

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

*October 1, 2015*

The Commission was created to recommend measures that can be implemented over the next ten years to attract businesses to form and maintain their significant operations in the state of Connecticut. Its mandate includes examining the laws and institutions of Delaware, New York and other states, and recommending changes to Connecticut's business laws, tax laws, judicial branch, and the operation of the Office of the Secretary of State and other functions. This report presents the Commission's findings and recommendations.

**I. EXECUTIVE SUMMARY.**

---

The Commission's members include representatives of the state's legislative, executive and judicial branches, as well as representatives of the private bar. After the majority of its members were appointed, the Commission met essentially monthly. It divided itself into six working groups to address specific components of its mandate – Business Law, Judiciary Law, Tax Law, Social Enterprise Law, Office of the Secretary of State, and Economic Development. The working groups met as often as needed between the monthly sessions to address developments in their areas. Each Commission member served on at least one working group.

In addition, the Commission consulted with the State Tax Panel, received presentations from CBIA representatives of large corporations and of limited liability companies and the Connecticut Hedge Fund Association. The Commission also solicited comment on topics as appropriate from the Office of the Attorney General, the state Department of Banking, the Connecticut Bar Association, the Hartford County Bar Association, the University of Connecticut School of Law, Yale University Law School, the Committee on Corporate Laws of the American Bar Association Business Law Section, counsel to the Commercial Division Advisory Committee of the Council on Judicial Administration of The Association of the Bar of the City of New York, the Connecticut Chapter of the Association of Corporate Counsel, and Connecticut Innovations, a quasi-public agency whose mission is to stimulate entrepreneurship in the state.<sup>1</sup>

After 12 months of investigation, analysis and discussion, the Commission recommends:

- Continuing to base the Connecticut Business Corporation Act (“CBCA”) upon the American Bar Association’s Model Business Corporation Act (“MBCA”).
- Making changes to the CBCA with respect to:
  - Retroactively validating corporate actions, as Delaware has recently done by statute;

---

<sup>1</sup> The Commission also thanks Adam Skowera, Judiciary Committee Clerk and Legislative Aide at the Connecticut General Assembly, for his invaluable contributions to its work.

- Permitting advance renunciation of business opportunities in the certificate of incorporation of a Connecticut corporation and related changes;
- Permitting medium form mergers;
- Authorizing Connecticut corporations to adopt bylaw provisions requiring disputes regarding the internal affairs of Connecticut corporations to be brought in Connecticut; and
- Adopting changes that have been adopted in the MBCA but not yet adopted in the CBCA, including updating the CBCA general standards for directors and providing for standards of liability for directors.
- Updating the Connecticut Nonstock Corporation Act.
- Updating and revising the Connecticut limited liability statutes based upon the Revised Uniform Limited Liability Company Act (“RULLCA”).
- Evaluating whether it is feasible and desirable to:
  - Add nonstock corporations to the type of entities which may utilize the Connecticut Entity Transaction Act;
  - Provide for non-profit limited liability companies (“LLCs”);
  - Permit series LLC interests;
  - Adopt one or more statutes that would impede non-meritorious litigation in Connecticut involving mergers and acquisitions; and
  - Codify rules relating to successor liability in connection with sales of assets by Connecticut entities.
- Evaluating whether 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.
- Establishing a State Business Law Center, preferably at the University of Connecticut School of Law, whose goals will be to enhance the state’s business reputation by focusing on the MBCA (which Connecticut and many other states look to for developments in corporate legislation), Connecticut’s limited liability company law (as the vast majority of businesses formed in the state are LLCs), and such other areas related to corporate law as are deemed appropriate.
- Evaluating the volume of shareholder and other corporate disputes which have recently been commenced in the state’s courts.
- Considering whether the Complex Litigation Docket should be refined in any way to further accommodate shareholder and other corporate disputes.

