

**INTERIM REPORT OF THE COMMISSION ON CONNECTICUT'S LEADERSHIP
ON CORPORATION AND BUSINESS LAW ESTABLISHED UNDER PUBLIC ACT 14-
189**

The Commission's mandate includes: a) examining the laws of Delaware, New York and other states and recommending changes to Connecticut's business, judiciary, and tax laws (as well as to the operation of the Office of the Secretary of State) and other actions which may enhance Connecticut's leadership with respect to attracting corporations and other business organizations to form and maintain their significant operations in the State; and b) to present its recommendations for implementation over the next 10 years by October 1, 2015. This will serve as the Commission's interim report on its progress.

**I. RECOMMENDATIONS OF THE BUSINESS LAW WORKING GROUP
REGARDING STATUTORY CHANGES AND TOPICS MERITING FURTHER
CONSIDERATION**

The Business Law Working Group ("BLWP") has examined Delaware law, proposed changes to Delaware law, and the existing and proposed changes to the American Bar Association's Model Business Corporation Act (the "MBCA") to which Connecticut and many other states have historically looked for guidance. The Business Law Working Group has also pursued the Commission's mandates with the appropriate leaders of the Connecticut Bar Association those involved with drafting changes to the MBCA, and has initiated contact with the Association of the Bar of the City of New York for any further ideas which may be worthy of consideration. The BWLP currently intends to make the following recommendations.

- 1) That the Commission recommend that the corporate statutes of Connecticut continue to be based upon the MBCA and that Connecticut should continue to review, evaluate and, as deemed appropriate, enact amendments to the Connecticut Business Corporation Act (the "CBCA") that are adopted and published as part of the MBCA.
- 2) That the Commission recommend the following changes to the CBCA to conform to the MBCA, on which the CBCA is based:
 - a) Proposed amendments to the CBCA that are set forth in Senate Bill 967 of the 2015 legislative session of the Connecticut General Assembly:
 - i) Amendments to CBCA section 33-776 to make the limits on indemnification and advance of expenses to officers comparable to the limits on directors.
 - ii) Amendment to CBCA section 33-773 to delete the requirement of a written affirmation as a condition to advance of expenses, while continuing the requirement for a written undertaking to repay any funds advanced if it is ultimately determined that the director is not entitled to indemnification.
 - iii) Other amendments to conform to recent MBCA changes, including changes clarifying when the terms of an irrevocable proxy are binding on a transferee, to

- allow voting trusts to have a term of more than ten years, and to clarify the rules regarding qualifications of directors and nominees for directors.
- b) Changes that have been adopted in the MBCA but not yet approved in Connecticut:
 - i) Update CBCA section 33-756 regarding general standards for directors to conform to MBCA section 8.30.
 - ii) Adopt a new CBCA section that would be the equivalent of section 8.31 of the MBCA to provide standards of liability for directors.
 - c) Changes to the MBCA that are expected to be adopted in the MBCA in the foreseeable future:
 - i) Provision permitting corporations to retroactively validate corporate actions, as Delaware has recently done by statute.
 - ii) Provision permitting advance renunciation of business opportunities in the certificate of incorporation of a Connecticut corporation and related changes.
 - iii) Provision permitting medium form mergers, as Delaware has recently done by statute.
- 3) That the Commission recommend that, as part of the ten-year plan, the Connecticut Nonstock Corporation Act be updated.
 - 4) That the Commission recommend that the CBCA be amended to authorize Connecticut corporations to adopt bylaw provisions requiring disputes regarding the internal affairs of Connecticut corporations to be brought in Connecticut, as permitted in Delaware by case law.
 - 5) That, as part of the ten-year plan, the Commission study and evaluate whether it is feasible and would enhance and improve the Connecticut General Statutes to adopt one or more statutes that would impede non-meritorious litigation in Connecticut involving mergers and acquisitions.
 - 6) That the Commission, as part of the ten-year plan, study and evaluate whether it is feasible and would enhance and improve the Connecticut General Statutes to codify rules relating to successor liability in connection with sales of assets by Connecticut entities.
 - 7) That the Commission recommend that the Connecticut limited liability statutes be updated and revised based upon the Uniform Limited Liability Company Act, noting that the Connecticut Bar Association is actively engaged in the preparation of updated limited liability statutory amendments to propose to the Connecticut General Assembly in 2016.
 - 8) That, as part of the ten year plan, the Commission study and evaluate whether it is feasible and would enhance and improve the Connecticut General Statutes to add nonstock corporations to the type of entities which may utilize the Connecticut Entity Transaction Act; provide for non-profit limited liability Companies; and to permit series limited liability company interests.

