



Senate

General Assembly

File No. 603

February Session, 2014

Substitute Senate Bill No. 23

Senate, April 17, 2014

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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, 2014*) 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, 2014*) As used in this section and
5 sections 3 to 15, inclusive, of this act:

6 (1) "Benefit corporation" means a business corporation (A) that has
7 elected to become subject to the provisions of sections 3 to 15,
8 inclusive, of this act, and (B) whose status as a benefit corporation has
9 not been terminated pursuant to section 7 of this act.

10 (2) "Benefit director" means either (A) the director designated as the
11 benefit director of a benefit corporation pursuant to section 10 of this
12 act, or (B) a person with one or more of the powers, duties or rights of

13 a benefit director under section 10 of this act to the extent that such
14 person has been granted all or part of the authority to manage the
15 business and affairs of the corporation by a shareholder agreement that
16 complies with section 33-717 of the general statutes.

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 purpose set forth in its
20 certificate of incorporation, or (B) the violation of any obligation, duty
21 or standard of conduct under sections 3 to 15, inclusive, of this act.

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

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

26 (6) "Charitable organization" means any organization that is exempt
27 from federal income tax under Section 501(a) of the Internal Revenue
28 Code of 1986, or any subsequent corresponding internal revenue code
29 of the United States, as amended from time to time, and that the
30 United States Treasury Department has expressly determined, by
31 letter, to be an organization that is described in Section 501(c)(3) of said
32 Internal Revenue Code.

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

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

41 (9) "Legacy preservation provision" means a provision in the
42 certificate of incorporation adopted in accordance with section 6 of this
43 act.

44 (10) "Material relationship" means a relationship between a person
45 and a benefit corporation or any of its subsidiaries if any of the
46 following apply: (A) The person is, or has been within the last three
47 years, an employee other than a benefit officer of the benefit
48 corporation or a subsidiary; (B) an immediate family member of the
49 person is, or has been within the last three years, an executive officer
50 other than a benefit officer of the benefit corporation or a subsidiary; or
51 (C) there is beneficial or record ownership of five per cent or more of
52 the outstanding shares of the benefit corporation, calculated on the
53 assumption that all outstanding rights to acquire shares in the benefit
54 corporation had been exercised, by (i) the person, or (ii) an entity (I) of
55 which the person is a director, an officer or a manager; or (II) in which
56 the person owns beneficially or of record five per cent or more of the
57 outstanding equity interests, calculated on the assumption that all
58 outstanding rights to acquire equity interests in the entity had been
59 exercised.

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

79 on the action.

80 (12) "Publicly traded corporation" means a business corporation that
81 has shares listed on a national securities exchange or traded in a
82 market maintained by one or more members of a national securities
83 association.

84 (13) "Specific public benefit" includes: (A) Providing low-income or
85 underserved individuals or communities with beneficial products or
86 services; (B) promoting economic opportunity for individuals or
87 communities beyond the creation of jobs in the normal course of
88 business; (C) protecting or restoring the environment; (D) improving
89 human health; (E) promoting the arts, sciences or advancement of
90 knowledge; (F) increasing the flow of capital to other benefit
91 corporations or similar entities whose purpose is to benefit society or
92 the environment; and (G) conferring any other particular benefit on
93 society or the environment.

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

97 (15) "Third-party standard" means a recognized standard for
98 defining, reporting and assessing corporate social and environmental
99 performance that: (A) Assesses the effect of its business and operations
100 upon the interests listed in subparagraphs (B), (C), (D) and (E) of
101 subdivision (1) of subsection (a) of section 9 of this act; (B) is developed
102 by an entity that is independent; and (C) makes publicly available the
103 following information about the development and revision of the
104 standard: (i) The identity of the directors, officers, material owners,
105 and the governing body of the entity that developed and controls
106 revisions to the standard; (ii) the process by which revisions to the
107 standard and changes to the membership of the governing body are
108 made; and (iii) an accounting of the revenue and sources of financial
109 support for such entity, with sufficient detail to disclose any
110 relationships that could reasonably be considered to present a
111 potential conflict of interest.

112 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) The provisions of this
113 section and sections 4 to 15, inclusive, of this act shall be applicable to
114 all benefit corporations.

115 (b) The provisions of this section and sections 4 to 15, inclusive, of
116 this act shall not create an implication that a contrary or different rule
117 of law is applicable to a business corporation that is not a benefit
118 corporation. The provisions of this section and sections 4 to 15,
119 inclusive, of this act shall not affect a statute or rule of law that is
120 applicable to a business corporation that is not a benefit corporation.

121 (c) Except as otherwise provided in this section and sections 4 to 15,
122 inclusive, of this act, the provisions of chapter 601 of the general
123 statutes shall be generally applicable to all benefit corporations. The
124 specific provisions of this section and sections 4 to 15, inclusive, of this
125 act shall control over the general provisions of chapter 601 of the
126 general statutes.

