



General Assembly

Substitute Bill No. 6356

January Session, 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*) As used in section 33-856
2 of the general statutes, as amended by this act, this section and sections
3 2 to 12, inclusive, of this act:

4 (1) "Benefit corporation" means a business corporation (A) that has
5 elected to become subject to the provisions of section 33-856 of the
6 general statutes, as amended by this act, this section and sections 2 to
7 12, inclusive, of this act, and (B) whose status as a benefit corporation
8 has not been terminated pursuant to section 6 of this act.

9 (2) "Benefit director" means either (A) the director designated as the
10 benefit director of a benefit corporation pursuant to section 8 of this
11 act, or (B) a person with one or more of the powers, duties or rights of
12 a benefit director as provided in a benefit corporation shareholder
13 agreement that eliminates the board of directors or transfers to one or
14 more shareholders or other persons all or part of the authority to
15 exercise corporate powers or to manage the business and affairs of the
16 corporation.

17 (3) "Benefit enforcement proceeding" means any claim or action for
18 (A) the failure of a benefit corporation to pursue or create a general

19 public benefit or any specific public benefit set forth in its certificate of
20 incorporation, bylaws or otherwise adopted by its board of directors,
21 or (B) the violation of any obligation, duty or standard of conduct
22 under sections 2 to 12, inclusive, of this act.

23 (4) "Benefit officer" means the individual designated as the benefit
24 officer of a benefit corporation pursuant to section 10 of this act.

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

27 (6) "Charitable organization" means any nonprofit organization
28 organized for charitable purposes to which has been issued a ruling by
29 the Internal Revenue Service classifying it as an exempt organization
30 under Section 501(c)(3) of the Internal Revenue Code of 1986, or any
31 subsequent corresponding internal revenue code of the United States,
32 as amended from time to time.

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

37 (8) "Legacy preservation provision" means a provision providing
38 that a benefit corporation (1) shall, upon dissolution, distribute its
39 assets to one or more charitable organizations or benefit corporations
40 that have enacted such provision, and (2) may not otherwise terminate
41 its status as a benefit corporation.

42 (9) "Minimum status vote" means, in addition to any other required
43 approval or vote, a vote in which (A) the shareholders of every class or
44 series shall be entitled to vote on the corporate action regardless of a
45 limitation stated in the certificate of incorporation or bylaws on the
46 voting rights of any class or series, and (B) the corporate action is
47 approved by the affirmative vote of at least two-thirds of the voting
48 power of each voting group entitled to vote thereon.

49 (10) "Specific public benefit" means a benefit that serves one or more
50 public welfare, religious, charitable, scientific, literary or educational
51 purposes, or other purpose or benefit beyond the strict interest of the
52 shareholders of the benefit corporation, and includes: (A) Providing
53 low-income or underserved individuals or communities with
54 beneficial products or services, (B) promoting economic opportunity
55 for individuals or communities beyond the creation of jobs in the
56 normal course of business, (C) preserving or improving the
57 environment, (D) improving human health, (E) promoting the arts,
58 sciences or advancement of knowledge, (F) increasing the flow of
59 capital to entities with a public benefit purpose, and (G) conferring any
60 other particular benefit on society or the environment.

61 (11) "Subsidiary" means, in relation to an individual, an entity in
62 which the individual either (A) owns directly or indirectly equity
63 interests entitled to cast a majority of the votes entitled to be cast
64 generally in an election of directors or members of the governing body
65 of the entity, or (B) otherwise owns or controls voting or contractual
66 power to exercise effective governing control of the entity. The
67 percentage of ownership of equity interests or ownership or control of
68 power to exercise control shall be calculated as if all outstanding rights
69 to acquire equity interests in the entity had been exercised.

70 (12) "Third-party standard" means a recognized standard for
71 defining, reporting and assessing corporate social and environmental
72 performance that is (A) developed by an organization that is
73 independent of the benefit corporation, and (B) easily understood
74 because the following information concerning the standard is publicly
75 available: (i) The factors considered when measuring the performance
76 of a business, (ii) the relative weightings of those factors, and (iii) the
77 identity of the persons that develop and control changes to the
78 standard and the process by which those changes are made.

79 (13) "Unanimous vote" means, in addition to any other required
80 approval or vote, a vote in which (A) the shareholders of every class or
81 series shall be entitled to vote on the corporate action regardless of a

82 limitation stated in the certificate of incorporation or bylaws on the
83 voting rights of any class or series, and (B) the corporate action is
84 approved by the affirmative vote of the entire voting power of each
85 voting group entitled to vote thereon.

