# Corporate Forms of Social Enterprise: Comparing the State Statutes

Professor J. Haskell Murray, Belmont University, Nashville, TN

<table>
<thead>
<tr>
<th>State</th>
<th>Entity Type</th>
<th>Effective Date</th>
<th>Notice of Entity Type</th>
<th>Min. Status Vote</th>
<th>Express Dissent Rights</th>
<th>General Public Purpose</th>
<th>Specific Public Purpose</th>
<th>Benefit Director Required</th>
<th>Third-Party Standard</th>
<th>Benefit Enforcement Proceeding</th>
<th>Benefit Report (&quot;BR&quot;)</th>
<th>Publicity Post BR</th>
<th>Benefit Report to SH</th>
<th>File BR with State</th>
<th>Express Penalty for Not Filing BR</th>
<th>Interests And Liability</th>
<th>Standing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td>BC</td>
<td>N/A</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>AR</td>
<td>BC</td>
<td>8/16/13</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>AZ</td>
<td>BC</td>
<td>1/1/15</td>
<td>2/3, 3/4</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>CA</td>
<td>BC</td>
<td>1/1/12</td>
<td>A, SC</td>
<td>2/3</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>CA</td>
<td>SPC*</td>
<td>1/1/12</td>
<td>A, N, SC</td>
<td>2/3</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>CO</td>
<td>PBC</td>
<td>4/1/14</td>
<td>A, N, SC</td>
<td>2/3</td>
<td>Adopt</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>CT</td>
<td>BC</td>
<td>10/1/14</td>
<td>A</td>
<td>2/3</td>
<td>Adopt</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>DE</td>
<td>PBC</td>
<td>8/1/13</td>
<td>A, N, SC</td>
<td>2/3, 90%</td>
<td>Adopt</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>PBC</td>
<td>2SH</td>
<td>Yes</td>
</tr>
<tr>
<td>DC</td>
<td>BC</td>
<td>5/1/13</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>FL</td>
<td>BC</td>
<td>7/1/14</td>
<td>A</td>
<td>2/3</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>HI</td>
<td>SBC*</td>
<td>7/8/11</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>SBC-H, SH, D</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>IL</td>
<td>BC</td>
<td>1/1/13</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>LA</td>
<td>BC</td>
<td>8/1/12</td>
<td>A, N, SC</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>MD</td>
<td>BC</td>
<td>10/1/10</td>
<td>A, SC</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>MA</td>
<td>BC</td>
<td>12/1/12</td>
<td>A</td>
<td>2/3</td>
<td>Adopt</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>MN</td>
<td>GBC</td>
<td>1/1/15</td>
<td>A, N</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Annual</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>MN</td>
<td>SBC*</td>
<td>1/1/15</td>
<td>A, N</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Annual</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>NE</td>
<td>BC</td>
<td>7/18/14</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>NV</td>
<td>BC</td>
<td>1/1/14</td>
<td>A, SC</td>
<td>2/3</td>
<td>Adopt</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>NH</td>
<td>BC</td>
<td>1/1/15</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>NJ</td>
<td>BC</td>
<td>3/1/11</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>NY</td>
<td>BC</td>
<td>2/10/12</td>
<td>A, SC</td>
<td>3/4</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>OR</td>
<td>BC*</td>
<td>1/1/14</td>
<td>Majority</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>PA</td>
<td>BC</td>
<td>1/22/13</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>RI</td>
<td>BC</td>
<td>1/1/14</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>SC</td>
<td>BC</td>
<td>6/14/12</td>
<td>A</td>
<td>2/3</td>
<td>Adopt</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>UT</td>
<td>BC</td>
<td>5/13/14</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Updated January 15, 2015

© 2012 Professor J. Haskell Murray

*Academic Purposes Only*
## Corporate Forms of Social Enterprise: Comparing the State Statutes

**Professor J. Haskell Murray, Belmont University, Nashville, TN**

---

### State Entity Type Effective Date Notice of Entity Type Min. Status Vote Express Dissent Rights General Public Purpose Specific Public Purpose Benefit Director Required Third-Party Standard Benefit Enforcement Proceeding Benefit Report (“BR”) Publicly Post BR Benefit Report to SH File BR with State Express Penalty for Not Filing BR Interests And Liability Standing