- Considering legislation to create special master-type positions to assist in administering shareholder and other corporate disputes.
- Creating within the Connecticut Bar Association of committees to focus on the areas of the Complex Litigation Docket and shareholder and other corporate litigation.
- Adopting a Connecticut analogue to the Rapid Arbitration Act, which was this year adopted in Delaware.
- Continuing the evaluation of the State’s tax legislation and the results of the CBIA survey of businesses in the State on taxation matters by the State Tax Panel and Commissioner Sullivan’s Office.
- Aligning state tax policy with the stated objectives of Connecticut’s Strategic Plan of Economic Development.
- Attaching a Business Impact Fiscal Note to proposed legislation that would have a cost or revenue impact on businesses in the state.
- Establishing the state as the national leader in Social Benefit Corporations (“SBCs”) through continuing to improve SBC legislation, publicizing the Connecticut SBC Act, pursuing policy initiatives and enacting a comprehensive plan to make it easier for social entrepreneurs to do business in Connecticut, to make it attractive for businesses outside of Connecticut to incorporate or organize their businesses using the state’s SBC Act, and to encourage investment in these new types of businesses.
- Enhancing the capacity of the Office of the Secretary of State (“SOTS”) as follows:
  - Implementing technological and staffing changes to enable greater usage levels of the SOTS’s electronic resources.
  - Increasing SOTS staffing to facilitate expanded hours and increased volumes of work.
  - Considering an easing of the rules requiring permanent storage of paper records.
  - Continuing to work to implement document scanning technology with online access to document images.
  - Enhancing data collection and customer-centric access to data.
- Considering structural reform to the General Assembly’s Joint Rules to update the definition of the Commerce Committee and its mission and to create a budget writing committee merging the functions of the current Finance, Revenue and Bonding Committee and the current Appropriations Committee.

These recommendations are more fully presented in the sections that follow. Consistent with the Commission's mandate, the recommendations are intended to be implemented no later than October 1, 2025.

**II. RECOMMENDATIONS BASED UPON THE BUSINESS LAW WORKING GROUP'S EXAMINATION OF STATUTORY CHANGES AND TOPICS MERITING FURTHER CONSIDERATION.**

---

The Business Law Working Group ("BLWG") has examined Delaware law, proposed changes to Delaware law, and the existing and proposed changes to the MBCA to which Connecticut and many other states have historically looked for guidance. It prepared a chart comparing Delaware and Connecticut corporate law, which is attached as Exhibit 1.

The BLWG has also pursued the Commission's mandates with the appropriate leaders of the Connecticut Bar Association and those involved with drafting changes to the MBCA, and it has initiated contact with the Association of the Bar of the City of New York for further ideas that might be worthy of consideration. The recommendations that the BLWG received from the Corporations Committee of the Connecticut Bar Association are attached as Exhibit 2. The BLWG's interim report, dated February 25, 2015, is attached as Exhibit 3.

As a result of the BWLG's work, the Commission recommends:

- That the corporate statutes of Connecticut continue to be based upon the MBCA and that Connecticut continue to review, evaluate and, as deemed appropriate, enact amendments to the CBCA that are adopted and published as part of the MBCA.
- That the following changes be made to the CBCA to conform to the MBCA, on which the CBCA is based:
  - Enact changes that have been adopted in the MBCA but not yet approved in Connecticut:
    - Update CBCA section 33-756 regarding general standards for directors to conform to MBCA section 8.30; and
    - Adopt a new CBCA section that would be the equivalent of section 8.31 of the MBCA to provide standards of liability for directors;
  - Enact changes to the MBCA that are expected to be adopted in the MBCA in the foreseeable future:
    - Adopt a provision permitting corporations to retroactively validate corporate actions, as Delaware has recently done by statute;
    - Adopt a provision permitting advance renunciation of business opportunities in the certificate of incorporation of a Connecticut corporation and related changes; and

- Adopt a provision permitting medium form mergers, as Delaware has recently done by statute.
- That the Connecticut Nonstock Corporation Act be updated.
- 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.
- That the State study and evaluate whether it is feasible and desirable to adopt one or more statutes that would impede non-meritorious litigation in Connecticut involving mergers and acquisitions.
- That the State study and evaluate whether it is feasible and desirable to codify rules relating to successor liability in connection with sales of assets by Connecticut entities.
- That the Connecticut limited liability statutes be updated and revised based upon the RULLCA, in accordance with the contemplated proposal of the Connecticut Bar Association to the General Assembly during the 2016 session.
- That the state study and evaluate whether it is feasible and desirable to add nonstock corporations to the type of entities which may utilize the Connecticut Entity Transaction Act; to provide for non-profit limited liability companies; and to permit series limited liability company interests.

The Commission also recommends that the state study whether to authorize Connecticut corporations, by contract, to extend the period in which suit may be brought beyond the applicable statute of limitations. This is permitted by statute in Delaware.