86 (14) "Voting group" means all shares of one or more classes or series
87 that under the certificate of incorporation, sections 33-600 to 33-998,
88 inclusive, of the general statutes or this section and sections 2 to 12,
89 inclusive, of this act are entitled to vote and be counted together
90 collectively on a matter at a meeting of shareholders. All shares
91 entitled by the certificate of incorporation or said sections to vote
92 generally on the matter are for that purpose a single voting group.

93 (15) "Voting power" means the current power to vote on a matter at
94 a meeting of shareholders.

95 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) Section 33-856 of the
96 general statutes, as amended by this act, and sections 1 to 12, inclusive,
97 of this act shall be applicable to all benefit corporations.

98 (b) The existence of a provision of section 33-856 of the general
99 statutes, as amended by this act, and sections 1 to 12, inclusive, of this
100 act shall not of itself create an implication that a contrary or different
101 rule of law is applicable to a business corporation that is not a benefit
102 corporation. The provisions of section 33-856 of the general statutes, as
103 amended by this act, and sections 1 to 12, inclusive, of this act shall not
104 affect a statute or rule of law that is applicable to a business
105 corporation that is not a benefit corporation.

106 (c) Except as otherwise provided in section 33-856 of the general
107 statutes, as amended by this act, and sections 1 to 12, inclusive, of this
108 act, the provisions of chapter 601 of the general statutes shall be
109 generally applicable to all benefit corporations. The specific provisions
110 of sections 1 to 12, inclusive, of this act shall control over the general
111 provisions of chapter 601 of the general statutes.

112 (d) A provision of the certificate of incorporation or bylaws of a

113 benefit corporation may not limit, be inconsistent with, or supersede a
114 provision of section 33-856 of the general statutes, as amended by this
115 act, and sections 1 to 12, inclusive, of this act.

116 (e) Nothing in section 33-856 of the general statutes, as amended by
117 this act, and sections 1 to 12, inclusive, of this act shall (1) be construed
118 as creating or granting to any person any contractual right to, or
119 proprietary interest in, the income or assets of the benefit corporation
120 by virtue of the fact that he or she may directly or indirectly benefit
121 from the general or any specific public benefit of the benefit
122 corporation, (2) be construed as imposing or creating a charitable use,
123 interest or restriction on any property or assets of a benefit
124 corporation, or (3) deprive the Attorney General of jurisdiction over a
125 benefit corporation under any other applicable law.

126 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
127 shall be formed in accordance with the provisions of chapter 601 of the
128 general statutes and its certificate of incorporation, as initially filed
129 with the office of the Secretary of the State or as amended, shall state
130 that such corporation is a benefit corporation.

131 (b) In addition to its purpose under chapter 601 of the general
132 statutes, a benefit corporation shall have a purpose of creating a
133 general public benefit. Such purpose shall be set forth in the
134 corporation's certificate of incorporation.

135 (c) The certificate of incorporation of a benefit corporation may
136 identify one or more specific public benefits that are the purpose of the
137 benefit corporation to create in addition to its purposes under chapter
138 601 of the general statutes or subsection (b) of this section. The
139 identification of a specific public benefit under this subsection shall not
140 limit the obligation of a benefit corporation to pursue a general public
141 benefit established pursuant to subsection (a) of this section or its
142 purpose under chapter 601 of the general statutes.

143 (d) The creation of a general public benefit and one or more specific

144 public benefits, if any, pursuant to this section is in the best interests of
145 the benefit corporation.

146 (e) A benefit corporation may amend its certificate of incorporation
147 to add, amend or delete the identification of a specific public benefit
148 that is the purpose of the benefit corporation to create. Any such
149 amendment shall be adopted in accordance with the procedures set
150 forth in section 33-797 of the general statutes and shall be approved by
151 a minimum status vote.

152 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) A business corporation
153 that was not formed as a benefit corporation may become a benefit
154 corporation by amending its certificate of incorporation so that such
155 certificate contains, in addition to matters required by section 33-636 of
156 the general statutes, (1) a statement that the corporation is a benefit
157 corporation, and (2) a purpose of creating a general public benefit. Any
158 such amendment shall be adopted in accordance with the procedures
159 set forth in section 33-797 of the general statutes and shall be approved
160 by a minimum status vote.

