



General Assembly

February Session, 2012

**Raised Bill No. 5490**

LCO No. 2132

\*02132\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING THE ESTABLISHMENT OF BENEFIT CORPORATIONS.**

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

1 Section 1. (NEW) (*Effective October 1, 2012*) Sections 1 to 11,  
2 inclusive, of this act shall be known and may be cited as the  
3 "Connecticut Benefit Corporation Act".

4 Sec. 2. (NEW) (*Effective October 1, 2012*) (a) Sections 1 to 11, inclusive,  
5 of this act shall be applicable to all benefit corporations.

6 (b) The existence of a provision of sections 1 to 11, inclusive, of this  
7 act shall not of itself create an implication that a contrary or different  
8 rule of law is applicable to a business corporation that is not a benefit  
9 corporation. The provisions of sections 1 to 11, inclusive, of this act  
10 shall not affect a statute or rule of law that is applicable to a business  
11 corporation that is not a benefit corporation.

12 (c) Except as otherwise provided in sections 1 to 11, inclusive, of this  
13 act, the provisions of chapter 601 of the general statutes shall be  
14 generally applicable to all benefit corporations. The specific provisions

15 of sections 1 to 11, inclusive, of this act shall control over the general  
16 provisions of chapter 601 of the general statutes. A benefit corporation  
17 may be simultaneously subject to the provisions of sections 1 to 11,  
18 inclusive, of this act and the provisions of chapters 598 to 602,  
19 inclusive, of the general statutes.

20 Sec. 3. (NEW) (*Effective October 1, 2012*) As used in sections 1 to 11,  
21 inclusive, of this act:

22 (1) "Benefit corporation" means a business corporation that has  
23 elected to become subject to the provisions of sections 1 to 11,  
24 inclusive, of this act, and whose status as a benefit corporation has not  
25 been terminated pursuant to section 6 of this act.

26 (2) "Benefit enforcement proceeding" means any claim or action for:  
27 (A) Failure of a benefit corporation to pursue or create a general public  
28 benefit or a specific public benefit purpose set forth in its certificate of  
29 incorporation, bylaws or otherwise adopted by its board of directors;  
30 or (B) violation of any obligation, duty or standard of conduct under  
31 sections 4 to 11, inclusive, of this act.

32 (3) "General public benefit" means a material positive impact on  
33 society and the environment, taken as a whole, assessed against a  
34 third-party standard, from the business and operations of a benefit  
35 corporation.

36 (4) "Independent" means having no material relationship with a  
37 benefit corporation or a subsidiary of the benefit corporation, either  
38 directly as a shareholder of the benefit corporation or as a partner, a  
39 member or an owner of a subsidiary of the benefit corporation or  
40 indirectly as director, an officer, an owner or a manager of an entity  
41 that has a material relationship with the benefit corporation or a  
42 subsidiary of the benefit corporation.

43 (5) "Material relationship" means a relationship between a person  
44 and a benefit corporation or any of its subsidiaries in which (A) a

45 person is, or has been within the last three years, an employee of the  
46 benefit corporation or a subsidiary of the benefit corporation; (B) an  
47 immediate family member of a person is, or has been within the last  
48 three years, an executive officer of the benefit corporation or a  
49 subsidiary of the benefit corporation; and (C) there is beneficial or  
50 record ownership of five per cent or more of the outstanding shares of  
51 the benefit corporation by (i) the person; or (ii) an entity (I) of which  
52 the person is a director, an officer or a manager; or (II) in which the  
53 person owns beneficially or of record five per cent or more of the  
54 outstanding equity interests, which percentage shall be calculated as if  
55 all outstanding rights to acquire equity interests in the entity had been  
56 exercised.

57 (6) "Minimum status vote" means (A) in the case of a business  
58 corporation, that in addition to any other required approval or vote,  
59 the following conditions shall be met: (i) The shareholders of every  
60 class or series shall be entitled to vote on the corporate action  
61 irrespective of a limitation stated in the certificate of incorporation or  
62 bylaws on the voting rights of any class or series; and (ii) the corporate  
63 action shall be approved by vote of the shareholders of each class or  
64 series entitled to cast at least two-thirds of the votes that all  
65 shareholders of the class or series are entitled to cast on the action; and  
66 (B) in the case of a domestic entity other than a business corporation,  
67 that in addition to any other required approval, vote or consent, the  
68 following conditions shall be met: (i) The holders of every class or  
69 series of equity interest in the entity that are entitled to receive a  
70 distribution of any kind from the entity shall be entitled to vote on or  
71 consent to the action regardless of any otherwise applicable limitation  
72 on the voting or consent rights of any class or series; and (ii) the action  
73 shall be approved by vote or consent of the holders described in  
74 subparagraph (B)(i) of this subdivision entitled to cast at least two-  
75 thirds of the votes or consents that all of those holders are entitled to  
76 cast on the action.