In addition, the BWLG is currently researching and considering whether changes to the Connecticut General Statutes to authorize Connecticut corporations, by contract, to extend the period in which suit may be brought beyond the applicable statute of limitations, as is permitted by statute in Delaware, would be necessary or desirable and the BWLG will report to the Commission when that research is completed.

As the Commission's mandate also describes a desire to examine the business laws of New York, the BWLG intends to study further whether New York has adopted, or is considering adopting, any other innovative approaches which may benefit Connecticut.

II. JUDICIARY WORKING GROUP (“JWP”) SUMMARY

- A. In response to the Commission's mandate to examine specifically the courts of Delaware, the JWP has identified significant structural differences between the courts of Connecticut and Delaware.
- Connecticut has a unified court system; Delaware does not.
 - Each of Delaware's courts (Supreme Court, Chancery Court, Superior Court, etc.) must be politically balanced, i.e., each court must be equally divided between the political parties with neither party having a majority of more than one.
 - Delaware only has one appellate court – the Delaware Supreme Court. Consequently, appeals from all courts go directly to the Supreme Court. Connecticut has two tiers of appellate courts – The Supreme Court and the Appellate Court – and the only matters that go directly to the Supreme Court do so based on statute or the discretionary decision of The Supreme Court to take up a matter as a direct appeal.
 - There is a misconception that Delaware's Chancery Courts are its business courts. This is incorrect in two respects. First, only a quarter of that court's work involves corporate disputes. The majority of its cases involve trust and estates, probate and guardianship matters. Conversely, the Superior Court also handles business litigation.
 - Delaware does not have a mandatory retirement age for judges.
- B. The JWP has also responded to perceptions expressed that corporate entities prefer to have their shareholder and significant corporate disputes resolved in Delaware. In that regard, the current consensus of the JWP is that it is not reasonable for Connecticut to seek to supplant the Delaware Chancery Court as the pre-eminent forum for resolving all types of corporate disputes for the following reasons:
- Overwhelming corporate presence in Delaware
 - Delaware has more corporations than people.
 - 75% of all Fortune 500 companies are incorporated in Delaware; 75% of all new incorporations occur in Delaware.

- Its governmental structure is designed to facilitate incorporation – Secretary of State’s Office is open until midnight each weeknight and provision now exists for an entity to incorporate in an hour.
 - Cottage industries already exist to support corporations electing to incorporate in Delaware, e.g., one building is the legal address for more than 285,000 separate corporations.
 - Delaware maintains business-friendly laws and tax structure
 - It has been reported that the “Delaware Loophole” has enabled Delaware corporations to reduce taxes they would otherwise have paid to other states by approximately \$9.5 billion between 1992-2012.
 - Predictability and Stability of Chancery Court rulings
 - There is a heavy emphasis on stare decisis with a body of case law going back almost a hundred years. This leads to highly predictable results upon which corporations and their officers and directors can rely.
 - Exceedingly strong reliance on the business judgment rule - Delaware courts will seldom second-guess actions of company leaders as to what is in the best interests of the shareholders.
 - Delaware has a corporate-oriented culture; Connecticut is strongly consumer-oriented.
 - “If it ain’t broke, don’t fix it”. Delaware satisfies virtually all of the needs and expectations of businesses which incorporate there. Little reason exists to incorporate elsewhere.
 - Other states are already vying to be an alternative to Delaware. Connecticut would not only have an uphill battle to supplant Delaware’s corporate leadership, but would also have to compete with other states as well.
- C. The working group has also been addressing other ways in which the Connecticut courts could seek to encourage corporate and other business entities to have their disputes resolved in Connecticut, for which consensus has not been reached.
- Connecticut could key on a few areas – such as LLC, shareholder/corporate and mergers & acquisitions litigation – and seek to attract litigation in those fields. There has been a lack of consensus on this topic in the following respects:
 - Some have expressed the view that a separate “docket” for such matters should be created. Others believe that Connecticut’s existing “Complex Litigation Docket” could capably hear such matters. In this regard, it is noteworthy that Connecticut implemented its Complex Litigation Docket approximately 15 years ago, while Delaware just recently instituted a complex litigation docket.
 - There is significant question whether there will be sufficient litigation in these areas to warrant creating specialized treatment for these disputes.

