



# OLR RESEARCH REPORT

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## **SOCIAL ENTERPRISE BUSINESSES**

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You asked us to compare the 2012 bills allowing the incorporation of social enterprise businesses as for profit corporations under the business corporation statutes. The bills are sHB 5466, AAC Social Enterprise Businesses (File 449; the Commerce Committee bill) and HB 5490, AAC the Establishment of Benefit Corporations (the Judiciary Committee bill).

### **SUMMARY**

The Commerce and Judiciary bills allow for the incorporation of businesses that address social goals while generating profits, but refer to them by different names. The Commerce bill calls them social enterprise businesses (SEBs) while the Judiciary bill calls them benefit corporations (BCs). (Unless the context suggests otherwise, we refer to one of these businesses as “the entity.”)

Both bills allow an entity’s board of directors to make decisions based on the public benefit goals specified in the entity’s certificate of incorporation and protects them from liability if it fails to achieve the goals.

The bills also share these elements:

1. a legal procedure for forming an entity,
2. specification of the types of social benefits they may provide,

3. shareholder voting requirements for approving the formation,
4. the factors boards of directors must consider when performing their duties,
5. specified protections for directors when performing their duties,
6. the preparation and dissemination of an annual report on the benefits provided, and
7. a mechanism for enforcing the entity's obligation to provide the specified benefits (i.e., benefit enforcement proceeding (BEP)).

Although the bills share these elements, the provisions vary. The differences are highlighted in the tables below.

Each bill also contains elements not found in the other bill. The Commerce bill requires entities to distribute a portion of their profits to charitable organizations providing the same social benefits, adopt a code of conduct and a conflict of interest policy, and complete specific tasks if they choose to dissolve. It also allows entities to designate a social enterprise officer and repurchase shares from shareholders who opposed converting a business into an entity or merging or consolidating with an existing SBE.

The Judiciary bill allows an entity to dispose of its assets only if the shareholders approve and specifies the process it must follow to end its status as a benefit corporation.

Attachment 1 compares the bills' major provisions.

## **LEGAL FORM**

Both bills allow parties to form an entity as a business corporation under their respective provisions and the corporation business statutes (CGS [Chapter 601](#)). The Judiciary bill also describes how its provisions relate to those statutes. It specifies that it:

1. generally applies to all entities;
2. has "control over the general provisions of chapter 601;"
3. neither creates a contrary or different rule of law applicable for traditional corporations; and

4. governs the entities in conjunction with the laws governing religious corporations and societies, charitable corporations and trusts, worker cooperatives, business corporations, and stock and nonstock corporations.

Regarding the latter, it is not clear how an entity could be governed by the laws governing specific types of nonprofit corporations when it could be formed under only the business corporation statutes. Under the Commerce bill, corporate law presumably applies along side the bill's provisions.

### **FORMATION PROCESSES**

Taken together, the bills provide four ways to form an entity: establishing a corporation as an entity; converting an existing corporation into one; merging or consolidating an existing corporation with an entity; or acquiring shares, through a share exchange, from an entity.

<b>Formation Process</b>	<b>Commerce Bill</b>	<b>Judiciary Bill</b>
Creation		X
Conversion	X	X
Merger or Consolidation	X	X
Share Exchange	X	X

As Table 1 shows, the Judiciary bill provides each option while the Commerce bill appears to allow only existing corporations to become an entity by conversion, merger or consolidation, or share exchange. (Arguably, a party could create a corporation under the Commerce bill and then convert it into an entity.)

Both bills specify the document that must be used to form an entity. Under the Commerce bill, an existing corporation can convert itself into an entity by amending its "articles of incorporation," a term that was supplanted in 1994 by "certificate of incorporation" when the legislature overhauled the corporation business statutes. (We subsequently use this term when discussing the Commerce bill.)

Under the Judiciary bill, a party creating an entity must do so according to the business corporation statutes and the process specified in its certificate of incorporation, which must also identify the corporation as an entity. By law, the certificate must be filed with the secretary of the state.

## **BENEFITS**

### ***Certificate of Incorporation***

The Commerce and Judiciary bills require an entity to specify the public benefits it will provide in its certificate of incorporation. Under the Commerce bill, the entity must identify specific public benefits in its certificate in addition to its corporate purpose. Under the Judiciary bill, the entity qualifies as a BC if its corporate purposes include creating a general public benefit, but the bill does not say if that benefit must also be included in the certificate. On the other hand, the Judiciary bill allows the entity to include one or more specific public benefits in the certificate.

