

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0399.03 Thomas Morris x4218

HOUSE BILL 13-1138

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

Kefalas,

House Committees

Business, Labor, Economic, & Workforce Development
Appropriations

Senate Committees

Business, Labor, & Technology
Appropriations

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>.)

On and after January 1, 2014, the bill permits a corporation to become a benefit corporation if it includes a statement to that effect in its articles of incorporation and also specifies in its articles of incorporation an additional purpose of providing a general or specific public benefit. A corporation needs to obtain two-thirds of the shareholders' consent to

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.*

SENATE
Amended 2nd Reading
April 26, 2013

HOUSE
3rd Reading Unamended
March 19, 2013

HOUSE
Amended 2nd Reading
March 18, 2013

1 FOR-PROFIT CORPORATION ORGANIZED UNDER AND SUBJECT TO THE
2 REQUIREMENTS OF THE "COLORADO BUSINESS CORPORATION ACT",
3 ARTICLES 101 TO 117 OF THIS TITLE, OR A DOMESTIC COOPERATIVE
4 ORGANIZED UNDER ARTICLE 55 OR 56 OF THIS TITLE THAT IS SUBJECT TO
5 THE "COLORADO BUSINESS CORPORATION ACT", THAT IS INTENDED TO
6 PRODUCE A PUBLIC BENEFIT OR PUBLIC BENEFITS AND TO OPERATE IN A
7 RESPONSIBLE AND SUSTAINABLE MANNER. TO THAT END, A PUBLIC
8 BENEFIT CORPORATION SHALL BE MANAGED IN A MANNER THAT BALANCES
9 THE SHAREHOLDERS' PECUNIARY INTERESTS, THE BEST INTEREST OF THOSE
10 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT, AND THE
11 PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION. IN ITS
12 ARTICLES OF INCORPORATION, A PUBLIC BENEFIT CORPORATION SHALL:

13 (a) IDENTIFY WITHIN ITS STATEMENT OF BUSINESS OR PURPOSE
14 PURSUANT TO SECTION 7-103-101 (1) ONE OR MORE SPECIFIC PUBLIC
15 BENEFITS TO BE PROMOTED BY THE CORPORATION; AND

16 (b) STATE AT THE BEGINNING OF THE ARTICLES OF INCORPORATION
17 THAT IT IS A PUBLIC BENEFIT CORPORATION.

18 (2) "PUBLIC BENEFIT" MEANS ONE OR MORE POSITIVE EFFECTS OR
19 REDUCTION OF NEGATIVE EFFECTS ON ONE OR MORE CATEGORIES OF
20 PERSONS, ENTITIES, COMMUNITIES, OR INTERESTS OTHER THAN
21 SHAREHOLDERS IN THEIR CAPACITIES AS SHAREHOLDERS, INCLUDING
22 EFFECTS OF AN ARTISTIC, CHARITABLE, CULTURAL, ECONOMIC,
23 EDUCATIONAL, ENVIRONMENTAL, LITERARY, MEDICAL, RELIGIOUS,
24 SCIENTIFIC, OR TECHNOLOGICAL NATURE.

25 (3) "PUBLIC BENEFIT PROVISIONS" MEANS THE PROVISIONS OF
26 ARTICLES OF INCORPORATION CONTEMPLATED BY THIS PART 5.

27 (4) THE DOMESTIC ENTITY NAME OF A PUBLIC BENEFIT

1 CORPORATION MUST, WITHOUT EXCEPTION, CONTAIN THE WORDS "PUBLIC
2 BENEFIT CORPORATION", THE ABBREVIATION "P.B.C.", OR THE
3 DESIGNATION "PBC", AND OTHERWISE SATISFY THE REQUIREMENTS OF
4 SECTION 7-102-102 (1) (a).

