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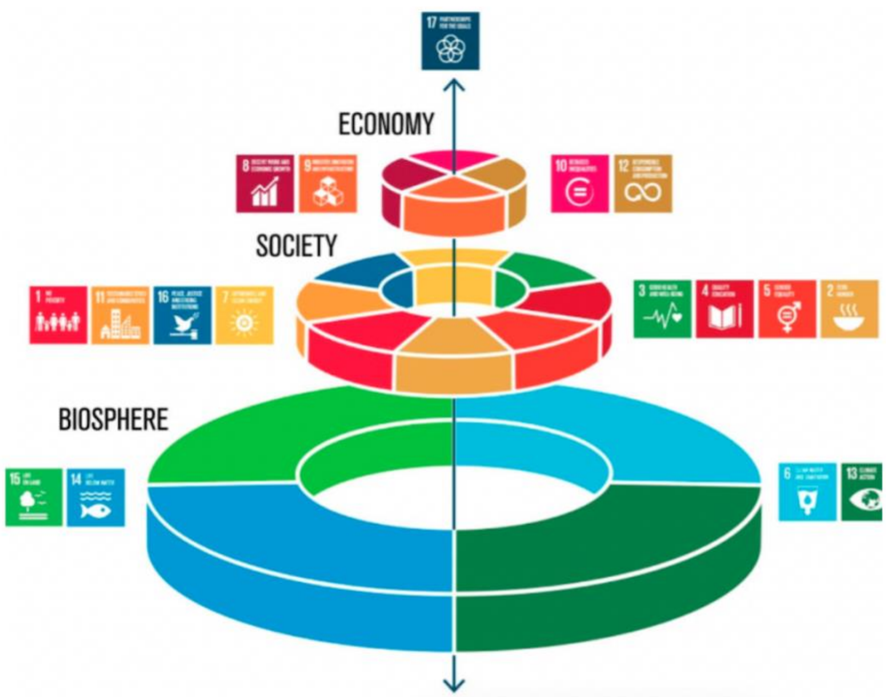
Raising the Bar: Reinvigorating the PBC Statute in Vermont



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Executive Summary:

In this report, we provide recommended updates for Vermont's Public Benefit Corporation statute to reflect effective pro-social business practices, and in doing so, offer content that serves as an educational resource for businesses to use in improving their ESG programs. The PBC structure is a key component of the systemic changes needed to improve our current capitalist model. By enabling businesses to put their capital resources towards pro-social initiatives, we can foster a prosperous business ecosystem, an equitable society, and a healthy natural environment. The PBC structure codifies a business's commitments and provides legal protection for engaging in these types of initiatives. With these updates we are asking businesses to hold themselves to a higher standard, and to reduce the burden of doing so, we have provided context, justification and external resources that outline the operational requirements of a pro-social organization. In these efforts, we have given Directors, Executives and Managers the information they need to implement these practices, reducing barriers to adoption and accelerating change. It is our hope that the legal doctrines governing this type of activity get updated as well, providing clearer guidelines, standardized practices, modernized regulations and ultimately ensuring that every business has access to the information they need to do better. Listed below are our recommendations for updating the legislature so that the language in the PBC statute promotes more impactful business activity:

- Update the definitions of Benefit Corporation and General Public Benefit to explicitly state what constitutes a benefit corporation and how it creates public benefit.
- Instead of listing 7 broad categories that satisfy "Specific Public Benefit", enable businesses to self-select specialized initiatives they deem most material to their business.
- Include the definitions of Materiality and Stakeholder, as these are critical for businesses to understand which initiatives and stakeholder groups to prioritize.
- Make the use of a Third-Party Standard a requirement and encourage businesses to select one that is appropriate for their business structure.
- Businesses need to embed a specific and material social mission into their corporate purpose. The statute should contain more descriptive language that includes guidelines for how management should focus their efforts, allowing for greater accountability.
- Including "PBC" in the naming convention of these businesses increases marketability in the same way that the "Certified B" logo has aided the B Corp movement.
- Encourage businesses to elect a Benefit Director who is responsible for embedding the social mission and establish a Benefit Officer who will put together a team of employees who are passionate about these initiatives to encourage collaboration across the company.
- Relevant Stakeholders need to be able to bring up a Benefit Enforcement Proceeding. Other forms of Accountability come from the Attorney General's office, where filing fees can help fund the oversight and enforcement of Annual Benefit Reporting.
- The Annual Benefit Report section needs to include language that clarifies the requirements of these reports. These Disclosure-style reports should center around transparency, provide context on materiality determinations, and use sustainability norms to include relevant metrics, allowing businesses to set goals and report on progress.

Reinvigorating Vermont PBCs

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Introduction:

In 2011, Vermont passed a law that allowed companies to incorporate as Public Benefit Corporations (PBCs). PBCs are a novel form of corporate structure that has developed across the country over the last decade and a half. The PBC structure was designed to solve an increasingly pressing problem: traditional corporations are prioritizing their own profit over any other considerations, particularly their environmental and social externalities.

Milton Friedman's assertion that a corporation's main purpose is to maximize profit for shareholders has created a half century of corporate and legal convention that treats shareholders as the most important voice in any business. Most modern for-profit corporations pursue shareholder profit as their single primary objective, elevated to the level of a fiduciary responsibility. This model of shareholder primacy has come under fire, but in practice, most corporations subscribe to the legal requirement of prioritizing profit, letting the concerns of important stakeholders fall to the wayside.

Public benefit corporations solve this problem. The PBC statutes are a voluntary legal structure, allowing companies to elevate pro-social goals to the level of fiduciary responsibilities. A corporation can be sued if they make a decision that does not lead to profit maximization, which jeopardizes the advancement of many ESG efforts. Being a PBC protects the business from such lawsuits, enabling them to freely engage in initiatives they deem important to the business and society. This protection also applies to hostile takeovers, giving management the ability to choose a new owner based on criteria other than who offers the highest price. This is extremely important for entrepreneurs who want to protect their company's mission as it grows. Being a PBC appeals to consumers and potential partners because it proves the business is a pro-social organization, not just from what it conveys in its marketing, but in its articles of incorporation. It is a structure that fits well with the needs of the moment, especially with the expectation that the SEC may soon implement rules governing ESG disclosure.

Vermont's Public Benefit Corporation Law:

Vermont implemented its public benefit corporation law, the Vermont Benefit Corporations Act, in 2011. Fewer than two dozen active Vermont companies are currently incorporated as public benefit corporations and only a small fraction of those are following the law's requirement to produce an annual benefit report. Vermont PBCs have stated that the law offers little guidance on how to create public benefit or how to report on a company's practices. While the legislation provides a basic legal structure for public benefit corporations, it does not give them the necessary tools to achieve their full impact and may even limit them.

Vermont PBCs are few in number and most have not yet reached their full potential. Vermont does have many certified B Corps, however, this structure may not be ideal for all businesses. The certification costs a portion of the business' revenues, must be renewed periodically, and requires adherence to the standards designed and weighted by B Lab. The PBC structure is free and voluntary, reducing upfront costs and giving businesses the liberty to design their own programs. The PBC space has not grown nearly as fast as the B Corp Movement and so there is real opportunity to improve how the state's business and legislative ecosystem treats Public Benefit Corporations.

Our Purpose:
As part of our capstone practicum project for earning the Sustainable Innovation MBA from the University of Vermont, we seek to improve the business and legal environment surrounding Vermont Public Benefit Corporations. We spent the summer of 2021 intensively researching and investigating why Vermont's PBC law has not been widely adopted, and what its current strengths and limitations are. Through extensive conversations with business and nonprofit leaders, government administrators, and other relevant sources, we have determined where the existing legislation falls short of achieving its full impact. We also evaluated the continuing need for companies that create public benefit. As more companies embrace environmental and social governance (ESG) measures, the need for clear tracking and reporting of these new developments is increasing.

Through these conversations and our analyses of best practices in other jurisdictions, we have developed recommendations to improve Vermont's PBC ecosystem. This takes two forms: first, we developed recommendations to improve Vermont's PBC legislation to better reflect the latest in environmental and social governance (ESG) and incentivize PBCs that are more impactful. Second, we have created guidelines and a clear, systematic approach to help Vermont businesses make a greater impact and report on their efforts clearly and effectively.

Definitions:

Benefit Corporation:
Vermont's Statute defines a Benefit Corporation as "a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement 'This corporation is a benefit corporation.'" As the starting point for these definitions, the description of what constitutes a Benefit Corporation needs to be more robust. Delaware's statute provides a good model.