Both bills allows an entity to add, amend, or delete a specific public benefit from its certificate, but the Commerce bill explicitly requires the certificate to identify at least one such benefit if the entity wishes to maintain its SEB status. The Commerce bill explicitly requires the entity to make these changes according to the statutory procedures for amending a certificate. Presumably, the same would be true for an entity operating under the Judiciary bill because it generally requires the entity to comply with the corporation business statutes.

### ***Broad Benefit***

In specifying the benefits for which entities

may be formed, both bills distinguish between broad and narrow benefits. As Table 2 shows, both define the broad benefit as the impact the entity has on society and the environment, but the Commerce bill links the broad benefit to the narrow ones by specifying that the broad benefit is generated by one or more of the narrow ones.

The Judiciary bill does not link the broad benefit to the narrow ones, but to the entity's business and operations. Further, it requires the impact to be assessed according to a "third party standard," which can be any recognized standard developed by an organization independent of the entity for defining, reporting, or assessing its corporate and environmental performance.

Besides being developed by an independent organization, the standard must be easily understood. Under the bill, the standard meets this criterion if the public can obtain the factors needed to measure the

<b>Commerce</b>	<b>Judiciary</b>
<b>Social Benefit:</b> Has a material positive impact on society or the environment through one or more specific public benefits.	<b>General Public Benefit:</b> Has a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, for the business and operation of the benefit corporation.

entity’s performance, their relative weights, and the identity of the people who develop and control changes to the standards and the process for changing them.

***Narrow Benefits***

As Table 3 shows, both bills allow parties to form entities to provide mostly the same narrow “specific public benefits”, such as serving a charitable purpose and providing beneficial products and services to low-income people.

**Table 3: Comparison of Specific Public Benefits under Commerce and Judiciary Bills**

<b><i>Commerce:</i></b>	<b><i>Judiciary:</i></b>
<ul style="list-style-type: none"> <li>• Significantly further one or more charitable, cultural, scientific, literary, or educational purposes, as defined in the federal Internal Revenue Code</li> <li>• Provide beneficial products and services to low-income people and underserved individuals</li> <li>• Promote economic opportunities for people and communities beyond creating jobs in everyday businesses</li> <li>• Preserve or improve the environment</li> <li>• Improve human health</li> <li>• Promote arts and sciences or advances in knowledge</li> <li>• Increase capital flows to entities serving a social purpose</li> <li>• Benefit society or the environment in other identifiable ways</li> </ul>	<ul style="list-style-type: none"> <li>• Serve one or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, including:               <ul style="list-style-type: none"> <li>○ Provide beneficial products and services to low-income people and underserved individuals</li> <li>○ Promote economic opportunities for people and communities beyond creating jobs in everyday businesses</li> <li>○ Preserve or improve the environment</li> <li>○ Improve human health</li> <li>○ Promote arts and sciences or advances in knowledge</li> <li>○ Increase capital flows to entities serving a social purpose</li> <li>○ Benefit society or the environment in other identifiable ways</li> </ul> </li> </ul>

The bills differ in whether they use Internal Revenue Code (IRC) definitions for certain benefits. The Commerce bill allows the formation of entities to further one or more IRC-defined charitable, cultural, scientific, literary, or educational purposes. An entity fulfills these purposes if it operates exclusively for religious, charitable, scientific, literary, or educational purposes; fosters national or international amateur sports competition; or prevents cruelty to children or animals. (IRC § 170(c)(2)(B)). The Judiciary bill allows an entity to serve a “purpose or benefit beyond the strict interest of the shareholders of the benefit corporation” without basing them on the IRC definition.

The Commerce bill explicitly prohibits forming an entity to serve a political or legislative purpose, as defined in the IRC.

### ***Profit Distribution***

The Commerce bill requires entities to distribute at least 20% of their distributed profits to charitable organizations that serve the same specific public purpose. The Judiciary bill imposes no such requirement.

### ***Code of Conduct***

Besides requiring an entity to specify public benefits in its certificate of incorporation, the Commerce bill also requires entities to maintain and enforce an ethical code of conduct and a conflict of interest policy consistent with the highest and best practices for its industry.