<table>
<thead>
<tr>
<th>State</th>
<th>Entity Type</th>
<th>Effective Date</th>
<th>Notice of Entity Type</th>
<th>Min. Status Vote</th>
<th>Express Dissent Rights</th>
<th>General Public Purpose</th>
<th>Specific Public Purpose</th>
<th>Benefit Director Required</th>
<th>Third-Party Standard</th>
<th>Benefit Enforcement Proceeding</th>
<th>Benefit Report (“BR”)</th>
<th>Publicly Post BR</th>
<th>Benefit Report to SH</th>
<th>File BR with State</th>
<th>Express Penalty for Not Filing BR</th>
<th>Interests And Liability</th>
<th>Standing</th>
</tr>
</thead>
<tbody>
<tr>
<td>VA</td>
<td>BC</td>
<td>7/1/11</td>
<td>A</td>
<td>100%, 2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Model</td>
<td>Model</td>
</tr>
<tr>
<td>VT</td>
<td>BC</td>
<td>7/1/11</td>
<td>A</td>
<td>2/3</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Model</td>
<td>Model</td>
</tr>
<tr>
<td>WA</td>
<td>SPC</td>
<td>6/7/12</td>
<td>A, N, SC</td>
<td>2/3</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>SBC-W</td>
<td>SH</td>
<td></td>
</tr>
<tr>
<td>WV</td>
<td>BC</td>
<td>7/1/14</td>
<td>A</td>
<td>Majority</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Annual</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Model*</td>
<td>SH, D, O</td>
<td></td>
</tr>
</tbody>
</table>


**Citations**

**Model Benefit Corp. Legis. §§ 101-401** *(Version, Apr. 10, 2013).*

**Ark. Code Ann. §§ 4-36-101 – 401.**


**Cal. Corp. Code § 14600 et seq. (BC).**

**Cal. Corp. Code § 2500 et seq. (SPC).**


**Conn. Gen. Stat. § 33-1350 – 33-1364.**

**D.C. Code §§ 29-1301.01 – 29-1304.01.**

**Del. Code. Ann. tit. 8, §§ 361-368.**

Updated January 15, 2015  Academic Purposes Only  © 2012 Professor J. Haskell Murray
Corporate Forms of Social Enterprise: Comparing the State Statutes
Professor J. Haskell Murray, Belmont University, Nashville, TN

805 ILL. COMP. STAT. ANN. §§ 40/1-40/5.01.
MASS. GEN. LAWS ANN. ch. 156E, §§ 1–16.
MD. CODE ANN., CORPS. & ASS’NS §§ 5-6C-01 to -08.
MINN. STAT. ANN. §§ 304A.001 – 304A.301.
NEV. REV. STAT. ANN. §§ 78B.010-190.
N.Y. BUS. CORP. LAW §§ 1701–1709.
OR. REV. STAT. ANN. §§ 60.750 – 770.
15 PA. STAT. ANN. §§ 3301-3331.
R.I. GEN. LAWS ANN. §§ 7-5.3-1 – 7-5.3-13.
S.C. CODE ANN. §§ 33-38-110 et seq.
VT. STAT. ANN. tit. 11A, §§ 21.01–08.
Corporate Forms of Social Enterprise: Comparing the State Statutes
Professor J. Haskell Murray, Belmont University, Nashville, TN


This chart benefited from Professor Carter G. Bishop’s Fifty State Series: L3C & B Corporation Legislation Table available at http://ssrn.com/abstract=1561783, legislative information on the B Lab website available at http://www.bcorporation.net/publicpolicy. Eric L. Talley’s Corporate Form and Social Entrepreneurship: A Status Report from California (and Beyond), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144567&download=yes. Samuel Moultrie, Andrew Cziok, Kevin Hoffman, Megan Klumpe, Gabrielle Gottfried, and Rhett Cash provided valuable research assistance on at least one version of this document, dating back to January 2012. Readers should reference the actual statutes and a knowledgeable attorney before making decisions regarding social enterprises. States with “NA” in the columns were passed but not effective as of the latest chart update. This document is not legal advice.

