

**First Extraordinary Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12B-2009.01 Thomas Morris x4218

SENATE BILL 12S-003

SENATE SPONSORSHIP

Bacon,

HOUSE SPONSORSHIP

Massey,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING BENEFIT CORPORATIONS, AND, IN CONNECTION**
102 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill enacts the "Invest in Colorado Act" and authorizes the creation of benefit corporations. A benefit corporation must have, as one of its purposes specified in its articles of incorporation, the goal of creating general public benefit. The bill establishes the requirements for a corporation to be created as, or to elect to become, a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

benefit corporation, including:

- ! The election and termination of benefit status;
- ! The promotion of general public benefit as a purpose of the corporation;
- ! Standards of accountability for the conduct of directors and officers of a benefit corporation;
- ! Designation of a benefit director;
- ! Rights of action in benefit proceedings; and
- ! The preparation and availability of annual benefit reports.

Section 2 specifies dissenters' rights for shareholders of a benefit corporation. **Section 3** clarifies that an offer or sale of a security of a benefit corporation is not a solicitation for purposes of the "Colorado Charitable Solicitations Act" if the offer or sale complies with the "Colorado Securities Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article
3 101 of title 7 as follows:

4 **PART 5**

5 **BENEFIT CORPORATIONS**

6 **7-101-501. Short title.** THIS PART 5 SHALL BE KNOWN AND MAY
7 BE CITED AS THE "INVEST IN COLORADO ACT".

8 **7-101-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "BENEFIT CORPORATION" MEANS A CORPORATION:

11 (a) THAT HAS ELECTED TO BECOME SUBJECT TO THIS PART 5; AND

12 (b) THE STATUS OF WHICH AS A BENEFIT CORPORATION HAS NOT
13 BEEN TERMINATED UNDER SECTION 7-101-506.

14 (2) "BENEFIT DIRECTOR" MEANS EITHER:

15 (a) THE DIRECTOR DESIGNATED AS THE BENEFIT DIRECTOR OF A
16 BENEFIT CORPORATION UNDER SECTION 7-101-509; OR

17 (b) A PERSON WITH ONE OR MORE OF THE POWERS, DUTIES, OR

1 RIGHTS OF A BENEFIT DIRECTOR TO THE EXTENT PROVIDED IN THE BYLAWS
2 UNDER SECTION 7-101-509.

3 (3) "BENEFIT ENFORCEMENT PROCEEDING" MEANS ANY CLAIM OR
4 ACTION FOR:

5 (a) FAILURE OF A BENEFIT CORPORATION TO PURSUE OR CREATE
6 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT PURPOSE SET
7 FORTH IN ITS ARTICLES OF INCORPORATION; OR

8 (b) VIOLATION OF ANY OBLIGATION, DUTY, OR STANDARD OF
9 CONDUCT UNDER THIS PART 5.

10 (4) "BENEFIT OFFICER" MEANS THE INDIVIDUAL DESIGNATED AS
11 THE BENEFIT OFFICER OF A BENEFIT CORPORATION UNDER SECTION
12 7-101-511.

13 (5) "GENERAL PUBLIC BENEFIT" MEANS A MATERIAL POSITIVE
14 IMPACT ON SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE,
15 ASSESSED AGAINST ANY THIRD-PARTY STANDARD, FROM THE BUSINESS
16 AND OPERATIONS OF A BENEFIT CORPORATION. THE ASSESSMENT DOES
17 NOT NEED TO BE PERFORMED, AUDITED, OR CERTIFIED BY A THIRD PARTY.

18 (6) "INDEPENDENT" MEANS HAVING NO MATERIAL RELATIONSHIP
19 WITH A BENEFIT CORPORATION OR A SUBSIDIARY OF THE BENEFIT
20 CORPORATION. A PERSON WHO SERVES AS A BENEFIT DIRECTOR OR
21 BENEFIT OFFICER DOES NOT LOSE HIS OR HER STATUS AS INDEPENDENT
22 MERELY BY SERVING IN THAT POSITION. IN DETERMINING WHETHER A
23 PERSON IS INDEPENDENT, A PERCENTAGE OF OWNERSHIP IN AN ENTITY
24 MUST BE CALCULATED AS IF ALL OUTSTANDING RIGHTS TO ACQUIRE
25 EQUITY INTERESTS IN THE ENTITY HAD BEEN EXERCISED. A MATERIAL
26 RELATIONSHIP BETWEEN A PERSON AND A BENEFIT CORPORATION OR ANY
27 OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY PRESUMED TO EXIST IF ANY

1 OF THE FOLLOWING APPLY:

2 (a) THE PERSON IS, OR HAS BEEN WITHIN THE LAST THREE YEARS,
3 AN EMPLOYEE, OTHER THAN A BENEFIT OFFICER, OF THE BENEFIT
4 CORPORATION OR OF A SUBSIDIARY OF THE BENEFIT CORPORATION.

5 (b) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS, OR HAS
6 BEEN WITHIN THE LAST THREE YEARS, AN EXECUTIVE OFFICER, OTHER
7 THAN A BENEFIT OFFICER, OF THE BENEFIT CORPORATION OR OF ITS
8 SUBSIDIARY.

