



OLR RESEARCH REPORT

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SELECTED STATE SOCIAL ENTERPRISE BUSINESS LEGISLATION

By: John Rappa, Chief Analyst

You asked for a comparison of Connecticut's 2012 social enterprise business (SEB) bills and California's, New Jersey's, and New York's SEB laws.

SUMMARY

Connecticut's 2012 SEB bills contain many of the elements found in the selected states SEB laws. The bills are [sHB 5466](#), An Act Concerning (AAC) Social Enterprise Businesses ([File 449](#); the Commerce bill) and [HB 5490](#), AAC the Establishment of Benefit Corporations (the Judiciary bill). (OLR [2012-R-0372](#) compares the bills). While some use the term, "social enterprise business," and others "benefit corporation," for this report we refer to all of them as SEBs.

The bills and the laws provide separate legal frameworks for establishing and operating businesses that, like nonprofit corporations, provide social benefits, but also generate profits and pay taxes. But businesses operating under these frameworks must still comply with the same laws that govern other for profit corporations unless those laws conflict with a specific element of the SEB framework.

A SEB framework allows a board of directors to make decisions based on the SEB's public goals and protects them from liability if they fail to achieve them. The Commerce bill and the New Jersey law provide for the designation of an officer or director, respectively to perform social benefit-related duties. Most frameworks include:

1. a legal procedure for forming a SEB,
2. specification of the types of social benefits it may pursue,
3. shareholder voting requirements for forming or terminating the SEB,
4. factors directors and officers must consider when performing their duties,
5. specified protections for directors when performing their duties,
6. the preparation and distribution of a separate annual report on the benefits, and
7. a mechanism for enforcing the SEB's obligations to provide the specified benefits (i.e., benefit enforcement proceeding (BEP)).

Although the bills and the laws share these elements, their provisions vary, as shown in the tables. This report focuses on five key elements—benefits, board directors, corporate officers, BEPs, and annual reports.

SOCIAL BENEFITS

Laws authorizing the formation of SEBs specify the range of public benefits they may address, often distinguishing between a general public benefit and several narrow “specific public benefits.” As Table 1 shows, the Connecticut bills and the selected states’ laws authorize very similar benefits. The Commerce bill’s broad benefit is similar to New Jersey’s and the Judiciary bill’s broad benefit is similar to California’s and New York’s benefit.

The bills and the state laws also specify very similar narrowly-defined specific public benefits, such as providing products and services benefiting low-income people and underserved individuals and increasing capital flows to entities serving a social purpose. But the Connecticut bills also include serving broader charitable, cultural, scientific, and other purposes. The Commerce bill limits these purposes to those defined in the Internal Revenue Code.

DIRECTORS

The bills and the state laws generally address directors' fiduciary duties, decision making factors, and liability protections. As Table 2 shows, the Judiciary bill and New Jersey's law do not specify the directors' fiduciary duty, but presumably it would be the same as under the laws governing business corporations. The Commerce bill limits the directors' duty to the parties allowed to bring a benefit enforcement proceeding against the SEB. The bills and the California and New York laws absolve directors from liability to any party based only on its status as a beneficiary of the SEB.

The bills' and the laws' impose similar mandatory decision making factors, but differ regarding optional ones. The Commerce bill includes no optional factors; the Judiciary bill and the California and New York laws are similar. New Jersey's law allows directors to consider the same factors directors of non-SEB corporations may consider, including the effects on creditors and the possibility that the SEB's continued independence may serve the SEB's short- and long-term interests.

The directors' liability protections vary under the bills and the laws. The bills protect them from liability for the SEB's failure to create a social benefit. The California and New Jersey laws specifically protect them from liability for monetary damages for failing to create a benefit. The New York law protects them from liability for violating their duties and responsibilities under other laws when considering the mandatory and optional decision making factors. Other liability protections apply under the bills and the laws.

OFFICERS

As Table 3 shows, the bills and the selected states' laws contain different types of provisions concerning SEB officers. The Commerce bill and the California law limit the officers' duties to the parties allowed to bring a BEP. The bills and the California and New Jersey laws provide that officers have a duty to parties based only on their beneficiary status. The Judiciary bill and the New Jersey and New York laws are silent on the officers' fiduciary duties, but presumably, they are the same as those under other corporation business laws.

The Commerce bill and the California and New Jersey laws require officers to consider the same requirements and factors when making decisions. Those requirements and factors are also the same as those that apply to directors, but only with respect to issues over which officers have discretion and when they reasonably believe that an issue could affect them or a social benefit's creation. The New York law requires officers to consider, without qualification, the same requirements and factors as directors.