77 (7) "Specific public benefit" means a benefit that serves one or more

78 public welfare, religious, charitable, scientific, literary or educational  
79 purposes, or other purpose or benefit beyond the strict interest of the  
80 shareholders of the benefit corporation, and includes:

81 (A) Providing low-income or underserved individuals or  
82 communities with beneficial products or services;

83 (B) Promoting economic opportunity for individuals or  
84 communities beyond the creation of jobs in the normal course of  
85 business;

86 (C) Preserving or improving the environment;

87 (D) Improving human health;

88 (E) Promoting the arts, sciences or advancement of knowledge;

89 (F) Increasing the flow of capital to entities with a public benefit  
90 purpose; and

91 (G) Conferring any other particular benefit on society or the  
92 environment.

93 (8) "Subsidiary" means in relation to an individual, an entity in  
94 which the individual either (A) owns directly or indirectly equity  
95 interests entitled to cast a majority of the votes entitled to be cast  
96 generally in an election of directors or members of the governing body  
97 of the entity; or (B) otherwise owns or controls voting or contractual  
98 power to exercise effective governing control of the entity. The  
99 percentage of ownership of equity interests or ownership or control of  
100 power to exercise control shall be calculated as if all outstanding rights  
101 to acquire equity interests in the entity had been exercised.

102 (9) "Third-party standard" means a recognized standard for  
103 defining, reporting and assessing corporate social and environmental  
104 performance that is: (A) Developed by an organization that is  
105 independent of the benefit corporation; and (B) easily understood

106 because the following information concerning the standard is publicly  
107 available: (i) The factors considered when measuring the performance  
108 of a business; (ii) the relative weightings of those factors; and (iii) the  
109 identity of the persons that develop and control changes to the  
110 standard and the process by which those changes are made.

111 Sec. 4. (NEW) (*Effective October 1, 2012*) A benefit corporation shall  
112 be formed in accordance with the provisions of chapter 601 of the  
113 general statutes, and its certificate of incorporation, as initially filed  
114 with the office of the Secretary of the State or as amended, shall state  
115 that such corporation is a benefit corporation.

116 Sec. 5. (NEW) (*Effective October 1, 2012*) (a) A corporation that was  
117 not formed as a benefit corporation may become a benefit corporation  
118 by amending its certificate of incorporation so that such certificate  
119 contains, in addition to matters required by section 33-636 of the  
120 general statutes, a statement that the corporation is a benefit  
121 corporation. Any such amendment to the certificate of incorporation  
122 shall be adopted in accordance with the procedures set forth in section  
123 33-796 of the general statutes. Any such amendment shall be approved  
124 by a minimum status vote.

125 (b) Any corporation that is not a benefit corporation that is a party  
126 to a merger or consolidation in which the surviving or consolidated  
127 corporation will be a benefit corporation shall approve the plan of  
128 merger or consolidation by a minimum status vote in addition to any  
129 other vote required by sections 33-814 to 33-821a, inclusive, of the  
130 general statutes, the certificate of incorporation or the bylaws.

131 (c) Any corporation that is not a benefit corporation that is party to a  
132 merger or consolidation in which shares of stock of such corporation  
133 will be converted into a right to receive shares of stock of a benefit  
134 corporation must approve the plan of merger or consolidation by a  
135 minimum status vote in addition to any other vote required by  
136 sections 33-840 to 33-845, inclusive, of the general statutes, the  
137 certificate of incorporation or the bylaws.

138       Sec. 6. (NEW) (*Effective October 1, 2012*) (a) A benefit corporation  
139 may terminate its status as such and cease to be subject to the  
140 provisions of sections 1 to 11, inclusive, of this act, by amending its  
141 certificate of incorporation to delete any provision stating that such  
142 corporation is a benefit corporation. Any such amendment to the  
143 certificate of incorporation shall be adopted in accordance with the  
144 procedures set forth in section 33-796 of the general statutes. Any such  
145 amendment shall be approved by a minimum status vote.

146       (b) If a benefit corporation is a party to a merger or consolidation in  
147 which the surviving or new corporation will not be a benefit  
148 corporation, the plan of merger or consolidation shall not be effective  
149 unless such plan is adopted by a minimum status vote in addition to  
150 any other vote required by sections 33-814 to 33-821a, inclusive, of the  
151 general statutes, the certificate of incorporation or the bylaws.