1 Entity Type.
BC = Benefit Corporation (in Oregon, “Benefit Company;”); GBC = General Benefit Corporation; PBC = Public Benefit Corporation; SBC = Sustainable Business Corporation (Hawaii) or Specific Benefit Corporation (Minnesota); SPC = Social Purpose Corporation (prior to January 1, 2015, the California SPCs were called “Flexible Purpose Corporations”).

2 Notice of Entity Type.
A = Articles of Incorporation; N = Entity Name; SC = Stock Certificate.

3 Minimum Status Vote.
Approval by two-thirds or more of shareholders is needed to adopt or terminate benefit corporation status or to add, amend, or delete any specific public benefit(s) in the articles of incorporation.

Arizona – typically 2/3rd shareholder vote required, but a “super-majority status vote” of 3/4th of shareholders is required for an existing business corporation to become a benefit corporation by amendment or merger. § 10-2404.

Delaware – 90%+ shareholder vote is required to adopt status. Approval by two-thirds of shareholders is needed to amend specific public benefit(s) or terminate status. 8 § 363.

Oregon – majority shareholder approval required to adopt or terminate status, unless the governing documents require a greater percentage, or, if the benefit corporation is publicly traded then two-thirds shareholder vote is required. § 60.756.

Virginia – 100% shareholder vote is required to adopt status. § 13.1-785. Approval by two-thirds of shareholders is needed to amend specific public benefit(s) or terminate status. § 13.1-785.
**Dissenters’/Appraisal Rights.**

This column deals with whether the social enterprise statute explicitly allows dissenters’/appraisal rights. The column does not evaluate whether dissenters’/appraisal rights may be available through other sections of the state’s corporate law.

Dissenters’/Appraisal Rights only when adopting benefit corp. status – dissenters’ rights are only expressly available when a traditional, for-profit corporation becomes a benefit corporation (not when a benefit corporation terminates status). Connecticut (§ 33-856 (5); Massachusetts (156E §§ 5, 8); Nevada (§ 78B.110).

Minnesota – in addition to providing dissenters’ rights, the Minnesota law provides “[a] public benefit corporation that terminates its status, or has its status revoked more than once pursuant to section 304A.301, subdivision 5, may not elect to become a public benefit corporation under this chapter until three years have passed since the effective date of termination or revocation.” § 304A.103.

**General Public Benefit Purpose.**

General Public Benefit (Model) – “a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.” Model § 102.

Colorado and Delaware – “(1) The board of directors shall manage or direct the business and affairs of a public benefit corporation in a manner that balances the pecuniary interests of the shareholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit identified in its [articles/certificate] of incorporation.” (Colorado) § 7-101-506; (Delaware) 8 § 365. “[Colorado/Delaware PBC] is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.” (Colorado) § 7-101-503(1); (Delaware) 8 § 362(a).

Minnesota – “’General public benefit’ means a net material positive impact from the business and operations of a general benefit corporation on society, the environment, and the well-being of present and future generations.” § 304A.021.

New York – Follows the Model’s definition of “general public benefit,” but also includes that “[t]he purpose to create general public benefit shall be a limitation on the other purposes of the benefit corporation, and shall control over any inconsistent purpose of the benefit corporation.” § 1706.

Oregon – “General public benefit” means “a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit company.” § 60.750 (3).

Washington – calls the mandatory purpose it is statute a “general social purpose,” but allows the SPC to choose one (or more) of the listed purposes, making the mandatory purpose more like the “specific public benefit purpose” that is discussed below. § 23B.25.020.

**Specific Public Benefit Purpose.**

This column notes which state statutes require a specific public purpose. Most benefit corporation statutes allow a specific public benefit purpose, as long as the specific public benefit purpose does not limit the other obligations of the entity, including fulfilling the general public benefit purpose.
Model

“Specific public benefit.’ Includes: (1) providing low-income or underserved individuals or communities with beneficial products or services; (2) promoting economic opportunity for individuals or communities beyond the creation of 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 entities with a purpose to benefit society or the environment; and (7) conferring any other particular benefit on society or the environment. § 102.