Recommended Definition:

> [ii]**(a) A "public benefit corporation" is a for-profit corporation organized under and subject to the requirements of this chapter 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 stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation. In the certificate of incorporation, a public benefit corporation shall:**
>
> > **(1) Identify within its statement of business or purpose pursuant to § 102(a)(3) of this title one or more specific public benefits to be promoted by the corporation; and**
> >
> > **(2) State within its heading that it is a public benefit corporation.**

Rationale:
Elaborating on the definition of a Benefit Corporation solidifies that Benefit Corporation status gives businesses more flexibility in how they can deliver on their social purpose.[iii] This structure provides legal protection to balance financial and non-financial interests, and it codifies a company's mission to pursue social good.[iv] This builds the ideal that generating positive social impact goes hand-in-hand with creating a large and thriving business and allows owners to bake

this social mission directly into the brand. Through the articles of incorporation, the Benefit Corporation states that these values are upheld from the very roots of the business and have been granted the legal right to do so.

General Public Benefit:

Vermont's statute defines General Public Benefit as "a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefit." Minnesota and Tennessee's definitions provide clarification on what it means to create public benefit.

Recommended Definitions:

> **Minnesota: "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"[v]**
> **Tennessee: "'Public benefit' means a positive effect or reduction of negative effects on one (1) or more categories of persons, entities, communities, or interests, other than shareholders in their capacities as shareholders, including, but not limited to, an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological effect"[vi]**

Rationale:

Organizations such as Patagonia, Seventh Generation, Ben & Jerry's, and King Arthur Baking top the list of businesses who use their capital to lead social change and environmental stewardship. These businesses also have a social mission baked into their mission statement. For example, King Arthur's states:

> *At King Arthur Baking Company, we believe in the power of baking to make a difference — for people and the planet. We work to build stronger communities and increase access and connection to real foods. We take pride in our responsible sourcing and our "never bleached" guarantee. And we work closely with farmers, millers, and suppliers in a continued commitment toward sustainability.*[vii]

The company's pursuit of profit is used to drive positive social change. The emphasis on the social mission being the driving force for its corporate purpose is the reason they are so successful in doing both, as indicated by their 2019 and 2021 'Best for the World' awards from B Lab[viii]. It is a typical feature of social enterprises to have income-generating activities at the core of their business and to directly or indirectly harness these activities to achieve the public benefit.[ix] **Businesses should prioritize a general public benefit that is directly related to the company's mission statement to ensure that the attention is focused on creating positive influence through its operations.**

Specific Public Benefit:

Recommendation:

This section should provide instruction on choosing specific initiatives. Based on what the company determines to be most material, businesses can look to the UN Sustainable Development Goals (SDGs) for a set of impact initiatives that create shared value. The SDGs are global objectives, which a business can use as a helpful guide when planning out these

material initiatives. This is useful for naming and prioritizing certain initiatives and for communicating these efforts to stakeholders. Each SDG includes a subset of activities that companies can engage in to deliver a specific and tailored public benefit that they are in a strategic position to address. We recommend focusing on 3 SDGs, as the ideal number for generating a strong ESG strategy is no more than 5 priority initiatives.[x] [1]

Rationale:
Vermont currently lists seven categories of specific public benefit, but they are not specific enough, leading businesses to focus on areas that are not material to their business or won't truly generate a lasting impact. By explicitly defining a set of initiatives in the law, we run the risk of pigeon-holing companies into selecting initiatives that are too high-level and less impactful. The first category, "providing low income or underserved individuals or communities with beneficial products or services" paints a picture of the issues these broad categories can create. If a company already has these groups within its customer base, then it can claim it is generating a positive impact simply through the normal course of business, as this satisfies the requirements of this specific public benefit. The business hasn't done anything to address material concerns and are merely ticking the boxes. To encourage initiatives that generate specific and lasting impacts for society, businesses should identify issues that are most material to them and select ESG initiatives based on this materiality. Research shows that firms that improved on material ESG issues significantly outperformed their competitors.[xi] A strong ESG strategy correlates with higher equity returns and a reduction in downside risk. Analyzing what matters along the value chain, identifying where the greatest potential lies and the areas that have the most impact for the company allows managers to make a strong case for these initiatives. The company will strengthen relationships with stakeholders and reap the benefits that strong ESG performance has been proven to create in the market.[xii]

Materiality:

Recommendation:
A material sustainability issue is an economic, environmental, or social issue on which a company has an impact or may be impacted by. It may also be one that significantly influences the assessments and decisions of stakeholders.[xiii] **The materiality assessment process inventories and quantitatively analyzes stakeholder perspectives on the company's pro-social performance, helping to plan and prioritize specific initiatives.**

Rationale:
There is currently no definition for materiality in the Vermont legislation, which inhibits businesses in choosing an appropriate and meaningful specific public benefit. The Global Resource Initiative (GRI)'s G4 Standards suggest that a materiality assessment is most useful if designed to inform both reporting and strategy. This is an exercise in stakeholder engagement designed to gather insight on the relative importance of key ESG issues. It should inform reporting in three key areas: disclosure strategy, content design and stakeholder communications. It's also an important tool for making the business case to senior management on why and how

[1] See Appendix A on Page 15 for an elaboration of how to choose Specific Public Benefit Initiatives, including additional resources to identify specific initiatives. See Tables 1 and 2, starting on Page 18 for the full set of UN SDGs.

to report on ESG initiatives.[xiv] Executives, Managers and Benefit Committees can use a Materiality Map to list and rank, in order, the issues they deem material. The Sustainability Accounting Standards Board (SASB) offers a template to help companies identify where to focus their attention depending on their industry. [2]

Stakeholder:

Recommendation:
The International Integrated Reporting Framework defines a stakeholder as:

> **…Those groups or individuals that can reasonably be expected to be significantly affected by an organization's business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organization to create value over time. Stakeholders may include providers of financial capital, employees, customers, suppliers, business partners, local communities, NGOs, environmental groups, legislators, regulators and policy-makers.**[xv]

Mark McElroy, in his *MultiCapital Scorecard,* defines a stakeholder as **"Anyone to whom an organization owes a duty or obligation to manage their impacts on vital capitals in some way and whose well-being (at least in part) depends on it,"**[xvi]

Rationale:
Vermont's statute currently lacks a definition of "stakeholder." Including this definition is essential for aiding businesses in properly determining materiality. This definition ensures the proper interpretation and execution of the other concepts outlined in this report.

Third-Party Standard:

Recommendation:
The non-profit B Lab defines a third-party standard as **"a standard for defining, reporting and assessing overall corporate social and environmental performance."** [xvii]

We recommend including updated language in the Vermont statute, like that of Massachusetts' statute, to provide a clearer description of what constitutes a third-party standard. External resources should guide businesses in choosing the right third-party standard, and we encourage the state to make the use of a third-party standard a requirement. This ensures that businesses are accurately reporting on their commitments, leaving room for an auditing process that verifies the impacts they are claiming. The goal here is not to catch businesses red-handed or to create more work for them, but to encourage a transparent, comprehensive, and verifiable system.[3]

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[2] See Table 3 on Page 20 for SASB's Materiality Map, Exhibit 1 on Page 28 for an example of a Materiality Matrix and Exhibit 2 on Page 29 for an explanation of how to determine materiality. Also see Appendix B on Page 16 for an explanation and justification for using Context-based Materiality.

[3] Table 4 on Page 21 provides a comparison of Vermont's statutes with those of Massachusetts, Washington D.C., and Illinois, to give context to what language the statutes should include. See Tables 5,6,7,and 8, starting on Page 22 for a set of resources that will help businesses choose an appropriate third-party standard.

Rationale:
Vermont's definition and expectations of a Third-Party standard are limited, as they do not require that a company's public benefit efforts be audited by a third-party. Third-party standards provide businesses with a template to measure their impact and creates transparency for stakeholders to verify that the business is accurately reporting their efforts in a way that meets the expectations outlined in their corporate purpose. Christopher Marquis, professor of Sustainable Global Enterprises at Cornell University, speaks on the need for transparency by saying:

> …Under benefit corporation law, directors' duties shift in a fundamental way such that they now need to consider all stakeholders, not just shareholders. But moving forward, it's crucial that benefit corporations are required to comply with the transparency requirements in the law. Without vigorous enforcement, there is a risk that the ideas behind the law will lose legitimacy and detract from the larger movement.[xviii]

This requirement also gives managers and consultants a tool for analyzing progress or gaps in their current ESG initiatives. Most businesses we interviewed use the B-Lab Impact Assessment as their Third-Party standard. This enabled them to obtain a holistic view of their efforts, identifying areas where they are excelling or where they should focus more attention, helping to inform strategy and their materiality assessment. With the broad variety of reporting standards that have emerged, it can be difficult to select one that is appropriate for your business. Each standard has its own set of advantages or disadvantages depending on the size of an organization and the impact areas included in its ESG strategy.

Corporate Purpose:

The ongoing debate about the roles and responsibilities of businesses within our society has brought about various interpretations of these powerful entities. During the 1970's, economist Milton Friedman coined the term 'Shareholder Primacy' which defined a "shareholder-centric form of corporate governance that focuses on maximizing the value of shareholders before considering the interests of other corporate stakeholders, such as society, the community, consumers, and employees."[xix] Friedman argued that the core responsibility of a business is "to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."[xx] For decades this has been the general modus operandi for most businesses' corporate purpose... at least until more recent social scrutiny has taken aim and set its sights on "business as usual."