161 (b) Any corporation that is not a benefit corporation that is a party
162 to a merger or consolidation in which the survivor or consolidated
163 corporation will be a benefit corporation shall approve the plan of
164 merger or consolidation by a minimum status vote in addition to any
165 other vote required by sections 33-814 to 33-821a, inclusive, of the
166 general statutes, the certificate of incorporation or the bylaws.

167 (c) Any corporation that is not a benefit corporation that is a party to
168 a merger or consolidation in which shares of stock of such corporation
169 will be converted into a right to receive shares of stock of a benefit
170 corporation shall approve the plan of merger or consolidation by a
171 minimum status vote in addition to any other vote required by
172 sections 33-840 to 33-845, inclusive, of the general statutes, the
173 certificate of incorporation or the bylaws.

174 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation

175 may, after not less than twenty-four months from the date it filed its
176 certificate of incorporation with the Secretary of the State, enact a
177 legacy preservation provision by amending its certificate of
178 incorporation so that such certificate contains a statement that the
179 corporation is subject to a legacy preservation provision. Any such
180 amendment shall be adopted in accordance with the procedures set
181 forth in section 33-797 of the general statutes and shall be approved by
182 (1) a unanimous vote, or (2) written consent of the shareholders of
183 every class or series regardless of a limitation stated in the certificate of
184 incorporation or bylaws on the voting rights of any class or series.

185 (b) Notwithstanding the provisions of sections 33-880 to 33-900,
186 inclusive, of the general statutes, the assets of a benefit corporation that
187 dissolves pursuant to chapter 601 of the general statutes and has
188 enacted a legacy preservation provision shall be applied and
189 distributed as follows: (1) All liabilities and other obligations of the
190 benefit corporation shall be paid, satisfied and discharged, or adequate
191 provision shall be made therefore, and (2) all remaining assets received
192 and held by the benefit corporation shall be transferred or conveyed to
193 one or more charitable organizations or benefit corporations that have
194 enacted a legacy preservation provision pursuant to this section.

195 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) Except for a benefit
196 corporation that has enacted a legacy preservation provision pursuant
197 to section 5 of this act, a benefit corporation may terminate its status as
198 such and cease to be subject to the provisions of sections 1 to 13,
199 inclusive, of this act by amending its certificate of incorporation to
200 delete any provision stating that such corporation is a benefit
201 corporation. Any such amendment shall be adopted in accordance
202 with the procedures set forth in section 33-797 of the general statutes
203 and shall be approved by a minimum status vote.

204 (b) Except for a benefit corporation that has enacted a legacy
205 preservation provision pursuant to section 5 of this act, a benefit
206 corporation may be a party to a merger or consolidation in which the
207 survivor of the merger will not be a benefit corporation, provided the

208 plan of merger or consolidation shall not be effective unless such plan
209 is adopted by a minimum status vote in addition to any other vote
210 required by sections 33-814 to 33-821a, inclusive, of the general
211 statutes, the certificate of incorporation or the bylaws.

212 (c) Except for a benefit corporation that has enacted a legacy
213 preservation provision pursuant to section 5 of this act, a benefit
214 corporation may be a party to a merger or consolidation in which
215 shares of stock of such benefit corporation will be converted into a
216 right to receive shares of stock of a corporation that is not a benefit
217 corporation, provided such plan of merger or consolidation shall not
218 be effective unless such plan is adopted by a minimum status vote in
219 addition to any other vote required by sections 33-840 to 33-845,
220 inclusive, of the general statutes, the certificate of incorporation or the
221 bylaws.

222 (d) (1) Except for a benefit corporation that has enacted a legacy
223 preservation provision in accordance with section 5 of this act, a sale,
224 lease, exchange or other disposition of all, or substantially all, of the
225 assets of a benefit corporation, unless such disposition is in the usual
226 and regular course of business of the benefit corporation, shall not be
227 effective unless such disposition is approved by a minimum status
228 vote in addition to any other vote required by section 33-831 of the
229 general statutes, the certificate of incorporation or the bylaws; and (2) a
230 benefit corporation that has enacted a legacy preservation provision
231 shall not enter into a sale, lease, exchange or other disposition of all, or
232 substantially all, of the assets of a benefit corporation, unless such
233 disposition is in the usual and regular course of business of the benefit
234 corporation, the parties to the disposition are charitable organizations
235 or benefit corporations that have enacted legacy preservation
236 provisions pursuant to section 5 of this act, and such disposition is
237 approved by a minimum status vote in addition to any other vote
238 required by section 33-831 of the general statutes, the certificate of
239 incorporation or the bylaws.