Hawaii – add the following to the possible specific public benefits:

“(8) Using the right to exclude, conferred by any and all patents in which the sustainable business corporation has an interest in this right through assignment, license, lien, security agreement, or obligation for the following purposes:

(A) Creating and retaining good jobs within the State as well as throughout the United States;

(B) Upholding fair labor standards nationally and internationally; provided that for purposes of this paragraph, “fair labor standards” shall be construed to prohibit child labor, forced or compulsory labor, discrimination in employment, restrictions on freedom of association, and denial of the right to collective bargaining; and

(C) Enhancing environmental protection nationally and internationally; provided that if the public benefit under this paragraph relating to the use of patents is specified, section 420D-4 shall not apply to the corporation and the sustainable business corporation status shall be permanent, and this specific public benefit shall not be deleted from the articles of the corporation pursuant to subsection (d), unless the annual statement of the benefit director concludes that the sustainable business corporation has failed to pursue this specific public benefit, then the corporation shall have its status as a sustainable business corporation terminated.” § 420D-5.

Louisiana – adds to the possible specific public benefits: historic preservation, urban beautification, and does not include a catch-all provision. § 1803.

Minnesota – “‘Specific public benefit’ means one or more positive impacts, or reduction of a negative impact, on specified categories of natural persons, entities, communities, or interests, other than shareholders in their capacity as shareholders, as enumerated in the articles of a public benefit corporation.” § 304A.021.

Pennsylvania – adds to the possible specific public benefits: businesses that support or create new technologies and growing technology enterprises. § 3302.

California (SPC) – (b)(1) Either of the following statements, as applicable:

(A) “The purpose of this social purpose corporation is to engage in any lawful act or activity for which a social purpose corporation may be organized under Division 1.5 of the California Corporations Code, other than the banking business, the trust company business or the practice of
a profession permitted to be incorporated by the California Corporations Code, for the benefit of the overall interests of the social purpose corporation and its shareholders and in furtherance of the following enumerated purposes __________.”

(B) “The purpose of this social purpose corporation is to engage in the profession of __________ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities, other than the banking or trust company business, not prohibited to a social purpose corporation engaging in that profession by applicable laws and regulations, for the benefit of the overall interests of the social purpose corporation and its shareholders and in furtherance of the following enumerated purposes __________.”

(2) A statement that a purpose of the social purpose corporation, in addition to the purpose stated pursuant to paragraph (1), is to engage in one or more of the following enumerated purposes, as also specified in the statement set forth pursuant to paragraph (1):

(A) One or more charitable or public purpose activities that a nonprofit public benefit corporation is authorized to carry out.

(B) The purpose of promoting positive effects of, or minimizing adverse effects of, the social purpose corporation's activities upon any of the following, provided that the corporation consider the purpose in addition to or together with the financial interests of the shareholders and compliance with legal obligations, and take action consistent with that purpose:

(i) The social purpose corporation's employees, suppliers, customers, and creditors.

(ii) The community and society.

(iii) The environment. § 2602.

Colorado and Delaware – “Public benefit” means one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than shareholders in their capacities as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature." (Colorado) § 7-101-503(2); (Delaware) 8 § 362(b).

Washington State – “Every corporation governed by this chapter must be organized to carry out its business purpose under RCW 23B.03.010 in a manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation's activities upon any or all of (1) the corporation's employees, suppliers, or customers; (2) the local, state, national, or world community; or (3) the environment.” § 23B.25.020

West Virginia – has the introductory language of “‘Specific public benefit’ means a benefit that serves one or more public welfare, religious, charitable, scientific, literary or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, including:...” § 31F-1-102 (e).

**Benefit Directors.**

YesP = benefit director required only for benefit corporations that are publicly traded corporations.
Corporate Forms of Social Enterprise: Comparing the State Statutes
Professor J. Haskell Murray, Belmont University, Nashville, TN

YesR = benefit director required only for benefit corporations that are registered corporations.

Arkansas – explicitly allows benefit directors but does not require them. § 4-36-302.

Florida – explicitly allows a benefit director (if the articles of incorporation so provide) but does not require a benefit director. § 607.608.

Oregon – calls benefit director a “benefit governor.” § 60.750.

Third-Party Standards.

This column deals with whether a third party standard is required. Delaware and Washington State expressly allow the use of a third-party standard, but do not require use of a third-party standard. Third party standard is not defined in Colorado. The remaining states define third-party standard using one or more of the following terms: recognized, comprehensive, independent, credible, and transparent.

Benefit Report in General.

California (SPC) – requires a special purpose current report.

“(a) The board shall cause a special purpose current report to be sent to the shareholders not later than 45 days following the occurrence of any one or more of the events specified in subdivision (b) or (c), and, to the extent consistent with reasonable confidentiality requirements, shall cause the special purpose current report to be made publicly available by posting it on the social purpose corporation’s Internet Web site or providing it through similar electronic means.

(b) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any expenditure or group of related or planned expenditures, excluding compensation of officers and directors, made in furtherance of the special purpose objectives, whether an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including, but not limited to, employee time, whether the expenditure was direct or indirect, and whether the expenditure was categorized as overhead or otherwise where the expenditure has or is likely to have a material adverse impact on the social purpose corporation’s results of operations or financial condition for a quarterly or annual fiscal period.

(c) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any decision by the board or action by management to do either of the following:

(1) Withhold expenditures or a group of related or planned expenditures, whether temporarily or permanently, that were to have been made in furtherance of the special purpose as contemplated in the most recent annual report, whether those planned expenditures were an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including, but not limited to, employee time, whether the planned expenditure was direct or indirect, and whether the planned expenditure to be made would have been categorized as overhead or otherwise, in any case, where the planned expenditure was likely to have had a material positive impact on the social purpose corporation’s impact in furtherance of its special purpose objectives, as contemplated in the most recent annual report.
(2) Determine that the special purpose has been satisfied or should no longer be pursued, whether temporarily or permanently.” § 3501

Publicly Post Benefit Report

Hawaii — “(b) A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a sixty-day public comment period prior to final publication of the benefit report. The deadline for a commentary shall be published in a publicly accessible manner.” HRS § 420D-11

Oregon — clarifies that all of a benefit corporation’s benefit reports, including the reports from previous years, must be posted. § 60.768

File Benefit Report with the State.

Arizona — benefit corporations must file their benefit reports with the Arizona corporation commission. § 10-2442(D).

District of Columbia — benefit corporations must file their benefit reports with the Mayor. § 29-1304.01.

Minnesota — must be filed within “90 days after the conclusion of each calendar year” instead of the more typical within 120-days of the end of the corporation’s fiscal year. § 304A.301.

Utah — benefit corporations must file their benefit reports with the Division. § 16-10b-402(4)(a).

Benefit Report Penalties

A shareholder may be able to bring a benefit enforcement proceeding for the benefit corporation’s failure to produce a benefit report, but this column deals with express penalties or prohibitions in the statutes.

California (SPC) — “(k) . . . if the court finds the failure of the social purpose corporation to comply with the requirements of those sections to have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorney’s fees, in connection with the action or proceeding. . . . (m) All reports and notices required by Section 3500 and Section 3501 shall be maintained by the social purpose corporation, in an electronic form for a period of not less than 10 years.” § 3502.

Florida — “If a benefit corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the benefit corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder of the benefit corporation requests a copy, summarily order the corporation to furnish the report. If the court orders the report to be
furnished, the court may also order the benefit corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in obtaining the order and otherwise enforce his or her rights under this section.” § 607.613

Massachusetts - a business corporation organized under the laws of the commonwealth shall not hold itself out as, advertise itself as, or indicate in any way that it is a benefit corporation unless it was organized under and in full compliance with this chapter. § 156E § 7

Minnesota – “5. Failure to file an annual benefit report. If a public benefit corporation fails to file an annual benefit report in accordance with this section within 90 days of the date on which an annual benefit report is due, the secretary of state shall revoke the corporation’s status as a public benefit corporation under this chapter and must notify the public benefit corporation of the revocation using the information provided by the corporation pursuant to section 5.002 or 5.34 or provided in the articles. 6. Effects of revocation; reinstatement. (a) A public benefit corporation that has lost its public benefit corporation status for failure to timely file an annual benefit report is not entitled to the benefits afforded to a public benefit corporation under this chapter as of the date of revocation. (b) Within 30 days of issuance of revocation of public benefit corporation status by the secretary of state, filing a renewal complying with this section and a $500 fee with the secretary of state will reinstate the corporation as a public benefit corporation under this chapter as of the date of revocation. 7. Intentional failure to file an annual benefit report. A shareholder of the public benefit corporation may obtain payment for the fair value of the shareholder’s shares pursuant to section 302A.473 as a result of revocation of public benefit corporation status pursuant to this section caused by the intentional failure to file an annual benefit report.” § 304A.301(5-7).