127 (d) A provision of the certificate of incorporation or bylaws of a
128 benefit corporation may not limit, be inconsistent with, or supersede a
129 provision of this section or sections 4 to 15, inclusive, of this act.

130 (e) Nothing in this section or sections 4 to 15, inclusive, of this act
131 shall (1) be construed as creating or granting to any person any
132 contractual right to, or proprietary interest in, the income or assets of a
133 benefit corporation by virtue of the fact that he or she may directly or
134 indirectly benefit from the general public benefit or any specific public
135 benefit of a benefit corporation, (2) be construed as imposing or
136 creating a charitable use, interest or restriction on any property or
137 assets of a benefit corporation, or (3) deprive the Attorney General of
138 jurisdiction over a benefit corporation under any other applicable law.

139 Sec. 4. (NEW) (*Effective October 1, 2014*) A benefit corporation shall
140 be incorporated in accordance with the provisions of chapter 601 of the
141 general statutes by filing a certificate of incorporation with the office of
142 the Secretary of the State that states that the corporation is a benefit
143 corporation.

144 Sec. 5. (NEW) (*Effective October 1, 2014*) (a) A business corporation
145 that is not a benefit corporation may elect to become a benefit
146 corporation by amending its certificate of incorporation to contain, in
147 addition to matters required by section 33-636 of the general statutes, a
148 statement that the corporation is a benefit corporation. Any such
149 amendment to the certificate of incorporation shall be approved by a
150 minimum status vote.

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

164 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) A benefit corporation
165 may, not earlier than twenty-four months after the date that it became
166 a benefit corporation, adopt a legacy preservation provision by
167 amending its certificate of incorporation to contain a statement that the
168 corporation is subject to a legacy preservation provision. Any such
169 amendment shall be adopted in accordance with the procedures set
170 forth in chapter 601 of the general statutes and shall be approved by
171 the unanimous vote or written consent of the shareholders of every
172 class or series, regardless of any limitation stated in the certificate of
173 incorporation or bylaws on the voting rights of any such class or series.

174 (b) A dissolved benefit corporation that has adopted a legacy
175 preservation provision shall distribute its remaining property only to
176 one or more (1) charitable organizations, or (2) other benefit

177 corporations that have adopted a legacy preservation provision.

178 Sec. 7. (NEW) (*Effective October 1, 2014*) (a) Except for a benefit
179 corporation that adopts a legacy preservation provision, a benefit
180 corporation may terminate its status as such and cease to be subject to
181 the provisions of sections 3 to 15, inclusive, of this act by amending its
182 certificate of incorporation to delete any provision stating that such
183 corporation is a benefit corporation. Any such amendment shall be
184 approved by a minimum status vote.

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

195 (c) A benefit corporation that adopts a legacy preservation provision
196 may only be a party to (1) a merger in which (A) the surviving entity
197 will be a benefit corporation that has adopted a legacy preservation
198 provision, or (B) shares of such benefit corporation will be converted
199 into a right to receive shares of a benefit corporation that has adopted a
200 legacy preservation provision, or (2) a share exchange in which the
201 shares of the benefit corporation will be exchanged for shares of a
202 benefit corporation that has adopted a legacy preservation provision,
203 and such merger or share exchange is approved by a minimum status
204 vote.

205 (d) Except for a benefit corporation that adopts a legacy
206 preservation provision, any sale, lease, exchange or other disposition
207 of assets of a benefit corporation, other than a disposition described in
208 section 33-830 of the general statutes, that would leave the benefit
209 corporation without a significant continuing business activity shall be

210 approved by a minimum status vote. A benefit corporation that adopts
211 a legacy preservation provision shall not enter into a sale, lease,
212 exchange or other disposition of its assets, other than a disposition
213 described in section 33-830 of the general statutes, unless the
214 disposition is to one or more (1) charitable organizations, or (2) other
215 benefit corporations that have adopted legacy preservation provisions,
216 and such disposition is approved by a minimum status vote.

217 Sec. 8. (NEW) (*Effective October 1, 2014*) (a) A benefit corporation
218 shall have a purpose of creating a general public benefit. Such purpose
219 shall be in addition to any purpose under chapter 601 of the general
220 statutes.

221 (b) The certificate of incorporation of a benefit corporation may
222 identify one or more specific public benefits as a purpose for such
223 benefit corporation to create in addition to any purpose under chapter
224 601 of the general statutes and subsection (a) of this section. The
225 identification of a specific public benefit under this subsection shall not
226 limit the obligation of a benefit corporation under subsection (a) of this
227 section.

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

231 (d) A benefit corporation may amend its certificate of incorporation
232 to add, amend or delete the identification of a specific public benefit
233 that it is the purpose of the benefit corporation to create. Any such
234 amendment shall be adopted by a minimum status vote.