240 Sec. 7. (NEW) (*Effective October 1, 2013*) (a) The board of directors,

241 committees of the board and individual directors of a benefit
242 corporation when discharging the duties of their respective positions
243 and considering the best interests of the benefit corporation:

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

245 (A) The shareholders of the benefit corporation,

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

248 (C) The interests of customers as beneficiaries of the general public
249 benefit purpose or any specific public benefit purpose of the benefit
250 corporation,

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

254 (E) The local and global environment,

255 (F) The short-term and long-term interests of the benefit
256 corporation, including benefits that may accrue to the benefit
257 corporation from its long-term plans and the possibility that these
258 interests and the general public benefit purpose and any specific public
259 benefit purposes of the benefit corporation may be best served by the
260 continued independence of the benefit corporation, and

261 (G) The ability of the benefit corporation to accomplish its general
262 public benefit and any specific public benefit;

263 (2) May consider (A) the resources, intent, and past, stated and
264 potential conduct of any person seeking to acquire control of the
265 benefit corporation, and (B) other pertinent factors or the interests of
266 any other person that they deem appropriate; and

267 (3) Need not give priority to the interests of a particular person
268 referred to in subdivision (1) or (2) of this subsection over the interests

269 of any other person unless the benefit corporation has stated its
270 intention to give priority to interests related to a specific public benefit
271 purpose identified in its certification 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.

277 (c) In any proceeding brought by or in the right of a benefit
278 corporation or brought by or on behalf of the shareholders of a benefit
279 corporation, a director is not personally liable for monetary damages
280 for (1) any action taken as a director if the director performed the
281 duties of office in compliance with section 33-756 of the general
282 statutes and this section, or (2) the failure of the benefit corporation to
283 create a general public benefit or any specific public benefit specified
284 in its certificate of incorporation, bylaws or otherwise adopted by the
285 board of directors.

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

290 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) The board of directors of
291 a benefit corporation that is a publicly traded corporation shall, and
292 the board of any other benefit corporation may, include a director who
293 shall (1) be designated the benefit director, and (2) have, in addition to
294 the powers, duties, rights and immunities of the other directors of the
295 benefit corporation, any additional powers, duties, rights and
296 immunities provided (A) by the bylaws, or (B) absent controlling
297 provisions in the bylaws, by resolutions or orders of the board of
298 directors.

299 (b) The benefit director shall be elected, and may be removed, in the

300 manner provided under chapter 601 of the general statutes. The benefit
301 director shall not have a material relationship with the benefit
302 corporation or a subsidiary of the benefit corporation. A material
303 relationship between a person and a benefit corporation or any of its
304 subsidiaries shall be conclusively presumed to exist if any of the
305 following apply: (1) A person is, or has been within the last three years,
306 an employee of the benefit corporation or a subsidiary of the benefit
307 corporation; (2) an immediate family member of a person is, or has
308 been within the last three years, an executive officer of the benefit
309 corporation or a subsidiary of the benefit corporation; or (3) there is
310 beneficial or record ownership of five per cent or more of the
311 outstanding shares of the benefit corporation by (A) the person, or (B)
312 an entity (i) of which the person is a director, an officer or a manager,
313 or (ii) in which the person owns beneficially or of record five per cent
314 or more of the outstanding equity interests, which percentage shall be
315 calculated as if all outstanding rights to acquire equity interests in the
316 entity had been exercised. Currently or previously serving as a benefit
317 director or benefit officer for the benefit corporation or a subsidiary of
318 the benefit corporation shall not constitute a material relationship. The
319 benefit director may serve as the benefit officer at the same time as
320 serving as the benefit director. The certificate of incorporation, bylaws
321 or a shareholder agreement of a benefit corporation may prescribe
322 additional qualifications of the benefit director not inconsistent with
323 this subsection.