Corporate purpose is classically defined as "The main objective(s) that is (are) being pursued by a commercial organization, as typically listed in its articles of incorporation or memorandum of association. It is the reason for having incorporated...A Corporate Purpose is often articulated in the corporate mission and purpose statement."[xxi] The PBC aims to redefine the meaning and structure surrounding these corporate purpose statements.[4] PBCs have a voluntary obligation to "engage in a good faith balancing of the interests of (a) the stockholders, (b) those constituencies materially affected by the corporation's conduct, and (c) the public benefit(s) identified in the company's charter"[xxii]. This takes Friedman's adage of 'shareholder primacy' and completely flips it on its head. To double down on this new paradigm shift, in August 2019, CEOs from 181 of the world's largest companies—as part of the Business Roundtable—modified a position that the

[4] See Appendix C on Page 17 for Vermont's current Corporate Purpose section.

group had held since 1977 by declaring that "the purpose of a corporation is not just to serve shareholders but to create value for all stakeholders."[xxiii]

A PBC's corporate purpose is the quintessential component to understanding why a corporation is established and clearly showcases the purpose it serves to all stakeholders. When a business uses a vague statement like "to promote sustainability" as its corporate purpose, the boundaries of their social and environmental initiatives are unclear.[xxiv] **Therefore, we recommend that Vermont's current statute be updated to represent the need for objective measurement. A specified corporate purpose, coupled with mechanisms for enforcing that purpose, prevents businesses from putting profit over the creation of social good. Setting forth a more measurable, and concrete purpose within a corporation's charter would allow for expectations to be set, goals to be created, and factual evidence to help support and evaluate the performance of that company.** [xxv]

Jill E. Fisch's "The 'Value' of a Public Benefit Corporation, states that, "PBC's should identify a discrete primary purpose, which can be unidirectional, such as minimizing pollution or multifaceted, such as furthering the interests of an identified set of stakeholders."[xxvi] Should a business establish their purpose around multiple objectives, it should clearly describe the goals that will be prioritized, and these goals should be articulated in terms that can be assessed against publicly available standards.[xxvii]

This nuance drastically changes the structure of the corporate purpose statute and now instead of vague language such as "A benefit corporation shall have the purpose of creating general public benefit..." we could implement more rigor into the statue and provide a guideline that states, "The Corporation shall have a public benefit purpose of producing a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard." This enables board members and shareholders to hold a PBC accountable for pursuing the goals stated in its corporate purpose, and more importantly for "non-shareholder stakeholders, including customers, employees and regulators, to evaluate the performance on the company against its social purpose claims."[xxviii]

Texas' PBC statute lays out the management style needed to successfully accomplish the stated corporate purpose. This section states, "To accomplish the purpose of the corporation described by Subsection (a), a public benefit corporation shall be managed in a manner that balances: (A) the shareholders' pecuniary interests; (B) the best interests of those persons materially affected by the corporation's conduct; (C) the public benefit or benefits specified in the corporation's certificate of formation."[xxix]

PBC Naming Convention:

The current PBC naming convention confuses consumers and even some companies. Some states refer to these legal structures as "Public Benefit Corporations", others refer to them as "Benefit Corporations" or "For-Profit Benefit Corporations." There is simply no regulated standard across state lines.

Zooming in locally, we look at carbon offset provider, Native Energy, a Public Benefit Corporation incorporated in Delaware, which allows them to place the PBC designation directly in their company name. One of the simplest, and potentially most impactful changes we can make to the Vermont Statutes, is to make this naming convention the standard. **Requiring businesses to put 'PBC' at the end of their name helps consumers identify the companies that have voluntarily dedicated themselves to engage in a higher standard of business. The**

more standardized this naming convention becomes, the more recognizable it becomes in the marketplace and thus, the more value the PBC structure provides to these businesses.

Board of Directors: Benefit Directors & Officers:

The duties of a benefit corporation director are the same as those for a general corporation,[xxx] except that a PBC's Board of Directors must consider both the best interests of those materially affected by the company's conduct, and the specific public benefit outlined in the company's charter.[xxxi] As a PBC, Directors are not liable if they make a decision that puts their social mission ahead of stockholder profitability. So long as these decisions are informed and presumed to be reasonable by any person of ordinary, sound judgement, such decisions are in accordance with the directors' statutory duties.[xxxii] Directors are not responsible for a failure of the PBC to create public benefit.[xxxiii] For transparent leadership and Board of Director clarity, we recommend that companies explicitly identify their five most important stakeholders.

Entrepreneurs and investors should consider a director's adherence to the mission of the company and alignment with the intended public benefit. Elizabeth Warren's Accountable Capitalism Act recommends that employees of a company elect 40% of the Board of Directors.[xxxiv] Studies have shown this codetermination steers corporate decision-making towards long-term considerations. [xxxv] **As the PBC is intended to create long-term value for stakeholders, it is important to empower these stakeholders and represent public benefit in the Board of Directors.**

Benefit Director:

The Vermont PBC statute requires the election of at least one Benefit Director. This member of the Board of Directors ensures the creation and reporting of the company's public benefit. Many Vermont PBCs have not elected a Benefit Director, or the Benefit Director is not involved in guiding or advancing the company's public benefit initiatives.

The Benefit Director is responsible for the Annual Benefit Report and publicly stating their opinion on the ability of the company to create their intended public benefit. If annual gross revenue of the PBC is greater than $5 million, the director must be independent. We recommend that the Benefit Director should always be independent, no matter the size of the corporation, for an additional layer of accountability and validity. **Companies should also put together a voluntary Benefit Committee of employees. This committee should provide suggestions for how the company can initiate or improve in the pursuit of its purpose and should be aligned under the Benefit Director's purview but could be spearheaded by either the Benefit Officer or non-management employee.**

Benefit Officer:

The Statute also allows for the election of a Benefit Officer, which can be an executive or manager that is strategically tasked with including the interest of stakeholders in the day-to-day operations. "An Officer shall consider the interests of shareholders, employees & workforce, subsidiaries & suppliers, customers, community, environment, long-term and short-term interests of the benefit corporation, and any other pertinent factors or interests deemed appropriate when the officer has discretion how to act and it reasonably appears that the matter might be material."[xxxvi] This is a unique opportunity that most companies are currently not using. We recommend the Benefit Director engage with a Benefit Officer and Benefit Committee for increased employee engagement and connection to the mission.

Use of the Annual Report:
The Benefit Director is responsible for the preparation of the Annual Benefit Report. This includes everything from the materiality assessment to the completion of the report itself. **We recommend the Benefit Director use the report as a benchmark of the company's progress so they can compare against a set of well-defined metrics to determine where to focus their efforts next.** In response to the Annual Report, the Benefit Director must prepare a statement stating whether, in their opinion, "The benefit corporation acted in accordance with its General Public Benefit Purpose and Specific Purpose in all material aspects."[xxxvii] If not, the benefit director must state why the corporation failed to do so.

Accountability- Right of Action:
Vermont PBCs are held accountable through two mechanisms: the required Annual Benefit Report and Benefit Enforcement Proceedings, which enables certain stakeholders to raise concerns about a PBC that is not following through on their intended public benefit.

The inherent problem with current benefit reporting practices is that only shareholders provide any real oversight, and only shareholders can approve or reject the annual benefit report. Michael A. Hacker of Boston College Law School points out, "third-party standard setters do not have any authority to revoke benefit corporation status, nor do they have the power to enforce the fiduciary duties of benefit corporation directors."[xxxviii] This lack of external regulation can create unfavorable circumstances for other stakeholders because most shareholders would not raise concerns if a PBC chose to prioritize profit over its general public benefit. [xxxix] Giving shareholders the final say is not an effective accountability mechanism, as they are the main interest group that has benefitted from business's profit maximization agenda. The lack of enforcement against PBCs that do not produce or file their required benefit reports inhibits any real accountability to stakeholders.

A Benefit Enforcement Proceeding is "a claim or action against a director or officer for failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or violation of duty or standard of conduct..."[xl] Consumers and intended beneficiaries are denied any viable method to enforce the development of these benefits.[xli] A Benefit Enforcement Proceeding can only be commenced by directors, certain large or privileged shareholders, and persons explicitly named in the corporate charter.[xlii] These privileged groups are not likely to bring a proceeding against the corporation as long as its still generating profit. PBCs could address this issue by allocating voting rights to some stakeholders who do not have an ownership stake or by providing stakeholder representation on the board of directors.[xliii]

Incorporating as a PBC is completely voluntary but this may not always be the case. Senator Elizabeth Warren has introduced the "Accountable Capitalism Act," which would require corporations with over $1 billion in revenue to become PBCs.[xliv] The Securities and Exchange Commission is also evaluating involvement in the regulation and enforcement of non-financial disclosures. These changes would introduce nationwide litigation that governs businesses' pro-social engagements, which should incentivize larger corporations to increase their own accountability. Improving their ESG efforts now, PBC or not, allows a business to join this space early, giving them ample time to adjust operations, develop programs and shows stakeholders they care about improvement, rather than just abiding by legal requirements as they get formalized.

