Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Huffman & Blumenfield	Analyst:	Jessica Matus	Bill Number:	AB 361
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced and Amended Dates:	February 14, 2011, and March 14, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Benefit Corporations

SUMMARY

This bill would create a new type of corporate entity called a "benefit corporation."

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The March 14, 2011, amendments removed the intent language and added the provisions discussed in this analysis. This is the department's first analysis of this bill. This analysis only addresses the provisions of the bill that impact the department's programs and operations.

PURPOSE OF THE BILL

According to the author's staff, this bill would create a new, voluntary distinction for California businesses called "Benefit Corporations" that would achieve the following:

- Create a material positive impact on society and the environment;
- Redefine fiduciary duty – for Benefit Corporations only – to require consideration of non-financial interests when making decisions; and
- Report on the corporation's overall social and environmental performance using recognized third-party standards.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2012, and be operative for entities that organize as "benefit corporations" on and after that date.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

In general, a corporation is created under state law whether pursuant to the California Corporations Code or the laws of another state. In some circumstances, corporations have been created under federal law (i.e., Fannie Mae). Current federal and state laws have no corporation types called a "benefit corporation."

Board Position:			Executive Director	Date
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Under federal law, a corporation is generally taxed based on its taxable income, computed by subtracting deductions from gross income and taxed at rates that vary from 15 percent to 35 percent.[1]

Under state law, a corporation doing business or receiving income from sources within the state and not expressly exempted from taxation by the provisions of the California Constitution or by Corporation Tax Law (CTL), is generally subject to either the California franchise or the income tax at a rate of 8.84 percent.[2]

Certain "tax exempt" entities are not taxed in California, but are subject to a review process and must be strictly for a charitable purpose. These entities are generally formed at the federal level and apply for tax exempt status in California.

THIS BILL

This bill would create, under the California Corporations Code, another type of corporation called a "benefit corporation" that would be subject to the franchise tax under California CTL.

The bill mandates that the benefit corporation have the purpose of creating a "general public benefit," which includes, but is not limited to, any of the following:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities that goes beyond the creation of jobs in the ordinary course of business.
- Preserving the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a public benefit purpose.
- The accomplishment of any other particular benefit for society or the environment.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax instructions and information systems, which could be accomplished during the normal annual update.

LEGISLATIVE HISTORY

SB 201 (DeSaulnier, 2010/11) would create a new type of corporate entity called a "flexible purpose corporation." This bill is currently in the Senate Appropriations Committee.

SB 1463 (DeSaulnier, 2009/10) would have created a new type of corporate entity called a "flexible purpose corporation." No hearing was held for the bill.

[1] Internal Revenue Code Section 11
[2] Revenue and Taxation Code section 23151

AB 2944 (Leno, 2007/08) would have allowed corporate directors to consider other stakeholders, like employees or the community, when making business decisions. AB 2944 was vetoed by Governor Schwarzenneger on September 30, 2008.[3]

AB 2341 (Villines, et. al, Stats. 2006, Ch. 773) provided that the minimum franchise tax or the annual tax would not be assessed for a taxable year unless specific conditions were met. In addition, this bill eliminated the requirement to obtain a tax clearance certificate from the FTB prior to terminating the existence of certain entities.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide for a type of corporation comparable to the type of corporation allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

Maryland and Vermont have recently enacted legislation to allow a "benefit corporation" that operates much like the proposed corporation type in this bill.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

<u>Revenue Estimate</u>

Estimated Revenue Impact of AB 361 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2011		
2011-12	2012-13	2013-14
Gain/loss less than $250,000	Gain/loss less than $250,000	Gain/loss less than $250,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: B-Lab, American Sustainable Business Council and Social Venture Network, Bay Area Council, California Advocacy Committee, California Associate for Micro Enterprise Opportunity (CAMEO), Clean Fund LLC, Direct Dental, Friends Committee on Legislation, Green America, Green Business Networking, Green Chamber of Commerce, Green Economy League, KINeSYS Inc., Mindful Investors, New Harvest Capital, New Voice of Business, Silicon Valley Leadership Group, Small Business California, Social Venture Network, and United States Green Building Council – California Advocacy Committee.

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[3] Link to Governor Schwarzenneger's veto message:
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2901-2950/ab_2944_vt_20080930.html

Opposition: California Association of Nonprofits (CAN) Corporations Committee of the Business Law Section (CCBLS) of the State Bar, and Steven K. Hazen, Esq. (An individual)

ARGUMENTS

Pro: Some taxpayers may advocate that the bill would allow for a new type of entity that could focus its efforts on activities to benefit the environment and the general community.

Con: Some taxpayers may argue that because a private company may already function as a "benefit corporation" this incorporation type is unnecessary**.** .

LEGISLATIVE STAFF CONTACT

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