The BLWG considered at length the adoption of “fee shifting” legislation. It closely followed the debate on this subject in Delaware and considered the views expressed by experts at the American Bar Association. The BLWG ultimately decided against recommending such legislation for Connecticut for the reasons set forth in Exhibit 4.

Finally, the Commission recommends that a State Business Law Center be established, preferably at the University of Connecticut School of Law, along the guidance provided in Exhibit 5.

### **III. RECOMMENDATIONS BASED UPON THE JUDICIARY WORKING GROUP’S EXAMINATION OF DISPUTE RESOLUTION INSTITUTIONS AND PROCEDURES IN DELAWARE, NEW YORK AND CONNECTICUT.**

Pursuant to the Commission’s mandate, the JWG examined innovations being implemented or considered for the Delaware Court of Chancery, the Commercial Division of the Supreme Court of the State of New York, and other jurisdictions. The JWG also studied the rules and procedures governing business disputes in the Connecticut Superior Court’s Complex Litigation Docket, and it examined the historical caseload of shareholder and other corporate disputes on the Complex Litigation Docket. The JWG received valuable assistance in this effort from the Judicial Branch and, in particular, the Office of the Chief Court Administrator, as well as from members of bar.

In response to the Commission's mandate to examine specifically the courts of Delaware, the JWG has identified significant structural differences between the courts of Connecticut and Delaware. These include the following.

- Connecticut has a unified court system; Delaware does not. This structural difference has two significant consequences:
  - First, Connecticut judges are necessarily generalists whose appointments and assignments do not depend on expertise in one particular area of law.
  - Second, the creation of a court of limited jurisdiction like Delaware's Court of Chancery would conflict with the judicial policy that Connecticut has followed for many years.
- Relatedly, the JWG discovered that there is a misconception that Delaware's Chancery Courts are its business courts. This is incorrect in two respects:
  - First, only a quarter of the Delaware Court of Chancery's work involves corporate disputes. The majority of its cases involve trust and estates, probate and guardianship matters.
  - Second, the Delaware Court of Chancery is not the only Delaware trial-level court that decides business disputes. The Delaware Superior Court also handles business litigation.
- 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. Connecticut has no such rule.
  - Connecticut judges are nominated by the Governor and appointed by the General Assembly. This means that voters have a stronger say in the political composition of courts in Connecticut than they do in Delaware.
  - Although Delaware's rule creates a perception of balance, imposing that rule in Connecticut would conflict with longstanding tradition, could be seen as undemocratic and would likely require a constitutional amendment.
- Delaware only has one appellate court – the Delaware Supreme Court. In contrast, Connecticut has two tiers of appellate courts established by the Connecticut Constitution – the Supreme Court and the Appellate Court.
  - In Delaware, appeals from all courts go directly to the Delaware Supreme Court.

- In Connecticut, the only matters that go directly to the Supreme Court do so based on the state constitution, based on a specific statute or based on the discretionary decision of the Supreme Court to take up a matter as a direct appeal.
- Connecticut created the Appellate Court by constitutional amendment thirty three years ago. The Appellate Court has been an effective way to protect appellate rights while avoiding a significant case backlog in the Supreme Court. Although a two-tier court system is appealing for businesses because of its speed, the JWG does not believe that eliminating the Appellate Court would be wise or feasible in Connecticut.
- Delaware does not have a mandatory retirement age for judges. Connecticut judges must retire at age 70.
  - As a consequence of Connecticut's retirement age and its post-retirement benefit rules, Connecticut would face efficiency and budgetary challenges if it pursued a strategy of recruiting leading practitioners to join the judiciary late in their careers.
- Connecticut implemented its Complex Litigation Docket approximately 15 years ago, while Delaware just recently instituted a complex litigation docket.

The JWG has also examined the perception that corporate entities prefer to have their shareholder and significant corporate disputes resolved in Delaware. It has concluded 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:

- Delaware is widely perceived as the leading U.S. jurisdiction in which to incorporate, meaning that an overwhelming majority of significant companies are already Delaware entities.
  - Delaware has more corporations than people.
  - 75% of all Fortune 500 companies are incorporated in Delaware, and 75% of all new incorporations occur in Delaware.
  - Delaware's governmental structure is recognized as facilitating incorporation. For example, the Delaware Secretary of State's Office is open until midnight each weeknight, and a new entity can incorporate in Delaware in an hour.
  - Cottage industries already exist to support corporations electing to incorporate in Delaware. For example, one Delaware building is the legal address for more than 285,000 separate corporations.

