

Be the Change Oregon Steering Committee

The Oregon State Legislature
The State Capitol
900 Court St. NE, Salem, Oregon 97301

MEASURE: HB 2296
EXHIBIT: 11
H BUSINESS & LABOR
DATE: 3.18.2013 PAGES: 12
SUBMITTED BY: Be the Change Oregon

February 22th, 2013

Dear Oregon Legislator,

The below-signed Oregon businesses, associations and other organizations are writing to express our support of Oregon Benefit Company Legislation, HB2296 (Read). Benefit company legislation creates a new legal entity that offers entrepreneurs and investors the option to build and invest in businesses that meet higher standards of corporate purpose, accountability and transparency. Benefit company legislation will attract businesses to Oregon and encourage Oregon businesses that focus on benefiting the greater good while providing economic prosperity to their owners, employees and communities.

To date over 200 companies, many of them in the last six months alone, have already taken advantage of similar legislation – called benefit corporation legislation – that has passed in twelve states and the District of Columbia. Oregon's benefit company legislation is unique, and its uniqueness will attract even more investors and entrepreneurs. By offering benefit company status to Limited Liability Companies (LLCs) as well as Corporations, Oregon is going above and beyond the typical benefit corporation approach and opening up this opportunity to all interested entrepreneurs. We also believe that the approach taken by Oregon's bill, adding Benefit Company status as an option to Oregon's existing forms, provides businesses with the greatest flexibility.

We believe benefit company legislation will bring considerable social and environmental improvements to Oregon, and will bring significant investment into the economy of the state as well. A "new economy" is blossoming across the country, made up of businesses that are finding ways to do well while helping our environment and society at large. There is an estimated three (3) trillion dollars in social impact investment money in the marketplace today and benefit company legislation provides the tools by which companies can attract these investors to our state. States that welcome these new businesses will be poised for growth.

Please help Oregon take the lead as a home for forward-looking companies and the new economy. We seek your aye vote for Oregon Benefit Company Legislation, HB2296 (Read).

Sincerely,

Activate Hub
Adaptation Services
Alima Cosmetics, Inc.
American Sustainable Business Council
Artemis Foods Inc.
AXIS Performance Advisors, Inc.
B Lab
B-LINE Urban Delivery

Back Into Your Body
Bamboo Sushi
Better World Club
Blue Tree Strategies
Brightworks
Canvas Dreams
Capital Pacific Bank
Cascade Web Development, Inc.

Celia Mueller CFP
Celilo Group Media
Changents
CoachersList
Dave's Killer Bread
Diane Dulken Strategies
Earth Sayers, LLC
ecoShuttle
Ecotrust
Ecotrust
Ecotrust Forest Management
Ecotrust Forest Management
EcoZoom
Edward Neal, MD LLC
Eleek, Inc.
Elements Naturals LLC
Eleven Wireless Inc.
Endurawood
Environmental Entrepreneurs
Equilibrium Capital Group
Family Forward Oregon
Fishpeople
FMYI
Freeflow Digital
gDiapers
GO Box
Graceful Space Organizing Services
Green Building Services/BuildingInsigts LLC
Green Rising
Gutmann Consulting LLC
Hawthorne Auto Clinic, Inc.
Idealist Consulting
Immix Law Group
Indow Windows
Inesscents Aromatic Botanicals
JEFFMADE

Jody Harper, LLC
Julia Nusbaum MAT
Jupiterwise Design
LaunchBox
Medford Fabrication
Metropolitan Group
Michael Olaf Montessori Company
Miller Nash LLP
Naomi's Organic Farm Supply
National Sustainable Sales
Natural Strategy Partners, LLC
Neil Kelly
Net Impact Portland
ONABEN: A Native American Business Network
Pinpoint Logic
PlanGreen
Portland State University
Portland Woolen Mills
Preciva Incorporated
Prem Group
Resource Recognition and Regeneration Ranch
Social Enterprises Inc.
Speak Shop
Sseko Designs
Supportland
Sustainable Harvest
Sustainable Solutions Unlimited, Inc.
Sympatico Clothing
Think Brilliant
TriLibrium
Trove
True Nature Wellness, LLC
VOIS
Waterknot
WellBalance
WillCoach, LLC
Woodfold