The bills and the selected states' laws provide different liability protections. The Commerce and Judiciary bills protect officers from liability for good faith actions they believe are consistent with the SEB's benefits and recognized standards for assessing an SEB's corporate and environmental performance. California's and New York's laws protect officers from liability if they consider the decision making requirements and factors. California's and New Jersey's laws also protect them from liability for monetary damages arising from the SEB's failure to create a social benefit.

BENEFIT ENFORCEMENT PROCEEDING

As Table 4 shows, the bills and the selected state laws, except New York's, provide a mechanism for ensuring that a SEB creates its specified general or specific public benefits (i.e., benefit enforcement proceeding), but differ as to the parties that can use the mechanism and the grounds under which they may do so.

ANNUAL REPORT

The bills and the selected states laws require SEBs to prepare and distribute annual benefit reports, but, as Table 5 shows, the requirements for doing so vary. Each requires the report to identify the benefits and the obstacles that prevented the SEB from providing them. But the Commerce bill requires the report to specify the goals or outcomes the shareholders approved for the next reporting period. Under the California and New York laws, the report must also describe the process for selecting the third party standards used to prepare the report.

The bills and the laws require the report to assess the SEB's social and environmental performance based on the third party standards used to prepare it. The differences include California's requirement that the report include the board's opinion about whether the SEB failed to

pursue its benefits and how it failed to do so. Under the New Jersey law, the report must also include a statement about whether the directors and officers failed to make decisions based on the statutory requirements and factors.

The administrative and financial information the bills and the laws require include the SEB's financial investors (Commerce bill), the names of the most highly paid employees (Commerce bill), and the directors' names and addresses (Judiciary bill and New Jersey and New York laws).

Only the Commerce bill requires the report to include the SEB's code of conduct and conflict of interest policies.

Lastly, the bills and the selected states laws impose similar requirements for delivering the annual report. The bills and the New Jersey and New York laws require SEBs to submit their reports to specific government agencies.

Table 1: Public Benefits

sHB 5466 (Commerce)	HB 5490 (Judiciary)	California (Corporation Code § 14600 et seq.)	New Jersey (N.J.S. § 14A:18-1 et seq.)	New York (Business Corporation Law § 1701 et seq.)
General Public Benefits				
Something that has a material positive social or environmental impact through one or more specific public benefits	Something that has a material positive social or environmental impact through one or more specific public benefits, taken as a whole, assessed against a third party standard, for the business and operation of the corporation	Same as Judiciary bill	Same as Commerce bill	Same as Judiciary bill
Specific Public Benefits				
<ul style="list-style-type: none"> • One or more IRS defined charitable, cultural, scientific, literary, or educational purposes • Products and services benefiting low-income people and underserved individuals • Economic opportunities for people and communities beyond creating jobs in everyday business • Environmental preservation or improving human health • Arts and sciences or knowledge advancement • Capital flows to entities serving a social purpose • Other identifiable societal or environmental benefits 	<p>One or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purposes or benefits beyond the strict interest of the shareholders of the SEB, including:</p> <ul style="list-style-type: none"> • Products and services beneficial to low-income people and underserved individuals • Economic opportunities for people and communities beyond creating jobs in everyday business • Environmental preservation or improving human health • Arts and sciences or knowledge advancement • Capital flows to entities serving a social purpose • Other identifiable societal or environmental benefits 	<p>Same as Commerce and Judiciary bills minus:</p> <ul style="list-style-type: none"> • One or more IRS defined charitable, cultural, scientific, literary, or educational purposes (Commerce) • 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 (Judiciary) 	<p>Similar to Commerce and Judiciary bills minus:</p> <ul style="list-style-type: none"> • One or more IRS defined charitable, cultural, scientific, literary, or educational purposes (Commerce) • 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 (Judiciary) <p>For products and services benefit, it must benefit low-income individuals or communities as opposed to low-income people or underserved individuals as under the Connecticut bills and California law</p>	<p>Has elements of Commerce and Judiciary bills and California law</p>

