



House of Representatives

File No. 839

General Assembly

January Session, 2013

(Reprint of File No. 661)

Substitute House Bill No. 6356
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 22, 2013

***AN ACT CONCERNING BENEFIT CORPORATIONS AND
ENCOURAGING SOCIAL ENTERPRISE.***

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

1 Section 1. (NEW) (*Effective October 1, 2013*) Sections 1 to 15,
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, 2013*) (a) Sections 1 to 15, inclusive,
5 of this act shall be applicable to all benefit corporations.

6 (b) The existence of a provision of sections 1 to 15, 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 15, 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 15, 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 15, inclusive, of this act shall control over the general
16 provisions of chapter 601 of the general statutes.

17 (d) A provision of the certificate of incorporation or bylaws of a
18 benefit corporation may not limit, be inconsistent with, or supersede a
19 provision of sections 1 to 15, inclusive, of this act.

20 (e) Nothing in sections 1 to 15, inclusive, of this act shall (1) be
21 construed as creating or granting to any person any contractual right
22 to, or proprietary interest in, the income or assets of the benefit
23 corporation by virtue of the fact that he or she may directly or
24 indirectly benefit from the general public benefit or any specific public
25 benefit of a benefit corporation, (2) be construed as imposing or
26 creating a charitable use, interest or restriction on any property or
27 assets of a benefit corporation, or (3) deprive the Attorney General of
28 jurisdiction over a benefit corporation under any other applicable law.

29 Sec. 3. (NEW) (*Effective October 1, 2013*) As used in sections 1 to 15,
30 inclusive, of this act:

31 (1) "Benefit corporation" means a business corporation (A) that has
32 elected to become subject to the provisions of sections 1 to 15,
33 inclusive, of this act, and (B) whose status as a benefit corporation has
34 not been terminated pursuant to section 7 of this act.

35 (2) "Benefit director" means either (A) the director designated as the
36 benefit director of a benefit corporation pursuant to section 10 of this
37 act, or (B) if a shareholder agreement of a benefit corporation
38 eliminates the board of directors or transfers to one or more
39 shareholders or other persons all or part of the authority to exercise
40 corporate powers or to manage the business and affairs of the
41 corporation, a person with one or more of the powers, duties or rights
42 of a benefit director under section 10 of this act as provided in such
43 shareholder agreement.

44 (3) "Benefit enforcement proceeding" means any claim or action for

45 (A) the failure of a benefit corporation to pursue or create a general
46 public benefit or any specific public benefit purpose set forth in its
47 certificate of incorporation, or (B) the violation of any obligation, duty
48 or standard of conduct under sections 1 to 15, inclusive, of this act.

49 (4) "Benefit officer" means the individual designated as the benefit
50 officer of a benefit corporation pursuant to section 12 of this act.

51 (5) "Business corporation" means a corporation whose internal
52 affairs are governed by chapter 601 of the general statutes.

53 (6) "Charitable organization" means any organization organized for
54 charitable, scientific or educational purposes that has been issued a
55 ruling by the Internal Revenue Service classifying it as an exempt
56 organization under Section 501(c)(3) of the Internal Revenue Code of
57 1986, or any subsequent corresponding internal revenue code of the
58 United States, as amended from time to time.

59 (7) "General public benefit" means a material positive impact on
60 society and the environment, taken as a whole, as assessed against a
61 third-party standard, from the business and operations of a benefit
62 corporation.

63 (8) "Independent" means having no material relationship with a
64 benefit corporation or a subsidiary of the benefit corporation, provided
65 a person who serves as a benefit director or benefit officer does not
66 lack independence solely by serving in such capacity.

67 (9) "Legacy preservation provision" means a provision enacted
68 pursuant to section 7 of this act providing that a benefit corporation
69 (A) shall, upon dissolution, distribute its assets to one or more
70 charitable organizations or benefit corporations that have enacted such
71 provision, and (B) may not otherwise terminate its status as a benefit
72 corporation.

73 (10) "Material relationship" means a relationship between a person
74 and a benefit corporation or any of its subsidiaries if any of the

75 following apply: (A) The person is, or has been within the last three
76 years, an employee other than a benefit officer of the benefit
77 corporation or a subsidiary; (B) an immediate family member of the
78 person is, or has been within the last three years, an executive officer
79 other than a benefit officer of the benefit corporation or a subsidiary; or
80 (C) there is beneficial or record ownership of five per cent or more of
81 the outstanding shares of the benefit corporation, calculated as if all
82 outstanding rights to acquire shares in the benefit corporation had
83 been exercised, by (i) the person, or (ii) an entity (I) of which the
84 person is a director, an officer or a manager; or (II) in which the person
85 owns beneficially or of record five per cent or more of the outstanding
86 equity interests, calculated as if all outstanding rights to acquire equity
87 interests in the entity had been exercised.

88 (11) "Minimum status vote" means (A) in the case of a business
89 corporation, in addition to any other required approval or vote, the
90 satisfaction of the following conditions: (i) The shareholders of every
91 class or series shall be entitled to vote as a separate voting group on
92 the corporate action regardless of a limitation stated in the certificate of
93 incorporation or bylaws on the voting rights of any class or series; and
94 (ii) the corporate action is approved by the vote of shareholders of each
95 class or series entitled to cast at least two-thirds of the votes that
96 shareholders of the class or series are entitled to cast on the action; and
97 (B) in the case of a domestic entity other than a business corporation, in
98 addition to any other required approval, vote or consent, the
99 satisfaction of the following conditions: (i) The holders of each class or
100 series of equity interest in the entity that are entitled to receive a
101 distribution of any kind from the entity shall be entitled to vote on or
102 consent to the action regardless of any otherwise applicable limitation
103 on the voting or consent rights of any such class or series; and (ii) the
104 action is approved by the vote or written consent of the holders
105 described in subparagraph (B)(i) of this subdivision entitled to cast at
106 least two-thirds of the votes that all of those holders are entitled to cast
107 on the action.

108 (12) "Publicly traded corporation" means a business corporation that

109 has shares listed on a national securities exchange or traded in a
110 market maintained by one or more members of a national securities
111 association.

112 (13) "Specific public benefit" includes, without limitation: (A)
113 Providing low-income or underserved individuals or communities
114 with beneficial products or services; (B) promoting economic
115 opportunity for individuals or communities beyond the creation of
116 jobs in the normal course of business; (C) protecting or restoring the
117 environment; (D) improving human health; (E) promoting the arts,
118 sciences or advancement of knowledge; (F) increasing the flow of
119 capital to other benefit corporations or similar entities whose purpose
120 is to benefit society or the environment; and (G) conferring any other
121 particular benefit on society or the environment.

