

**NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

HOUSE BILL 13-1138

BY REPRESENTATIVE(S) Lee, Buckner, Court, Duran, Exum, Fields, Fischer, Ginal, Hamner, Hullinghorst, Kagan, Kraft-Tharp, Lebsock, Moreno, Pabon, Peniston, Pettersen, Rosenthal, Ryden, Salazar, Schafer, Singer, Tyler, Young, Foote;  
also SENATOR(S) Kefalas, Aguilar, Giron, Guzman, Heath, Johnston, Jones, Kerr, Newell, Nicholson, Schwartz, Steadman, Morse.

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

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

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

## PART 5 PUBLIC BENEFIT CORPORATIONS

**7-101-501. Short title.** THIS PART 5 SHALL BE KNOWN AND MAY BE CITED AS THE "PUBLIC BENEFIT CORPORATION ACT OF COLORADO".

**7-101-502. Law applicable to public benefit corporations - how formed.** THIS PART 5 APPLIES TO ALL PUBLIC BENEFIT CORPORATIONS. IF A

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

CORPORATION ELECTS TO BECOME A PUBLIC BENEFIT CORPORATION UNDER THIS PART 5 IN THE MANNER PRESCRIBED IN THIS PART 5, IT IS SUBJECT IN ALL RESPECTS TO THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, AND THE "COLORADO CORPORATIONS AND ASSOCIATIONS ACT", ARTICLE 90 OF THIS TITLE, EXCEPT TO THE EXTENT THIS PART 5 IMPOSES ADDITIONAL OR DIFFERENT REQUIREMENTS, IN WHICH CASE SUCH ADDITIONAL OR DIFFERENT REQUIREMENTS APPLY.

**7-101-503. Public benefit corporation - definitions - contents of articles of incorporation.** (1) A PUBLIC BENEFIT CORPORATION IS A FOR-PROFIT CORPORATION ORGANIZED UNDER AND SUBJECT TO THE REQUIREMENTS OF THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, OR A DOMESTIC COOPERATIVE ORGANIZED UNDER ARTICLE 55 OR 56 OF THIS TITLE THAT IS SUBJECT TO THE "COLORADO BUSINESS CORPORATION ACT", THAT IS INTENDED TO PRODUCE A PUBLIC BENEFIT OR PUBLIC BENEFITS AND TO OPERATE IN A RESPONSIBLE AND SUSTAINABLE MANNER. TO THAT END, A PUBLIC BENEFIT CORPORATION SHALL BE MANAGED IN A MANNER THAT BALANCES THE SHAREHOLDERS' PECUNIARY INTERESTS, THE BEST INTEREST OF THOSE MATERIALLY AFFECTED BY THE CORPORATION'S CONDUCT, AND THE PUBLIC BENEFIT IDENTIFIED IN ITS ARTICLES OF INCORPORATION. IN ITS ARTICLES OF INCORPORATION, A PUBLIC BENEFIT CORPORATION SHALL:

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

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

(2) "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.

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

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

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

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

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

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

(2) THE RESTRICTIONS OF THIS SECTION DO NOT APPLY BEFORE THE CORPORATION HAS RECEIVED PAYMENT FOR ANY OF ITS CAPITAL STOCK. IN THE CASE OF A DOMESTIC COOPERATIVE FORMED UNDER ARTICLE 55 OR 56 OF THIS TITLE THAT IS SUBJECT TO THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF THIS TITLE, AN ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST BE APPROVED BY VOTE OR CONSENT OF THE HOLDERS OF EVERY CLASS OR SERIES OF EQUITY INTEREST IN THE ENTITY THAT ARE ENTITLED TO VOTE ON THE ACTION BY AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

(3) A SHAREHOLDER OF A CORPORATION THAT IS NOT A PUBLIC BENEFIT CORPORATION IS ENTITLED TO EXERCISE THE RIGHT TO DISSENT PURSUANT TO ARTICLE 113 OF THIS TITLE IF THE SHAREHOLDER HAS NEITHER VOTED IN FAVOR OF AN AMENDMENT, MERGER, OR CONVERSION SPECIFIED

IN THIS SUBSECTION (3) NOR CONSENTED THERETO IN WRITING PURSUANT TO SECTION 7-107-104 AND HOLDS SHARES OF SUCH CORPORATION IMMEDIATELY BEFORE THE EFFECTIVE TIME OF:

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

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

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

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

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

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

(c) MERGE WITH OR INTO ANOTHER ENTITY IF:

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

(II) THE ARTICLES OF INCORPORATION OR SIMILAR GOVERNING INSTRUMENT OF THE DOMESTIC OR FOREIGN CORPORATION THAT IS NOT A PUBLIC BENEFIT CORPORATION OR SIMILAR ENTITY DO NOT CONTAIN THE IDENTICAL PROVISIONS IDENTIFYING THE PUBLIC BENEFIT PURSUANT TO

SECTION 7-101-503 (1).

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

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

**7-101-506. Duties of directors.** (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 OF INCORPORATION.

(2) A DIRECTOR OF A PUBLIC BENEFIT CORPORATION:

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

(b) WITH RESPECT TO A DECISION IMPLICATING THE BALANCE REQUIREMENT IN SUBSECTION (1) 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.

(3) THE ARTICLES 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 OF THIS TITLE, CONSTITUTE AN ACT

OR OMISSION NOT IN GOOD FAITH OR A BREACH OF THE DUTY OF LOYALTY.

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

(a) A NARRATIVE DESCRIPTION OF:

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

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

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

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

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

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

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

(a) THE CRITERIA CONSIDERED WHEN MEASURING THE SOCIAL AND

ENVIRONMENTAL PERFORMANCE OF A BUSINESS, THE RELATIVE WEIGHTINGS OF THOSE CRITERIA, IF ANY, AND THE PROCESS FOR DEVELOPMENT AND REVISION OF THE STANDARD; AND

(b) ANY MATERIAL OWNERS OF THE ORGANIZATION THAT DEVELOPED THE THIRD-PARTY STANDARD, THE MEMBERS OF ITS GOVERNING BODY AND HOW THEY ARE SELECTED, AND THE SOURCES OF FINANCIAL SUPPORT FOR THE ORGANIZATION, IN SUFFICIENT DETAIL TO DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY BE CONSIDERED TO COMPROMISE ITS INDEPENDENCE.

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

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

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

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

(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.

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

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

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

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

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

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

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

**SECTION 3. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2013, the sum of \$91,760, or so much thereof as may be necessary, for allocation to information technology services for the purchase of contract computer services related to the implementation of this act.



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

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

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Mark Ferrandino  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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John P. Morse  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO