
178 business.

179 (c) An officer shall not be liable to the social enterprise business or
180 any person entitled to bring a benefit enforcement proceeding for any
181 action or failure to take action in his or her official capacity if the
182 officer performed the duties of the position in compliance with this
183 section and sections 33-763 and 33-764 of the general statutes.

184 (d) An officer of a social enterprise business shall have no liability
185 for actions taken that the officer believes, in his or her good faith
186 business judgment, are consistent with (1) the general public benefit or
187 any specific public benefit specified in the certificate of incorporation
188 or bylaws or otherwise adopted by the board of directors, and (2) the
189 requirements of any third-party standard in effect for the social
190 enterprise business.

191 (e) An officer of a social enterprise business shall have a fiduciary
192 duty only to those persons entitled to bring a benefit enforcement
193 proceeding against the social enterprise business. An officer of a social
194 enterprise business shall not have any fiduciary duty to a person that
195 is a beneficiary of the social benefit or specific public benefit purposes
196 of the social enterprise business arising only from the person's status as
197 a beneficiary.

198 Sec. 7. (NEW) (*Effective January 1, 2013*) A social enterprise business,
199 as defined in section 1 of this act, may designate a social enterprise
200 officer who shall have the authority and shall perform the duties in the
201 management of the social enterprise business relating to the purpose of
202 the corporation to create public benefit as set forth in the bylaws, or to
203 the extent not inconsistent with the bylaws, prescribed by the board of
204 directors or by direction of an officer authorized by the board of
205 directors to prescribe the duties of the office.

206 Sec. 8. (NEW) (*Effective January 1, 2013*) (a) The duties of directors
207 and officers of a social enterprise business, as defined in section 1 of
208 this act, and the social benefit and specific public benefit purposes of a
209 social enterprise business may be enforced only in a benefit
210 enforcement proceeding and no person may bring such an action or
211 claim against a social enterprise business or its directors or officers
212 except as provided in this section.

213 (b) A benefit enforcement proceeding may be commenced or
214 maintained only by:

215 (1) A shareholder who would otherwise be entitled to commence or
216 maintain a proceeding in the right of the social enterprise business on
217 any basis;

218 (2) A director of the social enterprise business;

219 (3) A person or group of persons who owns beneficially or of record
220 ten per cent or more of the equity interests in an entity of which the
221 social enterprise business is a subsidiary; or

222 (4) Such other persons or entities as may be specified in the articles
223 of incorporation of the social enterprise business.

224 Sec. 9. (NEW) (*Effective January 1, 2013*) (a) A social enterprise
225 business shall deliver to each shareholder, in a format approved by the
226 directors, an annual benefit report, which shall include:

227 (1) A statement of the specific goals or outcomes identified by the
228 social enterprise business for creating social benefit and any specific
229 public benefit for the period of the benefit report;

230 (2) A description of the actions taken by the social enterprise
231 business to attain the identified goals or outcomes and the extent to
232 which the goals or outcomes were attained;

233 (3) A description of any circumstances that hindered the attainment
234 of the identified goals or outcomes and the creation of social benefit or
235 any specific public benefit;

236 (4) Specific actions the social enterprise business will take to
237 improve its social and environmental performance and attain the goals
238 or outcomes identified for creating social benefit and any specific
239 public benefit;

240 (5) An assessment of the social and environmental performance of
241 the social enterprise business prepared in accordance with a third-
242 party standard that has been applied consistently with prior benefit
243 reports or accompanied by an explanation of the reasons for any
244 inconsistent application;

245 (6) A statement of specific goals or outcomes identified by the social
246 enterprise business and approved by the shareholders for creating
247 social benefit and any specific public benefit for the period of the next
248 benefit report;

249 (7) The name of each social enterprise director and the social
250 enterprise officer, if any, and the address to which correspondence to
251 each of them may be directed;

252 (8) A budget and balance sheet, including the accounting method
253 used;

254 (9) A copy of the compensation plan;

255 (10) Disclosure of all financial investors;

256 (11) The compensation paid by the social enterprise business during
257 the year to each director and a list of the one per cent most highly
258 compensated employees;

259 (12) Code of conduct and conflict of interest policies; and

260 (13) The name of each person that owns beneficially or of record five
261 per cent or more of the shares of the social enterprise business.

262 (b) A social enterprise business shall annually deliver and publish
263 via its web site the benefit report to each shareholder within one
264 hundred twenty days of the end of the fiscal year of the social
265 enterprise business or at the same time that the social enterprise
266 business delivers any other annual report to its shareholders.