122 (14) "Subsidiary" means, in relation to a person, an entity in which
123 the person owns beneficially or of record fifty per cent or more of the
124 outstanding equity interests.

125 (15) "Third-party standard" means a recognized standard for
126 defining, reporting and assessing corporate social and environmental
127 performance that is (A) comprehensive because the standard assesses
128 the effect of its business and operations upon the interests listed in
129 subparagraphs (B), (C), (D) and (E) of subdivision (1) of subsection (a)
130 of section 9 of this act; (B) developed by an entity that is independent;
131 and (C) transparent because the following information is publicly
132 available about the development and revision of the standard: (i) The
133 identity of the directors, officers, material owners, and the governing
134 body of the entity that developed and controls revisions to the
135 standard; (ii) the process by which revisions to the standard and
136 changes to the membership of the governing body are made; and (iii)
137 an accounting of the revenue and sources of financial support for the
138 entity, with sufficient detail to disclose any relationships that could
139 reasonably be considered to present a potential conflict of interest.

140 Sec. 4. (NEW) (*Effective October 1, 2013*) A benefit corporation shall

141 be incorporated in accordance with the provisions of chapter 601 of the
142 general statutes by filing its certificate of incorporation with the office
143 of the Secretary of the State and such certificate of incorporation shall
144 state that the corporation is a benefit corporation.

145 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) A business corporation
146 that was not formed as a benefit corporation may elect to become a
147 benefit corporation by amending its certificate of incorporation so that
148 such certificate contains, in addition to matters required by section 33-
149 636 of the general statutes, a statement that the corporation is a benefit
150 corporation. Any such amendment to the certificate of incorporation
151 shall be approved by a minimum status vote.

152 (b) If an entity that is not a benefit corporation is a party to (1) a
153 merger in which (A) the surviving entity will be a benefit corporation,
154 or (B) shares or other equity interests in such entity will be converted
155 into a right to receive shares of a benefit corporation, or (2) a share
156 exchange with a benefit corporation in which the shares or other
157 equity interests of the entity will be exchanged for shares of a benefit
158 corporation, the plan of merger or share exchange shall be approved
159 by a minimum status vote. If an entity other than a business
160 corporation is a party to any of the foregoing transactions and a
161 minimum status vote by the equity owners of such entity is required
162 for approval of the transaction, the equity owners of such entity shall
163 be entitled to appraisal rights under the procedures set forth in chapter
164 601 of the general statutes as if the entity were a business corporation.

165 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
166 may, after not less than twenty-four months from the date that it
167 became a benefit corporation, enact a legacy preservation provision by
168 amending its certificate of incorporation so that such certificate
169 contains a statement that the corporation is subject to a legacy
170 preservation provision. Any such amendment shall be adopted in
171 accordance with the procedures set forth in chapter 601 of the general
172 statutes and shall be approved by the unanimous vote or written
173 consent of the shareholders of every class or series, regardless of a

174 limitation stated in the certificate of incorporation or bylaws on the
175 voting rights of any such class or series.

176 (b) Notwithstanding the provisions of chapter 601 of the general
177 statutes, a benefit corporation that has adopted a legacy preservation
178 provision and is dissolved and has liquidated its assets shall (1)
179 discharge, or make adequate provision for, its liabilities, and (2)
180 distribute its remaining properties only to one or more charitable
181 organizations or other benefit corporations that have enacted a legacy
182 preservation provision.

183 Sec. 7. (NEW) (*Effective October 1, 2013*) (a) Except for a benefit
184 corporation that has enacted a legacy preservation provision, a benefit
185 corporation may terminate its status as such and cease to be subject to
186 the provisions of sections 1 to 15, inclusive, of this act by amending its
187 certificate of incorporation to delete any provision stating that such
188 corporation is a benefit corporation. Any such amendment shall be
189 approved by a minimum status vote.

190 (b) Except for a benefit corporation that has enacted a legacy
191 preservation provision, if a benefit corporation is a party to (1) a
192 merger in which (A) the surviving entity will not be a benefit
193 corporation, or (B) shares of such benefit corporation will be converted
194 into a right to receive shares or other equity interests of an entity that is
195 not a benefit corporation, or (2) a share exchange in which the shares of
196 the benefit corporation will be exchanged for shares or other equity
197 interests of an entity that is not a benefit corporation, the plan of
198 merger or share exchange shall be approved by a minimum status
199 vote.

200 (c) A benefit corporation that has enacted a legacy preservation
201 provision may only be a party to (1) a merger in which (A) the
202 surviving entity will be a benefit corporation that has adopted a legacy
203 preservation provision, or (B) shares of such benefit corporation will be
204 converted into a right to receive shares of a benefit corporation that has
205 adopted a legacy preservation provision, or (2) a share exchange in

206 which the shares of the benefit corporation will be exchanged for
207 shares of a benefit corporation that has adopted a legacy preservation
208 provision, and such merger or share exchange is approved by a
209 minimum status vote.

210 (d) Except for a benefit corporation that has enacted a legacy
211 preservation provision, any sale, lease, exchange or other disposition
212 of assets of a benefit corporation, other than a disposition described in
213 section 33-830 of the general statutes, that would leave the benefit
214 corporation without a significant continuing business activity shall be
215 approved by a minimum status vote. A benefit corporation that has
216 enacted a legacy preservation provision shall not enter into a sale,
217 lease, exchange or other disposition of its assets, other than a
218 disposition described in section 33-830 of the general statutes, unless
219 the disposition is to one or more charitable organizations or other
220 benefit corporations that have enacted legacy preservation provisions,
221 and such disposition is approved by a minimum status vote.

222 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
223 shall have a purpose of creating a general public benefit. This purpose
224 is in addition to its purposes under chapter 601 of the general statutes.

225 (b) The certificate of incorporation of a benefit corporation may
226 identify one or more specific public benefits that it is the purpose of the
227 benefit corporation to create in addition to its purposes under chapter
228 601 of the general statutes and subsection (a) of this section. The
229 identification of a specific public benefit under this subsection shall not
230 limit the obligation of a benefit corporation under subsection (a) of this
231 section.