235 Sec. 9. (NEW) (*Effective October 1, 2014*) (a) In discharging the duties
236 of their respective positions and considering the best interests of the
237 benefit corporation, the board of directors, any committee of the board
238 and the individual directors of the benefit corporation:

239 (1) Shall consider the effects of any corporate action or inaction
240 upon:

- 241 (A) The shareholders of the benefit corporation;
- 242 (B) The employees and workforce of the benefit corporation, its
243 subsidiaries and its suppliers;
- 244 (C) The interests of the customers of the benefit corporation as
245 beneficiaries of the general public benefit purpose and any specific
246 public benefit purpose of the benefit corporation;
- 247 (D) Community and societal factors, including those of each
248 community in which offices or facilities of the benefit corporation, its
249 subsidiaries or its suppliers are located;
- 250 (E) The local and global environment;
- 251 (F) The short-term and long-term interests of the benefit
252 corporation, including benefits that may accrue to the benefit
253 corporation from such corporation's long-term plans and the
254 possibility that such interests may be best served by the continued
255 independence of the benefit corporation; and
- 256 (G) The ability of the benefit corporation to accomplish its general
257 public benefit purpose and any specific public benefit purpose;
- 258 (2) May consider (A) in the circumstances described in subsection
259 (d) of section 33-756 of the general statutes, as amended by this act, the
260 interests referred to in said subsection, and (B) other pertinent factors
261 or the interests of any other group that the board of directors, any
262 committee of the board and the directors of the benefit corporation
263 deem appropriate; and
- 264 (3) Need not give priority to the interests of a particular person or
265 group referred to in subdivision (1) or (2) of this subsection over the
266 interests of any other person or group unless the certificate of
267 incorporation for such benefit corporation states an intention to give
268 priority to certain interests related to the accomplishment of the
269 corporation's general public benefit purpose or of a specific public
270 benefit purpose identified in the corporation's certificate of

271 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, as amended by this act, and (2) is
275 in addition to the power of directors to consider the interests and
276 factors listed in subsection (d) of section 33-756 of the general statutes,
277 as amended by this act, in the circumstances described in said
278 subsection.

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

286 (d) A director shall not have a duty to a person who is a beneficiary
287 of the general public benefit purpose or a specific public benefit
288 purpose of a benefit corporation based on the status of such person as
289 a beneficiary.

290 Sec. 10. (NEW) (*Effective October 1, 2014*) (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, the powers, duties, rights and immunities
296 provided in sections 3 to 15, inclusive, of this act.

297 (b) The benefit director shall be elected, and may be removed, in the
298 manner provided under chapter 601 of the general statutes. The benefit
299 director shall be an individual who is independent. The benefit
300 director may serve as the benefit officer at the same time as serving as
301 the benefit director. The certificate of incorporation or bylaws or a
302 shareholder agreement of a benefit corporation may prescribe

303 additional qualifications of the benefit director that are consistent with
304 this subsection.

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

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

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

327 Sec. 11. (NEW) (*Effective October 1, 2014*) (a) Each officer of a benefit
328 corporation shall consider the interests and factors described in
329 subsection (a) of section 9 of this act in the manner provided in that
330 subsection if (1) the officer has discretion to act with respect to a
331 matter, and (2) it reasonably appears to the officer that the matter may
332 have a material effect on the creation by the benefit corporation of a
333 general public benefit or any specific public benefit identified in the
334 certificate of incorporation of the benefit corporation.

335 (b) The consideration of interests and factors in the manner
336 described in subsection (a) of this section shall not constitute a
337 violation of section 33-765 of the general statutes, as amended by this
338 act.

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

346 (d) An officer shall not have a duty to a person that is a beneficiary
347 of the general public benefit purpose or any specific public benefit
348 purpose of a benefit corporation based on the status of such person as
349 a beneficiary.

350 Sec. 12. (NEW) (*Effective October 1, 2014*) A benefit corporation may
351 designate a benefit officer. A benefit officer shall have (1) the powers
352 and duties relating to the purpose of the corporation to create a general
353 public benefit or any specific public benefit provided (A) by the
354 bylaws, or (B) absent controlling provisions in the bylaws, by
355 resolutions or orders of the board of directors, and (2) the duty to
356 prepare the benefit report required by section 14 of this act.

357 Sec. 13. (NEW) (*Effective October 1, 2014*) (a) Except in a benefit
358 enforcement proceeding, no person may bring an action or assert a
359 claim against a benefit corporation or its directors or officers with
360 respect to (1) the failure to pursue or create a general public benefit or
361 any specific public benefit identified in its certificate of incorporation,
362 or (2) the violation of an obligation, duty or standard of conduct under
363 sections 3 to 15, inclusive, of this act.

364 (b) A benefit corporation shall not be liable for monetary damages
365 under sections 3 to 15, inclusive, of this act for any failure of the benefit
366 corporation to pursue or create a general public benefit or any specific

367 public benefit.