Oversight from the Attorney General's (AG) office can come in the form of a bad actor deterrent. The AG has greater incentive to protect the public from deceptive business practices and could require pre-approval before incorporation or reincorporation as a PBC.[xlv] The AG could also ensure that corporations are producing benefit reports. Massachusetts[xlvi] and New Jersey[xlvii] require that a benefit corporation's annual benefit report be filed with the state and New Jersey law also states that if a corporation has not delivered its report for two consecutive years, they can revoke its legal status as a benefit corporation.[xlviii] A non-governmental, pro-social entity could also be created to regulate PBCs, holding them accountable in terms of public benefit produced and benefit reports filled.

A PBCs corporate purpose is the quintessential component to understanding why a business is doing what it is doing. That is why it is important for PBCs to adopt an objective, factual, and third-party verifiable corporate purpose. The concept of Promissory Estoppel comes into play here. If you make a public commitment then you are bound to uphold that commitment, even without a formal contract. This provides justification for addressing voluntary public benefit commitments using the same types of performance accounting principles we apply to obligatory business activities, such as fiduciary duties owed to shareholders.[xlix] **If a general or specific benefit is clearly stated, the ways to improve, obtain, and measure this benefit are objectively and factually laid out, a clear departure from the purpose would be overwhelmingly obvious. This ensures that declarations made by the business in their articles, or claims made in their Benefit Reports, are seen as obligatory and can be legally upheld by regulators. If there is consistent deviation from the stated goals, non-equity stakeholders and all other intended beneficiaries now stand on solid ground to raise claim, which also increases incentive for transparent self-regulation.**

With increased rigor in corporate purpose and corporate accountability, the potential to incentivize these types of organizations now becomes an interesting piece in the pro-social business equation. PBCs are taxed as for-profit C corporations and receive no specific tax incentive or grants for taking a socially conscious approach. In 2017 the Trump administration signed into law the "Tax Cuts and Jobs Act" (TCJA)[l], a $1.5 trillion tax code overhaul aimed at US corporations. This was one of the largest overhauls of the tax code in the last three decades and creates a single corporate tax rate of 21%.[li] Anne Kim of the Progressive Policy Institute (PPI) believes that "What corporate tax reform should have achieved – and still can – is to help stop the cycle of companies disinvesting in their workers [and communities] in favor of returning more and more profits to shareholders."[lii] An interesting approach could be that of a tiered incentive program, where "The firms eligible for the lowest tax rates should meet one of two criteria: (1) that they meet specified standards for investment in their workers; or (2) that they are legally organized as "benefit corporations" and provide good evidence of their practices."[liii]

Further incentivization can come from increased grant funding. Giving PBCs additional points in the selection process for government grant allocations, we provide these businesses with a better opportunity to bring in capital, which will likely be used to fund pro-social initiatives.

Transparency: Annual Benefit Report

Building on the need for an appropriate third-party standard, businesses must take this information and present it to the public in a report that summarizes their ESG strategy and ability to generate material impact. Many of the businesses we spoke to stated that they were unaware of the requirement to produce one yearly, were unsure how to structure the report, and felt that they often did not have the time or resources to decipher what should be included. California's statutes offer clarifying language, as they have the most PBCs in the country, including some of those with the highest BIA Scores, proving these PBCs' ability to drive and report on impact. [5] Massachusetts, New York, and Pennsylvania all have very similar statutes,[liv] as well as many PBCs with high BIA scores. These states require businesses to file copies of their benefit report with the state, along with a filing fee, which signifies these state's dedication to enforcing and verifying the Annual Benefit Report requirement.

The Model Benefit Corporation Legislation[lv] suggests that these reports be filed with the state. Without this provision, tracking and enforcement becomes difficult. **Vermont should adopt similar language for added clarity and legitimization and charge a filing fee to allow the State Department to devote resources to monitoring the reporting practices, potentially setting statutory penalties and prompts for noncompliance.[lvi]**

The language used in the statutes should act as a guide to businesses, encouraging the use of clear, concise, and objective measures of public benefit. Businesses should set measurable goals and provide commentary on the internal efforts required to push their ESG initiatives along, sharing how they were able to meet or even exceed goals. If a goal was missed, explaining why this happened and how the business will improve, gives stakeholders context and reduces the need to raise concerns. Focusing on a "disclosure-style" report moves us away from a "newsletter-style" report, providing pertinent information that stakeholders and investors need to gain proper insight into the true depths of a company's current and intended future impact.

Authentic Sustainability Accounting encourages businesses to measure performance according to sustainability norms, with a focus on context-based metrics to identify their relative impact on sustainable improvements.[lvii] An example of this would be to compare two companies, one with high levels of emissions and one with low levels. If both companies report that they have reduced their emissions by the same amount, then this incremental view shows they are both creating value. Factoring in sustainability norms, the company with higher emission levels would need to reduce its emissions by much more to generate true and meaningful impact. Tools such as the IR Framework and the Demonstrating Value Initiative are useful as guides, but they are not sufficient. By including aspects of authentic Sustainability Accounting, businesses can set more impactful goals that effectively design, measure and report on a strong ESG strategy.[6]

[5] See Table 9 on Page 27 for a comparison of Vermont's statute with that of California.
[6] See Supplemental Reading on Page 30 for a How-To-Guide that includes instructions for writing a Benefit Report, content requirements, and metrics one can use to properly represent their impact.

Appendix:

Appendix A: **Specific Public Benefit Expanded**

Specific public benefit should include the identification of specific impact initiatives that a company deems material to their business. Choosing material ESG initiatives is vital to performance because not all ESG issues are equally important- some matter more depending on the industry. For example, in the transportation sector, investing in a low-carbon economy is essential for an auto-manufacturer to stay ahead of changing regulations and competition, not to mention the impact that climate change, the availability and cost of fossil fuels and evolving consumer preferences can have on their profit model. This impact is less significant for the technology sector, which shows how impact initiatives will differ for every business. As ESG grows in popularity and as we accumulate more data around how these strategies drive performance, we need to see a transition away from "box-ticking" where companies adopt increasingly standardized ESG activities. Although these strategies may bode well for society and the environment, they are not enough. Highly strategized and well-developed ESG Programs boost long-term performance but only if they create a competitive advantage. Standardized, higher-level, ESG strategies miss the mark because they are easily reproduced in other organizations. Research conducted by George Serafeim concluded that firms are increasingly focused on the same sorts of sustainability and governance activities, reducing their ability to differentiate and subsequently generate long-term benefit. He also discovered that during the height of the pandemic, when global financial markets were collapsing, the ones that the public perceived as behaving more responsibly had less-negative returns than their competitors. [lviii] Therefore, companies who design their ESG program around material and specialized activities will reap long-term benefits, operationally and financially as well as internally and externally.

For this reason, we turn to the UN SDG's for guidance on where companies should be focusing their efforts. The UN SDG's were developed with input from hundreds of leaders around the world, aligning on a vision that highlighted what changes we need to make in order to create the future we need if we are going to stabilize our environment and prosper as a collective whole. This creates a common language and framework for addressing sustainability issues across organizations and acts as a trusted guideline to set goals, implement strategies to achieve those goals, measure ESG performance and communicate with stakeholders on these issues. [lix] For that reason, we are incorporating them here as a guide for businesses to use in selecting the areas of impact they will seek to have with their material ESG strategies.

Once a business has determined their materiality, they can use the following table to choose a set of UN SDG's that apply to their materiality determinations, and from there sort through some additional resources to identify specific initiatives/activities they can engage in to satisfy the chosen SDG's.