5 **7-101-504. Certain amendments and mergers - votes required**
6 **- dissenter's rights. (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF**
7 **THIS PART 5 OTHER THAN SUBSECTION (2) OF THIS SECTION, A**
8 **CORPORATION THAT IS NOT A PUBLIC BENEFIT CORPORATION SHALL NOT,**
9 **WITHOUT THE APPROVAL OF TWO-THIRDS OF THE OUTSTANDING SHARES**
10 **OF EACH CLASS OF SHARES OF THE CORPORATION OF WHICH THERE ARE**
11 **OUTSTANDING SHARES, WHETHER VOTING OR NON-VOTING:**

12 (a) AMEND ITS ARTICLES OF INCORPORATION TO INCLUDE A
13 PROVISION AUTHORIZED BY SECTION 7-101-503 (1) (a);

14 (b) CONVERT INTO A DOMESTIC OR FOREIGN PUBLIC BENEFIT
15 CORPORATION OR SIMILAR ENTITY; OR

16 (c) MERGE WITH OR INTO ANOTHER ENTITY IF, AS A RESULT OF THE
17 MERGER, THE SHARES IN SUCH CORPORATION WOULD BECOME, OR BE
18 CONVERTED INTO OR EXCHANGED FOR THE RIGHT TO RECEIVE, SHARES OR
19 OTHER EQUITY INTERESTS IN A DOMESTIC OR FOREIGN PUBLIC BENEFIT
20 CORPORATION OR SIMILAR ENTITY.

21 (2) THE RESTRICTIONS OF THIS SECTION DO NOT APPLY BEFORE THE
22 CORPORATION HAS RECEIVED PAYMENT FOR ANY OF ITS CAPITAL STOCK.
23 IN THE CASE OF A DOMESTIC COOPERATIVE FORMED UNDER ARTICLE 55 OR
24 56 OF THIS TITLE THAT IS SUBJECT TO THE "COLORADO BUSINESS
25 CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, AN ACTION
26 DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST BE APPROVED BY
27 VOTE OR CONSENT OF THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY

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

4 (3) A SHAREHOLDER OF A CORPORATION THAT IS NOT A PUBLIC
5 BENEFIT CORPORATION IS ENTITLED TO EXERCISE THE RIGHT TO DISSENT
6 PURSUANT TO ARTICLE 113 OF THIS TITLE IF THE SHAREHOLDER HAS
7 NEITHER VOTED IN FAVOR OF AN AMENDMENT, MERGER, OR CONVERSION
8 SPECIFIED IN THIS SUBSECTION (3) NOR CONSENTED THERETO IN WRITING
9 PURSUANT TO SECTION 7-107-104 AND HOLDS SHARES OF SUCH
10 CORPORATION IMMEDIATELY BEFORE THE EFFECTIVE TIME OF:

11 (a) AN AMENDMENT TO THE CORPORATION'S ARTICLES OF
12 INCORPORATION TO INCLUDE A PROVISION AUTHORIZED BY SECTION
13 7-101-503 (1) (a);

14 (b) A CONVERSION INTO A DOMESTIC OR FOREIGN PUBLIC BENEFIT
15 CORPORATION OR SIMILAR ENTITY; OR

16 (c) A MERGER THAT WOULD RESULT IN THE CONVERSION OF THE
17 CORPORATION'S SHARES INTO, OR EXCHANGE OF THE CORPORATION'S
18 SHARES FOR, THE RIGHT TO RECEIVE SHARES OR OTHER EQUITY INTERESTS
19 IN A DOMESTIC OR FOREIGN PUBLIC BENEFIT CORPORATION OR SIMILAR
20 ENTITY.

21 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, A
22 CORPORATION THAT IS A PUBLIC BENEFIT CORPORATION SHALL NOT,
23 WITHOUT THE APPROVAL OF TWO-THIRDS OF THE OUTSTANDING SHARES
24 OF EACH CLASS OF SHARES OF THE CORPORATION OF WHICH THERE ARE
25 OUTSTANDING SHARES, WHETHER VOTING OR NONVOTING:

26 (a) AMEND ITS ARTICLES OF INCORPORATION TO DELETE OR AMEND
27 A PROVISION AUTHORIZED BY SECTION 7-101-503 (1) (a);

1 (b) CONVERT INTO ANOTHER DOMESTIC OR FOREIGN ENTITY THAT
2 IS NOT A PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY; OR