232 (c) The creation of a general public benefit and any specific public
233 benefit under subsections (a) and (b) of this section is in the best
234 interests of the benefit corporation.

235 (d) A benefit corporation may amend its certificate of incorporation
236 to add, amend or delete the identification of a specific public benefit
237 that it is the purpose of the benefit corporation to create. Any such

238 amendment shall be adopted by a minimum status vote.

239 Sec. 9. (NEW) (*Effective October 1, 2013*) (a) In discharging the duties
240 of their respective positions and considering the best interests of the
241 benefit corporation, the board of directors, any committee of the board
242 and the directors of a benefit corporation:

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

244 (A) The shareholders of the benefit corporation;

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

247 (C) The interests of the customers of the benefit corporation as
248 beneficiaries of the general public benefit purpose and any specific
249 public benefit purpose of the benefit corporation;

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

253 (E) The local and global environment;

254 (F) The short-term and long-term interests of the benefit
255 corporation, including benefits that may accrue to the benefit
256 corporation from its long-term plans and the possibility that these
257 interests may be best served by the continued independence of the
258 benefit corporation; and

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

261 (2) May consider (A) in the circumstances described in subsection
262 (d) of section 33-756 of the general statutes, the interests referred to in
263 said subsection, and (B) other pertinent factors or the interests of any
264 other group that they deem appropriate; and

265 (3) Need not give priority to the interests of a particular person or
266 group referred to in subdivision (1) or (2) of this subsection over the
267 interests of any other person or group unless the benefit corporation
268 has stated in its certificate of incorporation its intention to give priority
269 to certain interests related to the accomplishment of its general public
270 benefit purpose or of a specific public benefit purpose identified in its
271 certificate of incorporation.

272 (b) The consideration of interests and factors in the manner required
273 by subsection (a) of this section (1) shall not constitute a violation of
274 section 33-756 of the general statutes, and (2) is in addition to the
275 power of directors to consider the interests and factors referred to in
276 subsection (d) of section 33-756 of the general statutes in the
277 circumstances described in said subsection.

278 (c) A director shall not be personally liable for (1) any act or
279 omission in the course of performing the duties of a director under
280 subsection (a) of this section if the director performed the duties of the
281 position in compliance with section 33-756 of the general statutes and
282 this section; or (2) failure of the benefit corporation to pursue or create
283 a general public benefit or any specific public benefit.

284 (d) A director shall not have a duty to a person who is a beneficiary
285 of the general public benefit purpose or a specific public benefit
286 purpose of a benefit corporation arising from the status of the person
287 as a beneficiary.

288 Sec. 10. (NEW) (*Effective October 1, 2013*) (a) The board of directors of
289 a benefit corporation that is a publicly traded corporation shall, and
290 the board of any other benefit corporation may, include a director who
291 shall (1) be designated the benefit director, and (2) have, in addition to
292 the powers, duties, rights and immunities of the other directors of the
293 benefit corporation, the powers, duties, rights and immunities
294 provided in sections 9 to 13, inclusive, of this act.

295 (b) The benefit director shall be elected, and may be removed, in the
296 manner provided under chapter 601 of the general statutes. The benefit

297 director shall be an individual who is independent. The benefit
298 director may serve as the benefit officer at the same time as serving as
299 the benefit director. The certificate of incorporation or bylaws or a
300 shareholder agreement of a benefit corporation may prescribe
301 additional qualifications of the benefit director not inconsistent with
302 this subsection.

303 (c) The benefit director shall prepare, and the benefit corporation
304 shall include in the annual benefit report to its shareholders required
305 by section 14 of this act, the opinion of the benefit director on all of the
306 following: (1) Whether the benefit corporation acted in accordance
307 with its general public benefit purpose and any specific public benefit
308 purpose in all material respects during the period covered by the
309 report, (2) whether the directors and officers complied with subsection
310 (a) of section 9 of this act and subsection (a) of section 11 of this act,
311 respectively, and (3) if, in the opinion of the benefit director, the benefit
312 corporation or its directors or officers failed to comply with subsection
313 (a) of section 9 of this act or subsection (a) of section 11 of this act, a
314 description of the ways in which the benefit corporation or its directors
315 or officers failed to comply.

316 (d) The act or omission of an individual in the capacity of a benefit
317 director shall constitute for all purposes an act or omission of that
318 individual in the capacity of a director of the benefit corporation.

319 (e) Regardless of whether the certificate of incorporation of a benefit
320 corporation includes a provision limiting the personal liability of
321 directors, as authorized by chapter 601 of the general statutes, a benefit
322 director shall not be personally liable for any act or omission in the
323 capacity of a benefit director unless the act or omission constitutes self-
324 dealing, wilful misconduct or a knowing violation of law.

325 Sec. 11. (NEW) (*Effective October 1, 2013*) (a) Each officer of a benefit
326 corporation shall consider the interests and factors described in
327 subsection (a) of section 9 of this act in the manner provided in that
328 subsection if (1) the officer has discretion to act with respect to a

329 matter, and (2) it reasonably appears to the officer that the matter may
330 have a material effect on the creation by the benefit corporation of a
331 general public benefit or any specific public benefit identified in the
332 certificate of incorporation of the benefit corporation.

333 (b) The consideration of interests and factors in the manner
334 described in subsection (a) of this section shall not constitute a
335 violation of section 33-765 of the general statutes.

336 (c) An officer shall not be personally liable for (1) an act or omission
337 as an officer in the course of performing the duties of an officer under
338 subsection (a) of this section if the officer performed the duties of the
339 position in compliance with section 33-765 of the general statutes and
340 this section, or (2) the failure of the benefit corporation to pursue or
341 create a general public benefit or any specific public benefit.

342 (d) An officer shall not have a duty to a person that is a beneficiary
343 of the general public benefit purpose or any specific public benefit
344 purpose of a benefit corporation arising from the status of the person
345 as a beneficiary.

346 Sec. 12. (NEW) (*Effective October 1, 2013*) A benefit corporation may
347 designate a benefit officer. A benefit officer shall have (1) the powers
348 and duties relating to the purpose of the corporation to create a general
349 public benefit or any specific public benefit provided (A) by the
350 bylaws, or (B) absent controlling provisions in the bylaws, by
351 resolutions or orders of the board of directors; and (2) the duty to
352 prepare the benefit report required by section 14 of this act.