368 (c) A benefit enforcement proceeding may be commenced or
369 maintained only (1) directly by the benefit corporation, or (2)
370 derivatively in accordance with the provisions of chapter 601 of the
371 general statutes by (A) a person or group of persons that owns
372 beneficially or of record not less than five per cent of the total number
373 of shares of a class or series outstanding at the time of the act or
374 omission complained of, (B) a person or group of persons that owns
375 beneficially or of record ten per cent or more of the outstanding equity
376 interests in an entity of which the benefit corporation is a majority-
377 owned subsidiary at the time of the act or omission complained of, or
378 (C) other persons as specified in the certificate of incorporation or
379 bylaws of the benefit corporation.

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

383 Sec. 14. (NEW) (*Effective October 1, 2014*) (a) A benefit corporation
384 shall select a third-party standard by which to assess such
385 corporation's pursuit of a general public benefit and any specific public
386 benefit. Selecting or changing a third-party standard shall require
387 approval by (1) the greater of (A) a majority of all the directors in office
388 when the action is taken, or (B) the number of directors required by the
389 certificate of incorporation or bylaws of the benefit corporation to take
390 action under this section, or (2) the vote or written consent of the
391 shareholders required by the certificate of incorporation or bylaws of
392 the benefit corporation to take action under this section.

393 (b) A benefit corporation shall prepare an annual benefit report that
394 includes each of the following:

395 (1) A narrative description of (A) the ways in which the benefit
396 corporation pursued a general public benefit during the year and the
397 extent to which a general public benefit was created; (B) both (i) the
398 ways in which the benefit corporation pursued any specific public

399 benefit identified in the benefit corporation's certificate of
400 incorporation, and (ii) the extent to which such specific public benefit
401 was created; (C) any circumstances that have hindered the creation by
402 the benefit corporation of a general public benefit or any specific
403 public benefit; and (D) the process and rationale for selecting or
404 changing the third-party standard used to prepare the benefit report;

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

411 (3) The name of the benefit director and the benefit officer, if any,
412 and the address to which correspondence to the benefit director or the
413 benefit officer may be directed;

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

416 (5) The opinion of the benefit director described in subsection (c) of
417 section 10 of this act; and

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

426 (c) If, during the year covered by a benefit report, a benefit director
427 or benefit officer resigned from or refused to stand for reelection to the
428 position of benefit director or benefit officer, or was removed from the
429 position of benefit director or benefit officer, and the benefit director or

430 benefit officer furnished the benefit corporation with a written
431 statement or correspondence concerning the circumstances
432 surrounding the resignation, refusal or removal, the benefit report
433 shall include that statement or correspondence as an exhibit.

434 (d) Neither the benefit report nor the assessment of the performance
435 of the benefit corporation in the benefit report required by subdivision
436 (2) of subsection (b) of this section shall be required to be audited or
437 certified by the third-party standards provider.

438 Sec. 15. (NEW) (*Effective October 1, 2014*) (a) A benefit corporation
439 shall send its annual benefit report to each shareholder (1) not later
440 than one hundred twenty days following the end of the fiscal year of
441 the benefit corporation, or (2) at the same time that the benefit
442 corporation delivers any other annual report to its shareholders,
443 whichever is earlier.

444 (b) A benefit corporation shall post and maintain each annual
445 benefit report on the public portion of its Internet web site, if any,
446 except that the compensation paid to directors and any financial,
447 confidential or proprietary information included in any benefit report
448 may be omitted from the benefit report as posted.

449 (c) If a benefit corporation does not have an Internet web site, the
450 benefit corporation shall provide a copy of such corporation's most
451 recent benefit report, without charge, to any person who requests a
452 copy, but the compensation paid to directors and any financial,
453 confidential or proprietary information included in any benefit report
454 may be omitted from such copy.

455 Sec. 16. Section 33-856 of the general statutes is repealed and the
456 following is substituted in lieu thereof (*Effective October 1, 2014*):

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

460 (1) Consummation of a merger to which the corporation is a party

461 (A) if shareholder approval is required for the merger by section 33-
462 817 and the shareholder is entitled to vote on the merger, except that
463 appraisal rights shall not be available to any shareholder of the
464 corporation with respect to shares of any class or series that remain
465 outstanding after consummation of the merger, or (B) if the
466 corporation is a subsidiary and the merger is governed by section 33-
467 818;

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

474 (3) Consummation of a disposition of assets pursuant to section 33-
475 831 if the shareholder is entitled to vote on the disposition, except that
476 appraisal rights shall not be available to any shareholder of the
477 corporation with respect to shares of any class or series if (A) under the
478 terms of the corporate action approved by the shareholders there is to
479 be distributed to shareholders in cash its net assets, in excess of a
480 reasonable amount reserved to meet claims of the type described in
481 sections 33-886 and 33-887, (i) within one year after the shareholders'
482 approval of the action, and (ii) in accordance with their respective
483 interests determined at the time of such distribution, and (B) the
484 disposition of assets is not an interested transaction;