## **APPROVALS**

### ***Procedures***

As Table 4 shows, the bills appear to specify different steps an existing corporation must follow to become an entity. The Commerce bill requires the corporation to follow the statutory procedure for amending a certificate of incorporation (CGS §§ [33-795](#) to [803](#)), which includes notifying shareholders about meetings for approving proposed amendments. Under that bill, the notice must state why the corporation's board of directors proposes to amend the certificate and how that change could affect the shareholders.

<b>Factor</b>	<b>Commerce</b>	<b>Judiciary</b>
Amendment Procedure	CGS §§ <a href="#">33-795</a> to <a href="#">803</a>	CGS § <a href="#">33-796</a>
Notice Requirement Change	Yes	No

It is not clear if the Judiciary bill requires a corporation to follow the statutory procedures for amending a certificate of incorporation. On one hand, Section 2 (b) specifies that the business corporation statutes apply to BCs, and those statutes include CGS § [33-797](#)'s amendment procedure. On the other hand, Section 5 specifically requires the entity to follow the procedure in CGS § [33-796](#), but that section specifies only the types of amendments boards can make without the shareholders' approval.

Unlike the Commerce bill, the Judiciary bill makes no change to the notice requirement.

## ***Shareholder Voting***

As Table 5 below shows, the bills' voting requirements vary. Under the Commerce bill, an amendment to a certificate of incorporation or a merger or consolidation plan must be approved based on the higher of two standards—the one set in the certificate or two-thirds of the votes that the corporation's outstanding shares are entitled to cast. The two-thirds standard also applies to shares that must be voted as a class.

Under the Judiciary bill, an amendment to a certificate of incorporation takes effect if it is approved by a minimum status vote of the shareholders and, as noted above, according to CGS § [33-796](#)'s procedure.

The bill imposes different voting requirements for mergers and consolidations involving only corporations and those involving a corporation and a different business form, such as a limited liability partnership or limited partnership (i.e., domestic entity). But it also specifies that these requirements are in addition to any other votes required by the statutes, the certificate of incorporation, or the bylaws.

Regarding mergers and consolidations involving only corporations, the bill entitles all the shareholders of each class or series to vote regardless of any certificate or bylaw limitation on their voting rights and requires a minimum two-thirds vote of each class' or series' share.

Regarding mergers or consolidations between a corporation and a domestic entity, the bill extends voting or consent rights to the holder of each class or series of equity interest entitled to receive a distribution from the entity. These rights supersede any limitations imposed on the class or series. Further, the bill requires at least a two-thirds vote or consent.

**Table 5: Comparison of Shareholder Voting Requirements under Commerce and Judiciary Bills**

<b>Action</b>	<b>Commerce</b>	<b>Judiciary</b>
Certificate Amendment	Higher of: <ul style="list-style-type: none"> <li>• Vote required by certificate or</li> <li>• Two-thirds of voted entitled to be cast by: <ul style="list-style-type: none"> <li>○ outstanding shares or</li> <li>○ voting group if each class of share is entitled to vote as a group</li> </ul> </li> </ul>	Minimum Status Vote: <ul style="list-style-type: none"> <li>• All shareholders of every class or series are entitled to vote</li> <li>• Votes representing at least two-thirds of the shares in each class or series</li> </ul>
Merger or Consolidation of Corporation	Same as above	Same as above
Merger or Consolidation of Domestic Entity	Bill does not address domestic entities, but corporation business statutes presumably apply	Minimum status vote: <ul style="list-style-type: none"> <li>• Holders of every class or series of equity interest entitled to receive a distribution are entitled to vote</li> <li>• Votes or consents representing at least two-thirds of the holders of interest</li> </ul>
Exchange of Stock of Corporation	Bill makes no provision regarding voting when there is a share exchange	Minimum status vote for corporations in addition to any other vote required by the merger and share exchange statutes (CGS §§ <a href="#">33-814</a> to <a href="#">821a</a> , the certificate, and the bylaws
Exchange of Stock of Domestic Entity	Same as above	Minimum status vote for domestic entities in addition to any other vote required by the business combination statutes, the certificate, and the bylaws

***Share Repurchase***

The Commerce bill includes a provision permitting an entity to repurchase shares. Under that bill, if the shareholders approve an amendment or merger or consolidation plan, a shareholder who voted against either action may require the corporation to purchase his or her shares for cash at their fair market value.