353 Sec. 13. (NEW) (*Effective October 1, 2013*) (a) Except in a benefit
354 enforcement proceeding, no person may bring an action or assert a
355 claim against a benefit corporation or its directors or officers with
356 respect to (1) the failure to pursue or create a general public benefit or
357 any specific public benefit identified in its certificate of incorporation,
358 or (2) the violation of an obligation, duty or standard of conduct under
359 sections 1 to 15, inclusive, of this act.

360 (b) A benefit corporation shall not be liable for monetary damages
361 under sections 1 to 15, inclusive, of this act for any failure of the benefit
362 corporation to pursue or create a general public benefit or any specific
363 public benefit.

364 (c) A benefit enforcement proceeding may be commenced or
365 maintained only (1) directly by the benefit corporation, or (2)
366 derivatively in accordance with the provisions of chapter 601 of the
367 general statutes by (A) a person or group of persons that owns
368 beneficially or of record at least five per cent of the total number of
369 shares of all classes and series outstanding on the date the benefit
370 enforcement proceeding is commenced, (B) a person or group of
371 persons that owns beneficially or of record ten per cent or more of the
372 outstanding equity interests in an entity of which the benefit
373 corporation is a majority-owned subsidiary, or (C) other persons as
374 specified in the certificate of incorporation or bylaws of the benefit
375 corporation.

376 (d) For purposes of this section, a person is the beneficial owner of
377 shares or equity interests if the shares or equity interests are held in a
378 voting trust or by a nominee on behalf of the beneficial owner.

379 Sec. 14. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
380 shall select a third-party standard by which to assess its pursuit of a
381 general public benefit and any specific public benefit. Selecting or
382 changing a third-party standard shall require approval by (1) the
383 greater of (A) a majority of all the directors in office when the action is
384 taken, or (B) the number of directors required by the certificate of
385 incorporation or bylaws of the benefit corporation to take action under
386 this section; or (2) the vote or written consent of the shareholders
387 required by the certificate of incorporation or bylaws of the benefit
388 corporation to take action under this section.

389 (b) A benefit corporation shall prepare an annual benefit report
390 including all of the following:

391 (1) A narrative description of (A) the ways in which the benefit

392 corporation pursued a general public benefit during the year and the
393 extent to which a general public benefit was created; (B) both (i) the
394 ways in which the benefit corporation pursued a specific public benefit
395 that the certificate of incorporation states it is the purpose of the
396 benefit corporation to create, and (ii) the extent to which such specific
397 public benefit was created; (C) any circumstances that have hindered
398 the creation by the benefit corporation of a general public benefit or
399 any specific public benefit; and (D) the process and rationale for
400 selecting or changing the third-party standard used to prepare the
401 benefit report;

402 (2) An assessment of the overall social and environmental
403 performance of the benefit corporation against a third-party standard
404 (A) applied consistently with any application of that standard in prior
405 benefit reports, or (B) accompanied by an explanation of the reasons
406 for any inconsistent application or the change to that standard from
407 the one used in the most recent prior report;

408 (3) The name of the benefit director and the benefit officer, if any,
409 and the address to which correspondence to each of them may be
410 directed;

411 (4) The compensation paid by the benefit corporation during the
412 year to each director in his or her capacity as a director;

413 (5) The opinion of the benefit director described in subsection (c) of
414 section 10 of this act;

415 (6) A statement of any connection between the organization that
416 established the third-party standard, or its directors, officers or any
417 holder of five per cent or more of the voting power or capital interests
418 in the organization, and the benefit corporation or its directors, officers
419 or any holder of five per cent or more of the outstanding shares of the
420 benefit corporation, including any financial or governance relationship
421 that might materially affect the credibility of the use of the third-party
422 standard; and

423 (7) If a shareholder agreement eliminates the board of directors or
424 transfers to one or more shareholders or other persons all or part of the
425 authority to exercise corporate powers or to manage the business and
426 affairs of the corporation, a description of (A) the persons who exercise
427 the powers, duties and rights and who have the immunities of the
428 board of directors, and (B) the name of the person, if any, who is
429 vested with the powers, duties, rights and immunities of a benefit
430 director.

431 (c) If, during the year covered by a benefit report, a benefit director
432 or benefit officer resigned from or refused to stand for reelection to the
433 position of benefit director or benefit officer, or was removed from the
434 position of benefit director or benefit officer, and the benefit director or
435 benefit officer furnished the benefit corporation with a written
436 statement or correspondence concerning the circumstances
437 surrounding the resignation, refusal or removal, the benefit report
438 shall include that correspondence as an exhibit.

439 (d) Neither the benefit report nor the assessment of the performance
440 of the benefit corporation in the benefit report required by subdivision
441 (2) of subsection (b) of this section must be audited or certified by the
442 third-party standards provider.

443 Sec. 15. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
444 shall send its annual benefit report to each shareholder (1) not later
445 than one hundred twenty days following the end of the fiscal year of
446 the benefit corporation, or (2) at the same time that the benefit
447 corporation delivers any other annual report to its shareholders,
448 whichever is earlier.

449 (b) A benefit corporation shall post and maintain each annual
450 benefit report on the public portion of its Internet web site, if any, but
451 the compensation paid to directors and any financial, confidential or
452 proprietary information included in any benefit report may be omitted
453 from the benefit report as posted.

454 (c) If a benefit corporation does not have an Internet web site, the

455 benefit corporation shall provide a copy of its most recent benefit
456 report, without charge, to any person who requests a copy, but the
457 compensation paid to directors and any financial, confidential or
458 proprietary information included in any benefit report may be omitted
459 from such copy.