485 (4) An amendment of the certificate of incorporation with respect to
486 a class or series of shares that reduces the number of shares of a class
487 or series owned by the shareholder to a fraction of a share if the
488 corporation has the obligation or right to repurchase the fractional
489 share so created; [or]

490 (5) If the corporation is not a benefit corporation, as defined in
491 section 2 of this act, (A) an amendment of the certificate of
492 incorporation to state that the corporation is a benefit corporation; (B)
493 consummation of a merger to which the corporation is a party in

494 which the surviving entity will be a benefit corporation or in which
495 shares in the corporation will be converted into a right to receive
496 shares of a benefit corporation; or (C) consummation of a share
497 exchange to which the corporation is a party and the shares of the
498 corporation will be exchanged for shares of a benefit corporation; or

499 [(5)] (6) Any other merger, share exchange, disposition of assets or
500 amendment to the certificate of incorporation to the extent provided by
501 the certificate of incorporation, the bylaws or a resolution of the board
502 of directors.

503 (b) Notwithstanding subsection (a) of this section, the availability of
504 appraisal rights under subdivisions (1) [, (2), (3) and (4)] to (5),
505 inclusive, of subsection (a) of this section shall be limited in accordance
506 with the following provisions:

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

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

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

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

520 (2) The applicability of subdivision (1) of this subsection shall be
521 determined as of: (A) The record date fixed to determine the
522 shareholders entitled to receive notice of the meeting of shareholders
523 to act upon the corporate action requiring appraisal rights; or (B) the
524 day before the effective date of such corporate action if there is no

525 meeting of shareholders.

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

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

548 (c) Notwithstanding any other provision of this section, the
549 certificate of incorporation as originally filed or any amendment
550 thereto may limit or eliminate appraisal rights for any class or series of
551 preferred shares, but any such limitation or elimination contained in
552 an amendment to the certificate of incorporation that limits or
553 eliminates appraisal rights for any of such shares that are outstanding
554 immediately prior to the effective date of such amendment or that the
555 corporation is or may be required to issue or sell thereafter pursuant to
556 any conversion, exchange or other right existing immediately before
557 the effective date of such amendment shall not apply to any corporate

558 action that becomes effective within one year of that date if such action
559 would otherwise afford appraisal rights.

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

565 Sec. 17. Section 33-756 of the general statutes is amended by adding
566 subsection (f) as follows (*Effective October 1, 2014*):

567 (NEW) (f) A director is not liable under this section for any act or
568 omission in the course of performing the duties of a director under
569 subsection (a) of section 9 of this act if the director performed such
570 duties in compliance with this section and section 9 of this act.

571 Sec. 18. Section 33-765 of the general statutes is amended by adding
572 subsection (e) as follows (*Effective October 1, 2014*):

573 (NEW) (e) An officer is not liable under this section for any act or
574 omission in the course of performing the duties of an officer under
575 subsection (a) of section 11 of this act if the officer performed such
576 duties in compliance with this section and section 11 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	New section
Sec. 6	<i>October 1, 2014</i>	New section
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	New section
Sec. 9	<i>October 1, 2014</i>	New section
Sec. 10	<i>October 1, 2014</i>	New section
Sec. 11	<i>October 1, 2014</i>	New section

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 15 \$	FY 16 \$
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.

sHB 5030, the FY 15 revised budget, as favorably reported by the Appropriations Committee, includes a carry forward of \$60,000 in Other Expense funds from FY 14 to FY 15 for programming expenses associated with this bill.

OLR Bill Analysis**sSB 23*****AN ACT CONCERNING BENEFIT CORPORATIONS AND ENCOURAGING SOCIAL ENTERPRISE.*****SUMMARY:**

This bill establishes a legal framework for forming a for-profit corporation that both pursues social benefits and increases value for its shareholders (benefit corporation or b-corp). Corporations formed under current law are legally obligated to do only the latter. B-corps formed under the bill operate under the same laws as traditional business corporations (business corporation laws (BCL)) and seek to increase shareholder value. But their corporate purpose also includes doing things that generally benefit society and the environment or create specific public benefits.

The bill's governance structure and accountability requirements align with the b-corp's public benefit purpose. The bill requires a b-corp's directors and officers to consider certain interests and constituencies besides the shareholders' financial interests when making decisions. It also requires b-corps to report annually on their overall social and environmental performance. Under BCL, traditional corporate directors and officers must further the shareholders' interest without having to consider public interests (although they may pursue social and community goals in limited situations) or report on how the corporation benefitted society and the environment.

The bill specifies rules and procedures for establishing and dissolving b-corps, changing the specific public benefits they choose to create, disposing of a b-corp's assets, and entering into mergers or consolidations with traditional business entities or other b-corps. The bill also allows b-corps to include provisions in their bylaws and certificates of incorporation ensuring that their assets continue to serve

a public purpose after they dissolve.