- Delaware is widely perceived as maintaining business-friendly laws and a business-friendly 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.
- The Delaware Chancery Court has a longstanding reputation for predictability and stability in its rulings. In particular:
  - The Delaware Chancery Court places a heavy emphasis on the principle of *stare decisis*, meaning that the court today will follow the holdings of earlier cases that address the same issue.
  - The Delaware Chancery Court has a body of case law addressing a wide variety of shareholder and other corporate issues that goes back almost one hundred years.
  - The Delaware Chancery Court is known as a strong proponent of the business judgment rule. This means that Delaware courts will seldom second-guess the decisions of company leaders about what is in the best interests of shareholders.
- Because the Delaware Chancery Court already has a reputation of satisfying the legitimate dispute-resolution needs of the businesses that are incorporated there, there is little that Connecticut can do to convince businesses that Connecticut is a better jurisdiction in which to litigate sophisticated shareholder and corporate disputes.
- Delaware has a corporate-oriented culture. In contrast, Connecticut is strongly consumer-oriented. This magnifies the challenge of convincing corporations that Connecticut will be a pro-business jurisdiction. It is also a significant obstacle in convincing legislators and voters that Connecticut ought to be.
- Other states are already vying to be an alternative to Delaware. Connecticut would not only have an uphill battle to supplant Delaware’s leadership but would also have to compete and win against the other states.

The JWG has considered other strategies for encouraging business entities to resolve their disputes in Connecticut. The strategies considered include:

- Connecticut could key on a few specific areas of corporate litigation in which Delaware is not already dominant and seek to attract litigation in those fields.



- Examples include LLC governance issues and litigation involving mergers and acquisitions.
- 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 these cases.
  - There is significant doubt about 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. The question has also been raised whether, absent jurisdictional ties, Connecticut law would permit its courts to decide these cases.
- Connecticut could create “special master” positions and fill them with well-respected corporate lawyers looking to serve their communities as their careers come to a close. The state could use the reputations and ties these practitioners have built to convince litigants that Connecticut courts have the expertise and bandwidth to adjudicate sophisticated corporate disputes. The relevant 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 given the severe reduction in compensation they might incur.
  - Whether any senior attorneys who are willing to serve would be subject to the state’s mandatory retirement age within a few years of appointment, recognizing that such late-career appointments have met with criticism in the legislature in recent years.

The JWG also examined possible changes to the Complex Litigation Docket. The issues considered included:

- The levels of staffing and support on the Complex Litigation Docket;

- The desirability of altering the jurisdiction of the Complex Litigation Docket, such as by imposing an “amount in dispute” requirement or by assigning certain categories of cases to the Complex Litigation Docket automatically;
- The length of the term for which judges are assigned to the Complex Litigation Docket;
- The time between filing and resolution of cases on the Complex Litigation Docket;
- The venues in which judges on the Complex Litigation Docket sit; and
- The desirability of imposing special procedural rules to govern cases on the Complex Litigation Docket.

The JWG received extensive assistance in this work from the Office of the Chief Court Administrator, which shared information about measures considered and implemented in the past as well as feedback from judges presently and formerly assigned to the Complex Litigation Docket.

The JWG also considered the report of the task force on the Commercial Division of the Supreme Court of the State of New York. This report suggested the use of an ongoing task force to monitor and make recommendations; the expansion of the governor’s powers to appoint Court of Claims Judges to the Commercial Division; recommendations to transactional lawyers to recommend New York forum selection clauses; and the implementation of specialized expedited case management procedures which are attractive to foreign parties.

Ultimately, the Commission is not recommending any changes to the Complex Litigation Docket based upon the JWG’s work. It does recommend, however, that the Office of the Chief Court Administrator continue to monitor the Complex Litigation Docket and continue to consider feedback from judges, litigants, members of the bar and the judicial branch’s Civil Rules Committee. Additionally, the Commission recommends that the Connecticut Bar Association create a subcommittee or task force dedicated to providing input from the bar to the Chief Court Administrator regarding the Complex Litigation Docket and shareholder and corporate litigation.