9 (c) EITHER OF THE FOLLOWING HAS A BENEFICIAL OR RECORD
10 OWNERSHIP OF FIVE PERCENT OR MORE OF THE OUTSTANDING SHARES OF
11 THE BENEFIT CORPORATION:

12 (I) THE PERSON; OR

13 (II) AN ENTITY:

14 (A) OF WHICH THE PERSON IS A DIRECTOR, AN OFFICER, OR A
15 MANAGER; OR

16 (B) IN WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD FIVE
17 PERCENT OR MORE OF THE OUTSTANDING EQUITY INTERESTS.

18 (7) "MINIMUM STATUS VOTE" MEANS:

19 (a) IN THE CASE OF A CORPORATION, IN ADDITION TO ANY OTHER
20 REQUIRED APPROVAL OR VOTE, THE CORPORATE ACTION MUST BE
21 APPROVED BY THE SHAREHOLDERS OF EACH CLASS OR SERIES THAT ARE
22 ENTITLED TO VOTE ON THE ACTION BY AT LEAST TWO-THIRDS OF THE
23 VOTES THAT ALL SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED
24 TO CAST ON THE ACTION.

25 (b) IN THE CASE OF A DOMESTIC ENTITY OTHER THAN A
26 CORPORATION, IN ADDITION TO ANY OTHER REQUIRED APPROVAL, VOTE,
27 OR CONSENT, THE ACTION MUST BE APPROVED BY VOTE OR CONSENT OF

1 THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE
2 ENTITY THAT ARE ENTITLED TO VOTE ON THE ACTION BY AT LEAST
3 TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS
4 ARE ENTITLED TO CAST ON THE ACTION.

5 (8) "SPECIFIC PUBLIC BENEFIT" INCLUDES:

6 (a) PROVIDING LOW-INCOME OR UNDERSERVED INDIVIDUALS OR
7 COMMUNITIES WITH BENEFICIAL PRODUCTS OR SERVICES;

8 (b) PROMOTING ECONOMIC OPPORTUNITY FOR INDIVIDUALS OR
9 COMMUNITIES BEYOND THE CREATION OF JOBS IN THE NORMAL COURSE OF
10 BUSINESS;

11 (c) PRESERVING THE ENVIRONMENT;

12 (d) IMPROVING HUMAN HEALTH;

13 (e) PROMOTING THE ARTS, SCIENCES, OR ADVANCEMENT OF
14 KNOWLEDGE;

15 (f) INCREASING THE FLOW OF CAPITAL TO ENTITIES WITH A PUBLIC
16 BENEFIT PURPOSE; AND

17 (g) CONFERRING ANY OTHER PARTICULAR BENEFIT ON SOCIETY OR
18 THE ENVIRONMENT.

19 (9) "SUBSIDIARY" MEANS, IN RELATION TO A PERSON, AN ENTITY
20 IN WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD FIFTY PERCENT
21 OR MORE OF THE OUTSTANDING EQUITY INTERESTS. A PERCENTAGE OF
22 OWNERSHIP IN AN ENTITY MUST BE CALCULATED AS IF ALL OUTSTANDING
23 RIGHTS TO ACQUIRE EQUITY INTERESTS IN THE ENTITY HAD BEEN
24 EXERCISED.

25 (10) "THIRD-PARTY STANDARD" MEANS A RECOGNIZED STANDARD
26 FOR DEFINING, REPORTING, AND ASSESSING CORPORATE SOCIAL AND
27 ENVIRONMENTAL PERFORMANCE THAT IS:

1 (a) COMPREHENSIVE IN THAT IT ASSESSES THE EFFECT OF A
2 BUSINESS AND ITS OPERATIONS UPON THE INTERESTS LISTED IN SECTION
3 7-101-508 (1) (a) (II), (1) (a) (III), (1) (a) (IV), AND (1) (a) (V);

4 (b) DEVELOPED BY AN ORGANIZATION THAT IS INDEPENDENT OF
5 THE BENEFIT CORPORATION AND SATISFIES THE FOLLOWING
6 REQUIREMENTS:

7 (I) NOT MORE THAN ONE-THIRD OF THE MEMBERS OF THE
8 GOVERNING BODY OF THE ORGANIZATION ARE REPRESENTATIVES OF ANY
9 OF THE FOLLOWING:

10 (A) AN ASSOCIATION OF BUSINESSES OPERATING IN A SPECIFIC
11 INDUSTRY, THE PERFORMANCE OF WHOSE MEMBERS IS MEASURED BY THE
12 STANDARD;

13 (B) BUSINESSES FROM A SPECIFIC INDUSTRY OR AN ASSOCIATION
14 OF BUSINESSES IN THAT INDUSTRY; OR

15 (C) A BUSINESS WHOSE PERFORMANCE IS ASSESSED AGAINST THE
16 STANDARD; AND

17 (II) THE ORGANIZATION IS NOT MATERIALLY FINANCED BY AN
18 ASSOCIATION OR BUSINESS DESCRIBED IN SUBPARAGRAPH (I) OF THIS
19 PARAGRAPH (b);

20 (c) CREDIBLE BECAUSE THE STANDARD IS DEVELOPED BY A PERSON
21 THAT BOTH:

22 (I) HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS OVERALL
23 CORPORATE SOCIAL AND ENVIRONMENTAL PERFORMANCE; AND

24 (II) USES A BALANCED MULTISTAKEHOLDER APPROACH,
25 INCLUDING A PUBLIC COMMENT PERIOD OF AT LEAST THIRTY DAYS, TO
26 DEVELOP THE STANDARD; AND

