



# Senate

General Assembly

**File No. 708**

*January Session, 2017*

Substitute Senate Bill No. 12

*Senate, April 25, 2017*

The Committee on Judiciary reported through SEN. DOYLE of the 9th Dist. and SEN. KISSEL of the 7th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT ESTABLISHING BENEFIT LIMITED LIABILITY COMPANIES.***

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

1 Section 1. (NEW) (*Effective October 1, 2017*) Sections 1 to 14,  
2 inclusive, of this act shall be known and may be cited as the  
3 "Connecticut Benefit Limited Liability Company Act".

4 Sec. 2. (NEW) (*Effective October 1, 2017*) As used in this section and  
5 sections 3 to 14, inclusive, of this act:

6 (1) "Benefit corporation" means a business corporation (A) that has  
7 elected to become subject to the provisions of chapter 604 of the  
8 general statutes, and (B) whose status as a benefit corporation has not  
9 been terminated pursuant to section 33-1356 of the general statutes, as  
10 amended by this act.

11 (2) "Benefit enforcement proceeding" means any claim or action for  
12 (A) the failure of a benefit limited liability company to pursue or create

13 a general public benefit or any specific public benefit purpose set forth  
14 in its certificate of organization, or (B) the violation of any obligation,  
15 duty or standard of conduct under sections 3 to 14, inclusive, of this  
16 act.

17 (3) "Benefit limited liability company" means a limited liability  
18 company (A) that has elected to become subject to the provisions of  
19 sections 3 to 14, inclusive, of this act, and (B) whose status as a benefit  
20 limited liability company has not been terminated pursuant to section  
21 7 of this act.

22 (4) "Benefit officer" means an individual designated as the benefit  
23 officer of a benefit limited liability company pursuant to section 10 of  
24 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 (A) any organization that is  
28 exempt from federal income tax under Section 501(a) of the Code as an  
29 organization described in Section 501(c)(3) of the Code, or (B) an  
30 organization, contributions to which are deductible under Section  
31 170(c)(2) of the Code.

32 (7) "Code" means the Internal Revenue Code of 1986, or any  
33 subsequent internal revenue code of the United States, as amended  
34 from time to time.

35 (8) "General public benefit" means a material positive impact on  
36 both society and the environment, taken as a whole, as assessed  
37 against a third-party standard, from the business and operations of a  
38 benefit limited liability company.

39 (9) "Independent" means having no material relationship with a  
40 benefit limited liability company, provided an individual who serves  
41 as a benefit officer does not lack independence solely by serving in  
42 such capacity.

43 (10) "Interest exchange" means a transaction authorized by part III  
44 of chapter 616 of the general statutes.

45 (11) "Legacy preservation provision" means a provision in the  
46 certificate of organization of a benefit limited liability company that is  
47 adopted in accordance with subsection (a) of section 6 of this act and is  
48 identified in the certificate of organization as a legacy preservation  
49 provision.

50 (12) "Limited liability company" has the same meaning as provided  
51 in section 34-243a of the general statutes.

52 (13) "Material relationship" means a relationship between a person  
53 and a benefit limited liability company if any of the following apply:  
54 (A) The person is, or has been within the last three years, a manager, a  
55 benefit officer or an executive officer of the benefit limited liability  
56 company; (B) an immediate family member of the person is, or has  
57 been within the last three years, a manager or executive officer of the  
58 benefit limited liability company; or (C) the person is, or has been  
59 within the last three years, a member of the benefit limited liability  
60 company and owns or has owned, directly or indirectly, five per cent  
61 or more of the transferable interests of the benefit limited liability  
62 company.

63 (14) "Minimum status vote" means, in addition to any other  
64 required approval or vote, the action is approved by two-thirds in  
65 interest of the members of the limited liability company.

66 (15) "Specific public benefit" includes: (A) Providing low-income or  
67 underserved individuals or communities with beneficial products or  
68 services; (B) promoting economic opportunity for individuals or  
69 communities beyond the creation of jobs in the normal course of  
70 business; (C) protecting or restoring the environment; (D) improving  
71 human health; (E) promoting the arts, sciences or advancement of  
72 knowledge; (F) increasing the flow of capital to other benefit limited  
73 liability companies, benefit corporations or similar entities whose  
74 purpose is to benefit society or the environment; and (G) conferring

75 any other particular benefit on society or the environment.

76 (16) "Third-party standard" means a recognized standard for  
77 defining, reporting and assessing a benefit limited liability company's  
78 social and environmental performance that: (A) Is used to assess the  
79 effect of its business and operations upon the interests listed in  
80 subparagraphs (B), (C), (D) and (E) of subdivision (1) of subsection (a)  
81 of section 9 of this act; and (B) is developed by an entity that is  
82 independent and makes publicly available the following information  
83 about the development and revision of the standard: (i) The identity of  
84 the directors, officers, material owners, and the governing body of the  
85 entity that developed and controls revisions to the standard; (ii) the  
86 process by which revisions to the standard and changes to the  
87 membership of such governing body are made; and (iii) an accounting  
88 of the revenue and sources of financial support for such entity, with  
89 sufficient detail to disclose any relationships that could reasonably be  
90 considered to present a potential conflict of interest.

91 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) The provisions of this  
92 section and sections 4 to 14, inclusive, of this act shall be applicable to  
93 all benefit limited liability companies.

94 (b) The provisions of this section and sections 4 to 14, inclusive, of  
95 this act shall not create an implication that a contrary or different rule  
96 of law is applicable to a limited liability company that is not a benefit  
97 limited liability company. The provisions of this section and sections 4  
98 to 14, inclusive, of this act shall not affect a statute or rule of law that is  
99 applicable to a limited liability company that is not a benefit limited  
100 liability company.

101 (c) Except as otherwise provided in this section and sections 4 to 14,  
102 inclusive, of this act, the provisions of sections 34-243 to 34-283d,  
103 inclusive, of the general statutes shall be generally applicable to all  
104 benefit limited liability companies. The specific provisions of this  
105 section and sections 4 to 14, inclusive, of this act shall control over the  
106 general provisions of sections 34-243 to 34-283d, inclusive, of the  
107 general statutes.

108 (d) A provision of the certificate of organization or operating  
109 agreement of a benefit limited liability company may not limit, be  
110 inconsistent with or supersede a provision of this section or sections 4  
111 to 14, inclusive, of this act.

112 (e) Nothing in this section or sections 4 to 14, inclusive, of this act  
113 shall (1) be construed as creating or granting to any person any  
114 contractual right to, or proprietary interest in, the income or assets of a  
115 benefit limited liability company by virtue of the fact that he or she  
116 may directly or indirectly benefit from the general public benefit or  
117 any specific public benefit of a benefit limited liability company, (2) be  
118 construed as imposing or creating a charitable use, interest or  
119 restriction on any property or assets of a benefit limited liability  
120 company, or (3) deprive the Attorney General of jurisdiction over a  
121 benefit limited liability company under any other applicable law.