Finally, the JWP examined the Delaware Rapid Arbitration Act, which was adopted this year and appears as Exhibit 6. The JWG debated before the Commission the desirability of enacting similar legislation in Connecticut.

Connecticut’s provisions for contractually agreed upon arbitration are found at Conn. Gen. Stat. § 52-408 through and including Conn. Gen. Stat. § 52-424. They are consistent with the laws of many other states regarding support for and enforcement of arbitration awards. Connecticut also has is statutory authority for nonbinding arbitration. It has limited applicability – cases involving \$50,000 or less in dispute.

The Commission concluded that, while there were doubts about the Delaware Rapid Arbitration Act’s effectiveness, it is more beneficial than not. The Commission therefore recommends that an appropriate version be implemented in Connecticut.

**IV. RECOMMENDATIONS BASED UPON THE TAX WORKING GROUP’S EXAMINATION OF STATE TAX REGIMES IN CONNECTICUT AND IN COMPETING JURISDICTIONS.**

The Commission did not have the benefit of a corporate tax attorney until the end of its term. Further, the Commission’s mandate with respect to tax matters overlapped with the mandate of the state’s Tax Panel, whose consideration of tax changes has only just begun. Nevertheless, because the Tax Working Group (“TWG”) was tasked with examining the impact of state corporation, franchise and other business taxes on Connecticut businesses, TWG members met with tax law professors Diana Leyden and Richard Pomp from the University of Connecticut School of Law, as well as Commissioner Kevin Sullivan of the Connecticut Department of Revenue Services to gain insight on these issues.

The broad consensus derived from those conversations is that Connecticut’s franchise and corporation business taxes are competitive, but the state’s property tax regime could be altered to make Connecticut more business friendly. Additionally, though not a direct business tax, personal income tax in the State has grown. Many new businesses are forming as LLCs – which are pass-through entities for personal income tax purposes – and the state therefore cannot ignore the effect that the state’s high level of taxation for individuals has on the business climate.

From the table below, it is clear that Connecticut has several areas where it lags behind other states.

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

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

Commissioner Sullivan pointed out that a legislatively appointed study is now underway to determine the best ways to make the state’s tax system more competitive. Since adjusting one tax has implications for all others, it makes sense to view this effort holistically. The CBIA performed a full business survey and included the TWG’s questions on this topic to garner information directly from state-wide businesses.

Representatives from the CBIA presented on state corporate tax policy issues at the commission’s May 15, 2015 meeting. The presenters were Sandy Coombes, Senior Tax Director, Aetna; Harry Im, State Tax Counsel, United Technologies Corporation; Stephen LaRosa, Senior Director, State & Local Tax, Alexion Pharmaceuticals, Inc.; and Gerard Maher, Tax Director, Boehringer Ingelheim. Attached as Exhibit 7 is a copy of their PowerPoint Presentation, titled “Connecticut Corporate Taxes Overview & Guiding Principles.”

In addition, the TWP monitored proposed legislation in the General Assembly that related to business taxation, and it established a liaison to the state’s Tax Panel to ensure that there was no duplication of effort.

As a result of the TWP's efforts, the Commission makes the following tax policy recommendations:

**1. Align State Tax Policy with the Stated Objectives of Connecticut's Strategic Plan of Economic Development.**

It is the consensus of this Commission that to promote economic competitiveness as compared to other jurisdictions, Connecticut's tax policy needs to project a clear set of guiding principles and be relevant to today's economy. Coherent and stable tax policy encourages business location, retention, and growth that provides jobs, stimulates economic activity and strengthens our state and local tax base.

To that end, the commission recommends that, to the extent possible, the development of each two-year state budget be aligned with the mission and stated objectives included in the Department of Economic and Community Development's four-year "Strategic Plan of Economic Development." A copy of the present Strategic Plan is attached as Exhibit 8.

***Background:***

In 2012, Governor Dannel P. Malloy, by Executive Order No. 17, established The Business Tax Task Force. As part of its mission, the Task Force was charged with evaluating the cost, benefit, efficiency, effectiveness and measurable performance of the current tax structure with respect to economic development, business retention and growth, and employment retention and growth.