267 (c) Concurrently with the delivery of the benefit report to
268 shareholders as provided in subsection (b) of this section, the social
269 enterprise business shall deliver a copy of the benefit report to the
270 office of the Secretary of the State for filing.

271 (d) Every five years, the social enterprise business shall obtain an
272 independent third party to review the benefit report and conduct an
273 assessment of the social enterprise business's social benefit and specific
274 public benefit to ensure compliance and consistency with the articles of
275 incorporation.

276 Sec. 10. (NEW) (*Effective January 1, 2013*) Notwithstanding the
277 provisions of sections 33-880 to 33-900, inclusive, of the general
278 statutes, the assets of a social enterprise business that dissolves
279 pursuant to chapter 601 of the general statutes shall be applied and
280 distributed as follows: (1) All liabilities and other obligations of the

281 social enterprise business shall be paid, satisfied and discharged, or
 282 adequate provision shall be made therefor, and (2) assets received and
 283 held by the corporation shall be transferred or conveyed to one or
 284 more social enterprise businesses or charitable organizations with a
 285 similar social benefit as the social enterprise business being dissolved.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2013	New section
Sec. 2	January 1, 2013	New section
Sec. 3	January 1, 2013	New section
Sec. 4	January 1, 2013	New section
Sec. 5	January 1, 2013	New section
Sec. 6	January 1, 2013	New section
Sec. 7	January 1, 2013	New section
Sec. 8	January 1, 2013	New section
Sec. 9	January 1, 2013	New section
Sec. 10	January 1, 2013	New section

Statement of Legislative Commissioners:

In section 1(1), "a for-profit organization formed in accordance with sections 33-635, 33-636, 33-637 and 33-639" was replaced with "a corporation, as defined in section 33-602" for statutory consistency; in section 1(4), "person" was changed to "social enterprise business" for internal consistency; in section 1(5) "for purposes of third parties in relationship to the social enterprise business," was added for clarity; section 1(8) was moved from section 8 for internal consistency; section 3(c) was deleted for internal and statutory consistency; and in section 10, a reference to section 33-1176 of the general statutes was changed to a reference to sections 33-880 to 33-900, inclusive, of the general statutes and a reference to chapter 602 was changed to a reference to chapter 601 for accuracy.

CE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Secretary of the State	GF - Cost	62,000	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes Social Business Enterprises as a type of for-profit corporation. There is a cost to the Secretary of the State estimated to be \$62,000 associated with programming a new business entity into the CONCORD commercial records database.

The bill is expected to have a neutral impact on revenue, as it is anticipated that most social business enterprises created will be reclassified registered businesses.

The Out Years

The bill presents a one-time cost in FY 13 and has no impact on the out years.

OLR Bill Analysis**sHB 5466*****AN ACT CONCERNING SOCIAL ENTERPRISE BUSINESSES*****SUMMARY:**

This bill establishes a social enterprise business (SEB) as a type of for profit corporation. SEBs are formed primarily to create a social benefit, one that has a material positive impact on society or the environment. Under the bill, they must do so by engaging in one or more specified activities ranging from providing benefits to low-income people to furthering charitable, cultural, scientific, literary, or educational purposes (i.e., “specific public benefits”). SEBs must also distribute at least 20% of their distributed profits to charitable organizations serving the same specific public purpose.

The bill specifies how businesses formed and operating under the business corporation laws can become SEBs. A business can become a SEB by (1) amending its articles of incorporation to specify a specific public benefit as its primary purpose or (2) merging with another business that will become a SEB. Both actions must be approved by the shareholders as the bill specifies and comply with the statutes governing articles of incorporation and business mergers.

The bill specifies the duties and obligations of SEB directors and officers and protects them from liability for decisions made in specified contexts. It limits their fiduciary duty to shareholders, the SEB’s directors, and certain owners.

These parties are the only ones who may bring a “benefit enforcement proceeding” against the directors and officers to fulfill their respective duties and against the SEB to fulfill its social benefit and specified public benefit. They can use the proceedings to bring a claim or action against a director or officer for failing to pursue a social

benefit specified in the SEB's articles of incorporation or violating the bill's standards of conduct.

The SEB must report annually to its shareholders on the extent to which it achieved its social benefit goals and have an independent third party review its performance every five years.

Lastly, the bill specifies how the SEB must distribute its assets if it dissolves.