460 Sec. 16. Section 33-856 of the general statutes is repealed and the
461 following is substituted in lieu thereof (*Effective October 1, 2013*):

462 (a) A shareholder is entitled to appraisal rights, and to obtain
463 payment of the fair value of that shareholder's shares, in the event of
464 any of the following corporate actions:

465 (1) Consummation of a merger to which the corporation is a party
466 (A) if shareholder approval is required for the merger by section 33-
467 817 and the shareholder is entitled to vote on the merger, except that
468 appraisal rights shall not be available to any shareholder of the
469 corporation with respect to shares of any class or series that remain
470 outstanding after consummation of the merger, or (B) if the
471 corporation is a subsidiary and the merger is governed by section 33-
472 818;

473 (2) Consummation of a share exchange to which the corporation is a
474 party as the corporation whose shares will be acquired, if the
475 shareholder is entitled to vote on the exchange, except that appraisal
476 rights shall not be available to any shareholder of the corporation with
477 respect to any class or series of shares of the corporation that is not
478 exchanged;

479 (3) Consummation of a disposition of assets pursuant to section 33-
480 831 if the shareholder is entitled to vote on the disposition, except that
481 appraisal rights shall not be available to any shareholder of the
482 corporation with respect to shares of any class or series if (A) under the
483 terms of the corporate action approved by the shareholders there is to
484 be distributed to shareholders in cash its net assets, in excess of a
485 reasonable amount reserved to meet claims of the type described in
486 sections 33-886 and 33-887, (i) within one year after the shareholders'

487 approval of the action, and (ii) in accordance with their respective
488 interests determined at the time of such distribution, and (B) the
489 disposition of assets is not an interested transaction;

490 (4) An amendment of the certificate of incorporation with respect to
491 a class or series of shares that reduces the number of shares of a class
492 or series owned by the shareholder to a fraction of a share if the
493 corporation has the obligation or right to repurchase the fractional
494 share so created; [or]

495 (5) If the corporation is not a benefit corporation, as defined in
496 section 3 of this act, (A) an amendment of the certificate of
497 incorporation to state that the corporation is a benefit corporation; (B)
498 consummation of a merger to which the corporation is a party in
499 which the surviving entity will be a benefit corporation or in which
500 shares in the corporation will be converted into a right to receive
501 shares of a benefit corporation; or (C) consummation of a share
502 exchange to which the corporation is a party and the shares of the
503 corporation will be exchanged for shares of a benefit corporation; or

504 ~~[(5)]~~ (6) Any other merger, share exchange, disposition of assets or
505 amendment to the certificate of incorporation to the extent provided by
506 the certificate of incorporation, the bylaws or a resolution of the board
507 of directors.

508 (b) Notwithstanding subsection (a) of this section, the availability of
509 appraisal rights under subdivisions (1) [~~(2), (3) and (4)] to (5),~~
510 inclusive, of subsection (a) of this section shall be limited in accordance
511 with the following provisions:

512 (1) Appraisal rights shall not be available for the holders of shares of
513 any class or series of shares which is:

514 (A) A covered security under Section 18(b)(1)(A) or (B) of the
515 Securities Act of 1933, as amended;

516 (B) Traded in an organized market and has at least two thousand

517 shareholders and a market value of at least twenty million dollars,
518 exclusive of the value of such shares held by the corporation's
519 subsidiaries, senior executives, directors and beneficial shareholders
520 owning more than ten per cent of such shares; or

521 (C) Issued by an open-end management investment company
522 registered with the Securities and Exchange Commission under the
523 Investment Company Act of 1940 and may be redeemed at the option
524 of the holder at net asset value.

525 (2) The applicability of subdivision (1) of this subsection shall be
526 determined as of: (A) The record date fixed to determine the
527 shareholders entitled to receive notice of the meeting of shareholders
528 to act upon the corporate action requiring appraisal rights; or (B) the
529 day before the effective date of such corporate action if there is no
530 meeting of shareholders.

531 (3) Subdivision (1) of this subsection shall not be applicable and
532 appraisal rights shall be available pursuant to subsection (a) of this
533 section for the holders of any class or series of shares (A) who are
534 required by the terms of the corporate action requiring appraisal rights
535 to accept for such shares anything other than cash or shares of any
536 class or any series of shares of any corporation, or any other
537 proprietary interest of any other entity, that satisfies the standards set
538 forth in subdivision (1) of this subsection at the time the corporate
539 action becomes effective, or (B) in the case of the consummation of a
540 disposition of assets pursuant to section 33-831, unless such cash,
541 shares or proprietary interests are, under the terms of the corporate
542 action approved by the shareholders, to be distributed to the
543 shareholders, as part of a distribution to shareholders of the net assets
544 of the corporation in excess of a reasonable amount to meet claims of
545 the type described in sections 33-886 and 33-887, (i) not later than one
546 year after the shareholders' approval of the action, and (ii) in
547 accordance with their respective interests determined at the time of the
548 distribution.

549 (4) Subdivision (1) of this subsection shall not be applicable and
 550 appraisal rights shall be available pursuant to subsection (a) of this
 551 section for the holders of any class or series of shares where the
 552 corporate action is an interested transaction.

553 (c) Notwithstanding any other provision of this section, the
 554 certificate of incorporation as originally filed or any amendment
 555 thereto may limit or eliminate appraisal rights for any class or series of
 556 preferred shares, but any such limitation or elimination contained in
 557 an amendment to the certificate of incorporation that limits or
 558 eliminates appraisal rights for any of such shares that are outstanding
 559 immediately prior to the effective date of such amendment or that the
 560 corporation is or may be required to issue or sell thereafter pursuant to
 561 any conversion, exchange or other right existing immediately before
 562 the effective date of such amendment shall not apply to any corporate
 563 action that becomes effective within one year of that date if such action
 564 would otherwise afford appraisal rights.

565 (d) Where the right to be paid the value of shares is made available
 566 to a shareholder by this section, such remedy shall be the exclusive
 567 remedy as holder of such shares against the corporate actions
 568 described in this section, whether or not the shareholder proceeds as
 569 provided in sections 33-855 to 33-872, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	New section
Sec. 3	October 1, 2013	New section
Sec. 4	October 1, 2013	New section
Sec. 5	October 1, 2013	New section
Sec. 6	October 1, 2013	New section
Sec. 7	October 1, 2013	New section
Sec. 8	October 1, 2013	New section
Sec. 9	October 1, 2013	New section
Sec. 10	October 1, 2013	New section
Sec. 11	October 1, 2013	New section

Sec. 12	<i>October 1, 2013</i>	New section
Sec. 13	<i>October 1, 2013</i>	New section
Sec. 14	<i>October 1, 2013</i>	New section
Sec. 15	<i>October 1, 2013</i>	New section
Sec. 16	<i>October 1, 2013</i>	33-856

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 14 \$	FY 15 \$
Secretary of the State	GF - Cost	62,000	None

Municipal Impact: None

Explanation

The bill establishes benefit corporations as a type of for-profit corporation. There is a cost to the Secretary of the State (SOTS), 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 fee revenue at the SOTS. The SOTS collects fees from business entities for establishment, filing of annual reports, and dissolution. SOTS is not anticipated to realize a change in revenue from such fees as it is anticipated that most new benefit corporations will be reclassifications of existing businesses. The passage of similar legislation in several surrounding states has significantly decreased the likelihood that existing businesses will move corporate registration to Connecticut in order to become benefit corporations.