Oregon Benefit Company Supporters List

Associations

American Sustainable Business Council
Environmental Entrepreneurs
Net Impact Portland
ONABEN: A Native American Business Network
VOIS

Businesses

Adaptation Services
Alima Cosmetics, Inc.
Artemis Foods Inc.
AXIS Performance Advisors, Inc.
B-LINE Urban Delivery
Back Into Your Body
Bamboo Sushi
Better World Club
Blue Tree Strategies
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Social Enterprises Inc.
Speak Shop
Sseko Designs
Supportland
Sustainable Harvest
Sustainable Solutions Unlimited, Inc.
Sympatico Clothing
Think Brilliant
TriLibrium
Trove
True Nature Wellness, LLC
Waterknot
WellBalance
WillCoach, LLC
Woodfold

Nonprofits

Activate Hub
B Lab
Ecotrust
Ecotrust
Ecotrust Forest Management
Family Forward Oregon

Universities

Portland State University

Oregon Benefit Company Background

2013 Legislative effort

A group of Oregon Business Leaders is working to pass legislation in the 2013 session to create a new entity that supports the work of sustainable businesses. The bill would create a new corporate form in Oregon known as a Benefit Company. This bill is similar to legislation that was signed into law in Maryland, Vermont, California, New York, New Jersey, Hawaii, Louisiana, South Carolina, Illinois, Pennsylvania, Massachusetts and Virginia. In 2012, legislation is also working its way through the District of Columbia's legislative Council. An exploratory effort in Oregon's short 2012 session garnered interest and support from business leaders and members of the legislature. This has provided good indicators that a bill in 2013 can receive strong bi-partisan and diverse business support again.

The bill has been introduced in the Senate as SB 144. The bill has been introduced in the House as HB 2296. Certain amendments are proposed by the sponsors. This backgrounder assumes the inclusion of the amendments.

Why is this needed?

Business leaders and investors need to have the freedom to run their businesses in ways that consider the interests of more stakeholders and constituencies. Unfortunately, for corporations, court decisions in the last several decades have defined the fiduciary duty of corporate officers and directors narrowly, making it difficult for businesses that wish to embrace a larger purpose than just financial success to make the kinds of complicated decisions they face every day.

To address this problem, the benefit company legislation would create a new class of company that 1) has the purpose to create a material positive impact on society and the environment, taken as a whole, from the business and operations of the company; 2) redefines fiduciary duty to require consideration of the interests of employees, community, and the environment; and 3) reports on its overall social and environmental performance using an independent third party standard.

Differences between Oregon Benefit Company Legislation and benefit corporation legislation

The model benefit corporation legislation passed in eleven other states is written so that it applies solely to corporations. The exception to this rule is Maryland, where a benefit LLC form is also available. However, through an intensive legal working group process, Oregon has adapted and changed the model benefit corporation legislation to allow both LLCs and corporations to become benefit companies. Both forms are subject to the same requirements in the legislation.

Benefit Company – FREQUENTLY ASKED QUESTIONS

What is a benefit company?

- ✓ Benefit company is a new class of company that: has a purpose to create a material positive impact on society and the environment, taken as a whole, from the business and operations of the benefit company; redefines fiduciary duty to require consideration of broad stakeholder interests when making decision; and reports on its overall performance against its larger mission, assessing its activities against recognized third party standards. Both LLCs and corporations can become benefit companies in Oregon.
- ✓ Maryland, Vermont, New Jersey, California, Hawaii, New York, Massachusetts, Illinois, South Carolina, Louisiana, Pennsylvania and Virginia are the first 12 states in the nation to pass a form of benefit corporation legislation, giving entrepreneurs and investors an additional choice when determining which corporate form is most suitable to achieve their objectives. Maryland has also passed a benefit LLC form. In 2012, legislation is also moving forward in the District of Columbia.

How would becoming a benefit company benefit my business?