122 Sec. 4. (NEW) (*Effective October 1, 2017*) A benefit limited liability  
123 company shall be formed in accordance with the provisions of sections  
124 34-243 to 34-283d, inclusive, of the general statutes by filing a  
125 certificate of organization with the office of the Secretary of the State  
126 that states that the limited liability company is a benefit limited  
127 liability company. The name of each benefit limited liability company  
128 shall identify the limited liability company as a benefit limited liability  
129 company by including in the name the words "benefit limited liability  
130 company" or the abbreviation "BLLC" or "B.L.L.C."

131 Sec. 5. (NEW) (*Effective October 1, 2017*) A limited liability company  
132 that is not a benefit limited liability company may elect to become a  
133 benefit limited liability company by amending its certificate of  
134 organization to contain, in addition to matters required by section 34-  
135 247 of the general statutes, a statement that the limited liability  
136 company is a benefit limited liability company. Any such amendment  
137 to the certificate of organization shall be approved by a minimum  
138 status vote.

139 Sec. 6. (NEW) (*Effective October 1, 2017*) (a) The members of a benefit  
140 limited liability company may, not earlier than twenty-four months

141 after the date that it became a benefit limited liability company, amend  
142 its certificate of organization to include a legacy preservation  
143 provision. Any such amendment shall be adopted in accordance with  
144 the procedures set forth in section 34-247a of the general statutes and  
145 shall be approved by the affirmative vote or written consent of all of  
146 the members of the benefit limited liability company.

147 (b) A dissolved benefit limited liability company that adopted a  
148 legacy preservation provision shall distribute its remaining property to  
149 one or more (1) charitable organizations, or (2) other benefit limited  
150 liability companies or benefit corporations that have adopted legacy  
151 preservation provisions.

152 Sec. 7. (NEW) (*Effective October 1, 2017*) (a) Except for a benefit  
153 limited liability company that has adopted a legacy preservation  
154 provision, a benefit limited liability company may terminate its status  
155 as such and cease to be subject to the provisions of sections 3 to 14,  
156 inclusive, of this act by amending its certificate of organization to  
157 delete any provision stating that such limited liability company is a  
158 benefit limited liability company. Any such amendment must be  
159 approved by a minimum status vote.

160 (b) Except for a benefit limited liability company that has adopted a  
161 legacy preservation provision, if a benefit limited liability company is a  
162 party to a merger or interest exchange in which (1) the surviving entity  
163 will not be a benefit limited liability company or a benefit corporation,  
164 or (2) an interest in such benefit limited liability company will be  
165 exchanged for or converted into a right to receive a transferable  
166 interest of a limited liability company that is not a benefit limited  
167 liability company or shares of a corporation that is not a benefit  
168 corporation, the plan of merger or interest exchange must be approved  
169 by a minimum status vote.

170 (c) A benefit limited liability company that has adopted a legacy  
171 preservation provision may only be a party to (1) a merger in which  
172 (A) the surviving entity will be a benefit limited liability company or  
173 benefit corporation that has adopted a legacy preservation provision,

174 or (B) transferable interests of such benefit limited liability company  
175 will be converted into a right to receive transferable interests of a  
176 benefit limited liability company or shares of a benefit corporation that  
177 has adopted a legacy preservation provision, or (2) an interest  
178 exchange in which the transferable interests of the benefit limited  
179 liability company will be exchanged for transferable interests of a  
180 benefit limited liability company or shares of a benefit corporation that  
181 has adopted a legacy preservation provision, and such merger or  
182 interest exchange is approved by a minimum status vote.

183 (d) Except for a benefit limited liability company that has adopted a  
184 legacy preservation provision, any sale, lease, exchange or other  
185 disposition of all or substantially all of the assets of a benefit limited  
186 liability company that would leave the benefit limited liability  
187 company without a significant continuing business activity, within the  
188 meaning of subsection (a) of section 33-831 of the general statutes, such  
189 disposition must be approved by a minimum status vote. A benefit  
190 limited liability company that has adopted a legacy preservation  
191 provision shall not enter into a sale, lease, exchange or other  
192 disposition of its assets outside the ordinary course of the company's  
193 activities and affairs, unless the disposition is to one or more (1)  
194 charitable organizations, or (2) other benefit limited liability companies  
195 or benefit corporations that have adopted a legacy preservation  
196 provision, and such disposition is approved by a minimum status vote.

197 Sec. 8. (NEW) (*Effective October 1, 2017*) (a) A benefit limited liability  
198 company shall have a purpose of creating a general public benefit.  
199 Such purpose shall be in addition to any purpose under sections 34-  
200 243g and 34-243h of the general statutes.

201 (b) The certificate of organization of a benefit limited liability  
202 company may identify one or more specific public benefits as a  
203 purpose for such benefit limited liability company to create in addition  
204 to any purpose under sections 34-243g and 34-243h of the general  
205 statutes and subsection (a) of this section. The identification of a  
206 specific public benefit under this subsection shall not limit the

207 obligation of a benefit limited liability company under subsection (a) of  
208 this section.

209 (c) The creation of a general public benefit and any specific public  
210 benefit under subsections (a) and (b) of this section is in the best  
211 interests of the benefit limited liability company.

212 (d) A benefit limited liability company may amend its certificate of  
213 organization to add, amend or delete the identification of a specific  
214 public benefit that is the purpose of the benefit limited liability  
215 company to create. Any such amendment shall be adopted by a  
216 minimum status vote.

217 Sec. 9. (NEW) (*Effective October 1, 2017*) (a) In discharging the duties  
218 of their respective positions and considering the best interests of the  
219 benefit limited liability company, the members of a member-managed  
220 benefit limited liability company or the manager or managers of a  
221 manager-managed benefit limited liability company, as the case may  
222 be:

223 (1) Shall consider the effects of any company action or inaction  
224 upon:

225 (A) The members of a manager-managed benefit limited liability  
226 company, if applicable;

227 (B) The employees and workforce of the benefit limited liability  
228 company and its suppliers;

229 (C) The interests of the customers of the benefit limited liability  
230 company as beneficiaries of the general public benefit purpose and any  
231 specific public benefit purpose of the benefit limited liability company;

232 (D) Community and societal factors, including those of each  
233 community in which offices or facilities of the benefit limited liability  
234 company or its suppliers are located;

235 (E) The local and global environment;



236 (F) The short-term and long-term interests of the benefit limited  
237 liability company, including benefits that may accrue to the benefit  
238 limited liability company from such company's long-term plans; and

239 (G) The ability of the benefit limited liability company to accomplish  
240 its general public benefit purpose and any specific public benefit  
241 purpose;

242 (2) May consider other pertinent factors or the interests of any other  
243 group that the members of a member-managed benefit limited liability  
244 company or the manager or managers of a benefit limited liability  
245 company, as the case may be, deem appropriate; and

246 (3) Need not give priority to the interests of a particular person or  
247 group referred to in subdivision (1) or (2) of this subsection over the  
248 interests of any other person or group unless the certificate of  
249 organization of such benefit limited liability company states an  
250 intention to give priority to certain interests related to the  
251 accomplishment of the company's general public benefit purpose or of  
252 a specific public benefit purpose identified in the company's certificate  
253 of organization.