324 (c) The benefit director shall prepare, and the benefit corporation
325 shall include in the annual benefit report required by section 12 of this
326 act, the opinion of the benefit director regarding (1) whether the
327 benefit corporation acted in accordance with its general public benefit
328 purpose and any specific public benefit purpose in all material respects
329 during the period covered by the report, (2) whether the directors and
330 officers complied with subsection (a) of section 7 of this act and
331 subsection (a) of section 9 of this act, respectively, and (3) if the benefit
332 corporation or its directors or officers failed to comply with subsection
333 (a) of section 7 of this act or subsection (a) of section 9 of this act, a

334 description of the ways in which the benefit corporation or its directors
335 or officers failed to comply. If a benefit corporation does not elect a
336 benefit director, the board of directors shall prepare such opinion
337 pursuant to this subsection. If a shareholder agreement eliminates the
338 board of directors or transfers to one or more shareholders or other
339 persons all or part of the authority to exercise corporate powers or to
340 manage the business and affair of the corporation, such agreement
341 shall designate a person who shall prepare such opinion.

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

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

351 Sec. 9. (NEW) (*Effective October 1, 2013*) (a) Each officer of a benefit
352 corporation shall consider the interests and factors described in
353 subsection (a) of section 7 of this act in the manner provided in that
354 subsection if (1) the officer has discretion to act with respect to a
355 matter, and (2) it reasonably appears to the officer that the matter may
356 have a material effect on the creation by the benefit corporation of a
357 general public benefit or any specific public benefit identified in the
358 certificate of incorporation of the benefit corporation.

359 (b) The consideration of interests and factors in the manner
360 described in subsection (a) shall not constitute a violation of section 33-
361 765 of the general statutes.

362 (c) An officer shall not be personally liable for (1) an act or omission
363 as an officer in the course of performing the duties of an officer under
364 subsection (a) of this section if the officer performed the duties of the

365 position in compliance with section 33-765 of the general statutes and
366 this section, or (2) the failure of the benefit corporation to pursue or
367 create a general public benefit or any specific public benefit.

368 (d) An officer shall not have a duty to a person that is a beneficiary
369 of the general public benefit purpose or any specific public benefit
370 purpose of a benefit corporation arising from the status of the person
371 as a beneficiary.

372 Sec. 10. (NEW) (*Effective October 1, 2013*) A benefit corporation may
373 designate a benefit officer who shall have (1) the powers and duties
374 relating to the purpose of the corporation to create a general public
375 benefit or any specific public benefit provided (A) by the bylaws, or (B)
376 absent controlling provisions in the bylaws, by resolutions or orders of
377 the board of directors; and (2) the duty to prepare the benefit report
378 required by subsection (b) of section 12 of this act.

379 Sec. 11. (NEW) (*Effective October 1, 2013*) (a) Except in a benefit
380 enforcement proceeding, no person may bring an action or assert a
381 claim against a benefit corporation or its directors or officers with
382 respect to (1) the failure to pursue or create a general public benefit or
383 any specific public benefit set forth in its certificate of incorporation, or
384 (2) the violation of an obligation, duty or standard of conduct under
385 section 33-856 of the general statutes, as amended by this act, and
386 sections 1 to 12, inclusive, of this act.

387 (b) A benefit corporation shall not be liable for monetary damages
388 under section 33-856 of the general statutes, as amended by this act,
389 and sections 1 to 12, inclusive, of this act for any failure of the benefit
390 corporation to pursue or create a general public benefit or any specific
391 public benefit.

392 (c) A benefit enforcement proceeding may be commenced or
393 maintained (1) directly by the benefit corporation, or (2) in accordance
394 with the provisions of chapter 601 of the general statutes by (A) a
395 person or group of persons that own beneficially or of record at least

396 five per cent of the total number of shares of all classes and series
397 outstanding on the date the benefit enforcement proceeding is
398 commenced, (B) a person or group of persons that own beneficially or
399 of record ten per cent or more of the outstanding equity interests in an
400 entity of which the benefit corporation is a majority-owned subsidiary,
401 or (C) other persons as specified in the certificate of incorporation of
402 bylaws of the benefit corporation.

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

406 Sec. 12. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
407 shall produce an annual benefit report.

408 (b) In preparing the annual benefit report, a benefit corporation
409 shall select a third-party standard by which to assess its pursuit of a
410 general public benefit and any specific public benefit. Selecting or
411 changing a third-party standard shall require approval by (1) the
412 greater of (A) a majority of all the directors in office when the action is
413 taken, or (B) the number of directors required by the certificate of
414 incorporation or bylaws of the benefit corporation to take action under
415 this section; or (2) the vote or written consent of the shareholders
416 required by the certificate of incorporation or bylaws of the benefit
417 corporation to take action under this section.