In its Report, dated September 27, 2012, the Task Force concluded that:

- Connecticut's business tax policy is cumulative, legacy-based, revenue-driven, insufficiently aligned with economic policy, and inadequately reflects the emergent marketplace (global, mobile, virtual, contingent employment, intangible goods and services).
- Business tax incentives are insufficiently aligned with state economic policy, encourage interstate and intrastate "tax shopping" and are disconnected from state budgeting, but are important economic development tools.
- To the extent that the annual legislative process continuously raises tax or tax policy questions, discussions and revisions, the result can be unsettled business expectations that undermine a positive business climate.

The May 15, 2015 CBIA panel presentation on corporate tax policy to the Commission echoed these concerns. The panel noted that, in Connecticut today, there are inherent differences between the ways the state builds a budget and businesses build their strategic plans. The consensus of the panelists was that businesses need stable state policies to guide their decisions and actions.

The panel urged the development of a sound tax policy that will:

- Shape revenue decisions;
- Ease revenue insufficiency and volatility;
- Foster a predictable and growing business climate;
- Make investment and location decisions easier; and
- Maintain competitiveness for the state.

In Connecticut, the Department of Economic and Community Development (“DECD”) is charged with developing Connecticut’s economic development strategy. Its mission is to develop and implement strategies to increase the state’s economic competitiveness. In developing the strategy, the DECD’s stated objectives are to:

- Invest in the business clusters that drive Connecticut’s economy and encourage entrepreneurial development;
- Ensure a workforce that meets the needs of employers;
- Create sustainable communities; and
- Invest in infrastructure and support systems that will foster business growth.

By state statute (Conn. Gen. Stat. § 32-1o) the Commissioner must prepare a “Strategic Plan of Economic Development” every four years. The most recent plan is dated “Spring 2014.” The next plan is anticipated in 2018. In preparing each iteration of the plan, the DECD:

- Reviews and evaluates the state’s labor market;
- Reviews and analyzes the extent to which the state’s infrastructure, education systems, regulatory structure, technology sector and emerging technologies, health care delivery and costs and affordable housing supply affect the state’s economic growth; and
- Specifies clear and measurable economic development goals and objectives for the state and its regions and metrics to monitor progress.

The carefully considered plan resulting from this process provides a sensible foundation from which tax policy decisions can be made.

## **2. Attach a Business Impact Fiscal Note to Proposed Legislation that Would Have a Cost or Revenue Impact on Businesses in the State.**

The Commission recommends that the State Office of Fiscal Analysis attach a Business Impact Fiscal Note to all proposed legislation that would have a direct cost or revenue impact on businesses in the state. The fiscal note should include an estimate of the number of businesses that would be subject the bill’s provisions and the projected cost to businesses of compliance with the bill, including reporting, recordkeeping and administrative costs. Requiring this fiscal

note will promote fair, efficient and cost effective administration and foster compliance with tax and regulatory legislative mandates.

**V. RECOMMENDATIONS BASED UPON THE SOCIAL ENTERPRISE LAW WORKING GROUP'S INVESTIGATION OF THE OPPORTUNITY TO LEAD THE NATION IN SOCIAL ENTERPRISE LAW.**

The field 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 United States.

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 social enterprise 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 the most, if not *the* most, comprehensive benefit corporation statutes in the U.S.

Attached as Exhibit 9 is a report outlining the Social Enterprise Law Working Group's policy proposals to make the State a national leader in social enterprise law. The Commission recommends that the state pursue these policy recommendations and prioritize becoming the national leader in social enterprise law.

**VI. RECOMMENDATIONS BASED UPON THE SECRETARY OF THE STATE WORKING GROUP'S CONSIDERATION OF WAYS TO IMPROVE SERVICE TO CONNECTICUT BUSINESSES.**

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. Consistent with this directive, the SOTS working group has compared its operations with those of Delaware and other states. Attached as Exhibit 10 is a presentation that the Commission received on these issues from Seth Klaskin, Director of the SOTS's Business Services Division.

Through its work, the SOTS working group has identified resource enhancements and changes in administrative structure which would increase its ability to service businesses more promptly. As a result of the SOTS working group's efforts, the Commission recommends that the state implement the following enhancements to SOTS resources and capabilities:

- Highly Reliable Automation – SOTS is presently one of many agencies occupying a sector of the state mainframe hosted by DAS-BEST. 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. The General Assembly should also consider reintroducing the 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 built-in multiple redundancies. 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. SOTS is presently working toward this goal and should be supported in these efforts.
- 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).