House "A" strikes the original bill and has the fiscal impact identified above.

The Out Years

There is no fiscal impact in the out years as this is a one-time

programming cost.

OLR Bill Analysis**sHB 6356 (as amended by House "A")******AN ACT CONCERNING BENEFIT CORPORATIONS AND ENCOURAGING SOCIAL ENTERPRISE.*****SUMMARY:**

This bill establishes, defines, and governs a new and specialized type of business corporation, named a benefit corporation (b-corp), intended to benefit society and the environment.

Under the bill, a b-corp is a for-profit business organization operating under the same laws that govern traditional business corporations (business corporation law, "BCL"), but:

1. whose corporate purpose must be to make a material positive impact on society and the environment, taken as a whole and assessed against a third party standard, as a result of its business and operations (i.e., "general public benefit") and may be to promote any specific public benefits the organization chooses to pursue (i.e., "specific public benefit");
2. whose directors and officers must consider certain interests and constituencies in addition to the financial interest of its shareholders when making corporate decisions; and
3. report on its overall social and environmental performance against an independent and transparent third-party standard each year, (i.e., "benefit report").

Under BCL, generally, a traditional business corporation can operate towards any legal purpose; its directors and officers must work toward the financial interests of its shareholders, and it is not

required to evaluate or report on its social or environmental performance.

Under the bill, a b-corp is simultaneously subject to BCL and the provisions of the bill, with the specific provisions of the bill controlling the general provisions of BCL.

Under the bill, b-corps undergo formation, mergers, consolidations, dissolution, and other fundamental corporate changes as provided for by BCL, but such actions generally also require approval by two-thirds of the shareholders in each and every class of shareholders (i.e., “minimum status vote”). With unanimous shareholder approval, a b-corp can adopt a “legacy preservation provision” in its certificate of incorporation that generally (1) blocks the b-corp from engaging in certain corporate transactions and (2) requires the b-corp to distribute its assets to another b-corp that has enacted such a provision or charitable organization when it dissolves.

Under the bill, b-corp directors have the additional duty to consider a broader set of interests when making a corporate decision, above and beyond the board duties required by BCL. The bill affords b-corp directors the protections afforded to directors under the BCL and additional protections to cover the directors’ additional duties. The bill generally:

1. requires a b-corp board to have a “benefit director” responsible for assessing and annually reporting the b-corp’s performance in pursuit of its general and specific publically beneficial purposes and
2. allows for a “benefit officer” responsible for pursuing those purposes on an operational level and preparing the annual benefit report.

The benefit director and officer can be the same person.

Under the bill, only a limited set of people are empowered to bring

suit against the b-corp for failure to pursue or create a general or specific public benefit (i.e., a “benefit enforcement proceeding”), and they cannot sue for money damages. Generally, they can seek an order for specific performance or an injunction to change the b-corp’s behavior.

Lastly, the bill makes conforming and technical changes.

*House Amendment “A” makes numerous changes, including (1) reordering the sections; (2) establishing minimum status voting requirements for b-corps organized as corporations or other types of business entities; (3) adds and changes criteria defining the third party standard; and (4) establishes separate merger, dissolution, and termination requirements for b-corps with and without legacy preservation provisions.

EFFECTIVE DATE: October 1, 2013

§§ 2 & 16 — BENEFIT CORPORATION AS A SPECIALIZED FOR-PROFIT BUSINESS CORPORATION

The bill establishes b-corps as a special type of business corporation subject to (1) the BCL and (2) the provisions of the bill, with the bill’s specific provisions controlling the general provisions of the BCL. In establishing the b-corp, the bill does not create the implication that business corporations are governed by law that is contrary or different to that governing b-corps.

The bill does not impact or change current BCL, except to extend appraisal rights available to business corporation shareholders who oppose fundamental changes to a corporation (essentially the right to be bought out of their holdings at a fair value before a change occurs) to cover corporate changes that would result in a b-corp being formed or surviving in place of non-b-corp organization.

The bill does not (1) give mere beneficiaries of the b-corp’s operations any legal claim on or right to its assets, income, or ongoing operations; (2) require that the b-corp’s assets or property be put to a

charitable use; or (3) deprive the attorney general of jurisdiction over the b-corp under business corporation or any other law.

A b-corp’s certificate of incorporation or bylaws cannot limit, conflict with, or supersede the bill’s provisions.

§§ 3 & 8 — PURPOSE OF THE BENEFIT CORPORATION

Under the bill, a b-corp must create a general public benefit and may create one or more specific public benefits. A general public benefit is one that creates a material positive impact on society and the environment, taken as a whole and assessed against a third-party standard. Specific public benefits include:

1. providing low-income or underserved individuals or communities with beneficial products or services;
2. promoting economic opportunity for individuals or communities beyond creating jobs in the normal course of business;
3. protecting or restoring the environment;
4. improving human health;
5. promoting the arts, sciences, or advancement of knowledge;
6. increasing the flow of capital to other b-corps or similar entities whose purpose is to benefit society or the environment; and
7. conferring any other particular benefit on society or the environment.

Under the bill, corporate action pursuing any of these purposes is in the best interests of the b-corp. A b-corp’s choice to pursue a specific public benefit does not limit its obligation to pursue general public benefit.

The bill also specifies that a b-corp’s general public benefit is in

addition to those legal purposes allowed under BCL.

§ 3 — MINIMUM STATUS VOTE DEFINED

The bill establishes voting requirements for changing a b-corp's certificate of incorporation and executing mergers, dissolutions, and terminations (i.e., minimum status vote). The requirements vary depending on whether the b-corp is a corporation or a non-corporate entity.

For a business corporation, a minimum status vote is a vote of all the shareholders in each class or series of shares, regardless of any limitations on shareholders' voting or consent rights noted in the organizations' certificate of incorporation or bylaws. The proposed corporate action must be approved by at least two-thirds of the shareholders in each class, series, or voting group as defined by the b-corp's certificate of incorporation, the BCL, or the bill. This vote is in addition to any other approvals, votes, or consents required by the corporation's originating documents, bylaws, board resolutions or orders, or BCL.

For a business entity that is not a business corporation, a minimum status vote is a two-thirds supermajority vote as for a business corporation, but where all equity holders in any series or class entitled to a distribution from the entity are empowered to vote, regardless of any limitations on such voting.