418 (c) The annual benefit report shall include:

419 (1) A narrative description of (A) the ways in which the benefit
420 corporation pursued a general public benefit during the year and the
421 extent to which a general public benefit was created; (B) (i) the ways in
422 which the benefit corporation pursued any specific public benefit that
423 the certificate of incorporation states it is the purpose of the benefit
424 corporation to create, and (ii) the extent to which that specific public
425 benefit was created; (C) any circumstances that have hindered the
426 creation by the benefit corporation of a general public benefit or any

427 specific public benefit; and (D) the process and rationale for selecting
428 or changing the third-party standard used to prepare the benefit
429 report;

430 (2) An assessment of the overall social and environmental
431 performance of the benefit corporation against a third-party standard
432 (A) applied consistently with any application of that standard in prior
433 benefit reports, or (B) accompanied by an explanation of the reasons
434 for any inconsistent application or the change to that standard from
435 the one used in the report immediately prior;

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

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

441 (5) The opinion of (A) the benefit director, (B) the board of directors,
442 or (C) the person designated in a shareholder agreement pursuant to
443 subsection (c) of section 8 of this act;

444 (6) A statement of any connection between the organization that
445 established the third-party standard, or its directors, officers or any
446 holder of five per cent or more of the voting power or capital interests
447 in the organization, and the benefit corporation or its directors, officers
448 or any holder of five per cent or more of the outstanding shares of the
449 benefit corporation, including any financial or governance relationship
450 that might materially affect the credibility of the use of the third-party
451 standard; and

452 (7) If a shareholder agreement eliminates the board of directors or
453 transfers to one or more shareholders or other persons all or part of the
454 authority to exercise corporate powers or to manage the business and
455 affair of the corporation, a description of (A) the persons that exercise
456 the powers, duties and rights and who have the immunities of the
457 board of directors, and (B) the name of the person, if any, who is

458 vested with the powers, duties, rights and immunities of a benefit
459 director.

460 (d) If, during the year covered by a benefit report, a benefit director
461 or benefit officer resigned from or refused to stand for reelection to the
462 position of benefit director or benefit officer, or was removed from the
463 position of benefit director or benefit officer, and the benefit director or
464 benefit officer furnished the benefit corporation with a written
465 statement or correspondence concerning the circumstances
466 surrounding the resignation, refusal, or removal, the benefit report
467 shall include that correspondence as an exhibit.

468 (e) The annual benefit report need not be audited or certified by the
469 organization that designed the third-party standard used in the annual
470 benefit report.

471 (f) A benefit corporation shall send its annual benefit report to each
472 shareholder (1) not later than one hundred twenty days following the
473 end of the fiscal year of the benefit corporation, or (2) at the same time
474 that the benefit corporation delivers any other annual report to its
475 shareholders, whichever is earlier.

476 (g) A benefit corporation shall post and maintain each annual
477 benefit report on the public portion of its Internet web site, if any, but
478 the compensation paid to directors and any financial, confidential or
479 proprietary information included in any benefit report may be omitted
480 from the benefit report as posted.

481 (h) If a benefit corporation does not have an Internet web site, the
482 benefit corporation shall provide a copy of its most recent benefit
483 report, without charge, to any person who requests a copy, provided
484 the compensation paid to directors and any financial, confidential or
485 proprietary information included in any benefit report may be omitted
486 from such copy.

487 Sec. 13. Section 33-856 of the general statutes is repealed and the
488 following is substituted in lieu thereof (*Effective October 1, 2013*):

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

492 (1) Consummation of a merger to which the corporation is a party
493 (A) if shareholder approval is required for the merger by section 33-
494 817 and the shareholder is entitled to vote on the merger, except that
495 appraisal rights shall not be available to any shareholder of the
496 corporation with respect to shares of any class or series that remain
497 outstanding after consummation of the merger, or (B) if the
498 corporation is a subsidiary and the merger is governed by section 33-
499 818;

500 (2) Consummation of a share exchange to which the corporation is a
501 party as the corporation whose shares will be acquired, if the
502 shareholder is entitled to vote on the exchange, except that appraisal
503 rights shall not be available to any shareholder of the corporation with
504 respect to any class or series of shares of the corporation that is not
505 exchanged;