254 (b) The consideration of interests and factors in the manner required  
255 or permitted by subsection (a) of this section shall not constitute a  
256 violation of the applicable duties described in section 34-255h of the  
257 general statutes.

258 (c) A member or manager of a benefit limited liability company  
259 shall not be personally liable for (1) any act or omission in the course of  
260 performing the duties of a member of a member-managed benefit  
261 limited liability company or the duties of a manager of a manager-  
262 managed benefit limited liability company, as the case may be, under  
263 subsection (a) of this section if the member or manager performed the  
264 applicable duties of such member or manager in compliance with this  
265 section and section 34-255h of the general statutes, or (2) failure of the  
266 benefit limited liability company to pursue or create a general public  
267 benefit or any specific public benefit.

268 (d) A member or manager of a benefit limited liability company  
269 shall not have a duty to a person who is a beneficiary of the general  
270 public benefit purpose or a specific public benefit purpose of the  
271 benefit limited liability company based on the status of such person as  
272 a beneficiary.

273 Sec. 10. (NEW) (*Effective October 1, 2017*) (a) The members of a  
274 benefit limited liability company may appoint an individual to serve as  
275 the benefit officer of the limited liability company in the manner  
276 provided for a manager of a manager-managed limited liability  
277 company under subdivision (5) of subsection (c) of section 34-255f of  
278 the general statutes. A benefit officer shall: (1) Have the powers, duties,  
279 rights and immunities provided in sections 3 to 14, inclusive, of this act  
280 and set forth in the certificate of organization or operating agreement  
281 of the benefit limited liability company, and (2) if such benefit officer is  
282 not a member or manager of the benefit limited liability company, be  
283 entitled to (A) attend and participate as a nonvoting observer in all  
284 meetings of the members if not a member and meetings of the  
285 managers if not a manager, (B) receive copies of all notices, minutes,  
286 consents and other materials that the limited liability company  
287 provides to its members or managers at the same time and in the same  
288 manner as provided to such members or managers, and (C) have  
289 access to all information available to the members and managers of the  
290 benefit limited liability company, provided (i) the benefit officer shall  
291 agree to hold such information in confidence and trust and to act in a  
292 fiduciary manner with respect to such information, and (ii) the benefit  
293 limited liability company shall have the right to withhold any  
294 information and to exclude such benefit officer from any meeting or  
295 portion thereof if access to such information or attendance at such  
296 meeting could adversely affect the attorney-client privilege between  
297 the benefit limited liability company and its legal counsel or result in  
298 disclosure of trade secrets. The certificate of organization or operating  
299 agreement of a benefit limited liability company may provide  
300 additional rights and prescribe additional qualifications and duties of  
301 the benefit officer that are consistent with this subsection.

302 (b) The benefit officer may be removed in the same manner as  
303 provided for a manager of a manager-managed limited liability  
304 company under subdivision (5) of subsection (c) of section 34-255f of  
305 the general statutes.

306 (c) The benefit officer shall prepare, and the benefit limited liability  
307 company shall include, in the annual benefit report to its members  
308 required by section 14 of this act, the opinion of the benefit officer on  
309 each of the following: (1) Whether the benefit limited liability company  
310 acted in accordance with its general public benefit purpose and any  
311 specific public benefit purpose in all material respects during the  
312 period covered by the report, (2) whether the members or managers, as  
313 the case may be, complied with subsection (a) of section 9 of this act,  
314 and (3) if, in the opinion of the benefit officer, the benefit limited  
315 liability company or its members or managers failed to comply with  
316 subsection (a) of section 9 of this act, a description of the ways in  
317 which the benefit limited liability company or the company's members  
318 or managers failed to comply.

319 (d) Regardless of whether the certificate of organization of a benefit  
320 limited liability company includes a provision limiting the personal  
321 liability of officers, a benefit officer shall not be personally liable for  
322 any act or omission in the capacity of a benefit officer unless the act or  
323 omission constitutes self-dealing, wilful misconduct or a knowing  
324 violation of law.

325 Sec. 11. (NEW) (*Effective October 1, 2017*) (a) Each officer of a benefit  
326 limited liability company shall consider the interests and factors  
327 described in subsection (a) of section 9 of this act in the manner  
328 provided in said subsection if (1) the officer has discretion to act with  
329 respect to a matter, and (2) it reasonably appears to the officer that the  
330 matter may have a material effect on the creation by the benefit limited  
331 liability company of a general public benefit or any specific public  
332 benefit identified in the certificate of organization of the benefit limited  
333 liability company.

334 (b) The consideration of interests and factors in the manner

335 described in subsection (a) of section 9 of this act by an officer shall not  
336 constitute a breach of the duties of such officer to the benefit limited  
337 liability company.

338 (c) An officer shall not be personally liable for (1) an act or omission  
339 as an officer in the course of performing the duties of an officer under  
340 subsection (a) of this section if the officer performed the duties of the  
341 position in compliance with this section, or (2) the failure of the benefit  
342 limited liability company to pursue or create a general public benefit  
343 or any specific public benefit.

344 (d) An officer shall not have a duty to a person who is a beneficiary  
345 of the general public benefit purpose or any specific public benefit  
346 purpose of a benefit limited liability company based on the status of  
347 such person as a beneficiary.

348 Sec. 12. (NEW) (*Effective October 1, 2017*) (a) Except in a benefit  
349 enforcement proceeding, no person may bring an action or assert a  
350 claim against a benefit limited liability company or its members or  
351 managers or a benefit officer with respect to (1) the failure to pursue or  
352 create a general public benefit or any specific public benefit identified  
353 in its certificate of organization, or (2) the violation of an obligation,  
354 duty or standard of conduct under sections 3 to 14, inclusive, of this act  
355 or the certificate of organization or operating agreement.

356 (b) A benefit limited liability company shall not be liable for  
357 monetary damages under sections 3 to 14, inclusive, of this act for any  
358 failure of the benefit limited liability company to pursue or create a  
359 general public benefit or any specific public benefit.

360 (c) A benefit enforcement proceeding may only be commenced or  
361 maintained (1) by the benefit limited liability company, or (2)  
362 derivatively in accordance with the provisions of sections 34-271a and  
363 34-271b of the general statutes by (A) a member or group of members  
364 that own five per cent or more of the transferable interests of the  
365 benefit limited liability company, or (B) other persons as specified in  
366 the certificate of organization or operating agreement of the benefit

367 limited liability company.