3 (c) MERGE WITH OR INTO ANOTHER ENTITY IF:

4 (I) AS A RESULT OF THE MERGER, THE SHARES IN SUCH
5 CORPORATION WOULD BECOME, BE CONVERTED INTO, OR BE EXCHANGED
6 FOR THE RIGHT TO RECEIVE SHARES OR OTHER EQUITY INTERESTS IN A
7 DOMESTIC OR FOREIGN CORPORATION THAT IS NOT A PUBLIC BENEFIT
8 CORPORATION OR SIMILAR ENTITY; AND

9 (II) THE ARTICLES OF INCORPORATION OR SIMILAR GOVERNING
10 INSTRUMENT OF THE DOMESTIC OR FOREIGN CORPORATION THAT IS NOT A
11 PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY DO NOT CONTAIN THE
12 IDENTICAL PROVISIONS IDENTIFYING THE PUBLIC BENEFIT PURSUANT TO
13 SECTION 7-101-503 (1).

14 (5) A NONPROFIT CORPORATION CANNOT BE A CONSTITUENT
15 ENTITY IN CONNECTION WITH A MERGER OR CONVERSION GOVERNED BY
16 THIS SECTION.

17 **7-101-505. Share certificates - notices regarding uncertificated**
18 **shares.** A SHARE CERTIFICATE ISSUED BY A PUBLIC BENEFIT CORPORATION
19 MUST NOTE CONSPICUOUSLY THAT THE CORPORATION IS A PUBLIC BENEFIT
20 CORPORATION FORMED PURSUANT TO THIS PART 5. A STATEMENT SENT BY
21 A PUBLIC BENEFIT CORPORATION PURSUANT TO SECTION 7-106-207 MUST
22 STATE CONSPICUOUSLY THAT THE CORPORATION IS A PUBLIC BENEFIT
23 CORPORATION FORMED PURSUANT TO THIS PART 5.

24 **7-101-506. Duties of directors.** (1) THE BOARD OF DIRECTORS
25 SHALL MANAGE OR DIRECT THE BUSINESS AND AFFAIRS OF A PUBLIC
26 BENEFIT CORPORATION IN A MANNER THAT BALANCES THE PECUNIARY
27 INTERESTS OF THE SHAREHOLDERS, THE BEST INTERESTS OF THOSE

1 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT, AND THE
2 SPECIFIC PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION.

3 (2) A DIRECTOR OF A PUBLIC BENEFIT CORPORATION:

4 (a) DOES NOT, BY VIRTUE OF THE PUBLIC BENEFIT PROVISIONS OF
5 SECTION 7-101-503 (1), HAVE A DUTY TO ANY PERSON ON ACCOUNT OF AN
6 INTEREST OF THE PERSON IN THE PUBLIC BENEFIT IDENTIFIED IN THE
7 ARTICLES OF INCORPORATION OR ON ACCOUNT OF AN INTEREST
8 MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT; AND

9 (b) WITH RESPECT TO A DECISION IMPLICATING THE BALANCE
10 REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, WILL BE DEEMED TO
11 SATISFY THE DIRECTOR'S FIDUCIARY DUTIES TO SHAREHOLDERS AND THE
12 CORPORATION IF THE DIRECTOR'S DECISION IS BOTH INFORMED AND
13 DISINTERESTED AND NOT SUCH THAT NO PERSON OF ORDINARY, SOUND
14 JUDGMENT WOULD APPROVE.

15 (3) THE ARTICLES OF INCORPORATION OF A PUBLIC BENEFIT
16 CORPORATION MAY INCLUDE A PROVISION THAT A DISINTERESTED
17 DIRECTOR'S FAILURE TO SATISFY THIS SECTION DOES NOT, FOR THE
18 PURPOSES OF SECTION 7-108-401 OR ARTICLE 109 OF THIS TITLE,
19 CONSTITUTE AN ACT OR OMISSION NOT IN GOOD FAITH OR A BREACH OF
20 THE DUTY OF LOYALTY.