Nevada – expressly states that a benefit enforcement proceeding can be used if a report is not posted or provided. § 78B.030(3)

New Hampshire – “(V) If the secretary of state determines that a benefit corporation established pursuant to this chapter fails to make available its annual benefit report pursuant to RSA 293-C:12 and RSA 293-C:13, the secretary of state shall administratively dissolve the corporation in accordance with the procedures in RSA 293-A:14.21.” § 293-C:13.

New Jersey – “(d) (2) If a benefit corporation has not delivered a benefit report to the department for a period of two years, the department may prepare and file a statement that the corporation has forfeited its status as a benefit corporation and is no longer subject to this act. If the corporation subsequently delivers a benefit report to the department for filing, the status of the corporation as a benefit corporation shall be automatically reinstated upon the filing of the benefit report by the department and the corporation shall again be subject to this act.” § 14A:18-11

Washington State – “(5) The superior court of the county in which the social purpose corporation’s registered office is located may, after notice to the corporation, summarily order a social purpose report to be furnished to shareholders on application of any shareholder of a social purpose corporation if a social purpose report was not furnished to shareholders for at least two consecutive fiscal years.” § 23B.25.150

Interests and Liability.

Model – States that directors “shall consider the effects of any action or inaction upon:

[1] the shareholders of the benefit corporation; [2] the employees and work force of the benefit corporation, its subsidiaries, and its suppliers; [3] the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation; [4]
community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located; [5] the local and global environment; [6] the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and [7] the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose, and ; and (2) may consider: [(i) the interests referred to in [cite constituencies provision of the business corporation law if it refers to constituencies not listed above]; and (ii) other pertinent factors or the interests of any other group that they deem appropriate; but (3) need not give priority to a particular interest or factor referred to in paragraph (1) or (2) over any other interest or factor unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles. § 301

**Director Liability**

(c) Exoneration from personal liability. – “Except as provided in the [articles of incorporation] [bylaws], a director is not personally liable for monetary damages for: (1) any action or inaction in the course of performing the duties of a director under subsection (a) if the director performed the duties of office in compliance with [cite provision of the business corporation law on the duties of directors generally] and this section; or (2) failure of the benefit corporation to pursue or create general public benefit or specific public benefit. (d) Limitation on standing. – A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary. (e) Business judgments. – A director who makes a business judgment in good faith fulfills the duty under this section if the director: (1) is not interested in the subject of the business judgment; (2) is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and (3) rationally believes that the business judgment is in the best interests of the benefit corporation.” §301

**Officer Liability**

“(a) General rule. – Each officer of a benefit corporation shall consider the interests and factors described in section 301(a) in the manner provided in that subsection if: (1) the officer has discretion to act with respect to a matter; and (2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation. (b) Coordination with other provisions of law. – The consideration of interests and factors in the manner described in subsection (a) shall not constitute a violation of [cite provision, if any, of the business corporation law on the duties of officers] [the duties of an officer]. (c) Exoneration from personal liability. – Except as provided in the [articles of incorporation] [bylaws], an officer is not personally liable for monetary damages for: (1) an action or inaction as an officer in the course of performing the duties of an officer under subsection (a) if the officer performed the duties of the position in compliance with [cite provision of the business corporation law on the duties of officers] [the duties of an officer] and this section; or (2) failure of the benefit corporation to pursue or create general public benefit or specific public benefit. (d) Limitation on standing. – An officer does not have a duty to a person that is a beneficiary of the general
public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary. (e) Business judgments. – An officer who makes a business judgment in good faith fulfills the duty under this section if the officer: (1) is not interested in the subject of the business judgment; (2) is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and (3) rationally believes that the business judgment is in the best interests of the benefit corporation.” §303. Some states, such as Arkansas and California, do not include section (e) regarding business judgments.