§§ 3, 4, 5, & 8 — CREATING OR CHANGING A BENEFIT CORPORATION

The bill specifies how new and existing entities can become a b-corp. Under the bill, a new business can be incorporated as a b-corp by filing or amending a certificate of incorporation with the secretary of the state in accordance with BCL and indicating in the certificate that the organization is a b-corp.

An existing business can become a b-corp by amending its certificate of incorporation, an action that requires the board's and a minimum status vote.

An existing b-corp can amend its certificate of incorporation to add, change, or delete any specific public benefit purpose with approval by the board and a minimum status vote.

§ 5 — MERGERS OR CONSOLIDATIONS RESULTING IN A BENEFIT CORPORATION

Under the bill, in order for a corporation that is not a b-corp to enter into a merger or consolidation agreement with a b-corp that would (1) result in the b-corp being the surviving entity after the transaction or (2) exchange shares in the corporation for shares in the b-corp, the merger or consolidation plan must be approved by a minimum status vote by the corporation's shareholders.

In such transactions involving a business entity that is not a corporation, the entity's shareholders and those who will receive shares in a current or future b-corp are entitled to appraisal rights, under the bill and BCL, by following the procedures stipulated in the BCL to secure those rights.

§§ 6 & 7 — PRESERVING, DISSOLVING, TERMINATING, OR TRANSFORMING A BENEFIT CORPORATION

§ 6 — *Legacy Preservation Provision*

The bill provides a device b-corps can use to preserve their public benefit character. The device is a "legacy preservation provision," which a b-corp, at least two years after it is incorporated, can adopt by amending its certificate of incorporation. This provision (1) requires the b-corp to, upon dissolution, distribute its assets to one or more charitable organizations or b-corps that have enacted such a provision and (2) bars the b-corp from otherwise terminating its status as a b-corp.

The provision's adoption requires board approval and unanimous approval from all shareholders, for all shares, in all classes or series, regardless of any limitations on any shareholders' voting or consent powers stated in the b-corp certificate of incorporation or bylaws. The adoption must also comply with the BCL's procedures for amending

certificates of incorporation.

§ 6 — Dissolving a Benefit Corporation Pursuant to a Legacy Preservation Provision

Under the bill, a b-corp's ability to dissolve, terminate, or merge with another business depends on whether it has adopted a legacy preservation provision. The bill requires a dissolving b-corp that has enacted a legacy preservation provision to distribute its assets as follows:

1. all of the b-corp's liabilities and obligations must be paid, satisfied and discharged, or otherwise addressed and
2. all of the b-corp's remaining assets must be transferred to one or more charitable organizations or b-corps that have enacted legacy preservation provisions.

§ 7 — Mergers and Share Exchanges Pursuant to a Legacy Preservation Provision

Under the bill, a b-corp that has enacted a legacy preservation provision can only enter into a merger, business combination, or share exchange with another b-corp that has enacted a legacy preservation provision. Such a transaction requires approval by a minimum status vote.

§ 7 — Terminations Not Subject to Legacy Preservation Provisions

Under the bill, a b-corp that has not enacted a legacy preservation provision is terminated and stops being governed by the bill's provisions by amending its certificate of incorporation to delete any indication of the organization being a b-corp. Such an amendment must be approved by the board and a minimum status vote and, presumably adopted by following the BCL's procedures.

§ 7 — Transformation

The bill restricts the ability of a b-corp that has enacted a legacy preservation provision to enter into a merger, share exchange, or

business combination that would result in the b-corp not surviving or, generally, selling or disposing of all or substantially all of its assets. The b-corp may take these actions only (1) with other b-corps or charitable organizations that have adopted a legacy preservation provision and (2) if approved by a minimum status vote.

A b-corp that has not enacted a legacy preservation provision can engage in such a transaction with approval by a minimum status vote, and any other vote or consent required by BCL or the b-corp's certificate of incorporation or bylaws.

§§ 9 & 10 — DUTIES AND IMMUNITIES OF BENEFIT CORPORATION DIRECTORS AND OFFICERS

§ 9 — Directors

Under the bill, when discharging their respective duties and considering the b-corp's best interests, the board of directors, board committees, and individual directors must consider the effect of any corporate action upon the following:

1. the b-corp's shareholders;
2. the employees and workforce of the b-corp and its subsidiaries and suppliers;
3. the interests of the b-corp's customers as beneficiaries of the general and specific public benefits promoted by the b-corp;
4. community and societal factors, including those of each community in which offices or facilities of the b-corp or its subsidiaries or suppliers are located;
5. the local and global environment;
6. the short- and long-term interests of the b-corp, including benefits that may accrue to it from its long-term plans and the possibility that these interests may best be served by its continued independence; and

7. the b-corp's ability to accomplish its general and specific public benefit purposes.

Similarly, directors, individually and collectively, may also consider (1) any other interests that may be considered under BCL in particular circumstances and (2) other pertinent factors or the interests of any other group, as they deem appropriate.

No particular person's or group's interests must have priority in the b-corp directors' individual or collective deliberations, unless the b-corp's certificate of incorporation states the b-corp's intent to prioritize certain interests related to its general or specific public benefit purposes.

The bill specifies that b-corp directors who, individually or collectively, consider the various interests as required or allowed by the bill are not violating their duties under BCL by doing so. These directors may also act under any power authorized by the BCL to fulfill their duties.

B-corp directors have no duty to a person whose only connection to the b-corp is that he or she benefits from the b-corp's activities pursuing or creating general or specific public benefits.

The directors are not personally liable to the corporation in a direct or derivative suit for (1) any act or omission as a director in compliance with both the bill and BCL or (2) the b-corp's failure to create general or any chosen specific public benefit.

§ 11 — Officers

The bill requires a b-corp officer to consider the interests and factors that a director must consider if (1) the officer has discretion to act on the matter in consideration and (2) it reasonably appears to the officer that the matter may have a material effect on the b-corp's ability to create its general or chosen specific public benefit. It specifies that in considering these interests and factors, a b-corp officer is not violating BCL.

The bill generally affords b-corp officers the same immunities from personal liability as b-corp directors, and, like directors, they have no duty to mere beneficiaries of the b-corp's publically beneficial activities.