Table 2: Board of Directors

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
<i>Fiduciary Duty</i>				
<ul style="list-style-type: none"> Limited to parties allowed to bring a BEP No duty to the beneficiaries of the benefits SEB seeks to create 	Fiduciary duty presumably the same as under current law, but, like Commerce bill, no duty to beneficiaries of the benefits SEB seeks to create	<ul style="list-style-type: none"> Perform duties in good faith, in a manner director believes is in corporation's best interest, and with care an ordinarily prudent person would show in same situation Fiduciary duty presumably the same as under current law, but, like Commerce bill, no duty to beneficiaries of the benefits SEB seeks to create 	Fiduciary duty presumably the same as directors of non-benefit corporations	No duty to the beneficiaries of the benefits SEB seeks to create
<i>Mandatory Decision Making Requirements and Factors</i>				
<ul style="list-style-type: none"> Interests of shareholders, employees, workforce, subsidiaries, and suppliers Interests of customers benefitting from specific social benefits Community and social considerations Local and global environment Entity's short- and long-term interests 	Board, board committees, and individual directors must consider how a corporate action affects same groups and interests as under the Commerce bill	Same as Commerce and Judiciary bills plus corporation's ability to accomplish general benefit and any specific public benefits	Same as Commerce and Judiciary bills, plus provision relieving board from giving priority to corporation's shareholders, employees, workforce, subsidiaries, suppliers, and customers unless doing is related to a specific public benefit identified in articles of incorporation	Has elements of Commerce and Judiciary bills and California law
<i>Optional Decision Making Requirements and Factors</i>				
No optional factors	<ul style="list-style-type: none"> Resources; intent; and past, stated, and potential conduct of any person seeking to acquire control of the entity Other pertinent factors or interests of any other person the board members deem appropriate 	Same as Judiciary bill	<ul style="list-style-type: none"> Same statutory factors the directors of non-benefit corporations may consider, including effects on creditors and the possibility that the corporation's continued independence may serve its short- and long-term interests Other pertinent factors or interests of any other person the board members deem appropriate 	Same as Judiciary bill
<i>Liability Protections</i>				
<ul style="list-style-type: none"> No liability for SEB's failure to create a social benefit or specific social benefit Not liable to anyone entitled to bring a BEP for acting or failing to act while performing their duties in compliance with the bill and statutory good conduct standards 	<ul style="list-style-type: none"> No liability for failure to create a general public or specific public benefit specified in certificate of incorporation No liability for actions complying with statutory good conduct standards 	<ul style="list-style-type: none"> Not liable for monetary damages for corporation's failure to create general or specific benefit Not liable for monetary damages for failing to discharge director's duties Articles of incorporation may eliminate or limit director's liability for monetary damages 	<ul style="list-style-type: none"> Not liable for monetary damages for corporation's failure to create general or specific benefit Designated "benefit" director's liability limited to acts or omissions that are self-dealing, willful misconduct, or knowing violations of law 	Directors' consideration of decision making factors does not violate the other laws governing their duties and responsibilities

Table 3: Officers

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
<i>Fiduciary Duty</i>				
<ul style="list-style-type: none"> Limited to parties allowed to bring BEP Duty to parties based only on the beneficiary status 	Unspecified	No duty to parties based only their status as a beneficiary of a general or specific benefit	Unspecified	Unspecified
<i>Decision Making Requirements and Factors</i>				
<p>Same interests and factors as directors but:</p> <ul style="list-style-type: none"> only with respect to issues over which officer has discretion and when it reasonably appears to them that a matter could materially affect them or a social benefit's creation 	No similar provisions	<p>Same interests and factors as directors but:</p> <ul style="list-style-type: none"> only with respect to issues over which officer has discretion or when it reasonably appears to them that a matter could materially affect them or a social benefit's creation 	Same as Commerce bill	Same as directors
<i>Liability Protections</i>				
<p>Not liable for any action taken in good faith business judgment if officer believes action is consistent with:</p> <ul style="list-style-type: none"> any of the entity's public benefits, as specified in the bylaws or certificate of incorporation and any recognized standard for defining, reporting, or assessing an entity's corporate and environmental performance (i.e., third party standards) 	Same as Commerce bill	<ul style="list-style-type: none"> Officer's consideration of decision making interests and factors does not constitute violation of officer's duties Officer not liable for monetary damages for: <ul style="list-style-type: none"> Duties performed in compliance with statutes or Entity's failure to create general or specific benefit 	Officer not liable for monetary damages for corporation's failure to create general or specific benefit	Consideration of factors does not constitute a violation of officers' duties under other corporation business laws.

Table 4: Benefit Enforcement Proceedings (BEP)

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
Parties Allowed to Bring BEP				
<ul style="list-style-type: none"> Shareholders otherwise entitled to start or maintain a proceeding in the right of a SEB on any basis (derivative action) Entity's directors People owning beneficially or of record at least 10% equity interest in a business of which the SEB is a subsidiary Other people or parties specified in the certificate of incorporation 	<ul style="list-style-type: none"> SEB Derivatively by SEB's shareholder or director Other persons specified in certificate of incorporation or by laws 	<ul style="list-style-type: none"> Same as Judiciary plus people owning beneficially or of record at least 5% equity interest in a business of which the SEB is a subsidiary 	Same as Judiciary bill plus people owning beneficially or of record at least 10% equity interest in a business of which the SEB is a subsidiary (same as Commerce bill)	No provision
Grounds for Brining BEP				
<ul style="list-style-type: none"> Requiring directors and officers to fulfill their respective duties Requiring entity to fulfill its social benefit and specific public benefit 	<ul style="list-style-type: none"> Enforcing directors' duties Enforcing SEB's obligation to prepare and make available annual benefit report Enforcing SEB's general and specific public benefit purposes 	<ul style="list-style-type: none"> Failure to pursue general or specific public benefit Directors' violation of duty or standard of conduct Failure to deliver or post annual benefit report 	Enforcing directors' duties and general and specific public benefit	Not applicable