Resources on Public Benefit Initiatives:

- Specific Public Benefit Initiatives (From B Lab)
- Why the SDG's Matter
- How your company can advance each of the SDG's
- The Sustainable Development Goals Progress Report

<u>Appendix B:</u> **Making the case for Context-Based Sustainability and Context-Based Materiality**

While the differences in terminology for context-based versus traditional materiality may seem merely semantic, taking these concepts a step further and engaging with a more rigorous definition of sustainability and materiality will help move the needle faster and more efficiently. The idea here is that we want to be entirely stakeholder focused, not simply value-creation focused, which has been the overarching theme in ESG to date.[lx] Context-based sustainability is an approach to measurement, management and reporting that interprets performance in terms of what an organization's impacts on vital capitals are relative to norms, standards, or thresholds for what they would have to be in order to be sustainable. By interpreting performance through a sustainability lens, we can determine which impacts are sustainable if and only if they are producing or maintaining vital capital resources at levels that will ensure human well-being. Using this higher standard for sustainability will allow companies to report on standards of performance that are specific to their organization. For example, simply claiming "We are working to reduce our carbon emissions" is not sufficient because it leaves room for greenwashing. These businesses may claim to reduce emissions, however are they doing so in an amount that is sufficient, given their portion of total emissions generated in that sector? With context-based sustainability, we can generate increased transparency and accountability by ensuring that these claims are backed by organization and industry-specific measurements. This can reduce the number of bad actors who are just virtue signaling and will ensure they are working in a manner that accounts for the total impact they generate. The creators of the MultiCapital Scorecard provide a real-world example of this in practice with Cabot, and show through quantitative analysis how much emissions Cabot would need to cut in order to fairly and proportionately contribute to the reversal of Climate Change.[lxi]

Thus, it should be clear that context-based metrics consider truly sustainable social and environmental limits, providing the most rigorous, literal and authentic measures of performance. Materiality in this sense, focuses on the fact that businesses have duties and obligations to manage their impacts on vital capitals so as to ensure stakeholder well-being.[lxii] Performance should be measured in relation to what the impacts on vital capitals would have to be in order to be sustainable, specific to that organization, and all duties and obligations to address those impacts on vital capitals need to be represented in terms of the carrying capacities of those vital capitals. [lxiii]

Appendix C: **Corporate Purpose (Current VT Statute)**

§ 21.08. Corporate purpose

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and subsection (a) of this section. The adoption of a specific public benefit purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

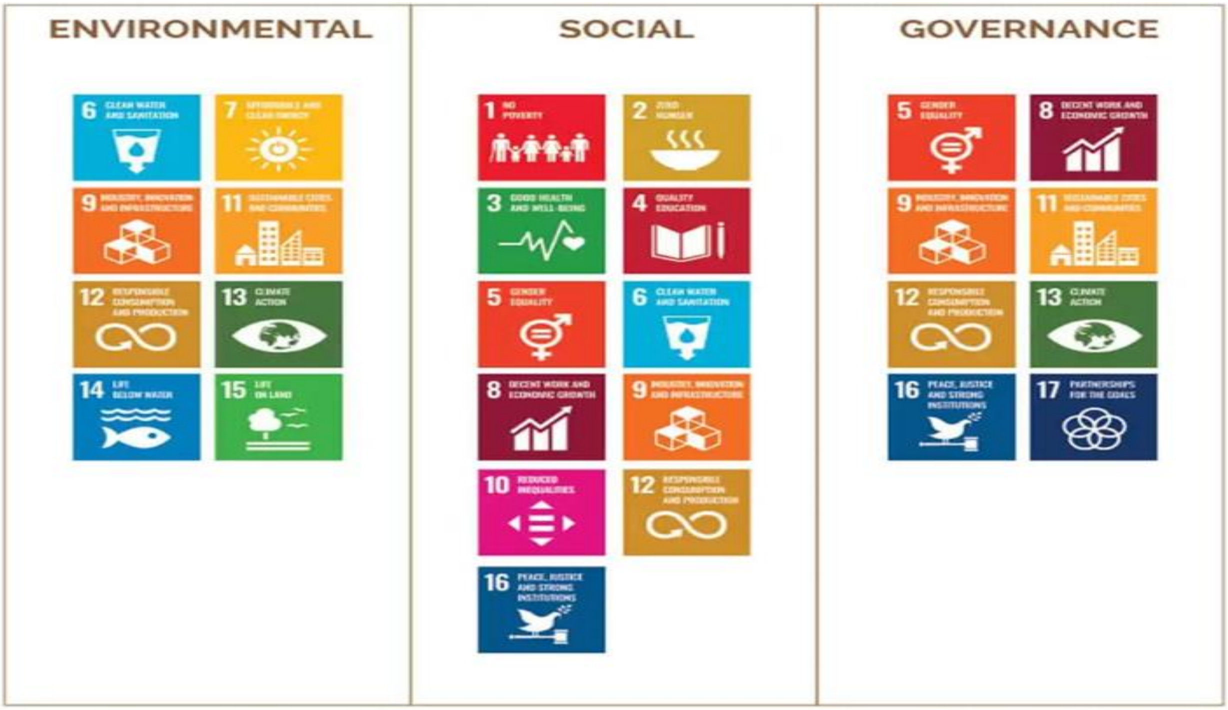
(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group. (Added 2009, No. 113 (Adj. Sess.), § 1, eff. July 1, 2011.)

Table 1: UN Sustainable Development Goals

1) No Poverty	Fostering inclusive economic growth by providing sustainable jobs and promoting equality.
2) Zero Hunger	Waste less food and Support local farmers
3) Good Health and Well-being	Ensuring healthy lives and promoting the well-being at all ages.
4) Quality Education	Help educate the children in your community by providing opportunities for quality education that will improve people’s lives.
5) Gender Equality	Empower women and girls to ensure equal rights. This is a necessary foundation for a peaceful and prosperous world.
6) Clean water and sanitation	Ensure availability and sustainable management of water and sanitation for all.
7) Affordable and clean energy	Ensure access to reliable, sustainable and modern energy for all.
8) Decent work and economic growth	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
9) Industry, Innovation and Infrastructure	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.
10) Reduced Inequalities	Reduce inequality within and among countries
11) Sustainable cities and communities	Make cities and human settlements safe, inclusive, resilient and sustainable.
12) Responsible consumption and production	Ensure sustainable consumption and production methods.
13) Climate Action	Take urgent action to combat climate change and its impacts.
14) Life Below water	Conserve and sustainably use the oceans, seas and marine resources for sustainable development.
15) Life on Land	Protect, restore and promote the sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss.
16) Peace, justice and strong institutions	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.
17) Partnerships for the goals	Strengthen the means of implementation and revitalize the global partnerships for sustainable development.

Table 2: UN Sustainable Development Goals (Visual)- SDG's Mapped to ESG Targets



[7]

[7] https://www.un.org/sustainabledevelopment/ "The content of this publication has not been approved by the United Nations and does not reflect the views of the United Nations or its officials or Member States"

Table 3: [SASB Materiality Map]

Table 4: Comparing VT's Third-Party Standard

Vermont's Current Statute:	Massachusetts Current Statute:
"Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that: (A) is developed by a person that is independent of the benefit corporation; and (B) is transparent because the following information about the standard is publicly available: (i) the factors considered when measuring the performance of a business; (ii) the relative weightings of those factors; and (iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.	"Third-party standard", a standard for defining, reporting and assessing overall corporate social and environmental performance which is: (1) comprehensive in that it assesses the effect of the business and its operations upon the interests listed in subclauses (ii), (iii), (iv) and (v) of clause (1) of subsection (a) of section 10; (2) developed or performed by a person or organization independent of the benefit corporation and not more than one-third of the members of the governing body of the organization are representatives of any of the following: (i) an association of businesses operating in a specific industry the performance of whose members is measured by the standard; (ii) a business from a specific industry or an association of businesses in that industry; or (iii) a business whose performance is assessed against the standard; (3) not materially financed by an association of business described in clause (2); (4) credible because the standard is developed by a person that: (i) has access to necessary expertise to assess overall corporate social and environmental performance; and (ii) uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard; (5) transparent, because the following information is publicly available about the standard: (i) the criteria considered when measuring the overall social and environmental performance of a business; (ii) the relative weighting of those criteria; (iii) the identity of the directors, officers, material owners and governing body of the organization that developed and control revisions to the standard; and (iv) an accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationship that could reasonably be considered to present a potential conflict of interest.

Illinois and Washington, D.C. include roughly the same language, with Illinois replacing the word 'independent' in clause (2) with the word 'material', which is a better use of this language, given the stress we have placed on the importance of materiality. These statutes are not only much more well-defined, but they also point businesses in the right direction for choosing a Third-Party Standard that is appropriate for them. Adding to the language provided by other states we can include a statement that allows for this kind of determination:

"And (6) was chosen in good faith by the corporation due to the standards ability to comply with these outlined qualifications and the standards applicability to the corporations efforts, providing them with an effective means of evaluating their specific public benefit and reporting on it in a way that fits the organizations benefit goals, uses metrics and/or thresholds that follow sustainability norms, and appeals to their stakeholders."

Table 5: Irish Funds' Comparing International Sustainability Reporting Frameworks Report

Framework	Pros	Cons
TCFD	• Closest framework to a mandatory/regulatory requirement and will therefore be most widely adopted by companies.	• Largely climate related disclosures. • Some complexity around the requirements, which may make it difficult for companies to report.
GRI	• Most widely adopted. • Easily implemented from a reporting perspective. • Considers materiality for each stakeholder.	• Mainly adopted by European companies. • Not a focus on climate related metrics.
SASB	• Specific industry standards • Investor focus in terms of reporting requirements. • Consideration of materiality for each industry standard. • Looks at the future performance of companies.	• Mainly US focus but adopted by other global organisations that have a presence in the US.
CDSB	• International consortium of business and environmental NGOs.	• Largely climate and environmental related disclosures.
IR	• Supports value creation for companies over short, medium and long term. • Global coalition of regulators, investors, companies, standard setters, the accounting profession and NGOs. • Considers materiality for each stakeholder.	• No specific metrics for measuring climate related risks and opportunities. • No specific metrics to measure scope 1, 2 or 3 for greenhouse gas emissions.

