

## The Ben & Jerry's Law: Principles Before Profit



### ▶ New legal protections for companies committed to social good

### ▶ Maryland is the first state to create "benefit corporations"

When Ben Cohen and Jerry Greenfield sold **Ben & Jerry's** to **Unilever** for \$326 million a decade ago, they did so reluctantly. They liked the payout but feared the new owners would ignore the social goals famously embraced by the ice cream maker. The board, though, felt it had no choice but to accept Unilever's offer. "The legal advice was that the primary concern for the directors was the financial interests of the shareholders," says Greenfield.

Entrepreneurs who want to put principles before profits—even after their companies go public—may soon have the legal cover to do just that. On Apr. 13, Maryland Governor Martin O'Malley signed a law creating legal entities

known as "benefit corporations" and giving them greater protection from shareholder lawsuits. California and Vermont have similar bills in the works and legislators in at least three other states, including New York, are considering them. While many entrepreneurs applaud the measures, corporate governance experts worry about the rights of shareholders.

Interest in so-called socially respon-

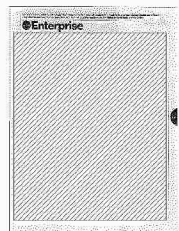
**Will shareholders buy in?  
Most "invest for the return  
to them, not ... to somebody  
else," says one lawyer**

sible businesses by investors and entrepreneurs has grown in recent years. More than \$2.7 trillion—about 11% of all assets under professional management—were in some kind of socially responsible investment in 2007, the latest data from Bloomberg show. More than 30,000 U.S. companies are members of socially responsible or sustainable business organizations, according to **B Lab**, a Berwyn (Pa.) nonprofit that certifies businesses as socially responsible.

Under the new Maryland law, benefit corporations must spell out their values in their charters, report annually on activities that benefit the public, and submit to third-party auditing of their societal impact. Becoming a benefit corporation, or shedding that status, would require approval of two-thirds of shareholders.

A California bill would have similar provisions for what it calls "flexible-purpose corporations." In Vermont, a bill creating benefit corporations passed in the state senate and is awaiting action by the lower house. Such measures would "better insulate [companies] from the pressures of short-termism that dominate the public equity markets," says Jay Coen Gilbert, co-founder of B Lab, which has certified 296 companies as B Corporations.

Many more privately held companies are likely to seek benefit corporation status. **Small Dog Electronics** is a 40-employee **Apple** reseller with two stores in Vermont and annual sales of \$20 million. CEO Don Mayer wants to recharter as a benefit corporation if the Vermont law is passed, in part because he is considering selling a stake in the company to raise funds for a third store. Small Dog, which is 15 years old, operates e-waste drives that recycle hundreds of tons of discarded electronics. It also matches customer donations to charities and pays 90% of its workers' health premiums. It even covers some veterinary care. "This will



give us another tool in our quiver to attract the kind of investors that we want," says Mayer, 61, who hopes to ensure that future owners will preserve the company's mission after he retires.

Will shareholders want to invest in companies that don't have a laser-like focus on profit? "Most shareholders invest for the return to them, not for the return to somebody else," says James J. Hanks Jr., a corporate lawyer at Venable in Baltimore. Others think managers could cite these alternative aims as justification for bad decision-making. "If your goal as a corporation is to better the environment, then you should be working philanthropically," says Charles Elson, director of a corporate governance program at the University of Delaware.

That's not the view of Jeffrey Hollender, co-founder of **Seventh Generation**, a \$150 million maker of environment-friendly household products based in Burlington, Vt. Hollender took Seventh Generation private in 2000 after seven years as a public company and recently wrote environmental values into his corporate charter. When the company was public, "brokers promoted the stock on primarily financial metrics: Buy this stock and get rich quick," he says.

Hollender, 55, says Seventh Generation's board will consider incorporating as a benefit corporation if the Vermont law passes. He calls the bill "part of a larger transition to a more just, equitable, and sustainable economy. It's the beginning of creating institutions that support that transition." —*John Tozzi*

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**The bottom line** Activists like the idea of protections for companies with social aims, but corporate governance experts worry about shareholder value.

ENGAGE

# WHAT MAKES A COMMUNITY ENVIRONMENTALLY LITERATE?

Discussions across the state seek an answer — and a new approach

**W**hat do you see when you picture an environmentally literate community? What are individuals, schools, businesses and organizations doing in your future vision?