368       Sec. 13. (NEW) (*Effective October 1, 2017*) (a) The members of a  
369 benefit limited liability company shall select a third-party standard by  
370 which to assess such company's pursuit of a general public benefit and  
371 any specific public benefit. Selecting or changing a third-party  
372 standard shall require approval by the greater of (1) a majority in  
373 interest of the members, or (2) the vote or written consent of the  
374 members required by the certificate of organization or operating  
375 agreement of the benefit limited liability company to take action under  
376 this section.

377       (b) A benefit limited liability company shall prepare an annual  
378 benefit report that includes each of the following: (1) A narrative  
379 description of (A) the ways in which the benefit limited liability  
380 company pursued a general public benefit during the year and the  
381 extent to which a general public benefit was created; (B) both (i) the  
382 ways in which the benefit limited liability company pursued any  
383 specific public benefit identified in the benefit limited liability  
384 company's certificate of organization, and (ii) the extent to which such  
385 specific public benefit was created; (C) any circumstances that have  
386 hindered the creation by the benefit limited liability company of a  
387 general public benefit or any specific public benefit; and (D) the  
388 process and rationale for selecting or changing the third-party  
389 standard used to prepare the benefit report; (2) an assessment of the  
390 overall social and environmental performance of the benefit limited  
391 liability company against a third-party standard (A) applied  
392 consistently with any application of that standard in prior benefit  
393 reports, or (B) accompanied by an explanation of the reasons for any  
394 inconsistent application or the change to that standard from the  
395 standard used in the most recent prior report; (3) the name of the  
396 benefit officer, if any, and the address to which correspondence to the  
397 benefit officer may be directed; (4) the opinion of the benefit officer  
398 described in subsection (c) of section 10 of this act; and (5) a statement  
399 of any connection between the organization that established the third-  
400 party standard, its directors or officers or any holder of five per cent or

401 more of the voting power or capital interests in such organization, and  
402 the benefit limited liability company, or its members or managers or  
403 any holder of five per cent or more of the transferable interests of the  
404 benefit limited liability company, including any financial or  
405 governance relationship that might materially affect the credibility of  
406 the use of the third-party standard.

407 (c) If, during the year covered by a benefit report, a benefit officer  
408 resigned from the position of benefit officer, or was removed from the  
409 position of benefit officer, and the benefit officer furnished the benefit  
410 limited liability company with a written statement or correspondence  
411 concerning the circumstances surrounding the resignation or removal,  
412 the benefit report shall include that statement or correspondence as an  
413 exhibit.

414 (d) Neither the benefit report nor the assessment of the performance  
415 of the benefit limited liability company in the benefit report required  
416 by subdivision (2) of subsection (b) of this section shall be required to  
417 be audited or certified by the third-party standards provider.

418 Sec. 14. (NEW) (*Effective October 1, 2017*) (a) A benefit limited  
419 liability company shall send the annual benefit report prepared  
420 pursuant to section 13 of this act to each member and manager (1) not  
421 later than one hundred twenty days following the end of each fiscal  
422 year of the benefit limited liability company after the first full fiscal  
423 year following its organization as a benefit limited liability company,  
424 or (2) at the same time that the benefit limited liability company  
425 delivers any other annual report to its members.

426 (b) A benefit limited liability company shall post and maintain each  
427 annual benefit report on the public portion of its Internet web site, if  
428 any, except that any financial, confidential or proprietary information  
429 included in any benefit report may be omitted from the benefit report  
430 as posted.

431 (c) If a benefit limited liability company does not have an Internet  
432 web site, the benefit limited liability company shall provide a copy of

433 such company's most recent benefit report, without charge, to any  
434 person who requests a copy, but any financial, confidential or  
435 proprietary information included in any benefit report may be omitted  
436 from such copy.

437 Sec. 15. Section 33-1351 of the general statutes is repealed and the  
438 following is substituted in lieu thereof (*Effective October 1, 2017*):

439 As used in this section and sections 33-1352 to 33-1364, inclusive, as  
440 amended by this act:

441 (1) "Benefit corporation" means a business corporation (A) that has  
442 elected to become subject to the provisions of sections 33-1352 to 33-  
443 1364, inclusive, as amended by this act, and (B) whose status as a  
444 benefit corporation has not been terminated pursuant to section 33-  
445 1356, as amended by this act.

446 (2) "Benefit director" means either (A) the director designated as the  
447 benefit director of a benefit corporation pursuant to section 33-1359, or  
448 (B) a person with one or more of the powers, duties or rights of a  
449 benefit director under section 33-1359 to the extent that such person  
450 has been granted all or part of the authority to manage the business  
451 and affairs of the corporation by a shareholder agreement that  
452 complies with section 33-717.

453 (3) "Benefit enforcement proceeding" means any claim or action for  
454 (A) the failure of a benefit corporation to pursue or create a general  
455 public benefit or any specific public benefit purpose set forth in its  
456 certificate of incorporation, or (B) the violation of any obligation, duty  
457 or standard of conduct under sections 33-1352 to 33-1364, inclusive, as  
458 amended by this act.

459 (4) "Benefit officer" means the individual designated as the benefit  
460 officer of a benefit corporation pursuant to section 33-1361.

461 (5) "Benefit limited liability company" has the same meaning as  
462 provided in section 2 of this act.

463 [(5)] (6) "Business corporation" means a corporation whose internal  
464 affairs are governed by chapter 601.

465 [(6)] (7) "Charitable organization" means (A) any organization that is  
466 exempt from federal income tax under Section 501(a) of the [Internal  
467 Revenue Code of 1986, or any subsequent corresponding internal  
468 revenue code of the United States, as amended from time to time, and  
469 that the United States Treasury Department has expressly determined,  
470 by letter, to be] Code as an organization [that is] described in Section  
471 501(c)(3) of [said Internal Revenue] the Code, or (B) an organization,  
472 contributions to which are deductible under Section 170(c)(2) of the  
473 Code.

474 (8) "Code" means the Internal Revenue Code of 1986, or any  
475 subsequent internal revenue code of the United States, as amended  
476 from time to time.

477 [(7)] (9) "General public benefit" means a material positive impact on  
478 both society and the environment, taken as a whole, as assessed  
479 against a third-party standard, from the business and operations of a  
480 benefit corporation.

481 [(8)] (10) "Independent" means having no material relationship with  
482 a benefit corporation or a subsidiary of the benefit corporation,  
483 provided [a person] an individual who serves as a benefit director or  
484 benefit officer does not lack independence solely by serving in such  
485 capacity.

486 [(9)] (11) "Legacy preservation provision" means a provision in the  
487 certificate of incorporation adopted in accordance with section 33-1355,  
488 as amended by this act.