506 (3) Consummation of a disposition of assets pursuant to section 33-
507 831 if the shareholder is entitled to vote on the disposition, except that
508 appraisal rights shall not be available to any shareholder of the
509 corporation with respect to shares of any class or series if (A) under the
510 terms of the corporate action approved by the shareholders there is to
511 be distributed to shareholders in cash its net assets, in excess of a
512 reasonable amount reserved to meet claims of the type described in
513 sections 33-886 and 33-887, (i) within one year after the shareholders'
514 approval of the action, and (ii) in accordance with their respective
515 interests determined at the time of such distribution, and (B) the
516 disposition of assets is not an interested transaction;

517 (4) An amendment of the certificate of incorporation with respect to
518 a class or series of shares that reduces the number of shares of a class
519 or series owned by the shareholder to a fraction of a share if the
520 corporation has the obligation or right to repurchase the fractional

521 share so created; [or]

522 (5) If the corporation is not a benefit corporation as defined in
523 section 1 of this act, (A) an amendment of the certificate of
524 incorporation to state that the corporation is a benefit corporation, (B)
525 consummation of a merger to which the corporation is a party in
526 which the surviving entity will be a benefit corporation, or (C)
527 consummation of a share exchange to which the corporation is a party
528 and the shares of the corporation will be exchanged for shares of a
529 benefit corporation; or

530 ~~[(5)]~~ (6) Any other merger, share exchange, disposition of assets or
531 amendment to the certificate of incorporation to the extent provided by
532 the certificate of incorporation, the bylaws or a resolution of the board
533 of directors.

534 (b) Notwithstanding subsection (a) of this section, the availability of
535 appraisal rights under subdivisions (1), (2), (3), [and] (4) and (5) of
536 subsection (a) of this section shall be limited in accordance with the
537 following provisions:

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

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

542 (B) Traded in an organized market and has at least two thousand
543 shareholders and a market value of at least twenty million dollars,
544 exclusive of the value of such shares held by the corporation's
545 subsidiaries, senior executives, directors and beneficial shareholders
546 owning more than ten per cent of such shares; or

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

551 (2) The applicability of subdivision (1) of this subsection shall be
552 determined as of: (A) The record date fixed to determine the
553 shareholders entitled to receive notice of the meeting of shareholders
554 to act upon the corporate action requiring appraisal rights; or (B) the
555 day before the effective date of such corporate action if there is no
556 meeting of shareholders.

557 (3) Subdivision (1) of this subsection shall not be applicable and
558 appraisal rights shall be available pursuant to subsection (a) of this
559 section for the holders of any class or series of shares (A) who are
560 required by the terms of the corporate action requiring appraisal rights
561 to accept for such shares anything other than cash or shares of any
562 class or any series of shares of any corporation, or any other
563 proprietary interest of any other entity, that satisfies the standards set
564 forth in subdivision (1) of this subsection at the time the corporate
565 action becomes effective, or (B) in the case of the consummation of a
566 disposition of assets pursuant to section 33-831, unless such cash,
567 shares or proprietary interests are, under the terms of the corporate
568 action approved by the shareholders, to be distributed to the
569 shareholders, as part of a distribution to shareholders of the net assets
570 of the corporation in excess of a reasonable amount to meet claims of
571 the type described in sections 33-886 and 33-887, (i) not later than one
572 year after the shareholders' approval of the action, and (ii) in
573 accordance with their respective interests determined at the time of the
574 distribution.

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

579 (c) Notwithstanding any other provision of this section, the
580 certificate of incorporation as originally filed or any amendment
581 thereto may limit or eliminate appraisal rights for any class or series of
582 preferred shares, but any such limitation or elimination contained in
583 an amendment to the certificate of incorporation that limits or

584 eliminates appraisal rights for any of such shares that are outstanding
585 immediately prior to the effective date of such amendment or that the
586 corporation is or may be required to issue or sell thereafter pursuant to
587 any conversion, exchange or other right existing immediately before
588 the effective date of such amendment shall not apply to any corporate
589 action that becomes effective within one year of that date if such action
590 would otherwise afford appraisal rights.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section
Sec. 9	<i>October 1, 2013</i>	New section
Sec. 10	<i>October 1, 2013</i>	New section
Sec. 11	<i>October 1, 2013</i>	New section
Sec. 12	<i>October 1, 2013</i>	New section
Sec. 13	<i>October 1, 2013</i>	33-856

CE

Joint Favorable Subst. C/R

JUD