21 **7-101-507. Benefit report - definition.** (1) A PUBLIC BENEFIT
22 CORPORATION SHALL PREPARE A REPORT THAT INCLUDES:

23 (a) A NARRATIVE DESCRIPTION OF:

24 (I) THE WAYS IN WHICH THE PUBLIC BENEFIT CORPORATION
25 PROMOTED THE PUBLIC BENEFIT IDENTIFIED IN THE ARTICLES OF
26 INCORPORATION AND THE BEST INTERESTS OF THOSE MATERIALLY
27 AFFECTED BY THE CORPORATION'S CONDUCT;

1 (II) ANY CIRCUMSTANCES THAT HAVE HINDERED THE PUBLIC
2 BENEFIT CORPORATION'S PROMOTION OF THE IDENTIFIED PUBLIC BENEFIT
3 AND THE BEST INTERESTS OF THOSE MATERIALLY AFFECTED BY THE
4 CORPORATION'S CONDUCT; AND

5 (III) THE PROCESS AND RATIONALE FOR SELECTING OR CHANGING
6 THE THIRD-PARTY STANDARD USED TO PREPARE THE BENEFIT REPORT; AND

7 (b) AN ASSESSMENT OF THE OVERALL SOCIAL AND
8 ENVIRONMENTAL PERFORMANCE OF THE PUBLIC BENEFIT CORPORATION
9 AGAINST A THIRD-PARTY STANDARD:

10 (I) APPLIED CONSISTENTLY WITH ANY APPLICATION OF THAT
11 STANDARD IN PRIOR BENEFIT REPORTS; OR

12 (II) ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY
13 INCONSISTENT APPLICATION. THE ASSESSMENT DOES NOT NEED TO BE
14 PERFORMED, AUDITED, OR CERTIFIED BY A THIRD PARTY.

15 (2) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION,
16 "THIRD-PARTY STANDARD" MEANS A STANDARD FOR DEFINING,
17 REPORTING, AND ASSESSING THE OVERALL CORPORATE SOCIAL AND
18 ENVIRONMENTAL PERFORMANCE, WHICH STANDARD IS DEVELOPED BY AN
19 ORGANIZATION THAT IS NOT CONTROLLED BY THE PUBLIC BENEFIT
20 CORPORATION OR ANY OF ITS AFFILIATES AND THAT MAKES PUBLICLY
21 AVAILABLE THE FOLLOWING INFORMATION:

22 (a) THE CRITERIA CONSIDERED WHEN MEASURING THE SOCIAL AND
23 ENVIRONMENTAL PERFORMANCE OF A BUSINESS, THE RELATIVE
24 WEIGHTINGS OF THOSE CRITERIA, IF ANY, AND THE PROCESS FOR
25 DEVELOPMENT AND REVISION OF THE STANDARD; AND

26 (b) ANY MATERIAL OWNERS OF THE ORGANIZATION THAT
27 DEVELOPED THE THIRD-PARTY STANDARD, THE MEMBERS OF ITS

1 GOVERNING BODY AND HOW THEY ARE SELECTED, AND THE SOURCES OF
2 FINANCIAL SUPPORT FOR THE ORGANIZATION, IN SUFFICIENT DETAIL TO
3 DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED
4 TO COMPROMISE ITS INDEPENDENCE.

5 (3) A PUBLIC BENEFIT CORPORATION THAT PREPARES A REPORT
6 PURSUANT TO THIS SECTION SHALL SEND IT TO EACH SHAREHOLDER.

7 (4) A PUBLIC BENEFIT CORPORATION SHALL POST ALL OF ITS
8 REPORTS PREPARED PURSUANT TO THIS SECTION ON THE PUBLIC PORTION
9 OF ITS WEB SITE, IF ANY, BUT THE PUBLIC BENEFIT CORPORATION MAY
10 OMIT FROM THE POSTED REPORTS ANY FINANCIAL OR PROPRIETARY
11 INFORMATION INCLUDED IN THE REPORTS.