27 (d) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS

1 PUBLICLY AVAILABLE:

2 (I) ABOUT THE STANDARD:

3 (A) THE CRITERIA CONSIDERED WHEN MEASURING THE OVERALL
4 SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A BUSINESS; AND

5 (B) THE RELATIVE WEIGHTINGS OF THOSE CRITERIA, IF THE
6 STANDARD USES RELATIVE WEIGHTINGS OF THE CRITERIA; AND

7 (II) ABOUT THE DEVELOPMENT AND REVISION OF THE STANDARD:

8 (A) THE IDENTITY OF THE DIRECTORS, OFFICERS, MATERIAL
9 OWNERS, AND GOVERNING BODY OF THE ORGANIZATION THAT DEVELOPED
10 AND CONTROLS REVISIONS TO THE STANDARD;

11 (B) THE PROCESS BY WHICH REVISIONS TO THE STANDARD AND
12 CHANGES TO THE MEMBERSHIP OF THE GOVERNING BODY ARE MADE; AND

13 (C) AN ACCOUNTING OF THE SOURCES OF FINANCIAL SUPPORT FOR
14 THE ORGANIZATION, WITH SUFFICIENT DETAIL TO DISCLOSE ANY
15 RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED TO PRESENT A
16 POTENTIAL CONFLICT OF INTEREST.

17 **7-101-503. Application and amendment of part.** (1) THIS PART
18 5 APPLIES ONLY TO A BENEFIT CORPORATION.

19 (2) THE EXISTENCE OF A PROVISION OF THIS PART 5 DOES NOT OF
20 ITSELF CREATE ANY IMPLICATION THAT A CONTRARY OR DIFFERENT RULE
21 OF LAW IS OR WOULD BE APPLICABLE TO A CORPORATION OR OTHER ENTITY
22 THAT IS NOT A BENEFIT CORPORATION. THIS PART 5 DOES NOT AFFECT ANY
23 STATUTE OR RULE OF LAW AS IT APPLIES TO A CORPORATION OR OTHER
24 ENTITY THAT IS NOT A BENEFIT CORPORATION.

25 (3) THE ARTICLES OF INCORPORATION AND BYLAWS OF A BENEFIT
26 CORPORATION MUST BE CONSISTENT WITH THIS PART 5.

27 (4) THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101

1 TO 117 OF THIS TITLE, AND THE "COLORADO CORPORATIONS AND
2 ASSOCIATIONS ACT", ARTICLE 90 OF THIS TITLE, APPLY TO ALL BENEFIT
3 CORPORATIONS; EXCEPT THAT THIS PART 5 CONTROLS OVER ANY
4 PROVISION OF THE "COLORADO BUSINESS CORPORATION ACT" OR THE
5 "COLORADO CORPORATIONS AND ASSOCIATIONS ACT" THAT IS
6 INCONSISTENT WITH THIS PART 5.

7 (5) THE GENERAL ASSEMBLY MAY AMEND OR REPEAL ALL OR PART
8 OF THIS PART 5 AT ANY TIME, AND ALL DOMESTIC CORPORATIONS ARE
9 GOVERNED BY THE AMENDMENT OR REPEAL.

10 **7-101-504. Formation of benefit corporations.** A BENEFIT
11 CORPORATION MUST BE FORMED IN ACCORDANCE WITH ARTICLE 102 OF
12 THIS TITLE AND PART 3 OF ARTICLE 90 OF THIS TITLE, BUT ITS ARTICLES OF
13 INCORPORATION MUST ALSO STATE THAT IT IS A BENEFIT CORPORATION.

14 **7-101-505. Election of status.** (1) AN EXISTING CORPORATION
15 MAY BECOME A BENEFIT CORPORATION UNDER THIS PART 5 BY AMENDING
16 ITS ARTICLES OF INCORPORATION SO THAT THEY CONTAIN, IN ADDITION TO
17 THE REQUIREMENTS OF SECTION 7-102-102 OF THE "COLORADO BUSINESS
18 CORPORATION ACT", A STATEMENT THAT THE CORPORATION IS A BENEFIT
19 CORPORATION. IN ORDER TO BE EFFECTIVE, THE AMENDMENT MUST BE
20 ADOPTED BY THE MINIMUM STATUS VOTE.

21 (2) IF AN ENTITY THAT IS NOT A BENEFIT CORPORATION IS A PARTY
22 TO A MERGER OR CONVERSION OR THE EXCHANGING ENTITY IN A SHARE
23 EXCHANGE, AND THE SURVIVING, NEW, OR RESULTING ENTITY IN THE
24 MERGER, CONVERSION, OR SHARE EXCHANGE IS TO BE A BENEFIT
25 CORPORATION, THE PLAN OF MERGER, CONVERSION, OR SHARE EXCHANGE
26 MUST BE ADOPTED BY THE MINIMUM STATUS VOTE. THE APPROVAL OF ANY
27 OTHER PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF SHARE

1 EXCHANGE MUST BE APPROVED BY A BENEFIT CORPORATION OR OTHER
2 ENTITY AS PROVIDED IN ARTICLE 90 OF THIS TITLE.

3 **7-101-506. Termination of status.** (1) A BENEFIT CORPORATION
4 MAY TERMINATE ITS STATUS AS SUCH AND CEASE TO BE SUBJECT TO THIS
5 PART 5 BY AMENDING ITS ARTICLES OF INCORPORATION TO DELETE THE
6 PROVISION REQUIRED BY SECTION 7-101-504 TO BE STATED IN THE
7 ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION. IN ORDER TO
8 BE EFFECTIVE, THE AMENDMENT MUST BE ADOPTED BY THE MINIMUM
9 STATUS VOTE.

10 (2) IF A PLAN OF MERGER, CONVERSION, OR SHARE EXCHANGE
11 WOULD HAVE THE EFFECT OF TERMINATING THE STATUS OF A
12 CORPORATION AS A BENEFIT CORPORATION, IN ORDER TO BE EFFECTIVE,
13 THE PLAN MUST BE ADOPTED BY THE MINIMUM STATUS VOTE. ANY SALE,
14 LEASE, EXCHANGE, OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL
15 OF THE ASSETS OF A BENEFIT CORPORATION, UNLESS THE TRANSACTION IS
16 IN THE USUAL AND REGULAR COURSE OF BUSINESS, IS NOT EFFECTIVE
17 UNLESS THE TRANSACTION IS APPROVED BY AT LEAST THE MINIMUM
18 STATUS VOTE. THE APPROVAL OF ANY OTHER PLAN OF MERGER, PLAN OF
19 CONVERSION, OR PLAN OF SHARE EXCHANGE MUST BE APPROVED BY A
20 BENEFIT CORPORATION OR OTHER ENTITY AS PROVIDED IN ARTICLE 90 OF
21 THIS TITLE.

22 **7-101-507. Corporate purposes.** (1) A BENEFIT CORPORATION
23 MUST HAVE A PURPOSE OF CREATING GENERAL PUBLIC BENEFIT. THIS
24 PURPOSE IS IN ADDITION TO ITS PURPOSE UNDER SECTION 7-103-101.

25 (2) THE ARTICLES OF INCORPORATION OF A BENEFIT CORPORATION
26 MAY IDENTIFY ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE
27 PURPOSE OF THE BENEFIT CORPORATION TO CREATE IN ADDITION TO ITS

1 PURPOSES UNDER SECTION 7-103-101 AND SUBSECTION (1) OF THIS
2 SECTION. THE IDENTIFICATION OF A SPECIFIC PUBLIC BENEFIT UNDER THIS
3 SUBSECTION (2) DOES NOT LIMIT THE OBLIGATION OF A BENEFIT
4 CORPORATION UNDER SUBSECTION (1) OF THIS SECTION.

5 (3) THE CREATION OF GENERAL PUBLIC BENEFIT AND SPECIFIC
6 PUBLIC BENEFIT UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION IS IN
7 THE BEST INTERESTS OF THE BENEFIT CORPORATION.

8 (4) A BENEFIT CORPORATION MAY AMEND ITS ARTICLES OF
9 INCORPORATION TO ADD, AMEND, OR DELETE THE IDENTIFICATION OF A
10 SPECIFIC PUBLIC BENEFIT THAT IT IS THE PURPOSE OF THE BENEFIT
11 CORPORATION TO CREATE. IN ORDER TO BE EFFECTIVE, THE AMENDMENT
12 MUST BE ADOPTED BY THE MINIMUM STATUS VOTE.

13 **7-101-508. Standard of conduct for directors.** (1) IN
14 DISCHARGING THE DUTIES OF THEIR RESPECTIVE POSITIONS AND IN
15 CONSIDERING THE BEST INTERESTS OF THE BENEFIT CORPORATION, THE
16 BOARD OF DIRECTORS, COMMITTEES OF THE BOARD, AND INDIVIDUAL
17 DIRECTORS OF A BENEFIT CORPORATION:

18 (a) SHALL CONSIDER THE EFFECTS OF ANY ACTION OR INACTION
19 UPON:

20 (I) THE SHAREHOLDERS OF THE BENEFIT CORPORATION;

21 (II) THE EMPLOYEES AND WORK FORCE OF THE BENEFIT
22 CORPORATION, ITS SUBSIDIARIES, AND ITS SUPPLIERS;

23 (III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF THE
24 GENERAL PUBLIC BENEFIT OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE
25 BENEFIT CORPORATION;

26 (IV) COMMUNITY AND SOCIETAL FACTORS, INCLUDING THOSE OF
27 EACH COMMUNITY IN WHICH OFFICES OR FACILITIES OF THE BENEFIT

1 CORPORATION, ITS SUBSIDIARIES, OR ITS SUPPLIERS ARE LOCATED;
2 (V) THE LOCAL AND GLOBAL ENVIRONMENT;
3 (VI) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE
4 BENEFIT CORPORATION, INCLUDING BENEFITS THAT MAY ACCRUE TO THE
5 BENEFIT CORPORATION FROM ITS LONG-TERM PLANS AND THE POSSIBILITY
6 THAT THESE INTERESTS MAY BE BEST SERVED BY THE CONTINUED
7 INDEPENDENCE OF THE BENEFIT CORPORATION; AND
8 (VII) THE ABILITY OF THE BENEFIT CORPORATION TO ACCOMPLISH
9 ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC BENEFIT
10 PURPOSE; AND
11 (b) MAY CONSIDER OTHER PERTINENT FACTORS OR THE INTERESTS
12 OF ANY OTHER GROUP THAT THEY DEEM APPROPRIATE; BUT
13 (c) NEED NOT GIVE PRIORITY TO THE INTERESTS OF A PARTICULAR
14 PERSON OR GROUP REFERRED TO IN PARAGRAPH (a) OR (b) OF THIS
15 SUBSECTION (1) OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP
16 UNLESS THE BENEFIT CORPORATION HAS STATED IN ITS ARTICLES OF
17 INCORPORATION ITS INTENTION TO GIVE PRIORITY TO CERTAIN INTERESTS
18 RELATED TO ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC BENEFIT
19 PURPOSE OR OF A SPECIFIC PUBLIC BENEFIT PURPOSE IDENTIFIED IN ITS
20 ARTICLES OF INCORPORATION.
21 (2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE
22 MANNER REQUIRED BY SUBSECTION (1) OF THIS SECTION DOES NOT
23 CONSTITUTE A VIOLATION OF SECTION 7-108-401.
24 (3) A DIRECTOR IS NOT PERSONALLY LIABLE FOR MONETARY
25 DAMAGES FOR:
26 (a) ANY ACTION TAKEN AS A DIRECTOR IF THE DIRECTOR
27 PERFORMED THE DUTIES OF OFFICE IN COMPLIANCE WITH SECTION

1 7-108-401; OR

2 (b) FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE
3 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

4 (4) A DIRECTOR DOES NOT OWE A DUTY TO A PERSON THAT IS A
5 BENEFICIARY OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC
6 PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION ARISING FROM THE
7 STATUS OF THE PERSON AS A BENEFICIARY.

8 **7-101-509. Benefit director.** (1) THE BOARD OF DIRECTORS OF A
9 BENEFIT CORPORATION MUST INCLUDE AT LEAST ONE DIRECTOR, WHO:

10 (a) IS DESIGNATED THE BENEFIT DIRECTOR; AND

11 (b) HAS, IN ADDITION TO THE POWERS, DUTIES, RIGHTS, AND
12 IMMUNITIES OF THE OTHER DIRECTORS OF THE BENEFIT CORPORATION, THE
13 POWERS, DUTIES, RIGHTS, AND IMMUNITIES PROVIDED IN THIS PART 5.

14 (2) THE BENEFIT DIRECTOR MUST BE ELECTED, AND MAY BE
15 REMOVED, IN THE MANNER PROVIDED BY PART 1 OF ARTICLE 108 OF THIS
16 TITLE, AND MUST BE AN INDIVIDUAL WHO IS INDEPENDENT. THE BENEFIT
17 DIRECTOR MAY SERVE AS THE BENEFIT OFFICER AT THE SAME TIME AS
18 SERVING AS THE BENEFIT DIRECTOR. THE ARTICLES OF INCORPORATION OR
19 BYLAWS OF A BENEFIT CORPORATION MAY PRESCRIBE ADDITIONAL
20 QUALIFICATIONS OF THE BENEFIT DIRECTOR NOT INCONSISTENT WITH THIS
21 SUBSECTION (2).

22 (3) THE BENEFIT DIRECTOR SHALL PREPARE, AND THE BENEFIT
23 CORPORATION SHALL INCLUDE IN THE ANNUAL BENEFIT REPORT TO
24 SHAREHOLDERS REQUIRED BY SECTION 7-101-513, THE OPINION OF THE
25 BENEFIT DIRECTOR ON ALL OF THE FOLLOWING:

26 (a) WHETHER THE BENEFIT CORPORATION ACTED IN ACCORDANCE
27 WITH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY SPECIFIC PUBLIC

1 BENEFIT PURPOSE IN ALL MATERIAL RESPECTS DURING THE PERIOD
2 COVERED BY THE REPORT;

3 (b) WHETHER THE DIRECTORS AND OFFICERS COMPLIED WITH
4 SECTIONS 7-101-508 (1) AND 7-101-510 (1), RESPECTIVELY;

5 (c) IF, IN THE OPINION OF THE BENEFIT DIRECTOR, THE BENEFIT
6 CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED TO COMPLY WITH
7 THE STANDARDS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS
8 SUBSECTION (3), A DESCRIPTION OF THE WAYS IN WHICH THE BENEFIT
9 CORPORATION OR ITS DIRECTORS OR OFFICERS FAILED TO COMPLY.

10 (4) THE ACT OR INACTION OF AN INDIVIDUAL IN THE CAPACITY OF
11 A BENEFIT DIRECTOR CONSTITUTES FOR ALL PURPOSES AN ACT OR
12 INACTION OF THAT INDIVIDUAL IN THE CAPACITY OF A DIRECTOR OF THE
13 BENEFIT CORPORATION.

14 (5) REGARDLESS OF WHETHER THE ARTICLES OF INCORPORATION
15 OF A BENEFIT CORPORATION INCLUDE A PROVISION ELIMINATING OR
16 LIMITING THE PERSONAL LIABILITY OF DIRECTORS AUTHORIZED BY
17 SECTION 7-108-402, A BENEFIT DIRECTOR IS NOT PERSONALLY LIABLE FOR
18 AN ACT OR OMISSION IN THE CAPACITY OF A BENEFIT DIRECTOR UNLESS
19 THE ACT OR OMISSION CONSTITUTES SELF-DEALING, WILLFUL
20 MISCONDUCT, OR A KNOWING VIOLATION OF LAW.

21 (6) IF THE ARTICLES OF INCORPORATION OF A BENEFIT
22 CORPORATION PROVIDE THAT THE POWERS AND DUTIES CONFERRED OR
23 IMPOSED UPON THE BOARD OF DIRECTORS MUST BE EXERCISED OR
24 PERFORMED BY A PERSON OTHER THAN THE DIRECTORS UNDER SECTION
25 7-108-101, THEN THE ARTICLES OF INCORPORATION MUST PROVIDE THAT
26 THE PERSONS OR SHAREHOLDERS WHO PERFORM THE DUTIES OF THE
27 BOARD OF DIRECTORS INCLUDE A PERSON WITH THE POWERS, DUTIES,

1 RIGHTS, AND IMMUNITIES OF A BENEFIT DIRECTOR.

2 (7) A PERSON THAT EXERCISES ONE OR MORE OF THE POWERS,
3 DUTIES, OR RIGHTS OF A BENEFIT DIRECTOR UNDER SUBSECTION (6) OF THIS
4 SECTION:

5 (a) DOES NOT NEED TO BE INDEPENDENT OF THE BENEFIT
6 CORPORATION;

7 (b) HAS THE IMMUNITIES OF A BENEFIT DIRECTOR;

8 (c) MAY SHARE THE POWERS, DUTIES, AND RIGHTS OF A BENEFIT
9 DIRECTOR WITH ONE OR MORE OTHER PERSONS; AND

10 (d) IS NOT SUBJECT TO THE PROCEDURES FOR ELECTION OR
11 REMOVAL OF DIRECTORS IN PART 1 OF ARTICLE 108 OF THIS TITLE UNLESS:

12 (I) THE PERSON IS ALSO A DIRECTOR OF THE BENEFIT
13 CORPORATION; OR

14 (II) THE BYLAWS MAKE THOSE PROCEDURES APPLICABLE.

15 **7-101-510. Standard of conduct for officers.** (1) EACH OFFICER
16 OF A BENEFIT CORPORATION SHALL CONSIDER THE INTERESTS AND
17 FACTORS DESCRIBED IN SECTION 7-101-508 (1) IN THE MANNER PROVIDED
18 IN THAT SECTION IF:

19 (a) THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A
20 MATTER; AND

21 (b) IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER
22 MAY HAVE A MATERIAL EFFECT ON THE CREATION BY THE BENEFIT
23 CORPORATION OF GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT
24 IDENTIFIED IN THE ARTICLES OF INCORPORATION OF THE BENEFIT
25 CORPORATION.

26 (2) THE CONSIDERATION OF INTERESTS AND FACTORS IN THE
27 MANNER DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT

1 VIOLATE SECTION 7-108-401.

2 (3) AN OFFICER IS NOT PERSONALLY LIABLE FOR MONETARY
3 DAMAGES FOR:

4 (a) AN ACTION OR OMISSION AS AN OFFICER IF THE OFFICER
5 PERFORMED THE DUTIES OF THE POSITION IN COMPLIANCE WITH SECTION
6 7-108-401 AND THIS SECTION; OR

7 (b) FAILURE OF THE BENEFIT CORPORATION TO PURSUE OR CREATE
8 GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

9 (4) AN OFFICER DOES NOT HAVE A DUTY TO A PERSON THAT IS A
10 BENEFICIARY OF THE GENERAL PUBLIC BENEFIT PURPOSE OR A SPECIFIC
11 PUBLIC BENEFIT PURPOSE OF A BENEFIT CORPORATION ARISING FROM THE
12 STATUS OF THE PERSON AS A BENEFICIARY.

13 **7-101-511. Benefit officer.** (1) A BENEFIT CORPORATION MAY
14 HAVE AN OFFICER DESIGNATED AS THE BENEFIT OFFICER.

15 (2) A BENEFIT OFFICER HAS:

16 (a) THE POWERS AND DUTIES RELATING TO THE PURPOSE OF THE
17 BENEFIT CORPORATION TO CREATE GENERAL PUBLIC BENEFIT OR SPECIFIC
18 PUBLIC BENEFIT PROVIDED:

19 (I) BY THE BYLAWS; OR

20 (II) ABSENT CONTROLLING PROVISIONS IN THE BYLAWS, BY
21 RESOLUTIONS OR ORDERS OF THE BOARD OF DIRECTORS; AND

22 (b) THE DUTY TO PREPARE THE BENEFIT REPORT REQUIRED BY
23 SECTION 7-101-513.

24 **7-101-512. Right of action.** (1) EXCEPT IN A BENEFIT
25 ENFORCEMENT PROCEEDING, NO PERSON MAY BRING AN ACTION OR
26 ASSERT A CLAIM AGAINST A BENEFIT CORPORATION OR ITS DIRECTORS OR
27 OFFICERS WITH RESPECT TO:

1 (a) FAILURE TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR
2 A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS ARTICLES OF INCORPORATION;
3 OR

4 (b) VIOLATION OF A DUTY OR STANDARD OF CONDUCT UNDER THIS
5 PART 5.

6 (2) A BENEFIT ENFORCEMENT PROCEEDING MAY BE COMMENCED
7 OR MAINTAINED ONLY:

8 (a) DIRECTLY BY THE BENEFIT CORPORATION; OR

9 (b) DERIVATIVELY BY:

10 (I) A SHAREHOLDER;

11 (II) A DIRECTOR;

12 (III) A PERSON OR GROUP OF PERSONS THAT OWNS BENEFICIALLY
13 OR OF RECORD FIVE PERCENT OR MORE OF THE EQUITY INTERESTS IN AN
14 ENTITY OF WHICH THE BENEFIT CORPORATION IS A SUBSIDIARY; OR

15 (IV) OTHER PERSONS AS SPECIFIED IN THE ARTICLES OF
16 INCORPORATION OR BYLAWS OF THE BENEFIT CORPORATION.

17 (3) A BENEFIT CORPORATION IS NOT LIABLE FOR MONETARY
18 DAMAGES UNDER THIS PART 5 FOR ANY FAILURE OF THE BENEFIT
19 CORPORATION TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A
20 SPECIFIC PUBLIC BENEFIT.

21 **7-101-513. Annual benefit report.** (1) A BENEFIT CORPORATION,
22 OR A BENEFIT OFFICER IF ONE HAS BEEN DESIGNATED, SHALL PREPARE AN
23 ANNUAL BENEFIT REPORT THAT INCLUDES ALL OF THE FOLLOWING:

24 (a) A NARRATIVE DESCRIPTION OF:

25 (I) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED
26 GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO WHICH
27 GENERAL PUBLIC BENEFIT WAS CREATED;

1 (II) BOTH:

2 (A) THE WAYS IN WHICH THE BENEFIT CORPORATION PURSUED A

3 SPECIFIC PUBLIC BENEFIT THAT THE ARTICLES OF INCORPORATION STATE

4 IS THE PURPOSE OF THE BENEFIT CORPORATION TO CREATE; AND

5 (B) THE EXTENT TO WHICH THAT SPECIFIC PUBLIC BENEFIT WAS

6 CREATED;

7 (III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE CREATION

8 BY THE BENEFIT CORPORATION OF GENERAL PUBLIC BENEFIT OR SPECIFIC

9 PUBLIC BENEFIT; AND

10 (IV) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING

11 THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT;

12 (b) AN ASSESSMENT OF THE OVERALL SOCIAL AND

13 ENVIRONMENTAL PERFORMANCE OF THE BENEFIT CORPORATION AGAINST

14 A THIRD-PARTY STANDARD:

15 (I) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT

16 STANDARD IN PRIOR BENEFIT REPORTS; OR

17 (II) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY

18 INCONSISTENT APPLICATION. THE ASSESSMENT DOES NOT NEED TO BE

19 PERFORMED, AUDITED, OR CERTIFIED BY A THIRD PARTY.

20 (c) THE NAME OF THE BENEFIT DIRECTOR AND THE BENEFIT

21 OFFICER, IF ANY, AND THE ADDRESS TO WHICH CORRESPONDENCE TO EACH

22 OF THEM MAY BE DIRECTED;

23 (d) THE COMPENSATION PAID BY THE BENEFIT CORPORATION

24 DURING THE YEAR TO EACH DIRECTOR IN THE CAPACITY OF A DIRECTOR;

25 (e) THE NAME OF EACH PERSON THAT OWNS FIVE PERCENT OR

26 MORE OF THE OUTSTANDING SHARES OF THE BENEFIT CORPORATION

27 EITHER:

1 (I) BENEFICIALLY, TO THE EXTENT KNOWN TO THE BENEFIT
2 CORPORATION WITHOUT INDEPENDENT INVESTIGATION; OR

3 (II) OF RECORD;

4 (f) THE STATEMENT OF THE BENEFIT DIRECTOR DESCRIBED IN
5 SECTION 7-101-509 (3); AND

6 (g) A STATEMENT OF ANY CONNECTION BETWEEN THE
7 ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR ITS
8 DIRECTORS, OFFICERS, OR ANY HOLDER OF FIVE PERCENT OR MORE OF THE
9 GOVERNANCE INTERESTS IN THE ORGANIZATION, AND THE BENEFIT
10 CORPORATION OR ITS DIRECTORS, OFFICERS, OR ANY HOLDER OF FIVE
11 PERCENT OR MORE OF THE OUTSTANDING SHARES OF THE BENEFIT
12 CORPORATION, INCLUDING ANY FINANCIAL OR GOVERNANCE
13 RELATIONSHIP THAT MIGHT MATERIALLY AFFECT THE CREDIBILITY OF THE
14 USE OF THE THIRD-PARTY STANDARD.

15 (2) IF THE BENEFIT CORPORATION HAS DISPENSED WITH, OR
16 RESTRICTED THE DISCRETION OR POWERS OF, THE BOARD OF DIRECTORS,
17 THE BENEFIT CORPORATION, OR A BENEFIT OFFICER IF ONE HAS BEEN
18 DESIGNATED, SHALL INCLUDE IN THE ANNUAL REPORT A DESCRIPTION OF:

19 (a) THE PERSONS THAT EXERCISE THE POWERS, DUTIES, AND
20 RIGHTS AND WHO HAVE THE IMMUNITIES OF THE BOARD OF DIRECTORS;
21 AND

22 (b) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION 7-101-509
23 (6).

24 (3) A BENEFIT CORPORATION SHALL SEND A BENEFIT REPORT
25 ANNUALLY TO EACH SHAREHOLDER:

26 (a) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF THE
27 FISCAL YEAR OF THE BENEFIT CORPORATION; OR

1 (b) AT THE SAME TIME THAT THE BENEFIT CORPORATION DELIVERS
2 ANY OTHER ANNUAL REPORT TO ITS SHAREHOLDERS.