Benefit Corp. Liability – “(b) Limitation on liability of corporation. – A benefit corporation shall not be liable for monetary damages under this part for any failure of the benefit corporation to create a general or specific public benefit.” §305.

California (SPC)

“(a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in the best interests of the social purpose corporation and its shareholders, and with that care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely upon information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) An officer or employee of the social purpose corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters which the director believes to be within that person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause that reliance to be unwarranted.

(c) In discharging his or her duties, a director shall consider those factors, and give weight to those factors, as the director deems relevant, including the overall prospects of the social purpose corporation, the best interests of the social purpose corporation and its shareholders, and the purposes of the social purpose corporation as set forth in its articles.

(d) A person who performs the duties of a director in accordance with subdivisions (a), (b), and (c) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. The liability of a director for monetary damages may be eliminated or limited by a social purpose corporation's articles to the extent provided in paragraph (10) of subdivision (a) of Section 2603.

(e) Notwithstanding any of the purposes set forth in its articles, a social purpose corporation shall not be deemed to hold any of its assets for the benefit of any party other than its shareholders. However, nothing in this division shall be construed as negating existing charitable trust principles or the Attorney General's authority to enforce any charitable trust created.
(f) Nothing in this section, express or implied, is intended to create or grant or shall create or grant any right in or for any person or any cause of action by or for any person, and a director shall not be responsible to any party other than the social purpose corporation and its shareholders."

§2700.

Colorado and Delaware

“A director of a public benefit corporation: [does/shall] not . . . have a duty to any person on account of an interest of the person in the public benefit identified in the [articles/certificate] of incorporation or on account of an interest materially affected by the corporation’s conduct; and

With respect to a decision implicating the balance requirement . . . of this section, will be deemed to satisfy the director’s fiduciary duties to shareholders and the corporation if the director’s decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

The [articles/certificate] of incorporation of a public benefit corporation may include a provision that a disinterested director’s failure to satisfy this section does not, for the purposes of section [7-108-401 or article 109/§ 102(b)(7) or § 145] of this title, constitute an act or omission not in good faith or a breach of the duty of loyalty.” (Colorado) § 7-101-506; (Delaware) 8 § 365.

Connecticut

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

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

Hawaii

(a) In discharging the duties of their respective positions, the board of directors, committees of the board, and individual directors of a sustainable business corporation, in considering the best interests of the sustainable business corporation:

(1) Shall consider the effects of any action of the sustainable business corporation upon:

(A) The shareholders of the sustainable business corporation; and

(B) The accomplishment of general and specific public benefits set forth in the sustainable business corporation’s purposes; and

(2) May consider:
(A) The employees and workforce of the sustainable business corporation and its subsidiaries and suppliers;
(B) The interests of customers as beneficiaries of the general or specific public benefit purposes of the sustainable business corporation;
(C) Community and societal considerations, including those of any community in which offices or facilities of the sustainable business corporation or its subsidiaries or suppliers are located;
(D) The local and global environment;
(E) The short-term and long-term interests of the sustainable business corporation, including benefits that may accrue to the sustainable business corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the sustainable business corporation;
(F) The ability of the sustainable business corporation to accomplish its general public benefit purpose and any specific public benefit purpose;
(G) The resources, intent, and conduct of any person seeking to acquire control of the corporation; and
(H) Any other pertinent factors or the interests of any other group that they deem appropriate.

(b) A director shall not be personally liable for monetary damages for any action taken as a director if the director performed the duties of the director’s office in compliance with the general standards of conduct pursuant to section 414-221. § 420D-6.

Minnesota

General Benefit Corporation. “In discharging the duties of the position of director of a general benefit corporation, a director:
(1) Shall consider the effects of any proposed, contemplated, or actual conduct on: (i) the general benefit corporation's ability to pursue general public benefit; (ii) if the articles also state a specific public benefit purpose, the general benefit corporation's ability to pursue its specific public benefit; and (iii) the interests of the constituencies stated in section 302A.251, subdivision 5, including the pecuniary interests of its shareholders; and
(2) May not give regular, presumptive, or permanent priority to: (i) the pecuniary interests of the shareholders; or (ii) any other interest or consideration unless the articles identify the interest or consideration as having priority.” § 304A.201(1).