These questions opened up a public dialogue session on

environmental literacy at Burlington's Fletcher Free Library on a recent evening. Among the answers that emerged:



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■ Systems that support sustainable intentions.

■ Decentralized energy production.

■ Outdoor learning as part of the curriculum in schools.

■ Clustered development to conserve wildlife habitats.

■ Vulnerable human and natural resources given heightened attention.

■ Everyone articulating a sense of connection to nature.

The March 24 meeting was the seventh in a series of dialogue sessions taking place in each of Vermont's 14 counties. The series, hosted by Vermont's State-Wide Environmental Education Program alliance (SWEEP) and the Four Winds Nature

Institute, began in January and will finish later this month. The dialogues are part of the Environmental Literacy for Vermont project, funded by The Canaday Family Charitable Trust, which aims to develop a comprehensive action plan to increase environmental literacy in Vermont.

The action plan — or roadmap — to be drafted will include a pre-kindergarten-through-12th-grade component that meets the requirements of proposed federal legislation, the No Child Left Inside Act of 2009, Brown said. The legislation seeks to increase environmental education in the school curriculum by integrating it into core subjects and using the local environment as an extension of the classroom.

At the library's community room, project coordinator Jen Brown explained the activities for the evening, gave a brief definition of environmental literacy, and had the 20 participants talk about their future vision of an environmentally literate community.

An environmentally literate community is one that understand the Earth as a physical system and living environment and whose citizens applies creative thinking and are empowered to solve problems, Brown said.

"Measure + report full cost of decisions (economic + social + ecological)," wrote Burlington resident Matt Dubel on a strip

of paper he was given to share his vision. Dubel, education coordinator for Shelburne Farms' Sustainable Schools Project, attended the session with his wife, Jennifer, a SWEEP board member.

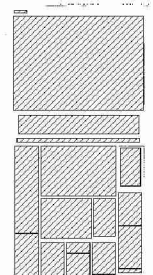
"Environmental literacy is the key to how we are going to live in the future," Jennifer Dubel said.

After sharing their visions, participants were divided in groups to list the environmental literacy assets in their communities, meaning individuals, businesses or organizations engaged in environmental projects. Dozens of names and initiatives from across Chittenden County were jotted down on easels — from public institutions such as the Chittenden Solid Waste District and the Intervale composting operation to private initiatives such as Small Dog Electronics' annual electronics round-up, a recycling event, from nonprofits including Local Motion and associations such as the Vermont Businesses for Social Responsibility to volunteer town energy committees, gardeners or and community groups.

The lists were long.

Finally, participants were asked to discuss what needed to happen for their vision to be realized, how to bridge the gap between what already exists and the future they want to see.

Tom Currell and Christine Massey of Burlington, Nick Richardson of Jericho and



Cory Stephenson of Fayston gathered in a small group to discuss the question.

"We need incentives for good environmental behavior," Massey said. "Incentives for kids, for food providers, for anybody; get people to change by giving them something — something they want or they need, something that makes sense to them."

"Incentives to change," Stephenson agreed.

"Bottle recycling started with a deposit," Currell suggested.

The group agreed that individual change was needed for institutional change to happen, and an ad campaign would be helpful to engage those who are not involved in the conversation.

"To get people to the table," Currell said, "you need to entice them."

**"WE NEED INCENTIVES FOR GOOD ENVIRONMENTAL BEHAVIOR. INCENTIVES FOR KIDS, FOR FOOD PROVIDERS, FOR ANYBODY; GET PEOPLE TO CHANGE BY GIVING THEM SOMETHING — SOMETHING THEY WANT OR THEY NEED, SOMETHING THAT MAKES SENSE TO THEM."**

Christine Massey,  
Burlington

## More dialogue to come

Upcoming environmental-literacy dialogue sessions:

- Wednesday: Newport State Building, 6:30-8:30 p.m.
- April 14: The Fairbanks Museum, St. Johnsbury, 6:30-8:30 p.m.
- April 19: Brattleboro Senior Center, 6-8 p.m.
- April 26: Green Mountain Technology and Career Center, Hyde Park, 6:30-8:30 p.m.
- More info: <http://environmentalliteracyvt.org>.



Photos by GLENN RUSSELL, Free Press

Vermont's Statewide Environmental Education Programs alliance hosted a public dialogue the Fletcher Free Library in Burlington on March 24 to discuss environmental literacy. The conversation highlighted successful environmental education efforts in our communities and organizations and identify opportunities to increase environmental literacy in Vermont.