EFFECTIVE DATE: January 1, 2013

§§ 1 & 4 — CRITERIA

The bill allows corporations formed under the statutes to establish themselves as SEBs and specifies the criteria for doing so. To become a SEB, the corporation must adopt as its primary purpose to create a material positive impact on society or the environment through one or more of the following specific public benefits:

1. provide beneficial products and services to low-income people and underserved individuals;
2. promote economic opportunities for people and communities beyond creating jobs in everyday business;
3. preserve or improve the environment;
4. improve human health;
5. promote the arts and sciences or advances in knowledge;
6. increase capital flows to entities serving a social purpose;
7. benefit society or the environment in other identifiable ways; or
8. significantly further one or more charitable, cultural, scientific, literary, or educational purposes, as defined in the federal Internal Revenue Code (IRC).

To meet the last criterion, the corporation must operate exclusively for religious, charitable, scientific, literary, or educational purposes; foster national or international amateur sports competition; or prevent cruelty to children and animals (IRC, § 170 (c)(2)(B)).

Besides creating a specific public benefit, the corporation must distribute at least 20% of any distributed profits to a charitable organization serving the same specific public benefit.

§§ 2 & 3 — PROCEDURE FOR BECOMING A SEB

Method

Under the bill, a corporation can establish itself as a SEB or become part of another corporation that will.

A corporation can establish itself as a SEB by specifying in its articles of incorporation at least one specific public benefit it intends to create. The number of benefits does not limit its obligation to create one. But it cannot adopt a specific public benefit that requires influencing legislation or participating or intervening in campaigns for public office, as specified in IRC, § 170 (c)(2)(D).

Alternatively, the corporation can become a SEB by merging or exchanging shares with another corporation that will become a SEB.

Procedure

Regardless of the method the corporation chooses, it must comply with the statutes for amending articles of incorporation or effecting a merger. Those statutes require shareholders to be notified about the meeting where they must vote on the amendment or merger plan. Under the bill, the corporation's board of directors must state in the notice why it is proposing the action and how it will affect the shareholders.

The action is approved based on the higher of two outcomes: (1) the number of votes required by the corporation's bylaws to approve the action or (2) two-thirds of the votes cast by the outstanding shares. If the bylaws allow a class of shares to vote as a group, then a two-thirds

vote of each class is required. If the shareholders approve the action, a shareholder who voted against it may require the corporation to purchase his or her shares for cash at their fair market value.

The corporation can subsequently add, amend, or delete specific public benefits from its articles of incorporation, but the articles must specify at least one such benefit if the corporation intends to remain a SEB. These changes must also be made according to the statutory procedure for changing articles of incorporation.

Maintaining and Enforcing a Code of Conduct and Conflict of Interest Policy

Besides requiring adopting a specific public benefit in its articles of incorporation, the corporation must maintain and enforce an ethical code of conduct and a conflict of interest policy consistent with the highest and best practices for its industry.

§ 5 — SEB DIRECTORS

Fiduciary Duty

Under the bill, SEB directors have a fiduciary duty only to the people entitled to bring a benefit enforcement action against the SEB (see below). They have no such duty with respect to the people who directly benefit from the SEB's specific public benefits.

Decision Making

The bill specifies the factors SEB directors must consider when determining if an action serves the SEB's best interest. A director must consider how an action or inaction affects:

1. the SEB's shareholders, employees, workforce, subsidiaries, and suppliers;
2. the interests of customers who benefit from the SEB's specific social benefits;
3. community and social considerations, including those of any community where the SEB's offices or facilities or those of its

subsidiaries or suppliers are located;

4. local and global environment; and
5. the SEB's short- and long-term interests, including whether the SEB's continued independence would best serve them.

Protections

Under the bill, directors who consider these interests and factors do not violate the standards of good conduct the statutes impose on corporate directors.

The bill also protects directors from liability for specified actions. Directors are not liable if the SEB fails to create a social benefit. Nor are they liable to anyone entitled to bring a benefit enforcement action for acting or failing to act while performing their duties if they did so in compliance with the bill and statutory standards for good conduct.

Lastly, the bill prohibits the SEB from imposing specific conditions or requirements on its directors. The SEB cannot require them to place the interests of any person or group above those of any other person or group unless doing so serves any of the SEB's specific public benefits. Nor can the SEB subject the directors to a different or higher standard of care regarding actions or inactions affecting control of the SEB.

§§ 6 & 7 — SEB OFFICERS

Fiduciary Duty

Like the directors, the SEB's officers have a fiduciary duty only to the people entitled to bring a benefit enforcement proceeding against the SEB. That duty does not extend to people who benefit from any of the SEB's specific public benefits.