§§ 3, 10 & 12 — BENEFIT DIRECTOR AND OFFICER

§ 3 & 10 — *Benefit Director*

Under the bill, publically traded b-corps must, and all other b-corps may, have a director, or properly authorized managing shareholder or shareholders, designated as the “benefit director.” In addition to powers, duties, rights, and immunities afforded to a b-corp’s directors, the benefit director (1) must prepare the b-corp’s annual benefit report, and (2) bear those powers, duties, rights, and immunities provided for the benefit director in the b-corp bylaws, resolutions, or orders. The benefit director is elected and removed according to the respective provisions for electing and removing a director under BCL.

The benefit director must not have a “material relationship” with the b-corp or its subsidiaries. Under the bill, this generally means the benefit director may not (1) be or have been an employee of the b-corp or a subsidiary within three years of serving as benefit director; (2) be immediately related to any current or recent executive officer of the b-corp or a subsidiary; or (3) generally (a) own 5% or more of the b-corp, (b) own 5% or more of an entity that owns 5% or more of the b-corp, or (c) hold a controlling position in such an entity. A benefit director’s current or previous service as the b-corp’s or a subsidiary’s benefit director or benefit officer (see below) does not constitute a material relationship to the b-corp or its subsidiary. The b-corp’s certificate of incorporation or bylaws may require additional, consistent qualifications of the benefit director.

The bill protects acts and omissions by the benefit director to the same extent as acts and omissions by b-corp directors in general, but the benefit director is immune from personal liability to a greater extent; he or she may be liable only for self-dealing, willful misconduct, or a knowing violation of the law.

§§ 11 & 12 — Benefit Officer

The bill allows a b-corp to have a benefit officer who has (1) all the powers and duties authorized by the bylaws or the board's orders or resolutions to create the b-corp's general and chosen specific public benefit and (2) the duty to prepare the annual benefit report. The benefit director may simultaneously be the benefit officer without forming a material relationship with the b-corp. The benefit officer has the same duties and immunities afforded to b-corp officers.

§ 13 — ENFORCING THE BENEFIT CORPORATION'S PURPOSE

The bill allows only a limited set of parties to bring a benefit enforcement proceeding against the b-corp, the directors, or officers for (1) failure to pursue or create a general or specific public benefit or (2) violation of shareholders' appraisal rights (see below). These parties cannot sue for money damages. Generally, they can seek an order for specific performance or an injunction to change the b-corp's behavior.

The b-corp itself can take action directly against directors or officers. The following parties can bring or maintain a benefit enforcement proceeding in accordance with BCL regarding derivate suits:

1. generally, a person or group of people that owns at least 5% of the b-corp's shares upon bringing the suit;
2. generally, a person or group of people that owns at least 10% of an entity that owns and controls the b-corp as a subsidiary; or
3. other people specified in the b-corp's certificate of incorporation or bylaws.

Under the bill, beneficial owners of shares held in a voting trust or by a nominee are considered owners for the purposes of bringing a benefit enforcement proceeding.

§§ 3, 10, 14 & 15 — ANNUAL BENEFIT REPORT**§ 10 & 14 — Content**

The bill requires a b-corp to prepare an annual benefit report and

present it to its shareholders and the public. The report must contain:

1. a narrative description of:
 - a. how the b-corp pursued its general public benefit purpose during the year and the extent to which a general public benefit was created;
 - b. how the b-corp pursued its chosen specific public benefit purposes, if any, and the extent to which any specific public benefit was created;
 - c. any circumstances that have hindered the b-corp's creation of general public benefit or any chosen specific public benefit; and
 - d. the process and rationale for selecting or changing the third-party standard used to prepare the benefit report;
2. an assessment of the b-corp's overall social and environmental performance against a third-party standard, either (a) applied consistently with any application of that standard in prior benefit reports, or (b) accompanied by an explanation of the reasons for any inconsistent application or the change to that standard from the one used in the most recent prior report;
3. the benefit director's and the benefit officer's, if any, names and mailing addresses;
4. each director's respective annual compensation as a director;
5. the opinion of the benefit director on the following:
 - a. whether the b-corp acted in accordance with its general public benefit purpose and any chosen specific public benefit purposes in all material respects during the period covered by the report,

- b. whether the directors and officers complied with their duties under the bill, and
 - c. whether and how the directors and officers failed to comply with their duties under the bill;
6. a statement of any connection between (a) the organization that established the third-party standard, its directors, officers, or any holder of 5% or more of the voting power or capital interests in the organization, and (b) the b-corp, its directors, officers, or any holder of 5% or more of the outstanding shares of the b-corp, including any financial or governance relationship that might materially affect the third-party standard's credibility;
 7. for shareholder-managed b-corps, a description of those shareholders who act as the b-corp board and the name of shareholder who acts as the benefit director; and
 8. if the benefit director or officer resigned, was removed, or refused to be reelected, any written statement or correspondence from that director or officer concerning the circumstances of his or her departure.

Neither the report nor the performance assessment it contains needs to be audited or certified by the third-party standard provider (see below).

§ 15 — Distribution

The bill requires the b-corp to send a copy of the report to each shareholder within 120 days of the fiscal year's end or together with any other annual report it provides to shareholders, whichever is earlier. The b-corp must post and maintain each annual report publically on its website, but may omit its directors' compensation or any financial, confidential, or proprietary information. If the b-corp does not have a website, it must provide a copy of its most recent report, with compensation, financial, confidential, and proprietary information omitted, to anyone who requests a copy, at no charge.

§ 3 & 14 — Third-Party Standard

Under the bill, a b-corp's performance must be annually assessed against a recognized third-party standard for defining, reporting, and assessing corporate social and environmental performance that is (1) comprehensive in addressing the b-corp's impact on its employees, workforce, subsidiaries, and shareholders; its customers; the communities in which it operates; and the local and global environment; (2) developed by an entity that has no "material relationship" with the b-corp (see § 3 & 10 – Benefit Director above); and (3) transparent because the following information about the standard is publicly available:

1. the identity of the people who develop and control changes to the standard,
2. how changes to the process and the entity's governing body are made, and
3. an accounting of the entity's revenue and financial support, providing sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Selecting or changing the b-corp's third-party standard requires either approval by at least a majority of the b-corp's directors or approval or written consent of that portion of directors or shareholders required by the b-corp' certificate of incorporation or bylaws for such an action.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute Change of Reference
Yea 17 Nay 0 (03/07/2013)

Judiciary Committee

Joint Favorable

Yea 40 Nay 1 (04/12/2013)

Appropriations Committee

Joint Favorable

Yea 48 Nay 0 (05/13/2013)