- ✓ Provides clarity to members of the business' governing bodies and officers that their fiduciary duty includes pursuing the creation of a material positive impact on society and the environment, taken as a whole, from the business and operations of the benefit company, even in liquidity scenarios;
- ✓ Offers legal protection to governors and officers to consider the non-financial interests of the workforce, community and environment when making decisions, even in liquidity scenarios;
- ✓ Increases accountability to investors by 1) expanding shareholder rights to enforce this expanded definition of fiduciary duty and standard of consideration, and 2) Allowing companies to adopt supermajority vote provisions as a condition of adopting or removing these higher standards;
- ✓ Differentiates the company in a confusing marketplace in which everyone is claiming to be a responsible or green business.

Why are benefit companies important to advancing the sustainable business movement?

Business leaders need to be able to shape business models that satisfy the demands of investors, employees and customers who increasingly demand that corporations and LLCs serve both shareholders and society, considering the impact of their decisions on multiple stakeholders rather than focusing solely on short-term financial returns.

Without increasing regulation or causing adverse effects on state budgets, benefit companies:

- ✓ Remove legal impediments preventing corporations and investors from making decisions to use sustainability and social innovation as a recognized part of their decision matrix
- ✓ Legitimize and accelerate development of innovative businesses by providing legal recognition for both corporations and LLCs that adopt higher standards of corporate purpose, accountability, and transparency

- ✓ Rebuild public trust in business by demonstrating that businesses are willing to be held accountable to create value for both shareholders and society
- ✓ Accelerate the development of generally accepted standards for assessing overall corporate social and environmental performance

What are the reporting requirements?

A benefit company must produce an annual benefit report. Since there is not standard method of reporting as there is with financials by following the GAAP guidelines, benefit company laws allow the company to choose their own third party standard for assessing their social and environmental activities. These standards must meet the legislation's requirements for comprehensiveness, independence, and transparency. The report does not have to be filed with any government agency – it merely needs to be available on the company's website, or by request.

How do benefit companies select a third party standard to use in preparation of their annual benefit report?

Benefit company legislation does not require a benefit company to use any particular third party standard to prepare its benefit report. **Nor are they required to have that report certified or audited by a third party.** There are many third party standards organizations that meet the statutory criteria for a third party standard. The Global Reporting Initiative (GRI), GreenSeal, Underwriters Laboratories (UL), ISO26000, Green America, and B Lab are a few well-known examples. Benefitcorp.net provides a list of numerous potential standard providers. Both GRI and B Lab offer companies the use of their reporting (GRI) and assessment (B Lab) tools for free. In addition to the examples listed above, more than 100 'raters' of corporate sustainability practices are listed in the 'Rate the Raters' report published by the research and consulting firm SustainAbility. This list is available for free at <http://www.sustainability.com/library/rate-the-raters-phase-two>. The management, and ultimately, governors and shareholders, of benefit companies are free to decide for themselves which of these or other standards they feel meet the statutory requirements and their needs.

What is the difference between a benefit company and a Certified B Corporation?

Certified B Corporation is a certification conferred by the nonprofit B Lab. Benefit company is a legal status under state law. Benefit companies do NOT need to be Certified B Corporations. Certified B Corporations have been certified as having met a high standard of overall social and environmental performance, and as a result have access to a portfolio of services and support through B Lab.

Do shareholders need to vote?

Yes, if you have an existing company, you can elect to become a benefit company by amending your articles of incorporation or organization.

Do dissenters' rights apply?

The board of a corporation can authorize dissenters' rights to apply to a decision to become a benefit company. The proposed legislation does not require it.

Does benefit company designation affect your tax status?

It doesn't. Your company can still elect to be taxed as a C or S corporation, or as an LLC or a partnership. Benefit company status only affects requirements of corporate purpose, accountability, and transparency; everything else remains the same.

Don't existing statutes already allow companies to adopt governance and purpose provisions like this?

Lawyers disagree about this. Many think existing statutes do allow it; others think not. Courts have not ruled on the question, so there is no definitive answer. Some lawyers are reluctant to let their clients include provisions in governance documents that might be found inappropriate later. Adopting a specific statute removes the uncertainty.

What about green-washing? Won't this be abused by people trying to deceive their customers or the public as to their "goodness"?