Under the Judiciary bill, corporate law applies. Under certain circumstances, shareholders have “appraisal rights,” due to a merger or share exchange, and can require the corporation to pay their value of the shares (CGS § [33-855](#) et seq.).

## BOARD OF DIRECTORS

A corporation's board of directors oversees the corporation's activities and safeguards its shareholders' interests, a task that entails a fiduciary duty to the corporation and the shareholders. The Commerce and Judiciary bills affect that duty by allowing corporations to pursue goals and objectives that may not immediately maximize profits or returns for the shareholders and investors. Consequently, both bills include provisions aligning the boards' actions with the corporation's stated social or public benefit goals and objectives.

### *Fiduciary Duty*

The bills differ with respect to the parties to whom the directors have a fiduciary duty. The Commerce bill limits that duty to the parties it allows to bring a benefit enforcement proceeding (see below) against the entity. These include the shareholders, directors, people or groups who own at least 10% of the equity of a parent corporation, or other people or entities specified in the certificate of incorporation.

Scope	Commerce Bill	Judiciary Bill
Duty owned:	Parties allowed to bring benefit enforcement proceeding	Not specified
Excludes:	Beneficiaries based solely on beneficiary status	Beneficiaries based solely on beneficiary

The Judiciary bill does not limit the directors' fiduciary duty to parties that can bring a proceeding. Presumably, their duty would be to the same parties as under existing law. But the Judiciary bill limits liability and who can enforce a director's duty in a BEP.

The Commerce and Judiciary bills specify that a director has no such duty with respect to people who are the designated beneficiaries of the public benefits simply because of their beneficiary status.

### *Decision Making*

Both bills specify the factors a board member must consider when performing his or her duties. The Judiciary bill, though, is more detailed, specifying the situations in which members act and providing an additional set of factors they may consider to determine a corporate action's potential effects.

As Table 7 shows, the Commerce and Judiciary bills' factors are the effects an action or inaction could have on specified groups and interests. A director must consider them whenever determining what he or she believes is in the entity's best interests.

The Judiciary bill specifies that directors must consider these factors when acting individually or as members of the board or a board committee.

The Judiciary bill also allows directors to consider certain factors pertaining to the potential effects an action could have on people seeking control over the entity or any other people they deem appropriate.

Table 7: Comparison of Decision Making Requirements and Factors	
Mandatory Factors	
Commerce Bill	Judiciary Bill
Directors must consider how action or inaction affects: <ul style="list-style-type: none"> <li>Entity's shareholders, employees, workforce, subsidiaries, and suppliers</li> <li>Interests of customers benefitting from specific social benefits</li> <li>Community and social considerations</li> <li>Local and global environment</li> <li>Entity's short- and long-term interests</li> </ul>	Board, board committees, and individual directors must consider how a corporate action affects same groups and interests as under the Commerce bill
No optional factors	Board, board committees, and directors may also consider how any corporate action affects: <ul style="list-style-type: none"> <li>Resources; intent; and past, stated, and potential conduct of any person seeking to acquire control of the entity</li> <li>Other pertinent factors or interests of any other person the board members deem appropriate.</li> </ul>

**Priority Status for Beneficiaries**

As noted above, both bills require the directors to consider how a corporate action could affect specific groups, such as the entity's shareholders and employees. But neither requires them to give priority to these interests unless the certificate of incorporation requires it.

**Exemptions from other Standards of Conduct**

The bills appear to differ in the degree to which they exempt directors from certain standards when making decisions based on the required interests and factors.

- Both bills exempt directors from the statutory standards of good conduct for corporation directors (CGS § [33-756](#)), and the Judiciary bill additionally exempts them from the rules for determining whether a court can grant equitable relief or award damages or other sanctions for a conflicting interest transaction (CGS § [33-783](#)).

- The Commerce bill, but not the Judiciary bill, prohibits directors from being subject to a different or higher standard of care for actions or inactions affecting the entity’s control.

**Liability Protections**

The bills protect directors from liability to different parties and actions. Both bills protect them from liability if the entity fails to create a social benefit. The Commerce bill also protects them from liability to parties entitled to bring a benefit enforcement proceeding if the directors complied with the bill and the statutory good conduct code. The Judiciary bill’s protection is limited to monetary damages, but seems to apply to a broader range of actors. It protects the directors from liability in any proceeding brought by the entity or on behalf of its shareholders.