3 (4) A BENEFIT CORPORATION SHALL POST ALL OF ITS BENEFIT
4 REPORTS ON THE PUBLIC PORTION OF ITS WEB SITE, IF ANY, BUT THE
5 BENEFIT CORPORATION MAY OMIT FROM THE POSTED BENEFIT REPORT THE
6 COMPENSATION PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY
7 INFORMATION INCLUDED IN THE BENEFIT REPORTS.

8 (5) IF A BENEFIT CORPORATION DOES NOT HAVE A WEB SITE, THE
9 BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS MOST RECENT
10 BENEFIT REPORT, WITHOUT CHARGE, TO ANY PERSON THAT REQUESTS A
11 COPY, BUT THE BENEFIT CORPORATION MAY OMIT THE COMPENSATION
12 PAID TO DIRECTORS AND FINANCIAL OR PROPRIETARY INFORMATION FROM
13 THE COPY OF THE BENEFIT REPORT SO PROVIDED.

14 **SECTION 2.** In Colorado Revised Statutes, 7-113-102, **amend**
15 (1) (d) and (1) (e); and **add** (1) (f), (1) (g), and (1) (h) as follows:

16 **7-113-102. Right to dissent.** (1) A shareholder, whether or not
17 entitled to vote, is entitled to dissent and obtain payment of the fair value
18 of the shareholder's shares in the event of any of the following corporate
19 actions:

20 (d) Consummation of a sale, lease, exchange, or other disposition
21 of all, or substantially all, of the property of an entity controlled by the
22 corporation if the shareholders of the corporation were entitled to vote
23 upon the consent of the corporation to the disposition pursuant to section
24 7-112-102 (2); ~~and~~

25 (e) Consummation of a conversion in which the corporation is the
26 converting entity as provided in section 7-90-206 (2);

27 (f) CONSUMMATION OF A PLAN BY WHICH A CORPORATION

1 BECOMES A BENEFIT CORPORATION BY MERGER OR CONVERSION INTO A
2 CORPORATION THAT HAS ELECTED BENEFIT CORPORATION STATUS AS
3 PROVIDED IN SECTION 7-101-505;

4 (g) CONSUMMATION OF A PLAN BY WHICH A BENEFIT CORPORATION
5 TERMINATES BENEFIT CORPORATION STATUS BY MERGER OR CONVERSION
6 INTO A CORPORATION THAT HAS NOT ELECTED BENEFIT CORPORATION
7 STATUS AS PROVIDED IN SECTION 7-101-505; AND

8 (h) AN AMENDMENT TO THE CORPORATION'S ARTICLES OF
9 INCORPORATION TO ELECT BENEFIT CORPORATION STATUS AS PROVIDED
10 IN SECTION 7-101-505 OR TO TERMINATE BENEFIT CORPORATION STATUS
11 AS PROVIDED IN SECTION 7-101-506.

12 **SECTION 3.** In Colorado Revised Statutes, **add** 7-116-110 as
13 follows:

14 **7-116-110. Applicability of the "Colorado Charitable**
15 **Solicitations Act" - rules.** (1) THE OFFER OR SALE OF A SECURITY OF A
16 BENEFIT CORPORATION, AS THAT TERM IS DEFINED IN SECTION 7-101-502
17 (1), IS NOT A SOLICITATION, AS THAT TERM IS DEFINED IN SECTION
18 6-16-103 (10), C.R.S., IF THE OFFER OR SALE COMPLIES WITH THE
19 REQUIREMENTS OF THE "COLORADO SECURITIES ACT", ARTICLE 51 OF
20 TITLE 11, C.R.S.

21 (2) IF A BENEFIT CORPORATION IS WITHIN THE DEFINITION OF A
22 CHARITABLE ORGANIZATION, AS THAT TERM IS DEFINED IN SECTION
23 6-16-103 (1), C.R.S., AND INTENDS TO SOLICIT CONTRIBUTIONS IN THIS
24 STATE OR TO HAVE CONTRIBUTIONS SOLICITED IN THIS STATE ON ITS
25 BEHALF BY ANY OTHER PERSON OR ENTITY, IN EITHER CASE BY ANY MEANS
26 OTHER THAN THE OFFER OR SALE OF A SECURITY OF THE BENEFIT
27 CORPORATION AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE

1 BENEFIT CORPORATION SHALL COMPLY WITH THE OBLIGATIONS OF A
2 CHARITABLE ORGANIZATION UNDER THE "COLORADO CHARITABLE
3 SOLICITATIONS ACT", ARTICLE 16 OF TITLE 6, C.R.S., AS THE SECRETARY
4 OF STATE MAY BY RULE REQUIRE.

5 **SECTION 4. Appropriation.** In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys in the
7 department of state cash fund created in section 24-21-104 (3) (b),
8 Colorado Revised Statutes, not otherwise appropriated, to the department
9 of state, for the fiscal year beginning July 1, 2012, the sum of \$52,688, or
10 so much thereof as may be necessary, for allocation to the information
11 technology services division for contract programming related to the
12 implementation of this act.

13 **SECTION 5. Effective date.** This act takes effect January 1,
14 2013.

15 **SECTION 6. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.