The bill provides a procedure for bringing an action against a b-corp for failing to create general or specific public benefits or violating any of the bill's provisions, but limits access to the procedure to shareholders and other parties specified in a b-corp's certificate of incorporation. Eligible parties may use the procedure to seek orders directed at a b-corp's conduct, but not to obtain monetary damages.

Lastly, the bill makes conforming and technical changes.

EFFECTIVE DATE: October 1, 2014.

§§ 3 & 16 — BENEFIT CORPORATION AS A FORM OF FOR-PROFIT CORPORATION

By law, traditional for-profit business corporations must maximize value for their shareholders by making decisions aimed at increasing earnings, dividends, and share prices (shareholder value). The bill creates a legal framework for establishing for-profit corporations that must legally create public benefits as well as increase shareholder value. It places that framework within BCL, specifying that b-corps are subject to the bill's and BCL's provisions, except for the bill's specific provisions, which supersede BCL's general provisions.

The bill's authorization to form b-corps creates no implication that a different or contrary law applies to corporations that are not b-corps. The bill does not affect or change BCL, except to extend statutory appraisal rights to a traditional corporation's shareholders when:

1. the corporation's certificate of incorporation is amended to make it a b-corp,
2. the corporation merges with another corporation and the surviving entity is a b-corp,
3. the corporation converts its shares into the right to receive shares in a b-corp, or

4. the corporation exchanges its shares for those of a b-corp.

(When a corporation (1) sells its assets or (2) merges or exchanges shares with another corporation, its shareholders have the right to have their shares appraised and purchased from them at the appraised price (CGS § 33-856)).

The bill's other provisions address the relationship between a b-corp and various parties. The bill:

1. gives people no legal claims to the b-corp's income or assets simply because they might benefit from a b-corp's creation of general and specific public benefits,
2. requires b-corps to use their assets or property only for charitable purposes, and
3. does not deprive the attorney general of jurisdiction over b-corps under the BCL or other law.

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

§§ 2 & 8 — GENERAL AND SPECIFIC PUBLIC BENEFITS

The authority to create general and specific public benefits sets b-corps apart from other traditional corporations, and the bill specifies that the creation of these benefits serves a b-corp's best interest.

The bill authorizes b-corps to create two types of public benefits. All b-corps must have a purpose of creating a "general public benefit," defined as a material positive impact on society and the environment, taken as a whole and assessed against a third-party standard described below. This benefit is in addition to those legal purposes allowed under the BCL.

The bill also allows b-corp to create one or more of the following "specific public benefits:"

1. providing low-income or underserved people 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.

Benefit corporations choosing to create one or more of these benefits must still create a general public benefit.

The general public benefit and any specific public benefits a b-corp chooses to create must be stated in its certificate of incorporation. The b-corp can subsequently add a specific public benefit or change or delete an existing one, but must do so by a minimum status vote, which is described below.

§§ 2, 4, 5, & 8 — CREATING A BENEFIT CORPORATION

The bill (1) allows parties to establish a new corporation as a b-corp or transform a traditional corporation into a b-corp and (2) specifies how they must do so. By law, parties may establish a new corporation by filing a certificate of incorporation with the secretary of the state. Under the bill, those establishing a new b-corp must also file with the secretary, but indicate in the certificate that the corporation is a b-corp.

An existing corporation can change itself into a b-corp by amending its certificate of incorporation to that effect, an action that requires its

board's approval and a minimum status vote.

§ 2 — LEGACY PRESERVATION PROVISION

The bill allows b-corps to adopt a "legacy preservation provision" (LPP), a legal device ensuring that their assets continue to serve a public purpose when a b-corp dissolves. A b-corp may add an LPP to its certificate of incorporation, but must wait at least two years after its formation before doing so. Under the bill, the LPP must require a dissolving b-corp to distribute its assets to one or more federal-tax-exempt charitable organizations or other b-corps with an LPP.

An LPP's adoption must be unanimously approved by the b-corp's shareholders for all shares in all classes or series, regardless of any limitations its bylaws or certificate of incorporation impose on any shareholder's voting or consent powers. The adoption must also comply with the BCL's procedures for amending certificates of incorporations (CGS §§ 33-795 -803).

§ 2 — MINIMUM STATUS VOTING REQUIREMENT

"Minimum status vote" refers to a voting requirement that must be met before certain actions can be taken under the bill. As discussed below, these actions include changing a traditional corporation into a b-corp, amending an existing b-corp's certificate of incorporation, and entering into mergers and share exchanges involving b-corps and traditional corporations or non-corporate entities, such as partnerships.