152       (c) Any benefit corporation that is party to a merger or consolidation  
153 in which shares of stock of such benefit corporation will be converted  
154 into a right to receive shares of stock of a corporation that is not a  
155 benefit corporation shall approve the plan of merger or consolidation  
156 by a minimum status vote in addition to any other vote required by  
157 sections 33-840 to 33-845, inclusive, of the general statutes, the  
158 certificate of incorporation or the bylaws.

159       (d) A sale, lease, conveyance, exchange, transfer or other disposition  
160 of all, or substantially all, of the assets of a benefit corporation, unless  
161 the transaction is in the usual and regular course of business of the  
162 benefit corporation, shall not be effective unless the transaction is  
163 approved by a minimum status vote in addition to any other vote  
164 required by section 33-830 or 33-831 of the general statutes, the  
165 certificate of incorporation or the bylaws.

166       Sec. 7. (NEW) (*Effective October 1, 2012*) (a) A benefit corporation  
167 shall have as one of its purposes the purpose of creating a general  
168 public benefit. The certificate of incorporation of a benefit corporation  
169 may identify one or more specific public benefits that it is the purpose

170 of the benefit corporation to create. A specific public benefit may also  
171 be specified in the bylaws or otherwise adopted by the board of  
172 directors. This purpose is in addition to its purpose under section 33-  
173 645 of the general statutes.

174 (b) The creation of a general public benefit and one or more specific  
175 public benefits, if any, under subsection (a) of this section is in the best  
176 interests of the benefit corporation.

177 (c) A benefit corporation may amend its certificate of incorporation  
178 to add, amend or delete the identification of a specific public benefit  
179 that it is the purpose of the benefit corporation to create.

180 Sec. 8. (NEW) (*Effective October 1, 2012*) (a) The board of directors,  
181 committees of the board and individual directors of a benefit  
182 corporation when discharging the duties of their respective positions  
183 and considering the best interests of the benefit corporation:

184 (1) Shall consider the effects of any corporate action upon:

185 (A) The shareholders of the benefit corporation;

186 (B) The employees and workforce of the benefit corporation, and its  
187 subsidiaries and suppliers;

188 (C) The interests of customers as beneficiaries of the general or  
189 specific public benefit purposes of the benefit corporation;

190 (D) Community and societal factors, including those of each  
191 community in which offices or facilities of the benefit corporation, or  
192 its subsidiaries or suppliers are located;

193 (E) The local and global environment;

194 (F) The short-term and long-term interests of the benefit  
195 corporation, including benefits that may accrue to the benefit  
196 corporation from its long-term plans and the possibility that these  
197 interests and the general public benefit purposes and any specific

198 public benefit purposes of the benefit corporation may be best served  
199 by the continued independence of the benefit corporation; and

200 (G) The ability of the benefit corporation to accomplish its general  
201 public benefit purpose and any specific public benefit purpose;

202 (2) May consider the effects of any corporate action upon:

203 (A) The resources; intent; and past, stated, and potential conduct of  
204 any person seeking to acquire control of the benefit corporation; and

205 (B) Other pertinent factors or the interests of any other person that  
206 they deem appropriate;

207 (3) Need not give priority to the interests of a particular person  
208 referred to in subdivisions (1) and (2) of this subsection, over the  
209 interests of any other person unless the benefit corporation has stated  
210 its intention to give priority to interests related to a specific public  
211 benefit purpose identified in its certification of incorporation.

212 (b) The consideration of interests and factors in the manner required  
213 by subsection (a) of this section, shall not constitute a violation of  
214 section 33-756 or 33-783 of the general statutes.

215 (c) In any proceeding brought by or in the right of a benefit  
216 corporation or brought by or on behalf of the shareholders of a benefit  
217 corporation, a director is not personally liable for monetary damages  
218 for: (1) Any action taken as a director if the director performed the  
219 duties of office in compliance with section 33-756 of the general  
220 statutes and this section; or (2) failure of the benefit corporation to  
221 create a general public benefit or any specific public benefit specified  
222 in its certificate of incorporation, bylaws or otherwise adopted by the  
223 board of directors.

224 (d) A director does not have a duty to a person that is a beneficiary  
225 of the general public benefit purpose or a specific public benefit  
226 purpose of a benefit corporation arising from the status of the person

227 as a beneficiary.

228       Sec. 9. (NEW) (*Effective October 1, 2012*) An officer of a benefit  
229 corporation shall have no liability for actions taken that the officer  
230 believes, in his or her good faith business judgment, are consistent  
231 with (1) the general public benefit or any specific public benefit  
232 specified in the certificate of incorporation or bylaws or otherwise  
233 adopted by the board of directors, and (2) the requirements of any  
234 third-party standard in effect for the corporation.