**VII. RECOMMENDATIONS BASED UPON THE ECONOMIC DEVELOPMENT WORKING GROUP'S CONSIDERATION OF MEASURES TO STIMULATE GROWTH AND INNOVATION.**

---

Starting with the current “Strategic Plan of Economic Development,” which was issued in spring 2015, the Economic Development Working Group (“EDWG”) investigated what is needed to make Connecticut an attractive location for corporate operations. The EDWG consulted with businesses, the CBIA, Connecticut Innovations and a leading patent firm in the state (Cantor Colburn) about what challenges or opportunities are provided by Connecticut’s legal framework and existing code.

Members of the EDWG reviewed the 2015 Connecticut Economic Development Strategic Plan in order to best align the Commission and the state with the Department of Economic and Community Development (“DECD”). The Department’s expressed mission is to develop and implement strategies to increase the state’s economic competitiveness. Several of the Plan’s strategies are outlined below, and the full strategic plan can be found in Exhibit 8:

- Continue to grow and leverage the healthcare/bioscience, financial services/insurance, and manufacturing sectors. Because these three sectors account for 35% of the state's total GDP, policy goals should protect and enhance these industries.
- Use financial and technical resources to assist companies from startup phase through maturity. DECD and Connecticut Innovations ("CI"), a quasi-governmental organization committed to providing strategic and operational insight to companies, have created an ecosystem support effort called CTNext. CTNext offers experienced entrepreneurs-in-residence whose job is to coach new business owners and connect them to all the resources they need. CTNext offers services including IT coder training and IT talent to help build products, mentors, coworking spaces, maker spaces to build prototypes, university connections, and connections to capital.
  - On the capital side, there is support for nearly every stage of growth for a company. Financial assistance awards and programs include the CTNext Entrepreneur Innovation Awards, Connecticut Business Incubator network grants, CI Preseed Program, DECD Small Business Express, CI Equity, and DECD Manufacturing Assistance Act.
- Build and maintain a workforce that meets the needs of employers. In order to address the challenges of building and maintaining a high quality workforce, the state has significantly invested in a partnership amongst educational institutions, the training delivery systems, and industries. A sustained commitment to initiatives such as the Manufacturing Innovation Fund, the Connecticut Early College Opportunities program, and support for STEAM (science, technology, engineering, arts, and mathematics) education will help build a skilled workforce that meets the immediate and long term needs of employers.
- Invest in the state's creative economy and arts infrastructure to advance the attractiveness and competitiveness of Connecticut cities, towns, and villages, as meaningful communities in which to live, work, learn, and visit. Support for creative enterprises through DECD grants and technical support help to enhance each community's competitive edge, bridge the social and economic divides, and contribute to the development and retention of a creative workforce.
- Ensure the presence of affordable and workforce housing, particularly in and around transportation networks.
- Invest in the infrastructure and support systems that will foster business growth. Included in this investment are initiatives to increase speed, access, and frequency of rail transportation within Connecticut and between the state and other major regional hubs, to widen existing interstate highways, and to build additional upgrades to Bradley International Airport. Similarly, the continuation of CTfastrak, Connecticut's first Bus Rapid Transit System, allows for quick connection between the New Britain and Hartford communities.
- Promote "smart growth," which includes sustainable development, brownfield redevelopment, historical preservation and renovation, and transit-oriented developed to



help communities attract businesses and workers. These policies and approaches to land-use planning, transportation, housing, environment, and human needs should be integrated into strategy and action plans in a way that makes them integral to future economic activity.

- Partner with other government agencies like the Department of Energy and Environmental Protection to execute policies aimed at increasing energy efficiency, lowering emissions from electricity production, and reducing overall energy costs.

The EDWG believes this Plan should be endorsed by the full Commission and should serve as the basis for any additional economic development recommendations we propose.

However, several suggestions not included in the State's Economic Strategic Plan also arose.