If the action involves two or more b-corps or a b-corp and a traditional corporation, the minimum status vote for both types of corporations is a vote of the shareholders in each class or series of shares, regardless of any limitations the bylaws or the certificate of incorporation place on their consent rights. The action must be approved by at least two-thirds of the shareholders in each class, series, or voting group as defined in the b-corp's certificate of incorporation, 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.

If the action involves a merger between a b-corp and a partnership, limited liability company, or other noncorporate business entity, the minimum status vote for the business entity is a two-thirds vote of all equity holders in any series or class entitled to a distribution from the entity, regardless of any limitation on their voting or consent rights.

MERGERS AND SHARE EXCHANGES

The bill's requirements for mergers and consolidations vary depending on (1) whether a b-corp is subject to an LPP or (2) the types of business entities involved in the transaction.

§ 7 — Rules Affecting B-Corps

Under the bill, a b-corp's ability to merge or exchange shares with another corporation depends on whether the b-corp is subject to an LPP. A b-corp subject to an LPP may merge or exchange shares with another b-corp that is also subject to an LPP. Specifically, the b-corp may:

1. merge with another corporate entity if the surviving entity is a b-corp with an LPP,
2. convert its shares into the right to receive the shares of another b-corp with an LPP, or
3. exchange its shares for those of another b-corp with an LPP.

Each of these transactions must be approved by a minimum status vote.

The bill allows b-corps that are not subject to an LPP to engage in the same transactions, but only if they do not result in or involve another b-corp. The merger or share exchange plan must be approved by a minimum status vote.

§ 5 — Rules Affecting Traditional Corporations and Other Business Entities

Under the bill, a traditional corporation may merge or consolidate with a b-corp if the corporation's shareholders approve the action by a

minimum status vote. Such a vote is specifically required for a merger or consolidation that would (1) result in the b-corp being the surviving entity or (2) exchange the traditional corporation's shares for the b-corp's.

The bill also allows noncorporate entities to merge or consolidate with b-corps. In these cases, the bill specifies that an entity's equity owners are entitled to appraisal rights under the same procedures BCL provides to the shareholders of a traditional corporation.

§§ 6 & 7 — DISPOSING ASSETS

The bill allows b-corps to sell, lease, exchange, or otherwise dispose of their assets, but the requirements for doing so vary depending on whether a b-corp is subject to an LPP. A b-corp with an LPP cannot take any of these actions unless (1) the assets are going to a charitable organization or another b-corp subject to an LPP and (2) the disposition is approved by a minimum status vote.

A b-corp without an LPP needs such a vote only for dispositions that would leave it without any significant business activity.

In both instances, the bill's disposition requirements do not apply to sales, leases, other transactions that occur during a b-corp's regular business operation.

§§ 2 & 6 — TERMINATING A BENEFIT CORPORATION

As noted above, a b-corp with an LPP cannot dissolve without distributing its assets to one or more charitable organizations or b-corps. A b-corp without an LPP may terminate its status as a b-corp by amending its certificate of incorporation to delete the provision that identifies it as a b-corp. This amendment must be approved by a minimum status vote.

BENEFIT CORPORATION DIRECTORS AND OFFICERS

§ 9 — Directors

Decision-Making Factors. The bill specifies the interest and factors a member of a b-corp's board of directors must consider when

discharging his or her duties individually or collectively as a board or committee member. A director must specifically consider how a corporate action affects:

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 b-corp's general and specific public benefits;
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, in the case of a merger, 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.

(By law, the directors of a traditional corporation can consider similar factors in certain situations, such as merger proposal.)

The directors, individually or collectively, may also consider (1) any other interests BCL allows them to consider in particular circumstances and (2) other pertinent factors or interests of any other group they deem appropriate.

When considering the bill's factors, directors do not have to give priority to the interest of any particular person or group unless the certificate of incorporation requires them to do so.

Immunities. Under the bill, the directors are not violating their

duties under BCL when they consider the factors described above. Their authority to consider these factors is in addition to their authority to consider those factors specified in BCL.

The bill further specifies the conditions under which the directors are not personally liable to the b-corp in a direct or derivative suit under the BCL. Under the bill, they are not liable for any act or omission they made or failed to make while performing their duties as a director in compliance with the bill and the BCL. Nor are they liable for the b-corp's failure to create a general public benefit or any of its specific public benefits.

Lastly, under the bill, 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 creation of the general or specific public benefits.

§ 11 — Officers

The bill requires b-corp officers to consider the same interests and factors that directors must consider if (1) they have discretion to act on the matter under consideration and (2) it reasonably appears to an officer that the matter could materially affect the b-corp's ability to create its general or specific public benefit. A b-corp officer acting in these circumstances does not violate the 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.

§§ 2 & 10 — BENEFIT DIRECTOR

Designation

Under the bill, the board of directors of a publically traded b-corp must, and the board of all other b-corps may, designate a benefit director responsible for preparing the b-corp's annual report and performing the other duties the b-corp's bylaws, resolutions, and orders specifically assign to the benefit director. Those duties, plus the powers, rights, and immunities these documents assign to the benefit

director, are in addition to those this director has as a board member.