[lxiv]

Table 6: OECD Paris- ESG Investing: Environmental Pillar Scoring
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	Year	Purpose	Scope
Carbon Disclosure Project	2002	Releases annual disclosure guidelines on emissions, climate hazards and mitigation, water and governance	CDP provide questionnaires for company disclosure across climate change, forests and water security that cover emissions, carbon pricing, and governance
Global Reporting Initiative	2006	Global standards for companies to report on economic, environmental and social impact	The G4 sustainability reporting guidelines provide 34 metrics to measure environmental impact across a range of sectors
Sustainability Accounting Standards Board	2011	Provides basic concepts, principles, definitions, and objectives to guide sustainability accounting	Sector specific guidelines with between 10 and 29 environmental metrics per sector, and a median of five disclosure topics
International Integrated Reporting Council	2012	Framework to identify areas for disclosure and reporting relating to the environmental and governance activities of companies with the aim to maintain value creation over time	Outlines the context for environmental performance data and clarifies how value relevant information fits into operations or a business, and may help make company decisions more long-term
Task Force Climate-related Financial Disclosures	2015	Provides company financial reporting guidelines on climate, energy, waste and water management	TCFD make recommendations on targets and metrics that cover 28 key issues, with complementary guidance on management and processes
Climate Disclosure Standards Board	2015	Provide material information for investors and financial markets through the integration of climate change-related information into mainstream financial reporting	Provides non-sector specific guidelines across 12 categories for companies to report on environmental and climate change matters, including environmental policies, strategies and targets including guidelines for the assessment of impact
Nasdaq ESG Reporting Guide	2019	Provide guidance to listed companies on environmental reporting, and promote dialogue between investors and companies of the performance signal of better data on the topic	Outlines 17 metrics across 10 categories to assess environmental and climate related performance. Guidance is also given on measurement methodology of each metric

Table 7: Mark McElroy- Making Materiality Determinations: A Context Based Approach

	Type of Method			Materiality				Key Attributes		
				Orientation		Source of Indicators				
	TBL in Scope	Impact Valuation	Sustainability Accounting	Shareholder-Centric	Stakeholder-Centric	Predetermined	User-Determined	Context-Based	Purpose-Based	Multi-Capital-Based
B Corp BIA	✓	✓			✓	✓			✓	
Common Good Balance Sheet	✓	✓			✓	✓				
Future Fit Business Benchmark			Incomplete[2]		✓	✓		Incomplete[2]		
GRI	✓	Effectively[1]	See Note[1]		✓	✓		Incomplete[1]		
IIRC <IR>	✓	✓		✓			✓			✓
MultiCapital Scorecard	✓		✓		✓		✓	✓	✓	✓
SASB	✓	✓		✓			✓			✓

Notes:
1. GRI omits guidance for its *Sustainability Context principle;* no GRI report, therefore, has ever actually disclosed sustainability performance in full TBL terms.
2. Future Fit fails to fully address thresholds and allocations in some of the areas of impact (AOIs) it covers and therefore makes sustainability reporting per se impossible; it also does not address economic sustainability performance at all and falls short of full TBL accounting in that regard.

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Table 8: Summary of the most widely used and accepted Standards:

B Lab Benefit Impact Assessment (BIA)	Almost every business we spoke to exclusively uses the BIA as their 3rd party standard. It is a comprehensive online tool that can be filled out similar to a survey, with its own set of questions and metrics that generate a Benefit Impact Score, which is useful for comparing your performance to that of other certified B Corps. B Lab also includes some instruction on how to choose a third-party standard as well as a list of the ones they endorse. You can find that here.[lxvii]
MultiCapital Scorecard (MCS)	MCS is a free and open-source management tool (a public good) that organizations can use to measure, manage and report their performance in a fully integrated (Triple Bottom Line) way. In principle, the MCS is based on the idea that performance is best understood in terms of what an organization's impacts on vital capitals are relative to *organization-specific* and context-based sustainability norms. Managing performance, therefore, boils down to managing impacts on vital capitals, a basic tenet of multicapitalism.[lxviii] For more information on the MCS and it's pilot with Ben & Jerry's see here[lxix]
Global Reporting Initiative (GRI)	The GRI Standards contain several topic-specific standards for organizations to use to report climate change where they identify it as a material topic. GRI has some of the most extensive and thorough reporting standards, which can be quite challenging as there is a lot to uncover there. In order to assist with this, they have a lot of support to help businesses file these non-financial disclosures, which can cost a lot but appears to be helpful in going through the process. - How to make claims that your report was in accordance with the GRI standards- Pages 21-26 - Specifically GRI 101 (Foundation), 102 (General Disclosures), 200 (Economic), 300 (Environmental) and 400 (Social)
World Economic Forum (WEF) Standards	The WEF Standards were designed in conjunction with 140 CEOs from the International Business Council and are also pretty comprehensive, but only agree on the categories of items to report on, any metrics or measurements point the reader to other standards, mainly GRI and SASB, which requires additional research.
Sustainability Accounting Standards Board (SASB)	The SASB Foundation has established an independent standard-setting arm, the Sustainability Accounting Standards Board, that sets sustainability disclosure standards that are industry-specific and tied to the concept of materiality to investors. The standards are intended to capture sustainability matters that are financially material and reasonably likely to have a material impact on financial performance or condition. One of the key elements of SASB is the concept of double materiality. The double materiality perspective appropriately

	acknowledges that non-financial information is important to multiple constituencies. The SASB materiality map identifies sustainability issues that are likely to affect the financial condition or operating performance of companies within an industry.[lxx]
The Value Reporting Foundation and the International (IR) Framework	The Value Reporting Foundation is a culmination of efforts from CDP, CDSB, GRI, IIRC, and SASB meant to align the standards set by each organization. This began as a merger of SASB and the IIRC and with input from these additional organizations, have produced this prototype of standards. Previously, the IIRC has published the International (IR) Framework which aligns more with what to include in a report that covers the organization's strategic purpose and ability to create long-term value, and less in terms of metrics.
Task Force on Climate-Related Financial Disclosures (TCFD)	Reserved for companies focused on climate disclosures (those who's material impacts are centered on environmental concerns)

Table 9: Comparing Vermont's Reporting Requirements

Vermont's Current Requirements:	California's Current Requirements:
- Statement of goals or outcomes of the benefit corp's efforts in creating general public benefit or any specific public benefit - Description of the actions and efforts taken to attain the identified goals and the extent to which these goals/outcomes were attained. - Description of circumstances that hindered the attainment of the goals/outcomes. - Specific actions taken to improve its social/environmental performance and attain the stated goals. - Assessment of performance in accordance to 3rd party standard and that is consistent with prior reports (or explanation of the reasons for changing the standards/metrics) - Statement of specific goals/outcomes approved by shareholders for the next reporting period.	(1) A narrative description of all of the following: (A) The process and rationale for selecting the third-party standard used to prepare the benefit report. (B) The ways in which the benefit corporation pursued a general public benefit during the applicable year and the extent to which that general public benefit was created. (C) The ways in which the benefit corporation pursued any specific public benefit that the articles state it is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created. (D) Any circumstances that have hindered the creation by the benefit corporation of a general or specific public benefit. (2) An assessment of the overall social and environmental performance of the benefit corporation, prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be audited or certified by a third party. (3) The name of each person that owns 5 percent or more of the outstanding shares of the benefit corporation, either beneficially, to the extent known to the benefit corporation without independent investigation, or of record. (4) The statement required by Section 14621 . (5) A statement of any connection between the entity that established the third-party standard, or its directors, officers, or material owners, and the benefit corporation, or its directors, officers, and material owners, including any financial or governance relationship that might materially affect the credibility of the objective assessment of the third-party standard. (b) The benefit report shall be sent annually to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders. (c) A benefit corporation shall post all of its benefit reports on the public portion of its Internet Web site, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted on the Internet Web site. (d)(1) If a benefit corporation does not have an Internet Web site, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy. (2) The benefit corporation may omit any proprietary or financial information, including, but not limited to, compensation paid to directors, from the copy of a benefit report that the benefit corporation provides pursuant to paragraph (1).