Commerce Bill	Judiciary Bill
<ul style="list-style-type: none"> <li>• Failing to create a social benefit or specific social benefit</li> <li>• Anyone entitled to bring a benefit enforcement action for acting or failing to act while performing their duties in compliance with the bill and statutory good conduct standards</li> </ul>	<ul style="list-style-type: none"> <li>• Entity’s failure to create a general public benefit or specific public benefit specified in certificate of incorporation or</li> <li>• Actions performed in compliance with statutory good conduct standards</li> </ul>

**OFFICERS**

The bills differ in the degree to which they define an entity’s officer’s role. The Commerce bill specifies an officer’s fiduciary duties, decision making criteria, and protections from liability, while the Judiciary bill specifies only their protections from liability. The Commerce bill also allows entities to designate a social enterprise officer.

**Fiduciary Duty**

Under the Commerce bill, the officers have a fiduciary duty only to the people entitled to bring a benefit enforcement proceeding against the entity, but not to the entity’s intended beneficiaries. The Judiciary bill does not specify the officers’ fiduciary duty.

**Decision Making**

Under the Commerce bill, an officer must consider the same interests and factors that a director must consider when determining if an action or inaction serves the entity’s best interest, but only with respect to issues over which he or she has discretion.

Officers must also consider the interests and factors when it reasonably appears to them that a matter could materially affect them or the creation of a social benefit. When acting in these instances, they do not violate their fiduciary duties to the entity.

The Judiciary bill has no similar provisions.

**Protections from Liability**

The Commerce and Judiciary bills contain provisions protecting officers from liability, but the Commerce bill’s protections seem broader. That bill provides protections from liability for specific actions and benefit enforcement proceedings.

**Actions Taken in Good Faith Business Judgment.** The Commerce and Judiciary bills protect the officers from liability for any action taken in good faith business judgment if they believe it is consistent with:

1. any of the entity’s specific public benefits, as specified in the bylaws or certificate of incorporation and
2. any recognized standard for defining, reporting, or assessing an entity’s corporate and environmental performance (i.e., third party standards).

Regarding the third party standards, they must have been developed by an organization independent of the entity. Further, the standards must be easily understood because, under the bills, the public must be able to obtain the factors needed to measure the entity’s performance, their relative weights, and the identity of the people who develop and control changes to the standards and process for changing them.

It is not clear under either bill how independence is determined. Although the bills refer to standards developed by an independent organization, the criteria seem to test

Table 9: Comparison of Criteria for Determining Third Party Standard	
Commerce Bill	Judiciary Bill
<b>Criterion: Independent</b>	
No <i>material relationship</i> with entity or its subsidiaries either: <ul style="list-style-type: none"> <li>• directly or</li> <li>• as an owner or manager of a business related to the entity</li> </ul> (Material relationship does not include serving as entity’s director or officer)	No <i>material relationship</i> with the entity or its subsidiaries either: <ul style="list-style-type: none"> <li>• directly as a shareholder, partner, member, or owner of a subsidiary</li> <li>• indirectly as a director, officer, or manager to a business that has a material relationship with the entity or its subsidiaries</li> </ul>
<b>Criterion: Material Relationship</b>	
<ul style="list-style-type: none"> <li>• Employment with entity or its subsidiary within last three years;</li> <li>• Related to current or former executive officer of an entity or its subsidiary; or</li> <li>• Owning beneficially or of record at least 5% of the entity’s shares directly or through another business</li> </ul>	<ul style="list-style-type: none"> <li>• Employment with entity or subsidiary within the last three years;</li> <li>• Related to current or former executive officer of an entity or its subsidiaries; and</li> <li>• Having beneficial or record of ownership directly in BC or as the director, officer, or manager of another business entity that owns beneficially or of record at least 5% of the outstanding equity (Under the Commerce bill, material relationship does not include serving as entity’s director or officer)</li> </ul>

whether an individual is independent of an organization. As Table 9 shows, both define independence based on a “material relationship” between the entity and a person. They further define “material relationship” in terms of interpersonal relationships.

It appears that an organization’s independence of an entity depends on whether an individual is a shareholder, officer, director, or employee.

**Social Enterprise Officer**

Only the Commerce bill explicitly allows entities to designate social enterprise officers to perform duties related to the entity’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.