489 [(10)] (12) "Material relationship" means a relationship between a  
490 person and a benefit corporation or any of its subsidiaries if any of the  
491 following apply: (A) The person is, or has been within the last three  
492 years, an employee other than a benefit officer of the benefit  
493 corporation or a subsidiary; (B) an immediate family member of the



494 person is, or has been within the last three years, an executive officer  
495 other than a benefit officer of the benefit corporation or a subsidiary; or  
496 (C) there is beneficial or record ownership of five per cent or more of  
497 the outstanding shares of the benefit corporation, calculated on the  
498 assumption that all outstanding rights to acquire shares in the benefit  
499 corporation had been exercised, by (i) the person, or (ii) an entity (I) of  
500 which the person is a director, an officer or a manager; or (II) in which  
501 the person owns beneficially or of record five per cent or more of the  
502 outstanding equity interests, calculated on the assumption that all  
503 outstanding rights to acquire equity interests in the entity had been  
504 exercised.

505 [(11)] (13) "Minimum status vote" means (A) in the case of a  
506 business corporation, in addition to any other required approval or  
507 vote, the satisfaction of the following conditions: (i) The shareholders  
508 of every class or series shall be entitled to vote as a separate voting  
509 group on the corporate action regardless of a limitation stated in the  
510 certificate of incorporation or bylaws on the voting rights of any class  
511 or series; and (ii) the corporate action is approved by the vote of  
512 shareholders of each class or series entitled to cast at least two-thirds of  
513 the votes that shareholders of the class or series are entitled to cast on  
514 the action; and (B) in the case of a domestic entity other than a business  
515 corporation, in addition to any other required approval, vote or  
516 consent, the satisfaction of the following conditions: (i) The holders of  
517 each class or series of equity interest in the entity that are entitled to  
518 receive a distribution of any kind from the entity shall be entitled to  
519 vote on or consent to the action regardless of any otherwise applicable  
520 limitation on the voting or consent rights of any such class or series;  
521 and (ii) the action is approved by the vote or written consent of the  
522 holders described in subparagraph (B)(i) of this subdivision entitled to  
523 cast at least two-thirds of the votes that all of those holders are entitled  
524 to cast on the action.

525 [(12)] (14) "Publicly traded corporation" means a business  
526 corporation that has shares listed on a national securities exchange or  
527 traded in a market maintained by one or more members of a national

528 securities association.

529 [(13)] (15) "Specific public benefit" includes: (A) Providing low-  
530 income or underserved individuals or communities with beneficial  
531 products or services; (B) promoting economic opportunity for  
532 individuals or communities beyond the creation of jobs in the normal  
533 course of business; (C) protecting or restoring the environment; (D)  
534 improving human health; (E) promoting the arts, sciences or  
535 advancement of knowledge; (F) increasing the flow of capital to other  
536 benefit corporations or similar entities whose purpose is to benefit  
537 society or the environment; and (G) conferring any other particular  
538 benefit on society or the environment.

539 [(14)] (16) "Subsidiary" means, in relation to a person, an entity in  
540 which the person owns beneficially or of record fifty per cent or more  
541 of the outstanding equity interests, calculated on the assumption that  
542 all outstanding rights to acquire shares in the benefit corporation have  
543 been exhausted.

544 [(15)] (17) "Third-party standard" means a recognized standard for  
545 defining, reporting and assessing corporate social and environmental  
546 performance that: (A) Assesses the effect of its business and operations  
547 upon the interests listed in subparagraphs (B), (C), (D) and (E) of  
548 subdivision (1) of subsection (a) of section 33-1358; (B) is developed by  
549 an entity that is independent; and (C) makes publicly available the  
550 following information about the development and revision of the  
551 standard: (i) The identity of the directors, officers, material owners,  
552 and the governing body of the entity that developed and controls  
553 revisions to the standard; (ii) the process by which revisions to the  
554 standard and changes to the membership of the governing body are  
555 made; and (iii) an accounting of the revenue and sources of financial  
556 support for such entity, with sufficient detail to disclose any  
557 relationships that could reasonably be considered to present a  
558 potential conflict of interest.

559 Sec. 16. Section 33-1353 of the general statutes is repealed and the  
560 following is substituted in lieu thereof (*Effective October 1, 2017*):

561 A benefit corporation shall be incorporated in accordance with the  
562 provisions of chapter 601 by filing a certificate of incorporation with  
563 the office of the Secretary of the State that states that the corporation is  
564 a benefit corporation. The name of each benefit corporation shall  
565 identify the corporation as a benefit corporation by including in the  
566 name the words "benefit corporation" or the abbreviation "BC" or  
567 "B.C.".

568 Sec. 17. Section 33-1355 of the general statutes is repealed and the  
569 following is substituted in lieu thereof (*Effective October 1, 2017*):

570 (a) [A] The shareholders of a benefit corporation may, not earlier  
571 than twenty-four months after the date that it became a benefit  
572 corporation, adopt a legacy preservation provision by amending its  
573 certificate of incorporation to [contain a statement that the corporation  
574 is subject to] include a legacy preservation provision. Any such  
575 amendment shall be adopted in accordance with the procedures set  
576 forth in chapter 601 and [shall] must be approved by the unanimous  
577 vote or written consent of the shareholders of every class or series,  
578 regardless of any limitation stated in the certificate of incorporation or  
579 bylaws on the voting rights of any such class or series.

580 (b) A dissolved benefit corporation that has adopted a legacy  
581 preservation provision shall distribute its remaining property only to  
582 one or more (1) charitable organizations, or (2) other benefit limited  
583 liability companies or benefit corporations that have adopted [a] legacy  
584 preservation [provision] provisions.

585 Sec. 18. Section 33-1356 of the general statutes is repealed and the  
586 following is substituted in lieu thereof (*Effective October 1, 2017*):

587 (a) Except for a benefit corporation that [adopts] has adopted a  
588 legacy preservation provision, a benefit corporation may terminate its  
589 status as such and cease to be subject to the provisions of sections 33-  
590 1352 to 33-1364, inclusive, as amended by this act, by amending its  
591 certificate of incorporation to delete any provision stating that such  
592 corporation is a benefit corporation. Any such amendment shall be

593 approved by a minimum status vote.

594 (b) Except for a benefit corporation that [adopts] has adopted a  
595 legacy preservation provision, if a benefit corporation is a party to (1) a  
596 merger in which (A) the surviving entity will not be a benefit limited  
597 liability company or a benefit corporation, or (B) shares of such benefit  
598 corporation will be converted into a right to receive shares or other  
599 equity interests of an entity that is not a benefit limited liability  
600 company or a benefit corporation, or (2) a share exchange in which the  
601 shares of the benefit corporation will be exchanged for shares or other  
602 equity interests of an entity that is not a benefit limited liability entity  
603 or a benefit corporation, the plan of merger or share exchange shall be  
604 approved by a minimum status vote.