Decision Making

SEB officers must consider the same interests and factors that directors must consider when determining if an action or inaction serves the SEB's best interest. An officer must do so with respect to issues over which he or she has discretion. The officer must also

consider the interests and factors when it reasonably appears to him or her that a matter could materially affects them or the creation of a social benefit. In these instances, the officer does not violate his or her fiduciary duty to the SEB.

Protections from Liability

The bill protects the officers from liability for specified actions. They are not liable for any action taken in good faith business judgment if they believe it is consistent with:

1. any of the SEB's specific public benefits, as specified in the bylaws or articles of incorporation, and
2. any recognized standard for defining, reporting, or assessing a SEB's corporate and environmental performance (i.e., third party standard).

The standards must have been developed by an organization independent of the SEB. Further, the standards must be easily understood because the public can obtain the factors needed to measure the SEBs performance, their relative weights, and the identity of the people who develop and control changes to the standards and the process for changing them.

The bill also protects officers from liability from a benefit enforcement proceeding for acting or failing to act while performing their duties in compliance with the SEB's bylaws, as the law requires.

Social Enterprise Officer

The bill allows SEBs to designate social enterprise officers to perform those duties related to the SEB's public benefit, as specified in the bylaws or prescribed by the board of directors or a supervising officer. But any prescribed duties must be consistent with the bylaws.

§ 8 — BENEFIT ENFORCEMENT PROCEEDING

The bill allows specified groups to bring a benefit enforcement proceeding against the (1) directors and officers to fulfill their

respective duties and (2) SEB to fulfill its social benefit and specified public benefit. The proceeding can be brought only by:

1. shareholders otherwise entitled to start or maintain a proceeding on any basis with regard to the right of the SEB;
2. SEB directors;
3. people who own beneficially or of record at least 10% equity interest in an entity of which the SEB is a subsidiary; or
4. other people or entities the SEB's articles of incorporation specify.

§ 9 — ANNUAL BENEFIT REPORT

Content

SEBs must submit annual benefit reports to shareholders in a format approved by their boards of directors. A report must describe the SEB's goals or outcomes for creating social benefits or any specific public benefit. It must:

1. specify the goals or outcomes;
2. describe the actions the SEB took to achieve them and the extent to which it succeeded;
3. describe any obstacles that prevented the SEB from attaining the goals or outcomes or creating the social benefit or any specific public benefit; and
4. specify the shareholder-approved goals or outcomes for the next report period.

The report must (1) assess the SEB's social and environmental performance based on third-party standards and (2) specify how it will improve its performance and attain the goals and outcomes for creating social benefits. The third-party standards must be the same ones that were used to assess social and environmental performance in

other reports. If the current report does not use these standards to assess this performance, it must explain why.

The report must provide information on the SEB's finances, including a copy of the SEB's compensation plan, budget, and balance sheet. It must also identify the accounting method used to prepare these documents and list:

1. the 1% of the SEB's most highly compensated employees,
2. the SEB's financial investors, and
3. each person who owns beneficially or of record at least 5% of the SEB's shares.

Lastly, the report must provide a copy of the SEB's code of conduct and conflict of interest policies and list each director and officer, his or her mailing address, and, with respect to the directors, how much each was compensated during the year.

Distribution

The SEB must annually deliver the benefit report to each shareholder within one 120 days after the SEB's fiscal year ends or at the same time it delivers any other annual report to its shareholders. It must also publish the report on its website. When it delivers and publishes the report, the SEB must also deliver a copy to the secretary of the state.

Five-Year Independent Third Party Reviews

Every five years, the SEB must obtain an independent third party to review its annual benefit report and assess its social benefit and specific public benefit for consistency with the SEB's articles of incorporation.

§ 10 — DISSOLUTION

The bill specifies how a SEB must apply and distribute its assets if it dissolves. The SEB must pay, satisfy, and discharge all of its liabilities and other obligations or adequately provide for this to happen. It must

also transfer or convey the assets it received or held to one or more SEBs or charitable organizations with a similar social benefit.

BACKGROUND

Related Bill

sSB 403, which the Commerce Committee reported favorably on March 27, allows individuals and institutions to form “low-profit limited liability companies,” for profit businesses formed to attract private investment and philanthropic capital to provide social benefits. The bill specifies the criteria a limited liability company (LLC) must meet to qualify as a low-profit LLC and makes conforming changes in the LLC statutes.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 13 Nay 4 (03/27/2012)