**ANNUAL BENEFIT REPORT**

The Commerce and Judiciary bills require entities to prepare and distribute annual benefit reports, but, as Table 10 shows, impose different reporting requirements.

**Table 10: Comparison of Annual Benefit Report and Distribution Requirements**

<i>Commerce</i>	<i>Judiciary</i>
<b><i>Entity’s Goals and Outcomes</i></b>	
<ul style="list-style-type: none"> <li>• Specify goals or outcomes</li> <li>• Describe actions taken to achieve them and the extent to which they were achieved</li> <li>• Describe obstacles that prevented attainment of goals or outcomes or creation of social benefit or any specific public benefit</li> <li>• Specify the shareholder-approved goals or outcomes for the next report period</li> </ul>	<ul style="list-style-type: none"> <li>• Describe how general and specific public benefits were pursued and extent they were created</li> <li>• Circumstances hindering benefits’ creation</li> </ul>
<b><i>Assessments</i></b>	
<ul style="list-style-type: none"> <li>• Assess social and environmental performance based on the same third-party standards used for this purpose in other reports or otherwise explain why they were not used</li> <li>• Specify how performance will be improved and goals and objectives attained for creating social benefits</li> </ul>	<ul style="list-style-type: none"> <li>• Assess social and environmental performance based on third party standard specified in certificate, bylaws, or adopted by board used for this purpose in other reports or explain why the standards were not consistently applied</li> <li>• Provide any other information the third party standard requires</li> </ul>

Table 10 (continued)

<i>Commerce</i>	<i>Judiciary</i>
<b><i>Administration and Finance</i></b>	
<ul style="list-style-type: none"> <li>• Provide information on entity's finances, including copy of compensation plan, budget, and balance sheet</li> <li>• Identify accounting method used to prepare the above</li> <li>• List:               <ul style="list-style-type: none"> <li>○ Top 1% of entity's most highly compensated employees</li> <li>○ Entity's financial investors</li> <li>○ Each person who owns beneficially or of record at least 5% of the entity's shares</li> </ul> </li> </ul>	Provide: <ul style="list-style-type: none"> <li>• Name and address of each director</li> <li>• Compensation paid to each director in his or her capacity as director</li> <li>• Name of each person who owns beneficially or of record at least 5% of outstanding shares</li> </ul>
<b><i>Conduct</i></b>	
<ul style="list-style-type: none"> <li>• Provide code of conduct and conflict of interest policies</li> <li>• List each director and officer, his or her mailing address, and, with respect of officers, how much each was compensated during the year</li> </ul>	No provision
<b><i>Distribution</i></b>	
<ul style="list-style-type: none"> <li>• Deliver to each shareholder within 120 days after entity's fiscal year ends or at the same time any other annual report is delivered to them</li> <li>• Publish report on website</li> <li>• Deliver copy to secretary of the state when it delivers and publishes report</li> </ul>	<ul style="list-style-type: none"> <li>• Same except copy delivered to secretary of the state may omit compensation data and proprietary information</li> <li>• Website posting required; entities without website must make written or electronic copy of report available upon request</li> </ul>

Under the Commerce bill, the entity must retain an independent third party to review its annual benefit report and assess its broad and narrow social benefits for compliance and consistency with the entity's certificate of incorporation. The entity must have this analysis done every five years.

## BEP

The Commerce and Judiciary bills provide a mechanism for ensuring that an entity creates its specified general or specific public benefit (i.e., BEP), but, as Table 11 shows, differ regarding the parties that can use the mechanism and the grounds under which they may do so.

<i>Commerce Bill</i>	<i>Judiciary Bill</i>
<b>Parties Allowed to Bring BEP</b>	
<ul style="list-style-type: none"><li>• Shareholders otherwise entitled to start or maintain a proceeding in the right of a SEB on any basis (derivative action)</li><li>• Entity's directors</li><li>• People owning beneficially or of record at least 10% equity interest in a business of which the SEB is a subsidiary</li><li>• Other people or parties specified in the certificate of incorporation</li></ul>	<ul style="list-style-type: none"><li>• BC</li><li>• Derivatively by BC's shareholder or director</li><li>• Other persons specified in certificate of incorporation or bylaws</li></ul>
<b>Grounds for Bringing BEP</b>	
<ul style="list-style-type: none"><li>• Requiring directors and officers to fulfill their respective duties</li><li>• Requiring entity to fulfill its social benefit and specific public benefit</li></ul>	<ul style="list-style-type: none"><li>• Enforcing directors' duties</li><li>• Enforcing BC's obligation to prepare and make available annual benefit report</li><li>• Enforcing BC's general and specific public benefit purposes</li></ul>

## DISSOLUTION

Only the Commerce bill specifies how a SEB may dissolve. The SEB must:

1. pay, satisfy, and discharge all of its liabilities and other obligations or adequately provide for this to happen and
2. transfer or convey the assets it received or held to one or more entities or charitable organizations with a similar public benefit.