Exhibit 1: Materiality Matrix

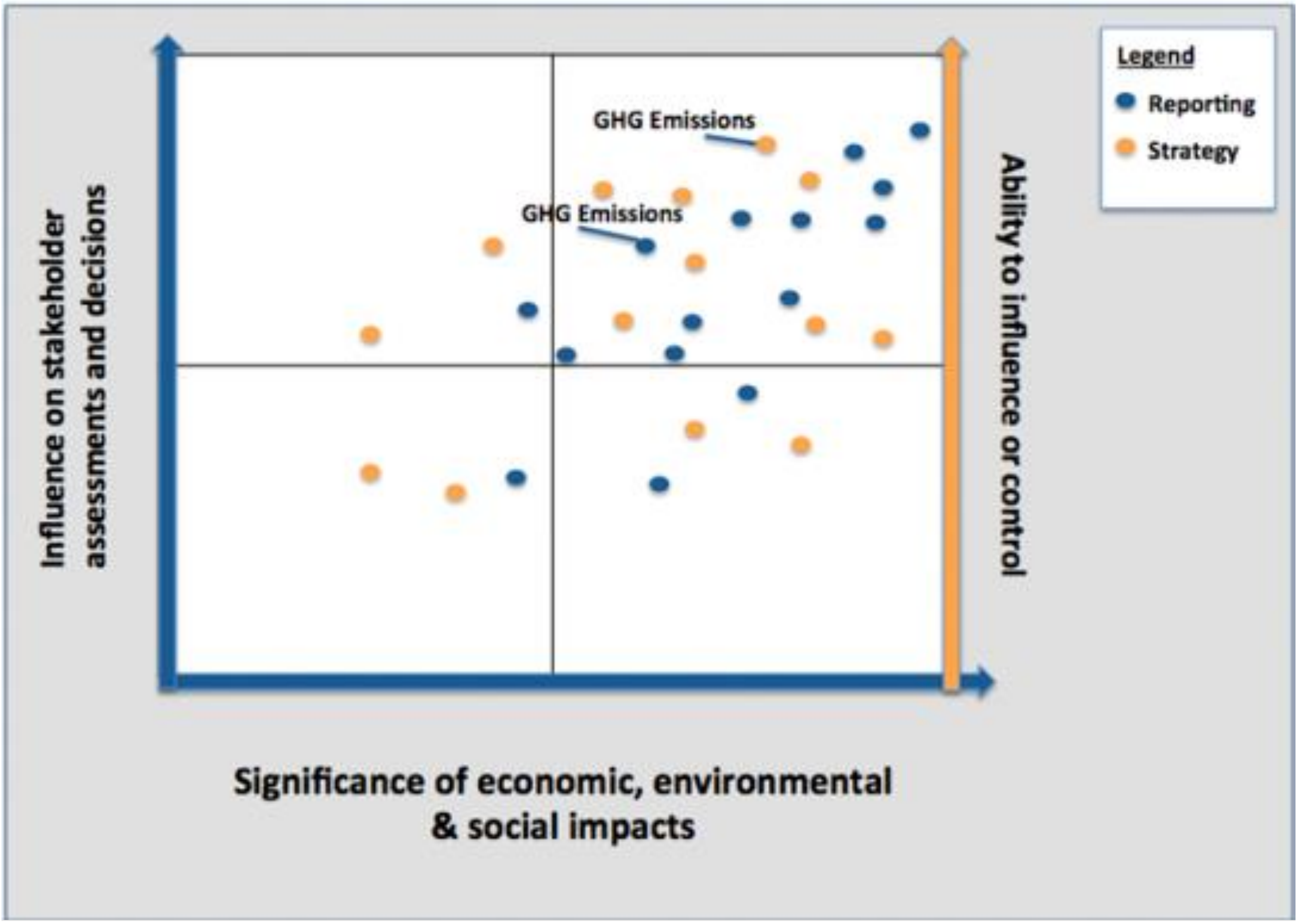

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Exhibit 2: How to Determine Materiality:

Building off the understanding that specific ESG strategies generate long-term value, and the UN SDG's can be used as a guide for focusing these programs internally, it is imperative that businesses properly determine materiality. Here is a step-by-step guide on how to effectively do this, as instructed by Mark McElroy in an article titled "Making Materiality Determinations"[lxxii]:

1 Scope Delineations:

Identify the functional domain whose performance is going to be assessed. In most cases this will be the organization's own operations, but it can also pertain to its supply chain or demand chain (Customers/consumers). This determines who takes responsibility for assessing the sustainability performance.

2 Stakeholder Identification: (Part 1)

- This step is focused on determining who an organization's stakeholders actually are. These parties generally include (but are not limited to) shareholders or owners, customers, employees, trading partners and communities, some of whose interests may be represented by a third-party regulator of some kind.
- The output of this step is an inventory of stakeholders whom management believes duties and obligations are owed to manage its impact in ways that can affect their well-being.
- This step should also include an initial analysis of what the scope of these duties and obligations actually are. These should be expressed in terms of what the capitals are upon which an organization should be having an impact on. Focusing on direct impacts, these are the capitals which stakeholders rely on directly and thus should be the focus of materiality here.

3 Capital Impact Determinations: (Part 1)

- Building on your stakeholder identification, here is where an organization should be taking a closer look at their material impacts on vital capitals. This is where the organization identifies its impact on the world around them and determines which one's impact stakeholder well-being, and thus should be focused on in their ESG Program.
- Drawing a line between direct and indirect impacts, and between parties to whom duties and obligations are affirmatively owed and those who may only be indirectly impacted prevents a situation where everyone's interests are allegedly material to an organization's impact. In this case the term loses meaning and performance accounting becomes unmanageable.
- Organizations should also focus on impacts that are not yet occurring, but which should be occurring by virtue of their relationship with the stakeholders identified.
- Determining which externalities, misconstrued existing impacts and impacts generated by partners (such as suppliers) should be identified and measured in regard to the scope of materiality.

4 Stakeholder Identification: (Part 2)

- Considering that newly material impacts may have been determined in Step 3, we need to revisit the stakeholder identification step to ensure that the list of stakeholders is complete.
- If in making the capital impact determinations an organization decides that they will expand their scope of materiality to include, for example, the employees of their supplier partners, then these constitute a new stakeholder group to consider.

5 Capital Impact Determinations (Part 2)

- Similar to how the identification of capital impacts can lead to the identification of additional stakeholders, so too can the identification of new stakeholders. These recursive steps ensure that no material stone is left unturned.

6 Areas of Impact and Related Duties and Obligations Documentation:

- Once materiality determinations have been made, we must record the following information:
  - Boundary Specification – What is the entity or actor whose sustainability performance is at issue and what are its boundaries of operation?
  - Identification of the Areas of Impact – What are the discrete areas of impact that have been determined to be material (e.g., wages paid to employees, water use, greenhouse gas emissions, etc.)
  - Associated Stakeholders and Duties/Obligations – What are the corresponding duties and obligations for each material area of impact and to whom are they owed? Who, that is, are the stakeholders in the case of each area of impact?
  - Legitimacy of Duties/obligations – Each identification of a duty or obligation owed to a stakeholder should include an explanation to its validity or legitimacy. This includes the argument that an organization's impact on vital capitals has an effect on human (stakeholder) well-being and therefore, need to be regulated; and/or the effects organizations are duty-bound to have on capitals, given the relationship that exists between them.
  - Norms, Targets and Metrics – The initial Scoping and Materiality step should conclude by identifying and describing areas of impact determined to be material, but also by indicating a set of possible norms, targets, and metrics to be applied in each case.

Supplemental Reading**: How-to-guide for Producing an Annual Benefit Report:**
This guide was prepared under our own efforts through the review of Annual Benefit Reports produced by PBCs and B Corps. By taking note of best-in-class examples and items in these reports that display proper representation of sustainability metrics, as well as the ideal level of transparency, we have created this guide, which businesses can use in constructing their own reports. By following this model, we hope to create standardization so that the reports can be better evaluated by investors and stakeholders.

AUGUST 2021

HOW TO CREATE AN ANNUAL BENEFIT REPORT

FOR YOUR VERMONT
PUBLIC BENEFIT CORPORATION

01 WHY DO I NEED TO CREATE AN ANNUAL BENEFIT REPORT?

With the Vermont Benefit Corporations Act requiring PBC's to complete an Annual Benefit Report within 120 days of the end of the fiscal year, these reports are an integral way to showcase all your company has done. By focusing on metrics-driven key performance indicators (KPIs), materiality, and transparency, getting as close as you can to authentic sustainability accounting is the optimal way to attract ESG-minded investors, appeal to the growing pro-social customer base, and contribute to the movement of businesses catalyzing systematic change.

DEFINITIONS

ESG -Environmental, social, and governance criteria are a set of standards for a company's operations that socially conscious investors use to screen investments. Environmental criteria consider how a company performs as a steward of nature. Social criteria examine how it manages relationships with employees, suppliers, customers, and the communities where it operates. Governance deals with a company's leadership, executive pay, audits, internal controls, and shareholder rights.