Specific Benefit Corporation. “In discharging the duties of the position of director of a specific benefit corporation, a director: (1) shall consider the effects of any proposed, contemplated, or actual conduct on: (i) the pecuniary interest of its shareholders; and (ii) the specific benefit corporation’s ability to pursue its specific public benefit purpose; (2) may consider the interests of the constituencies stated in section 302A.251, subdivision 5; and (3) may not give regular, presumptive, or permanent priority to: (i) the pecuniary interests of the shareholders; or (ii) any other interest or consideration unless the articles identify the interest or consideration as having priority.” § 304A.201(2).

Liability. “A director who performs the duties of a director stated in subdivisions 1 and 2 is not liable by reason of being or having been a
director of a public benefit corporation.”  § 304A.201(3).

Duty of Loyalty. “The articles of a public benefit corporation may include a provision that any disinterested failure to satisfy subdivision 1 or 2 of this section shall not, for purposes of this section or section 302A.251, subdivision 4, constitute a breach of the duty of loyalty.” § 304A.201(5).

Grounds for Relief. “In addition to the grounds for relief stated in section 302A.751, subdivision 1, paragraph (b), a court may grant relief under this chapter when:
(1) directors or those in control of a public benefit corporation have breached the duties stated in section 304A.201 to a substantial extent and in a sustained manner; or
(2) the public benefit corporation has for an unreasonably long period of time failed to pursue:
(i) in the case of a general benefit corporation: (A) general public benefit; or (B) any specific public benefit purpose stated in its articles; and
(ii) in the case of a specific benefit corporation, any specific public benefit purpose stated in its articles.” § 304A.202(2).

Particular Relief Available. “(a) In an action under this chapter, in addition to granting any other equitable relief the court deems just and reasonable in the circumstances, the court may:
(1) order the public benefit corporation to terminate its status as a public benefit corporation pursuant to section 304A.103, subdivision 1;
(2) remove one or more directors from the public benefit corporation’s board of directors and determine whether the vacancy will be filled:
(i) as provided in section 302A.225; or
(ii) by court appointment, with the appointee to serve only until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders;
(3) appoint a receiver of the public benefit corporation to:
(i) wind up and liquidate the activities and business of the public benefit corporation; or
(ii) carry on the business and activities of the public benefit corporation in a manner consistent with this chapter.” § 304A.202(3).

Washington State

(1) A director of a social purpose corporation shall discharge the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation in accordance with RCW 23B.08.300.

(2) Unless the articles of incorporation provide otherwise, in discharging his or her duties as a director, the director of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as the director deems relevant.
(3) Any action taken as a director of a social purpose corporation, or any failure to take any action, that the director reasonably believes is intended to promote one or more of the social purposes of the corporation shall be deemed to be in the best interests of the corporation.

(4) A director of a social purpose corporation is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) Nothing in this chapter creates any liability or grants any right in or for any person or any cause of action by or for any person, and a director shall not be responsible to any party other than the corporation and its shareholders.

(6) Nothing in this chapter alters the general standards for any director of a corporation that is not a social purpose corporation. § 23B.25.050

West Virginia

Officer. “An officer of a benefit corporation has no liability for actions taken that the officer believes, in his or her good faith business judgment, are consistent with: (i) The general public benefit or specific public benefit specified in the articles of incorporation or bylaws or otherwise adopted by the board of directors; and (ii) the requirements of any third-party standard then in effect for the corporation.” § 31F-4-402.

xiv Standing.

SH = Shareholders, D = Directors, 5P/10P = “A person or group of persons that owns beneficially or of record 5/10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary,” O = Other persons as have been specified in the articles or bylaws of the benefit corporation. 2SH = “(a) At least two percent of the corporation’s outstanding shares; or (b) In the case of a corporation with shares listed on a national securities exchange, the lesser of two percent of the corporation’s outstanding shares or shares of at least two million dollars in market value.” Model = SH, D, 5P, or O. Model2 = 2% shareholder, D, 5P, or O.

Connecticut

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

Minnesota – “No person other than a shareholder may assert a claim under this chapter or chapter 302A against a public benefit corporation, its directors, or its officers on account of the public benefit corporation’s director’s or officer’s failure to pursue or create general public benefit or a specific public benefit.” § 304A.202.