A BC dissolving under the Judiciary must comply with existing corporate law.

## TERMINATION OF STATUS

Only the Judiciary bill specifies the process a BC must follow to terminate its benefit corporation status. The process varies depending on whether the action is part of a merger or consolidation. If it is not, the BC can terminate its status by amending its certificate of incorporation to that effect. In doing so, the entity must follow the statutory procedure for amending certificates and have the amendment approved by a minimum status vote. (As noted above, the bill cites the statute specifying the types of certificate amendments directors can make without shareholders' approval, not the statute for amending the certificate.)

A minimum status vote is also required if a BC terminates its benefit corporation status as part of a merger or consolidation. The requirements vary depending on whether the BC's shares will be converted into share rights of a business corporation. If no shares will be converted, the merger or consolidation must be approved by a minimum status vote in addition to the votes required by the merger and share exchanges statutes (CGS §§ [33-814](#) to [33-821a](#)), the certificate, and the BC's bylaws.

If the action requires a share conversion with a business corporation, the termination must be approved by a minimum status vote in addition to the votes required by the business combination statutes (CGS §§ [33-840](#) to [33-845](#)), the certificate, and the BC's bylaws.

## **DISPOSITION**

The Judiciary bill specifies how an entity must dispose of assets outside its normal course of business. Any time an entity proposes to sell, lease, convey, exchange, transfer, or otherwise disposes of all or substantially all of its assets, it must first have the disposition approved by a minimum status vote plus any other votes required under the certificate, bylaws, or the statutes governing asset sales (CGS §§ [33-830](#) or [33-831](#)).

**Attachment 1: 2012 Social Enterprise Business and Benefit Corporation Bills**

<b>Variable</b>	<b><i>sHB 5466 Social Enterprise Business (Commerce)</i></b>	<b><i>HB 5490 Benefit Corporation (Judiciary)</i></b>
Name	Social Enterprise Business (SEB)	Benefit Corporation (BC)
Relationship to Existing Law	Presumably corporate law applies to the extent it does not conflict with the bill's provisions	Bill explicitly states corporate law governs to the extent it does not conflict with the bill's provisions
Formation	<p>Existing corporation organized under corporation business laws becomes a SBE by:</p> <ul style="list-style-type: none"> <li>• amending articles of incorporation to include social benefit statement or</li> <li>• being a party to: <ul style="list-style-type: none"> <li>○ merger or consolidation plan or</li> <li>○ share exchange, in which surviving organization is a SBE</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• New corporation organized under corporation business laws adopts certificate of incorporation identifying itself as a BC</li> <li>• Existing non-BC corporation organized under corporation business laws: <ul style="list-style-type: none"> <li>○ amends certificate to identify itself as a BC or</li> <li>○ becomes a party to a merger or consolidation plan in which the surviving corporation is a BC</li> </ul> </li> </ul>

**Attachment 1 (continued)**

<b>Variable</b>	<b><i>sHB 5466 Social Enterprise Business (Commerce)</i></b>	<b><i>HB 5490 Benefit Corporation (Judiciary)</i></b>
Additional Voting Requirements	<p>Additional voting requirements apply to certificate changes and proposals to merge or consolidate with another entity</p> <p>Approval based on the higher of:</p> <ol style="list-style-type: none"> <li>1. the number of votes required by the bylaws or</li> <li>2. two-thirds of the votes cast by outstanding shares</li> </ol> <p>If bylaws allow voting by share class, then two-thirds vote of each class required</p>	<ul style="list-style-type: none"> <li>• Additional voting requirements apply to decisions to form or become a BC, terminate BC status, or specified transactions</li> <li>• Voting rules vary depending on whether the business is a corporation or other type of entity that becomes a BC via merger or consolidation or share exchange</li> <li>• For business corporation: <ul style="list-style-type: none"> <li>○ shareholders of every class or series can vote regardless of certificate or by law limitations and</li> <li>○ approval by those shareholders in each class or series entitled to cast at least two-thirds of the class' or series' votes</li> </ul> </li> <li>• For domestic entities other than business corporations: <ul style="list-style-type: none"> <li>○ equity holders of every class or series entitled to a distribution can vote or consent to the action regardless of voting or consent limitations</li> <li>○ approval by equity holders entitled to cast two-thirds of votes or consents of the class' or series' votes or consents</li> </ul> </li> </ul>
Shareholder Meeting Notice to Approve Proposed Changes	<p>Must include directors'</p> <ul style="list-style-type: none"> <li>• reasons for the proposed action and</li> <li>• anticipated effects on shareholders</li> </ul>	