- Members of the EDWG also considered and debated before the full Commission whether to propose "crowd funding" legislation as has been done in other states (as described in the attached Exhibit \_\_\_\_). It was suggested that the Connecticut legislature provide the mechanisms by which crowd funding is able to be done in the state. It was also decided to ask the legislature to adopt crowd funding legislation to make it easier for young companies to raise capital, following the lead of over twenty other states. Additionally, it is believed that the U.S. Securities and Exchange Commission is poised to make federal changes that will enable cross-border crowd funding possible, further simplifying the process.
- Members of the EDWG also considered and debated before the full Commission whether to propose legislation prohibiting the use of non-competition clauses to restrain employees from departing existing employers for new ones, as they are perceived as a damper on entrepreneurial activity and frequently result in litigation. California is known for its policy against non-compete agreements – it typically will not enforce them except where they arise from the sale of equity in a business, where a partner agrees not to compete in anticipation of dissolution of a partnership or LLC, or where the non-compete is necessary to protect trade secrets. The statutory basis is California Business and Professions Code Section 16600, which provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." The exceptions for the sale of equity and dissolution of a partnership are also statutory (CBPC 16601, 16602 and 16602.5). The trade secret exception comes from caselaw. The EDWG recommended that this subject receive further, serious consideration by the General Assembly.

Other Commission members, including the members of the BLWG, believe that restricting non-compete agreements in Connecticut would have a significant adverse effect on business in Connecticut, in that people forming and funding businesses that would benefit from the ability to enforce non-compete agreements would simply create their businesses in other states in which they could. The fact that California is able to have such a prohibition is not necessarily indicative of how it would work in Connecticut, as California has a concentration of entrepreneurs, venture capital and engineers (and an absence of other, similar states within close geographic proximity) that Connecticut does not have.

The CBIA also expressed concerns about restricting non-compete agreements in Connecticut. Its position on this issue is attached as Exhibit 11.

In light of the strong divergence of views on this issue, the Commission did not take a position on whether the General Assembly should consider statutory restrictions on non-compete agreements.

- Members of the EDWG also recommend completing a study aimed toward streamlining regulation of small businesses to foster entrepreneurship, such as giving startup businesses a simple, one-stop process for launching that would make it easier than going through multiple agencies to obtain permits and licenses. Further, some suggested that all fees and taxes be waived for the first couple of years of a company's life. Focusing this initiative on certain sectors which the State wishes to foster, such as bioscience and engineering, with tax and regulatory relief, could fuel innovation and small business growth in these sectors.
- Members of the EDWG also considered and debated before the full Commission whether to propose legislation with respect to Economic Development Zones and it was resolved not to propose any policy changing legislation.

#### **VIII. OTHER RECOMMENDATIONS ARISING FROM THE COMMISSION'S WORK.**

---

It was identified during the Commission's work that the confidence of businesses in the State could be enhanced by two structural changes to the Connecticut General Assembly's rules.

First, the Commission recommends broadening the scope of the Commerce Committee's authority. The recommended revision below is designed to provide a single venue in which all Connecticut businesses are able to raise issues relating to business, commerce, economic development and economic competitiveness. Suggested additions are underlined and suggested deletions are ~~stricken through~~:

A committee on COMMERCE that shall have cognizance of all matters relating to business, commerce, economic development and economic competitiveness, including, but not limited to, manufacturing, information technology, bioscience, emerging technologies and markets, international trade and all matters relating to state agencies and quasi-public agencies concerned with fostering economic development. ~~and commerce not otherwise delineated under other committees including but not limited to manufacturing, information technology, pharmaceuticals, biotechnology, bioscience and all matters relating to the Department of Economic and Community Development and Connecticut Innovations, Incorporated.~~

Second, the Commission recommends that the General Assembly create a single budget writing committee merging the functions of the current Finance, Revenue and Bonding Committee and the current Appropriations Committee. The Commission believes that giving a single

commission the authority to raise revenue and control spending will foster the creation and implementation of clearer, more coherent and more consistent taxation and spending policies. This, in turn, will increase the business community's confidence that Connecticut is a sensible place in which to make long-term investments.

**IX. CONCLUSION.**

---

Supplanting Delaware as the leading venue to incorporate and litigate shareholder and corporate disputes is a significant challenge. Connecticut should not expect that any strategic plan can turn it into the next Delaware in ten years. But the Commission believes that its work can deliver value to Connecticut residents and businesses. Even if Connecticut does not supplant Delaware, it can follow the recommendations presented in this Report to become a better place for businesses to form themselves, conduct their business and resolve their disputes. This will lead to new jobs, innovation, increased tax revenues and better products for Connecticut consumers.

Respectfully Submitted,

Christopher P. Hall  
*Chairman*