235       Sec. 10. (NEW) (*Effective October 1, 2012*) (a) The duties of directors  
236 under section 8 of this act, the obligation of a benefit corporation to  
237 prepare and make available the annual benefit report required under  
238 section 11 of this act, and the general public benefit purpose and any  
239 specific public benefit purpose of a benefit corporation may be  
240 enforced only in a benefit enforcement proceeding. No person may  
241 bring an action or assert a claim against a benefit corporation or its  
242 directors or officers with respect to the duties of directors and officers  
243 under the provisions of sections 8 and 9 of this act, and the general  
244 public benefit purpose and any specific public benefit purpose of the  
245 benefit corporation except in a benefit enforcement proceeding.

246       (b) A benefit enforcement proceeding may be commenced or  
247 maintained: (1) Directly by the benefit corporation; or (2) derivatively  
248 by a shareholder of the benefit corporation or a director of the benefit  
249 corporation; or (3) other persons as specified in the certificate of  
250 incorporation or bylaws of the benefit corporation.

251       Sec. 11. (NEW) (*Effective October 1, 2012*) (a) A benefit corporation  
252 shall prepare an annual benefit report that includes:

253       (1) A narrative description of the ways in which the benefit  
254 corporation pursued the general public benefit during the year and the  
255 extent to which the general public benefit was created;

256       (2) The ways in which the benefit corporation pursued any specific

257 public benefit and the extent to which such specific public benefit was  
258 created when the certificate of incorporation, bylaws or other action  
259 taken by the board of directors, state that it is the purpose of the  
260 benefit corporation to create such specific public benefit;

261 (3) Any circumstances that have hindered the creation by the benefit  
262 corporation of the general or any specific public benefit;

263 (4) An assessment of the social and environmental performance of  
264 the benefit corporation. The assessment shall (A) be prepared in  
265 accordance with a third-party standard specified in the certificate of  
266 incorporation, bylaws or otherwise adopted by the board of directors  
267 and applied consistently with any application of that standard in prior  
268 benefit reports; (B) be accompanied by an explanation of the reasons  
269 for any inconsistent application; and (C) contain other information or  
270 disclosures that may be required under any third-party standard  
271 adopted by the directors of the benefit corporation;

272 (5) The name of each benefit director and the address to which  
273 correspondence to such director may be directed;

274 (6) The compensation paid by the benefit corporation during the  
275 fiscal year to each director in his or her capacity as a director; and

276 (7) The name of each person that owns five per cent or more of the  
277 outstanding shares of the benefit corporation either (A) beneficially, to  
278 the extent known to the benefit corporation without the need for  
279 independent investigation; or (B) of record.

280 (b) The benefit report shall be made available annually to each  
281 shareholder of the benefit corporation (1) not later than one hundred  
282 twenty days following the end of the fiscal year of the benefit  
283 corporation; or (2) at the same time that the benefit corporation  
284 delivers any other annual report to its shareholders.

285 (c) A benefit corporation shall post the most recent benefit report on  
286 a publicly accessible portion of such corporation's Internet web site, if

287 any. If a benefit corporation does not have an Internet web site, such  
288 corporation shall make a written or electronic copy of the most recent  
289 benefit report available upon written request from any person. A  
290 benefit corporation shall not be required to publicly disclose to persons  
291 other than such corporation's shareholders any proprietary,  
292 confidential or individual compensation information contained in the  
293 benefit report to the extent that any third-party standard adopted by  
294 the directors of the benefit corporation permits the omission of such  
295 information from public disclosure.

296 (d) Concurrently with the delivery of the benefit report to  
297 shareholders as provided in subsection (b) of this section, the benefit  
298 corporation shall deliver a copy of the benefit report to the office of the  
299 Secretary of the State for filing, provided the compensation paid to  
300 directors and financial or proprietary information included in the  
301 benefit report may be omitted from the benefit report as delivered to  
302 the office of the Secretary of the State.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	New section
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>October 1, 2012</i>	New section
Sec. 4	<i>October 1, 2012</i>	New section
Sec. 5	<i>October 1, 2012</i>	New section
Sec. 6	<i>October 1, 2012</i>	New section
Sec. 7	<i>October 1, 2012</i>	New section
Sec. 8	<i>October 1, 2012</i>	New section
Sec. 9	<i>October 1, 2012</i>	New section
Sec. 10	<i>October 1, 2012</i>	New section
Sec. 11	<i>October 1, 2012</i>	New section

**Statement of Purpose:**

To provide for the establishment of benefit corporations in the state.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*