- There is a debate whether parties would agree to a forum selection clause establishing venue in Connecticut courts without any jurisdictional ties to this state; and the question has been raised whether, absent jurisdictional ties, would Connecticut law permit the use of its courts in such situations?
- It has been suggested that Connecticut might create “special master positions” to handle such matters? The considerations include:
 - The existing and future ability of Complex Litigation judges to handle such matters.
 - The amount of funding needed, and whether funding could be obtained for these positions given current economic conditions and budgetary pressures in the State.
 - Whether “highly qualified” practitioners in these areas (who typically are in their prime earning years and highly compensated) would be attracted to such positions (because of the severe reduction in compensation they may incur); and while more senior attorneys may be willing to serve, whether they would be subject to the State’s mandatory retirement age within a few years of appointment absent changes in existing legislation (and such appointments have met with criticism in the legislature in recent years).

The JWP intends to consider further the volume of shareholder and other corporate disputes which have recently been commenced in the State’s courts; whether the Complex Litigation Docket should be refined in any way to further accommodate such disputes; and whether to propose legislation to create special master-type positions.

The JWP is working with the Connecticut Bar Association regarding whether it should create a committee to focus on the area of shareholder/corporate litigation.

Pursuant to its mandate, the JWP has studied and will continue to study innovations being implemented or considered by Delaware, and subsequently the Commercial Division of the Supreme Court of the State of New York, and other jurisdictions.

III. TAX WORKING GROUP (“TWP”) SUMMARY

The TWP has been tasked with examining the impact of state business taxes (including franchise and corporation business taxes) on Connecticut businesses. Members of the Commission have met with tax law professors Diana Leyden and Richard Pomp from the University of Connecticut Law School, as well as Commissioner Kevin Sullivan of the Connecticut Department of Revenue Services. The broad consensus coming out of those conversations was that Connecticut’s franchise and corporation business taxes are competitive, but the State’s property tax regime could be altered to make the State more business friendly. Additionally, though not a direct business tax, personal income tax in the State has grown, and since many younger, new businesses are forming through LLCs, we cannot ignore the higher level of taxation for individuals. From the table below, it is clear that Connecticut has several areas where it lags: other competitor states.

	Overall Rank	Corporate Tax Rank	Individual Income Tax Rank	Sales Tax Rank	Unemployment Insurance Tax Rank	Property Tax Rank
Connecticut	42	32	34	31	20	49
Delaware	14	50	33	1	2	13
Massachusetts	24	37	13	21	48	45
New York	49	20	49	40	31	46

Source: 2015 Tax Foundation’s *State Business Tax Climate Index*

In our meeting with Commissioner Sullivan, he pointed out that a legislatively appointed study is now underway to determine the best ways to make our state tax system more competitive. Since adjusting one tax has implications for all others, it makes sense to view this effort holistically. The TWP recommends that that it provide that group with the issues and concerns that are being raised by the business community so that they can tackle them in its analysis. To get that perspective, we propose to two strategies to obtain the business community input:

- CBIA performs a full business survey in the Spring. We are requesting CBIA to include questions on this topic to garner information directly from state-wide businesses; and
- We plan to hold an informational meeting with tax counsel from a number of companies around the State to get their perspectives on our tax structure in early April.

Based on the information obtained from these two avenues, the TWP plans to identify the greatest “pain-points” for business and recommend that the tax study (to which Commissioner Sullivan has referred) look for solutions as they evaluate the entire tax structure of the state.

The TWP is currently monitoring proposed legislation in the General Assembly that relates to business taxation, and has a liaison to the State’s Tax Study Panel to ensure that there is not a duplication of efforts among the two groups.

Commission Chairman Kip Hall and members of the TWP have corresponded with State Rep. Matthew Lesser to discuss the possibility of nominating a business tax expert to the Commission to lead the TWP. Three potential nominees for the position have been identified.

IV. SOCIAL ENTERPRISE LAW SUMMARY

A report is being prepared outlining policy proposals which to make the State a national leader in social enterprise law. The area of social enterprise law, non-existent just eight years ago, has exploded over the past four years. Over 30 states have adopted some form of new legal entity specifically for social entrepreneurs - individuals who operate triple bottom line businesses that work to create a positive social or environmental impact, in addition to generating profits. The trend of creating legal entities for social entrepreneurs shows no sign of stopping. In 2015 alone, it is expected that at least fourteen states will consider legislation regarding the establishment of a benefit corporation as a new legal entity, which is currently the most popular form of social enterprise legal entity in the U.S.

While many states have passed legislation enabling these new legal entities for social enterprises, no state that has taken up the mantle as the go-to state for attorneys and entrepreneurs incorporating their businesses, in the way that Delaware has become for corporations, and Nevada and Colorado have become attractive for other types of entities. This lack of leadership in the social enterprise law space presents an opportunity for Connecticut, which has one of, if not the most comprehensive benefit corporation statutes in the U.S.

The report on social enterprise law will explore national trends in the social enterprise law sector, and propose policy initiatives and a comprehensive plan to make it easier for social entrepreneurs to do business in Connecticut, make it attractive for businesses outside of Connecticut to incorporate or organize their businesses using the state's social enterprise entities, and encourage investment into these new types of businesses.

V. THE SECRETARY OF THE STATE WORKING GROUP (“SOTS”) SUMMARY

The Commission's mandate includes consideration of ways in which the Secretary of the State's Office can further attract businesses to form and remain in the State, and specifically to compare its operations with those of Delaware (and other states). Having made significant progress, the SOTS working group has identified the following resource enhancements and changes in administrative structure which would increase its ability to service businesses more promptly. This list is exemplary and not exhaustive:

- Highly Reliable Automation – SOTS is presently one of many agencies occupying a sector of the state Mainframe hosted by DAS-BEST, and the agency's administrative functions are externally limited by capacity, processing speed and user volume issues that cause unproductive down time and interference with crucial online customer services. SOTS would require an off-system small mainframe or else a large, scalable server bank of its own to ensure maximum performance and system availability. This would also require professional-level IT staffing. Otherwise, SOTS would require priority load-balance response and guaranteed resources on the enterprise system hosted by the State, and at far greater usage levels than are presently accessed.
- Substantial Staffing Increases (perhaps two shifts and/or a satellite branch operation and expanded hours of operation, plus staffing resources to absorb higher volumes of work).

- Substantially Enhanced Funding (to cover all costs associated with the items in this list) – Possibly reintroduce a SOTS non-lapsing fund.
- Potential Easing of Records Retention Rules Regarding Permanent Storage of Records – Many states permit records to be kept electronically, so long as they are legible and kept in records management systems with multiple redundancies built in. SOTS presently contracts with archive vendors to keep original paper records in air conditioned environments, which would become unduly burdensome and costly at higher volumes.
- Implementation of Document Scanning Technology with Customer Access to Document Images Online (presently working toward this goal).
- Enhanced Data Collection and Customer-centric Access to Data – In order to offer a full array of business-friendly services, SOTS could provide a vital state function as a repository of reliable statistical data on business and commerce within the state.
- Enhanced Managerial Oversight – SOTS would need to elevate management of the operation to a Chief Level Manager and three standalone divisions (Business Filings Division, UCC Filings Division and Data Collection and Dissemination Division).

Going forward, the SOTS working group will seek to determine the costs of each listed item and, to the extent possible, the projected impact of each item on attracting businesses to form and remain in the State, and the revenue the State may derive.

VI. ECONOMIC DEVELOPMENT WORKING GROUP (“EDWG”) SUMMARY

The EDWG is currently in the process of information gathering in order to inform the Commission’s work on what is needed to make Connecticut an attractive location for corporate operations. To be able to produce the most salient and potentially effective recommendations for the Commission, the EDWG has arranged to consult with businesses about what challenges or opportunities are provided by Connecticut’s legal framework and/or existing code.

The primary source of input from businesses will be gathered through the Association of Corporate Counsel. Through either a separate meeting or attendance by interested parties at one of the Commission’s regular meetings, we hope to hear directly from corporate counsel any amendments that need to be made to Connecticut Statutes to make the State more attractive to businesses. Additionally, the Subgroup has arranged to meet with officials at Connecticut Innovations and a leading patent firm in the state (Cantor Collburn) to hear how Connecticut’s legal environment impacts the entrepreneurial and start-up community. From an Economic Development standpoint, it is important the subgroup invite input from a variety of different business communities.