Under the bill, a benefit director can be designated in one of two ways. The board may elect one of its members to that position and may remove the member according the BCL's provisions for electing or removing board members. A benefit director may also be anyone, including a nonboard member, authorized to manage the b-corp's business and affairs under a shareholder agreement that complies with the BCL. The agreement must specifically assign to this person some or all of the powers, duties, and rights the bill assigns to a benefit director.

Whether designated by the board or under a shareholder agreement, a benefit director must not have a "material relationship" with the b-corp. Under the bill, this generally means that the director may not:

1. be or have been an employee of the b-corp or a subsidiary (other than as a benefit officer) 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 an controlling position (such as a manager) in such entity.

A benefit director's current or previous service as the b-corp's or subsidiary 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.

Liability

The bill protects a benefit director's acts and omissions to the same extent it generally protects those of the b-corp's directors. But the bill

protects a benefit director from personal liability to a greater extent than it does the other directors. Under the bill, the benefit director is liable only for self-dealing, willful misconduct, or a knowing violation of the law.

§§ 2, 10, & 12 — BENEFIT OFFICERS

The bill allows a b-corp to designate a benefit officer to prepare its annual report and exercise all the powers and duties related to its general and specific public benefits, as specified in the bylaws or the board's orders or resolutions authorizing the creation of such benefits. The bill gives the benefit officer the same duties and affords him or her the same immunities it affords to the b-corp's other officers. A benefit director may simultaneously serve as the benefit officer without forming a material relationship with the b-corp.

§§ 2 & 13 — BENEFIT ENFORCEMENT PROCEEDING

Under the bill, a b-corp or its shareholders may bring a benefit enforcement proceeding for (1) failing to create a general public benefit or specific public benefit or (2) violating the shareholders' appraisal rights (see below). Parties may bring a proceeding to order a b-corp to undertake an action or refrain from taking one, but not for money damages.

The b-corp can start a benefit enforcement proceeding directly against its directors or officers. One or more of its shareholders can also start one against the b-corp's directors, officers, or other shareholders (derivative action) if they (1) generally own at least 5% of the b-corp's shares when they start the suit or (2) own at least 10% of the entity that owns or controls the b-corp as a subsidiary. Under the bill, the beneficial owners of shares held in a voting trust or by a nominee may also start a proceeding.

Other groups may also start a proceeding if the b-corp's bylaws or certificate of incorporation allows them to do so.

ANNUAL BENEFIT REPORT

§§ 10 & 14 — Content

The bill requires a b-corp to prepare an annual benefit report for its shareholders and the public. The report must contain a narrative description of:

1. how the b-corp pursued its general public benefit purpose during the year and the extent to which a general public benefit was created;
2. how the b-corp pursued its chosen specific public benefit purposes, if any, and the extent to which any specific public benefit was created;
3. any circumstances that have hindered the b-corp's creation of general public benefit or any chosen specific public benefit; and
4. the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

The report must also provide an assessment of the b-corp's overall social and environmental performance against a third-party standard (see below), either:

1. applied consistently with any application of that standard in prior benefit reports or
2. 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.

The report must also provide the benefit director's opinion regarding:

1. 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 reporting period,
2. whether the directors and officers complied with their duties under the bill, and

3. if they failed to do so, how.

The report must include a statement regarding any connection between the organization that established the third-party standard and the b-corp. This requirement applies to a connection between the organization's directors, officers, or any holder of 5% or more of the voting power or capital interests in the organization, and the b-corp's directors, officers, or anyone holding at least 5% of the b-corp's outstanding shares. It also includes any financial or governance relationship that might materially affect the third-party standard's credibility.

The report must provide each director's annual compensation for serving as a director and the names and mailing addresses of the benefit director and benefit officer, if any.

Lastly, if the benefit director or officer resigned, was removed, or refused to be reelected, the report must include 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).

§§ 2 & 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. The standard must address 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. It must have been developed by an entity that has no "material relationship" with the b-corp (see § 3 & 10 — Benefit Director above). The entity that developed the standard must allow the public to know:

1. the identity of the people and organization that develop and control the process for making changes to the standard,
2. the process for revising the standard,
3. how changes to the organization's governing body are made, and
4. where the entity derives its revenue and financial support so that the public can identify any potential conflicts of interests.

Under the bill, a b-corp cannot select or change its third-party standard without the approval of (1) at least a majority of its directors or (2) approval or written consent of that portion of directors or shareholders who must, under the bylaws or certificate of incorporation, approve such actions.

§ 15 — Distribution

The b-corp must send a copy of the annual 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.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute Change of Reference
 Yea 16 Nay 0 (03/11/2014)

Judiciary Committee

Joint Favorable
 Yea 34 Nay 4 (04/01/2014)