605 (c) A benefit corporation that [adopts] has adopted a legacy  
606 preservation provision may only be a party to (1) a merger in which  
607 (A) the surviving entity will be a benefit corporation that has adopted  
608 a legacy preservation provision, or (B) shares of such benefit  
609 corporation will be converted into a right to receive shares or other  
610 equity interests of a benefit limited liability company or a benefit  
611 corporation that has adopted a legacy preservation provision, or (2) a  
612 share exchange in which the shares of the benefit corporation will be  
613 exchanged for shares or other equity interests of a benefit limited  
614 liability company or a benefit corporation that has adopted a legacy  
615 preservation provision, and such merger or share exchange is  
616 approved by a minimum status vote.

617 (d) Except for a benefit corporation that [adopts] has adopted a  
618 legacy preservation provision, any sale, lease, exchange or other  
619 disposition of assets of a benefit corporation, other than a disposition  
620 described in section 33-830, that would leave the benefit corporation  
621 without a significant continuing business activity, within the meaning  
622 of subsection (a) of section 33-831, shall be approved by a minimum  
623 status vote. A benefit corporation that [adopts] has adopted a legacy  
624 preservation provision shall not enter into a sale, lease, exchange or  
625 other disposition of its assets, other than a disposition described in

626 section 33-830, unless the disposition is to one or more (1) charitable  
 627 organizations, or (2) other benefit limited liability companies or a  
 628 benefit corporations that have adopted legacy preservation provisions,  
 629 and such disposition is approved by a minimum status vote.

630 Sec. 19. Subsection (a) of section 33-1364 of the general statutes is  
 631 repealed and the following is substituted in lieu thereof (*Effective*  
 632 *October 1, 2017*):

633 (a) A benefit corporation shall send its annual benefit report to each  
 634 shareholder (1) not later than one hundred twenty days following the  
 635 end of [the] each fiscal year of the benefit corporation after the first full  
 636 fiscal year following its organization as a benefit corporation, or (2) at  
 637 the same time that the benefit corporation delivers any other annual  
 638 report to its shareholders, whichever is earlier.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	New section
Sec. 5	<i>October 1, 2017</i>	New section
Sec. 6	<i>October 1, 2017</i>	New section
Sec. 7	<i>October 1, 2017</i>	New section
Sec. 8	<i>October 1, 2017</i>	New section
Sec. 9	<i>October 1, 2017</i>	New section
Sec. 10	<i>October 1, 2017</i>	New section
Sec. 11	<i>October 1, 2017</i>	New section
Sec. 12	<i>October 1, 2017</i>	New section
Sec. 13	<i>October 1, 2017</i>	New section
Sec. 14	<i>October 1, 2017</i>	New section
Sec. 15	<i>October 1, 2017</i>	33-1351
Sec. 16	<i>October 1, 2017</i>	33-1353
Sec. 17	<i>October 1, 2017</i>	33-1355
Sec. 18	<i>October 1, 2017</i>	33-1356
Sec. 19	<i>October 1, 2017</i>	33-1364(a)

**Statement of Legislative Commissioners:**

In Section 10, "benefit" was added before references to "limited liability company" for consistency and in Section 14(a) "pursuant to section 13 of this act" was added for clarity and consistency.

**JUD**      *Joint Favorable Subst.*

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 18 \$	FY 19 \$
Secretary of the State	GF - Cost	60,000	None

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill establishes the framework for benefit limited liability companies and makes changes to both business corporation laws and laws governing limited liability companies. As a result, the Secretary of the State's CONCORD system and other online functions will need to be reprogrammed, resulting in an estimated one-time cost of \$60,000.

**The Out Years**

There is no out-year cost as this is a one-time cost in FY 18.

Sources: Secretary of the State

**OLR Bill Analysis****sSB 12****AN ACT ESTABLISHING BENEFIT LIMITED LIABILITY COMPANIES.****SUMMARY**

This bill establishes a legal framework for forming a limited liability company (LLC) that both pursues social benefits and increases value (a benefit limited liability company, or b-LLC). The structure is similar to the one in place for benefit corporations (b-corps) (CGS § 33-1350 *et seq.*).

As part of this new structure, the bill:

1. specifies rules and procedures for establishing and dissolving b-LLCs, changing the specific public benefits they choose to create, disposing of their assets, and merging or consolidating with other entities (§§ 3-8);
2. requires a b-LLC's managers and officers to consider certain interests and constituencies when making decisions (§§ 9-11);
3. allows b-LLCs to provide in their certificates of organization that their assets continue to serve a public purpose after they dissolve (i.e., legacy preservation provisions or LPPs) (§ 6);
4. provides a procedure for certain parties to bring an action against a b-LLC for failing to create public benefits or violating the bill's b-LLC provisions (§ 12); and
5. requires b-LLCs to report annually on their social and environmental performance (§§ 13 & 14).

The bill also changes the state's b-corp laws by:



1. permitting b-corps to enter into mergers or exchanges with b-LLCs under certain conditions (§ 18);
2. allowing a dissolved b-corp with an LPP to distribute its remaining property to one or more b-LLCs with an LPP, in addition to b-corps with an LPP or charitable organizations as permitted under existing law (§ 17);
3. specifying that (a) shareholders have the authority to adopt an LPP and (b) the annual shareholder reporting requirement begins no later than 120 days after the first full fiscal year after a b-corp's formation (§§ 17 & 19);
4. requiring the certificate of incorporation filed with the secretary of the state to include in the b-corp's name the words "benefit corporation" or the abbreviation "BC" or "B.C." (§ 16); and
5. modifying certain definitions (§ 15).

The bill also makes numerous minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2017

## **BENEFIT LIMITED LIABILITY COMPANIES**

### **§ 3 — *B-LLCs as a Form of For-Profit LLC***

The bill creates a legal framework for establishing LLCs that must create certain public benefits (b-LLCs), places it within the LLC laws, and specifies that b-LLCs are subject to the LLC laws, except that the bill's specific provisions for b-LLCs supersede the LLC law's general provisions. The authorization to form b-LLCs does not imply that a different or contrary law applies to traditional LLCs.

A b-LLC's operating agreement or certificate of organization cannot limit, conflict with, or supersede the bill's provisions.

The bill defines the relationship between a b-LLC and various parties. It:

1. does not give people a legal claim to a b-LLC's income or assets simply because they might benefit from the b-LLC's general and specific public benefits,
2. imposes no obligations on b-LLCs to use their assets or property only for charitable purposes, and
3. does not deprive the attorney general of jurisdiction over b-LLCs under any other applicable law.

### **§§ 2 & 8 — General and Specific Public Benefits**

The bill authorizes b-LLCs to create two types of public benefits, specifying that doing so serves as the b-LLC's best interest.

Under the bill, all b-LLCs must have a purpose of creating a general public benefit, meaning that they have a material positive impact on society and the environment, taken as a whole and assessed against a third-party standard (see "Third-Party Standard" below). This purpose is in addition to any other lawful purpose.