12 (5) IF A PUBLIC BENEFIT CORPORATION DOES NOT HAVE A WEB
13 SITE, THE PUBLIC BENEFIT CORPORATION SHALL PROVIDE A COPY OF ITS
14 MOST RECENT REPORT, WITHOUT CHARGE, TO A PERSON THAT REQUESTS
15 A COPY, BUT THE PUBLIC BENEFIT CORPORATION MAY OMIT ANY FINANCIAL
16 OR PROPRIETARY INFORMATION FROM THE COPY OF THE BENEFIT REPORT
17 SO PROVIDED.

18 **7-101-508. Derivative suits.** (1) SHAREHOLDERS OF A PUBLIC
19 BENEFIT CORPORATION MAY MAINTAIN A DERIVATIVE LAWSUIT TO
20 ENFORCE THE REQUIREMENTS OF SECTION 7-101-506 (1) IF THE
21 SHAREHOLDERS OWN, INDIVIDUALLY OR COLLECTIVELY, AS OF THE DATE
22 OF INSTITUTING A DERIVATIVE SUIT, EITHER:

23 (a) AT LEAST TWO PERCENT OF THE CORPORATION'S OUTSTANDING
24 SHARES; OR

25 (b) IN THE CASE OF A CORPORATION WITH SHARES LISTED ON A
26 NATIONAL SECURITIES EXCHANGE, THE LESSER OF TWO PERCENT OF THE
27 CORPORATION'S OUTSTANDING SHARES OR SHARES OF AT LEAST TWO

1 MILLION DOLLARS IN MARKET VALUE.

2 **7-101-509. No effect on other corporations.** THIS PART 5 DOES
3 NOT AFFECT A STATUTE OR RULE OF LAW THAT APPLIES TO A CORPORATION
4 THAT IS NOT A PUBLIC BENEFIT CORPORATION, EXCEPT AS PROVIDED IN
5 SECTION 7-101-504.

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

8 **7-113-102. Right to dissent.** (1) A shareholder, whether or not
9 entitled to vote, is entitled to dissent and obtain payment of the fair value
10 of the shareholder's shares in the event of any of the following corporate
11 actions:

12 (d) Consummation of a sale, lease, exchange, or other disposition
13 of all, or substantially all, of the property of an entity controlled by the
14 corporation if the shareholders of the corporation were entitled to vote
15 upon the consent of the corporation to the disposition pursuant to section
16 7-112-102 (2); and

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

19 (f) AN AMENDMENT, CONVERSION, OR MERGER DESCRIBED IN
20 SECTION 7-101-504 (3); AND

21 (g) CONSUMMATION OF A PLAN BY WHICH A PUBLIC BENEFIT
22 CORPORATION TERMINATES PUBLIC BENEFIT CORPORATION STATUS BY
23 MERGER OR CONVERSION INTO A CORPORATION THAT HAS NOT ELECTED
24 PUBLIC BENEFIT CORPORATION STATUS AS PROVIDED IN SECTION
25 7-101-504 (4) OR BY AMENDMENT OF ITS ARTICLES OF INCORPORATION.

26 **SECTION 3. Appropriation.** In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 department of state cash fund created in section 24-21-104 (3) (b),
2 Colorado Revised Statutes, not otherwise appropriated, to the department
3 of state, for the fiscal year beginning July 1, 2013, the sum of \$91,760, or
4 so much thereof as may be necessary, for allocation to information
5 technology services for the purchase of contract computer services
6 related to the implementation of this act.

7 **SECTION 4. Act subject to petition - effective date -**
8 **applicability.** (1) Sections 1 and 2 of this act take effect April 1, 2014,
9 and the remainder of this act takes effect at 12:01 a.m. on the day
10 following the expiration of the ninety-day period after final adjournment
11 of the general assembly (August 7, 2013, if adjournment sine die is on
12 May 8, 2013); except that, if a referendum petition is filed pursuant to
13 section 1 (3) of article V of the state constitution against this act or an
14 item, section, or part of this act within the ninety-day period after final
15 adjournment of the general assembly, then the act, item, section, or part
16 will not take effect unless approved by the people at the general election
17 to be held in November 2014 and, in such case, will take effect on the
18 date of the official declaration of the vote thereon by the governor.

19 (2) This act applies to acts occurring on or after the applicable
20 effective date of this act.