Materiality - An ESG issue on which a company has an impact, or may be impacted by. It may also be one that significantly influences the assessments and decisions of stakeholders.

Materiality Assessment - an exercise in stakeholder engagement designed to gather insight on the relative importance of specific ESG issues. The insight is most commonly used to inform sustainability reporting and communication strategies, but it also is valuable to strategic planning, operational management, and capital investment decisions.

Stakeholders - Anyone to whom an organization owes a duty or obligation to manage their impacts on vital capitals in some way and whose well-being (at least in part) depends on it.

Sustainability Accounting - disclosure of non-financial information about a firm's performance to external stakeholders, representing the activities that have a direct impact on the environment, society, and the economic performance of an organization.

02 IDENTIFYING IMPACT

1: MATERIALITY ASSESSMENT

Identify all stakeholders

i. Internal: executive leadership, directors, regional managers, employees, etc.
ii. External: trade associations, customers, NGOs, communities, geographic regions, etc.

Create a comprehensive list of everything potentially material to these stakeholders. *Focus on impacts on vital capitals, externalities from business operations, impact generated through the supply chain and other external partners.*

i. Convene your management team and create an extensive list that covers all of the impacts you deem as absolutely material. If the business directly impacts a certain type of capital or stakeholder, or if not addressing this type of capital will impact the business or stakeholders in any way, then it is material.

ii. Next, sort the impacts that are material in order of relevance.
a. Weight: Managers can decide which impacts on vital capitals are most important and accord them more weight in performance measurement and reporting
b. Progression: All actual impacts are further qualified in terms of how they currently compare to sustainability norms and in cases where they (the impacts) fall short, whether performance is getting better or worse over time.

Engage with the stakeholders identified earlier in order to better understand which items on your list are most important. This can be done through interviews or surveys. *This process should also uncover impacts that you were not able to identify on your own, so be sure to continue to update your list as you engage with more stakeholders.*

i. Based on the feedback from stakeholders, rank these impacts and insert them into the Materiality Map based on their significance, their impact on stakeholders and your ability to control them as an organization. Click here for more about the materiality assessment and for a template (one can also be found through SASB here)

Identify at least 3 impacts that are of critical importance to the business & stakeholders. *These will be impacts in the top right on the Materiality Map.*

03

IDENTIFYING IMPACT

2: IDENTIFY THE TEAM

Identify an internal Impact Committee who will help you along this mission- choose individuals who are in close relation to material items identified above

i. Ask them to join, and stress that this is an "opt-in" committee. These individuals should be selected based on their role in the company as well as their passion for the impacts that need to be addressed.

3: SELECT 3 SDG'S

Select 3 Sustainable Development Goals (SDGs) that relate to the area of impact you are focusing on and that you are in a strategic position to address. You can find the full list of SDGs in Appendix A.

i. Focus on how you can use your business' core competencies to address the items you've identified.
ii. Use these SDG's to identify specific initiatives that pertain to each goal. (You can find a list of initiatives here)
iii. Have the members of your Impact Committee choose the initiatives that they want to work on.

4: MANAGE WHAT YOU MEASURE

Identify key metrics and KPI's to report on for each of those initiatives.

i. Use WEF standards and the Demonstrating Value Library of Impact to identify relevant metrics for each type of activity.
ii. Once you have determined a metric for each initiative, determine an appropriate goal to work towards and measure your progress against.

04 COMPILING THE ANNUAL BENEFIT REPORT

Identify a relevant third-party standard assessment tool

i. Choose a standard you will be able to fill out without burdening operations

ii. Choose a standard that best aligns with your initiatives (for example, the TCFD and CDP are both solely environmentally-focused which would not be conducive for socially-minded organizations) Review the definition of Third-Party Standards and Appendix C to see an explanation of each of these standards.

To view the assessment of your impact through a holistic lens, **seek guidance from an independent party.**

Use the results of this assessment for the basis of your report, but also to help inform strategy, ensuring that you focus on the impacts that the firm is most capable of addressing. This is also a great place to identify the relevant metrics to use in the report.

For example, looking at your scores in each section of the BIA is helpful in identifying areas you are lacking, or areas where you have already made a big impact and might be able to shift resources.

05 COMPILING THE ANNUAL BENEFIT REPORT

Based on the initiatives your company has chosen to pursue, **create a list of all the data that is needed** and align that with who would be able to provide that information.

i. Categorize the initiatives, and within each category list the data that will be needed to provide a transparent view of the actions taken to make progress on the initiatives.
ii. Consult with key employees/stakeholders who have direct insight/access to the information you need. This will most likely be those from the Impact Committee who were assigned an initiative, but don't rule out other individuals within the company or external stakeholders.

This is important to ensure you have not missed any important insights.

Meet with these individuals to review the progress on these efforts. Have them compile the following information and review it as a team:

- *Where the company wants to be on that initiative (Goals)*
- *What would be the ideal indicator of progress on that goal.*
- *How far along is the company on getting to that goal*
- *What the company has done so far to get there.*
- *What the company will do moving forward to get them to their goal.*

06 DRAFTING THE REPORT

Create Graphics & Visualizations that are clear and understandable to share what your company has done so far, where you are headed, and how you will achieve your goals.

i. Create a template that outlines all the information in a way that fits with your company's brand. This will help you produce reports efficiently in the future.
ii. Provide commentary on your experiences achieving this goal so far- roadblocks, advancements, realizations, etc.
iii. Transparency provides legitimacy and opportunity! If there are issues in achieving your goal, explain why and identify how you will overcome those roadblocks or transition to find a goal that is more appropriate/impactful.

SHARE & CELEBRATE!

Consult with your team for sign-off and share it with your board! After their approval, share it with all of your stakeholders!

Post it on your website, share it on social channels, and the spread the word on your newsletter. Celebrate this document that is a representation of the values and benefit deeply embedded in your company!

And do it again next year! Using this template, it should be easier, faster, and get better every year.

Report Contents: *This can be used as a checklist when synthesizing one's efforts into the Annual benefit Report.*

	Opening Summary Statement	The report should open with a statement that highlights the business's mission, purpose statement, General/Specific Public Benefit and what it means for them to be a PBC - Ex: King Arthur's Mission and Values Page
	Table of Contents	
	Summary of impact areas with summary stats for metrics chosen	This should be a one-pager that summarizes the charter statements that are included in the articles of incorporation, focusing on the general/specific public benefit chosen. Should also include a list of all metrics identified with the company's current status on those goals. - Ex: Metric tons of CO_2 produced and reduced/sequestered.
	Commentary on how the main business operations provide social benefit.	How does your business create value through your products or services? - Ex: SunCommon creating clean energy alternatives for customers in VT or Kickstarter funding projects that provide social benefit.
	Summary of Materiality process	- Can show materiality matrix - Quick commentary on the processes engaged in to determine materiality o Stakeholders contacted o Methodology o Needs identified and ordered for importance. (How they impact the business and why they are in a strategic position to address them) o Impact areas decided on based on this materiality
	Elaboration on each of the identified impact areas	- Commentary on how they have been addressing it. - Metrics chosen and goals identified o Progress made in reaching these goals. ▪ Where do they stand currently compared to what their goal is? ▪ What are the outcomes of this impact (qualitative and quantitative stats)? - Commentary on what they have done to work towards that goal o Internal business processes and changes, important projects deployed, key partnerships established, policy support, volunteerism/philanthropy, funding provided/received, successfully completed engagements. o Transparency is key here- provide insight into successes, roadblocks, setbacks, realignments. - What will they do moving forward to achieve these goals?
	Summary of Next Steps	What will the business be doing in the future to continue to advance on the goals that have been identified?
	Closing Statement	Here is your chance to highlight business changes, advancements in progress, industry changes, key partnerships, etc. Provide any relevant info that will provide more context on the business operations and how the public benefit plays into this/how they are contributing to continued/advanced public benefit.

Metrics:

GRI	GRI has some of the most comprehensive metrics disclosures listed. They give instructions on type of metrics needed to be used and what should be included in order to represent this value. Look to their specific sections (Ex: GRI Disclosure 305-1) to metrics for each category of reporting
WEF	The WEF Standards are ideal for metric identification. They have an outline of the metrics to use, and this is helpful because it's a culmination of standards from all the major standards boards. There is not much instruction, but it is helpful for identifying what metrics pertain to each category and what you should be measuring.
BIA	The BIA has metrics identifiers in their questionnaire, but they also simply ask you questions regarding your disclosure efforts which is helpful in that you don't have to go through the process of figuring out how to calculate these things.
Demonstrating Value Report	The **Demonstrating Value Report-** Library of Impact (Sustainability and Performance Measures) • Has a great set of performance metrics/indicators for these categories: ▪ Community Impact ▪ Business Performance ▪ Organizational Sustainability.
EFFAS	EFFAS has a great set of KPI's to use when setting goals with these metrics. These can be found here: KPI's for ESG Reporting

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