B-LLCs may also have one or more specific public benefits identified in their certificates of organization, which include:

1. providing low-income or underserved people or communities with beneficial products or services;
2. promoting economic opportunity for people 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-LLCs, b-corps, or similar entities that benefit society or the environment; and
7. conferring any other particular benefit on society or the

environment.

B-LLCs choosing to create any specific public benefits must still create a general public benefit.

A b-LLC may add, change, or delete a specific public benefit from its certificate of organization, but only by a minimum status vote (i.e., approval by two-thirds of its members in interest).

#### **§§ 4-7 — Creating and Terminating a B-LLC**

**Formation Options.** The bill allows parties to establish a new LLC as a b-LLC or transform a traditional LLC into one, and it specifies how they must do so.

By law, parties that want to establish an LLC must do so by filing a certificate of organization with the secretary of the state that contains certain information. Under the bill, those establishing a b-LLC must also file with the secretary, but indicate in the certificate that it is a b-LLC by including “benefit limited liability corporation,” “BLLC,” or “B.L.L.C.”.

The members of an existing LLC can change it to a b-LLC by amending its certificate of organization with approval by a minimum status vote.

**Legacy Preservation Provision.** The bill allows b-LLCs to adopt a “legacy preservation provision” (LPP), a legal device ensuring that their assets continue to serve a public purpose if the b-LLC dissolves.

A b-LLC must wait at least two years after it becomes a b-LLC before it can choose to adopt an LPP, which must be added to the certificate of organization. An affirmative vote or written consent of all of the b-LLC’s members is needed to add an LPP.

**Terminating a b-LLC.** If a b-LLC with an LPP is dissolved, its remaining property may only be distributed to one or more charitable organizations or other b-LLCs or b-corps with LPPs.

Under the bill, “charitable organizations” include organizations (1) to which contributions are federally tax deductible or (2) that are exempt from federal income tax under §§ 501(a) and 501(c)(3) of the IRS tax code.

A b-LLC without an LPP may terminate its status as a b-LLC by amending its certificate of organization to delete any provision identifying it as a b-LLC, a change that must be approved by a minimum status vote.

### **§ 7 — Mergers and Interest Exchanges**

The bill sets certain conditions for b-LLCs to merge or exchange interests or shares.

**B-LLC without an LPP.** These entities must get approval by a minimum status vote before merging or exchanging interest if the:

1. surviving entity will not be a b-LLC or b-corp or
2. b-LLC’s interests will be exchanged for or converted into a right to receive an interest in a traditional LLC or shares in a traditional corporation.

A b-LLC without an LPP must also get minimum status vote approval to sell, lease, exchange, or otherwise dispose of its assets if the disposition would leave it without any significant continuing business activity.

**B-LLC with an LPP.** These entities may only:

1. merge if the (a) surviving entity will be a b-LLC or b-corp with an LPP or (b) b-LLC’s transferable interests will be converted into a right to receive transferable interests of another b-LLC or shares of a b-corp with an LPP or
2. exchange interests (a) with a b-LLC with an LPP or (b) for shares of a b-corp with an LPP.

These actions require minimum status vote approval.

Outside of the ordinary course of its activities or affairs, a b-LLC with an LPP may only sell, lease, exchange, or otherwise dispose of assets to one or more (1) charitable organizations or (2) other b-LLCs or b-corps with an LPP. The disposition must be approved by a minimum status vote.

### **§ 9 — B-LLC Managers**

**Decision Making Factors.** The bill specifies the interests and factors members of member-managed b-LLCs and managers of manager-managed b-LLCs must consider when discharging their duties. The members and managers must specifically consider how a company action or failure to act affects:

1. the members of a manager-managed b-LLC, if applicable;
2. the employees and workforce of the b-LLC and its suppliers;
3. the interests of the b-LLC's customers as beneficiaries of its general and specific public benefits;
4. community and societal factors, including those of each community in which offices or facilities of the b-LLC or its suppliers are located;
5. the local and global environment;
6. the b-LLC's short- and long-term interests, including benefits that may accrue from its long-term plans; and
7. the b-LLC's ability to accomplish its general and specific public benefit purposes.

The members of a member-managed b-LLC and managers of a manager-managed b-LLC may also consider other pertinent factors or interests of any other group that they deem appropriate.

When considering these factors, members of a member-managed b-

LLC and managers of a manager-managed b-LLC do not have to rank the interest of any particular person or group over another unless the certification of organization requires them to do so to accomplish one of its benefits.

**Immunities.** Under the bill, the members of a member-managed b-LLC and managers of a manager-managed b-LLC do not violate their duties under the LLC laws when they consider the above interests and factors.

The bill further specifies that these members and managers are not personally liable for (1) anything they did or failed to do while acting as managers in compliance with the bill and LLC laws or (2) the b-LLC's failure to create a general public benefit or any of its specific public benefits.

B-LLC members or managers also have no duty to anyone whose only connection to the b-LLC is that he or she benefits from its general or specific public benefits.

#### **§§ 10 & 11 — B-LLC Benefit Officers**

The bill permits b-LLC members to appoint an individual to serve as the b-LLC's benefit officer. The appointment may be made by an affirmative vote or consent of the majority of members in interest. The officer may be removed in the same manner. The officer has all the powers, duties, rights, and immunities provided in the bill's b-LLC provisions and in the b-LLC's certificate of organization or operating agreement.

The benefit officer has no duties to any beneficiary of the b-LLC's general or specific public benefit purposes based on the beneficiary's status.

**Immunities.** Regardless of whether the b-LLC's certificate of organization includes a provision limiting officers' personal liability, the bill specifies that a benefit officer is not personally liable for any act or omission in his or her capacity as a benefit officer unless the act or

omission constitutes self-dealing, willful misconduct, or a knowing violation of the law.

The bill also specifies that the officer is not personally liable for (1) any act or omission in the course of performing these duties as long as he or she substantially complied with the bill's requirements or (2) the b-LLC's failure to pursue or create a general or specific public benefit.

**Entitlements.** If the benefit officer is not a b-LLC member or manager, he or she is entitled to:

1. attend and participate as a nonvoting observer in member meetings if not a member and manager meetings if not a manager;
2. receive copies of all notices, minutes, consents, and other materials at the same time and in the same manner as the b-LLC provides them to its members or managers; and
3. all information available to the b-LLC's members and managers, provided he or she agrees to keep the information confidential and act as a fiduciary with respect to it.

The b-LLC may still withhold any information and exclude the benefit officer from any meeting or part of a meeting if the access or attendance could (1) adversely affect the attorney-client privilege between the b-LLC and its legal counsel or (2) disclose trade secrets.

The b-LLC's certificate of organization or operating agreement may provide additional rights and prescribe additional qualifications and duties for the officer consistent with the bill's provisions.

**Annual Benefit Report.** The benefit officer must prepare, and the b-LLC must include in its annual benefit report to its members (see "Annual Benefit Report" below), his or her opinions on the following:

1. whether the b-LLC acted according to its general public benefit purpose and any chosen specific public benefit purposes in all

- material respects during the reporting period;
2. whether the members or managers, as the case may be, complied with their duties under the bill; and
  3. if the b-LLC or members or managers failed to do so, how.

**Decision Making.** If the benefit officer has discretion to act on a matter and it reasonably appears that the matter may have a material effect on creating a general or specific public benefit set out in the certificate of organization, the officer must consider the same interests and factors as those for members or managers (see “Decision Making Factors” above). Considering those interests and factors is not a breach of the officer’s duties to the b-LLC.

### **§ 12 — Benefit Enforcement Proceeding**

A person may bring a benefit enforcement action against a b-LLC or its members, managers, or a benefit officer for (1) failing to pursue or create a general public benefit or an identified specific public benefit or (2) violating an obligation, duty, or standard of conduct the bill specifies or is set out in the certificate of organization or operating agreement. A person may not otherwise bring an action or assert a claim against a b-LLC on these grounds.

The b-LLC may start a benefit enforcement proceeding directly against its members, managers, or benefit officers. Members or groups of members that own at least 5% of the b-LLC’s transferable interests and other persons specified in the b-LLC’s certificate of organization or operating agreement may also start a benefit enforcement proceeding against the b-LLC or its members, managers, or officers in accordance with the LLC laws.

A b-LLC is not liable for monetary damages for failing to pursue or create its general or any specific public benefit.

### **§§ 2 & 13 — Third-Party Standard**

Under the bill, the b-LLC’s performance must be annually assessed



against a recognized third-party standard for defining, reporting, and assessing social and environmental performance. The standard must address the b-LLC's impact on its employees, workforce, suppliers, and customers; the communities in which it or its suppliers operate; and the local and global environment. The standard must allow the public to know:

1. the identity of the directors, officers, material owners, and governing body of the entity that developed and controls the revisions to the standard;
2. the process for revising the standard;
3. how changes to the membership of the governing body are made; and
4. from where the entity derives its revenue and financial support, and in what amounts, so that any potential conflicts of interest are identifiable.

The standard must be developed by an independent entity (i.e., one with no material relationship with the b-LLC). For these purposes, "material relationship" includes the following:

1. the person or an immediate family member is, or was within the last three years, a manager or an executive officer of the b-LLC;
2. the person is, or was within the last three years, a benefit officer of the b-LLC; or
3. the person is, or was within the last three years, a member of the b-LLC and owns or has owned at least 5% of the b-LLC's transferable interests.

The bill requires a b-LLC's members to select its third-party standard. But the members cannot select or change the standard without approval from the greater of (1) a majority of the members with interest or (2) the vote or written consent of the members who

must approve such actions under the b-LLC's operating agreement or certificate of organization.

### **§§ 13 & 14 — Annual Benefits Report**

**Content.** Under the bill, a b-LLC must prepare an annual benefit report describing:

1. how it pursued its general public benefit purpose during the year and the extent to which the benefit was created;
2. how it pursued any specific public benefit purpose and the extent to which the benefit was created;
3. any circumstances that hindered the creation of any of the public benefits; and
4. the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

The report must assess the b-LLC's overall social and environmental performance against a third-party standard, either:

1. applied consistently with any application of that standard in prior benefit reports or
2. explaining the reasons for any inconsistent application or change to that standard from the one used in the most recent report.

The report must also include the name of any benefit officer, the address to which correspondence to the officer may be sent, and the officer's opinions on the b-LLC's performance as described above. It must state any connection between the organization that established the third-party standard, including the organization's directors or officers or certain voting power or capital interest holders, and the b-LLC, its members or managers, or any holder of at least 5% of transferable interests, including any financial or governance relationship that might materially affect the credibility of using the standard.

If a benefit officer resigns or is removed from the position during the year the report covers, the report must include any written statement or correspondence from the officer on the circumstances of resignation or removal.

The report and the performance assessment it contains do not need to be audited or certified by the third-party standard provider.

***Distribution.*** Starting after the first full fiscal year the b-LLC is organized, it must annually send to each member and manager a copy of the benefit report within 120 days of the fiscal year's end or together with any other annual report it provides to its members. It must also post and maintain each annual benefit report on its public website, but may omit any financial, confidential, or proprietary information.

If the b-LLC has no public website, it must provide a copy of its most recent annual benefit report to anyone who requests one, at no charge, but may omit financial, confidential, or proprietary information.

## **B-CORP LAWS**

The bill amends the b-corp laws' definitions and its merger and share exchange provisions.

### **§ 15 — Definitions**

The bill broadens what constitutes a "charitable organization" to include organizations to which contributions are federally tax deductible and mirrors the definition under the bill's b-LLC provisions, which also includes federally tax exempt organizations.

Currently, a "subsidiary" for b-corp purposes is, in relation to a person, an entity in which the person owns at least 50% of the outstanding equity interests. The bill specifies that this percentage is calculated on the assumption that all outstanding rights to acquire the b-corp's shares have been exhausted.

### **§ 18 — Mergers and Exchanges**

The bill amends the laws on b-corp mergers and exchanges to align with its provisions on b-LLCs.

**B-Corps Without an LPP.** For b-corps without an LPP, the bill requires minimum status vote approval for a merger where the surviving entity is not a b-LLC or the b-corp's shares will be converted into a right to receive equity interests in an entity other than a b-LLC. This approval is already required by law if the surviving entity is not a b-corp or the share will be converted into a right to receive equity interests in an entity other than a b-corp. Similarly, the bill requires minimum status vote approval for a share exchange where a b-corp's shares will be exchanged for equity interests in an entity that is not a b-LLC. The law already requires this for an exchange of interests with an entity that is not another b-corp.

**B-Corps with LPPs.** The bill allows a b-corp with an LPP to be a party to a merger if shares of the b-corp will be converted into a right to receive equity interests in a b-LLC or b-corp with an LPP. Currently, b-corps with LPPs may only be a party to a merger if the surviving entity will be a b-corp that has adopted an LPP or shares of the b-corp will be converted into a right to receive shares of a b-corp with an LPP.

The bill also allows a b-corp with an LPP to exchange its shares for shares or other equity interests of a b-LLC or b-corp with an LPP. Currently, b-corps with LPPs may only exchange its shares for shares of another b-corp with an LPP. As under current law, any merger or share exchange requires minimum status vote approval.

Under current law, b-corps with LPPs may generally only sell, lease, exchange, or dispose of assets, with minimum status vote approval, to charitable organizations or other b-corps with LPPs. The bill also permits them to dispose of assets to b-LLCs with LPPs.

## COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 2 (04/07/2017)