The drafters recognized this danger. The draft statute includes provisions under which shareholders and directors can enforce the obligations specific to a "benefit company." The general public benefit purpose, which requires that shareholders and directors consider both society and the environment in their decision-making process helps prevent abuse of the legislation by preventing the use of a single narrow safe harbor. With respect to the public, the statute has adopted a "disclosure" framework, rather than a regulatory framework, to address this concern. The statute requires each benefit company to identify an independent, comprehensive, transparent standard, and to report the company's performance annually against that standard – so anyone wanting to know will be able to see what the standard is, who promulgated it, what its scoring mechanism is, how the promulgating organization is funded and governed, and how the company performed against that standard.

Do benefit-company obligations extend to the core product line, or only to how the company is governed and how it treats its employees and community?

It encompasses the core product line as well. The statute defines the core purpose of a benefit company as creating "General public benefit." General public benefit means "the creation of a material positive impact on society and the environment, taken as a whole, from the business and operations of the benefit company." The language "taken as a whole" does not permit exclusion of the most important thing a company does – selling products. Further, the boards of directors and officers of benefit companies are obligated to consider the impact of their decisions on all affected stakeholders, including, of course, customers – again, addressing the product line's effects.

Model Benefit Company – Major Provisions

Applicability

- ✓ Both LLCs and corporations can become benefit companies, the provisions of the legislation, *Purpose, Accountability and Transparency*, apply to both entities

Purpose

- ✓ shall create general public benefit, which is defined as material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit company
- ✓ shall have the right to name specific public benefit purposes (e.g. % of profits to charity, carbon neutral, 100% local sourcing, beneficial product to customers in poverty, etc.) but is not required to do so.
- ✓ The process for determining the best interests of the benefit company is defined to include consideration of all stakeholder interests, including the creation of public benefit

Accountability

- ✓ governors' duties are to make decisions in the best interests of the company
- ✓ governors and officers shall consider the effects of decisions on shareholders and employees, suppliers, customers, community, and environment (together the "Stakeholders")
 - not required to give priority to any particular stakeholder
 - have discretion to give priority to particular stakeholders consistent with general and any specific public benefit purposes
 - standard of accountability is identical for operating and liquidity / change of control decisions

Transparency

- ✓ shall publish annual Benefit Report in accordance with a third party standard for defining, reporting, and assessing social and environmental performance
- ✓ third party standard defined as comprehensive, independent, and transparent
- ✓ Benefit Report delivered to 1) all shareholders; 2) public website with exclusion of proprietary data

Right of Action

- ✓ only shareholders and governors have right of action
- ✓ no third party right of action
- ✓ Right of Action can be for 1) violation of or failure to pursue or create general or specific public benefit; 2) violation of duty or standard of conduct

For more information check www.benefitcorp.net

Be The Change Oregon Steering Committee Members

Nik Blosser, President, Celilo Group Media

Graeme Byrd, President, Net Impact Portland; Director of Business Development & Client Services, cascade web // development