Table 5: Annual Report Requirements

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
Goals and Outcomes				
<ul style="list-style-type: none"> Specify SEB's goals or outcomes Describe actions taken to achieve them and the extent to which they were achieved Describe obstacles that prevented attainment of goals or outcomes or creation of social benefit or any specific public benefit Specify the shareholder-approved goals or outcomes for the next report period 	<ul style="list-style-type: none"> Describe how general and specific public benefits were pursued and extent they were created Circumstances hindering benefits' creation 	Same as Judiciary bill, except California statutes plus a description of the process and rationale for selecting third party standards	Same as Judiciary bill	Same as Judiciary bill plus a description of the process and rationale for selecting third party standards
Assessments				
<ul style="list-style-type: none"> 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 Specify how performance will be improved and goals and objectives attained for creating social benefits 	<ul style="list-style-type: none"> Assess social and environmental performance based on third party standard specified in certificate, bylaws, or adopted by board and used for this purpose in other reports or explain why the standards were not consistently applied Provide any other information the third party standard requires 	Similar to Judiciary bill but: <ul style="list-style-type: none"> does not explicitly require any additional information the third party standard requires specifies that assessment does not have to be audited or certified by third party includes board's opinion about whether corporation failed to pursue its general benefit and any specific public benefit in all material respects during reporting period and, if so describe how corporation failed to do so 	Similar to Judiciary bill, but not requirement that report provide any other information the third party standard requires and additional requirement for director's statement as to whether: <ul style="list-style-type: none"> Corporation acted according with general and specific benefits during the reporting period and Directors and officers failed to make decisions based on the statutory factors 	Assess performance based on the same third-party standards used for this purpose in other reports or otherwise explain why they were not used

Table 5: -Continued-

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
Administration and Finance				
<ul style="list-style-type: none"> • Provide information on entity's finances, including copy of compensation plan, budget, and balance sheet • Identify accounting method used to prepare the above • List: <ul style="list-style-type: none"> ○ Top 1% of entity's most highly compensated employees ○ Entity's financial investors ○ Each person who owns beneficially or of record at least 5% of the entity's shares • List each director and officer, his or her mailing address, and, with respect of officers, how much each was compensated during the year 	Provide: <ul style="list-style-type: none"> • name and address of each director • compensation paid to each director in his or her capacity as director • name of each person who owns beneficially or of record at least 5% of outstanding shares 	<ul style="list-style-type: none"> • Name of each person who owns beneficially or of record at least 5% of outstanding shares • Statement regarding any connection between the corporation and the entity that established the third party standards 	Same as Judiciary bill	Same as Judiciary bill
Conduct				
Provide code of conduct and conflict of interest policies	No provision	No provision	No provision	No provision

Table 5: -Continued-

<i>sHB 5466 (Commerce)</i>	<i>HB 5490 (Judiciary)</i>	<i>California (Corporation Code § 14600 et seq.)</i>	<i>New Jersey (N.J.S. § 14A:18-1 et seq.)</i>	<i>New York (Business Corporation Law § 1701 et seq.)</i>
<i>Distribution</i>				
<ul style="list-style-type: none"> • 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 • Publish report on website • Deliver copy to secretary of the state when it delivers and publishes report 	<ul style="list-style-type: none"> • Same as Commerce bill except copy delivered to secretary of the state may omit compensation data and proprietary information • Website posting required; entities without website must make written or electronic copy of report available upon request 	<ul style="list-style-type: none"> • 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 • Website posting required, but web version may exclude directors' compensation and any financial or proprietary information • Corporations without website must provide most recent report upon request without charge <ul style="list-style-type: none"> ○ Report may omit any financial or proprietary information 	<ul style="list-style-type: none"> • 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 • Simultaneous delivery to State Treasury Department (with payment of \$70 filing fee) or status forfeited • Website posting required • Report on web and delivered to State Treasury Department may exclude directors' compensation and any financial or proprietary information 	<ul style="list-style-type: none"> • Delivery to shareholders within 120 days after end of fiscal year • Simultaneous delivery to New York Department of State • Website posting required, but web version may exclude directors' compensation and any financial or proprietary information • Report on web and delivered to New York Department of State may exclude directors' compensation and any financial or proprietary information

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