**Attachment 1 (continued)**

<b>Variable</b>	<b><i>sHB 5466 Social Enterprise Business (Commerce)</i></b>	<b><i>HB 5490 Benefit Corporation (Judiciary)</i></b>
Benefits	<ul style="list-style-type: none"> <li>• SEB must produce social benefits by providing one or more of the bill's specified public benefits</li> <li>• Specifies permitted public benefits, at least one of which must be included in articles of incorporation</li> </ul>	<p>Distinguishes between general public benefit and specific public benefits (but does not link them)</p> <ul style="list-style-type: none"> <li>• Purpose must be to create one or more general public benefits</li> <li>• Specific public benefits may also be specified in the certificate of incorporation or bylaws</li> <li>• BC may amend certificate to add, amend, or delete specific public benefit</li> </ul>
Directors	<ul style="list-style-type: none"> <li>• Limits directors fiduciary duty to those allowed to bring benefit enforcement proceeding</li> <li>• Requires directors to identify how an action or inaction could affect specified interests and factors</li> <li>• Limits scope of directors' accountability and liability for creating the benefit</li> </ul>	<ul style="list-style-type: none"> <li>• Specifies the interests and factors the board, committees of the board, and individual directors must consider when discharging their duties</li> <li>• Requires directors to identify how an action or inaction could affect specified interests and factors</li> <li>• Allows directors to consider how corporate actions affect specific people</li> <li>• Limits scope of directors' accountability and liability for creating the benefit</li> </ul>
Officers' Duties	<ul style="list-style-type: none"> <li>• Specifies conditions under which officers must consider the same interests and factors directors must consider</li> <li>• Defines officers' scope of accountability and liability</li> </ul>	Not liable for good faith actions consistent with general or specific public benefits and requirements of any third-party standard
Social Enterprise Officer (SEO)	Allows SEB to designate SEO and defines scope of duties	No provisions

**Attachment 1 (continued)**

<b>Variable</b>	<b>sHB 5466 Social Enterprise Business (Commerce)</b>	<b>HB 5490 Benefit Corporation (Judiciary)</b>
Benefit Enforcement Proceedings	<p>Allows benefit enforcement proceedings to be brought by:</p> <ul style="list-style-type: none"> <li>• shareholders otherwise entitled to start or maintain a proceeding on any basis regarding the right of SEB (i.e., derivative action)</li> <li>• SEB directors</li> <li>• people who own beneficially or of record at least 10% equity interest in an entity of which SEB is a subsidiary or</li> <li>• other people or entities the SEB's articles of incorporation specify</li> </ul> <p>Proceedings can be brought by the above parties against:</p> <ul style="list-style-type: none"> <li>• directors and officers to fulfill their respective duties and</li> <li>• SEB to fulfill its social benefit and specified public benefits</li> </ul>	<p>Allows benefit proceedings to be brought by:</p> <ul style="list-style-type: none"> <li>• BC</li> <li>• derivatively by BC's shareholders or directors</li> <li>• other persons specified in certificate or incorporation or bylaws</li> </ul> <p>Proceeding can be brought by the above parties to enforce:</p> <ul style="list-style-type: none"> <li>• directors' duties</li> <li>• BC's obligation to prepare and make available annual benefit report</li> <li>• BC's general and specific public benefit purposes</li> </ul>
Annual Benefit Report	Required	Required
Independent Third Party Reviews and Assessments	Required	Not required
Distribution of Assets	Specifies how assets must be distributed upon dissolution	Specifies how BCs must dispose of assets outside course of normal business

JR:ro