Bill Campbell, Co-Founder / CFO, Equilibrium Capital Group

David Chen, Co-Founder / Principal, Equilibrium Capital Group

Sattie Clark, Founder / President, VOIS Business Alliance

Eric Friedenwald-Fishman, President / Creative Director, Metropolitan Group

David Lippoff, Managing Director, Sustainable Harvest Coffee Importers

Linda Naerheim, Co-Founder / CEO, Elements Naturals

Initial Draftsmen

Oregon Corporate Lawyers' Committee: Chaired by **Jeff Wolfstone**, co-chair of the Corporate Finance M&A practice at Lane Powell PC, who has long led legislative focus on the nuances of corporate and fiduciary duty law as it applies to Oregon businesses, this committee consists of some of Oregon's foremost corporate and business lawyers, with extensive experience advising public and private corporations and limited liability companies. The committee includes **Bill Campbell**, former chair of Ater Wynne LLP and now a principal at Equilibrium Capital Group, LLC, which has adopted B-Lab's Certified B-Corp governance provisions; **Doug Morris**, a partner at Ater Wynne LLP specializing in corporate governance, financing, and M&A work for high-growth private and public companies with institutional investor and public shareholders; **Ellen Grover**, a partner at Karnopp Peterson, LLP with deep experience in energy and tribal law; **Jeff Cronn**, a partner at Tonkon Torp LLP whose practice serves public, private, private equity and nonprofit entities with respect to M&A, governance, securities and financings, and reorganizations; **Jim Kennedy**, a partner at Kennedy & Kennedy whose practice covers governance, finance, securities law, financing, regulatory, and related matters for public and private entities throughout the west; **Marco Matterozi**, a partner at Tonkon Torp LLP whose practice focuses on M&A and securities offerings; **Andrew Morrow**, whose practice involves business organizations, M&A, financing and representation of corporations and limited liability companies; and **Peter Threlkel**, the Director of the Corporation Division in the Oregon Secretary of State's office, whose division is responsible for all corporate and LLC registrations and filings in the State of Oregon.

William H. Clark, Jr.: is a partner in the Corporate and Securities and Government and Regulatory Affairs Practice Groups of Drinker Biddle and Reath LLP in Pennsylvania. Bill's draft served as critical baseline drafting for the Oregon lawyers' committee, and he has generously provided commentary and advice on the process as drafting has proceeded. Bill has served for a number of years as the draftsman for the Title 15/ Business Associations Committee of the Pennsylvania Bar Association and in that capacity was the author of the 1988 Pennsylvania Business Corporation Law and the Pennsylvania Revised Uniform Limited Partnership Act. He was also the draftsman of the 1994 Pennsylvania Limited Liability Company Law. Bill drafted the legislation and designed the legislative strategy that led to the enactment of the North Dakota Publicly Traded Corporations Act, which is the first state corporation law in the United States to address all of the major issues of corporate governance that are of concern to institutional investors. Bill is the reporter for a special committee of the ABA Business Law Section preparing a comprehensive revision of the Model Nonprofit Corporation Act. He is the ABA reporter for a joint project of the ABA and the National Conference

of Commissioners on Uniform State Laws that has drafted the Model Entity Transactions Act, which permits mergers between differing forms of entities and the conversion of an entity from one form of organization to another. He was also the reporter for the NCCUSL drafting committee that prepared the Model Registered Agents Act. Bill is a Pennsylvania commissioner to NCCUSL and has participated in the drafting of the Uniform Statutory Trust Act and the revised Uniform Limited Liability Company Act. He was formerly an appointed member of the Committee on Corporate Laws of the Business Law Section of the American Bar Association, which is responsible for updating the Model Business Corporation Act, and he now serves as a special consultant to the committee. Bill is the former chair of the Business Law Section of the Pennsylvania Bar Association and the former chair of the Business Law Section of the Philadelphia Bar Association. He is a fellow of the American Bar Foundation and a member of the American Law Institute. Bill graduated summa cum laude from Amherst College and received his J.D. magna cum laude from Temple University. He also has a master's degree in theology from Westminster Theological Seminary.

Refinements: The Oregon Business Association and major Oregon businesses participated in review and refinement of subsequent proposed refinements, along with members of the steering committee and the initial agency and legislator sponsors.

Initial Sponsors

American Sustainable Business Council: is a growing coalition of business networks and businesses committed to advancing a new vision, framework and policies to support a vibrant, equitable and sustainable economy. The Council brings the business perspective, experience and strength to stimulate our economy, benefit our communities, and preserve our environment. Today, the organizations that have joined in this partnership represent over 65,000 businesses and social enterprises and more than 150,000 entrepreneurs, owners, executives, investors and business professionals and other individuals.
www.asbcouncil.org

B Lab: is a nonprofit organization dedicated to using the power of business to solve social and environmental problems. B Lab drives systemic change through three interrelated initiatives: 1) building a community of Certified B Corporations to make it easier for all of us to tell the difference between “good companies” and just good marketing; 2) accelerating the growth of the impact investing asset class through use of B Lab’s GIIRS impact rating system by institutional investors; and 3) promoting supportive public policies, including creation of a new corporate form and tax, procurement, and investment incentives for sustainable business. For more information, check www.bcorporation.net. There are to date 29 Certified B-Corporations in the State of Oregon, both corporations and LLCs, and the number has been growing monthly.

