

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Huffman, et al.	AB 361

SUBJECT

Benefit Corporations

SUMMARY

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

PURPOSE OF 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

FEDERAL/STATE LAW

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.”

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

¹ Internal Revenue Code Section 11.

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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.

LEGISLATIVE HISTORY

SB 201 (DeSaulnier, 2010/11) would create a new type of corporate entity called a “flexible purpose corporation.” This bill is currently on the assembly floor.

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.

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 Schwarzenegger on September 30, 2008.

² Revenue and Taxation Code section 23151.

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 Franchise Tax Board 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.

ECONOMIC IMPACT

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.

APPOINTMENTS

None.

SUPPORT/OPPOSITION³

Support: B Lab (source), Abacus Wealth Partners, Academies for Social Entrepreneurship, Accountable Develop, AGSJ, Alan Briskin Management Consultants, Alter Eco Fair Trade, American Lung Association in Californian, American Sustainable Business Council, AnewAmerica Community Corporation, Aquamantra, Bay Area Council, Bay Point Benefits, Beacon Management Consulting, Beam Inc., Beck with Associates, Bike station/Mobis Transportation Alternatives, Birkenstock, Blitz Bazaar, Blueprint Research and Design, BP Stewart and

³ Senate Floor Analysis dated August 17, 2011.

Co.Contracting, Bridge the Gap Consulting Inc., Brion and Associates, Build It Green, California Association of Micro Enterprise Opportunity, CAMEO, Canal Alliance, Cannourish, CAP Global, Caratnet, Care2, Catalyst Coaching and Training, Center for Dynamic Governance, Chapman University, Chosen Futures, Clean Fund LLC, CleanFish, Common Sense Counseling, Communications Inc. CORE Foods, Creative Management, Dana Smirin, Detour Agency, Dharma Merchant Services, Direct Dental, DNAGlobalNetwork.com, Dragonfly Designs, Dzambuling Imports, Elemental Herbs, Ellen Weinreb Sustainability Recruiting, Emerge, Enlightened Brand Incorporated, Environmental and Public Health Consulting, Equinox Landscape, Eurous Global Executive, Leadership, Evergreen Lodge, Everson Financial, Exygy Web and Mobile, Fox Acupuncture, Give Something Back, Global Alliance for Incinerator Alternatives, GoodGuide, Inc., Great Place to Work Institute, Green Age 360, Green America, Green Chamber of Commerce, Green Design Systems, Green Retirement Plans, Inc., GreenLab Creative, Guayakí Sustainable Rainforest Products, Hanson Bridgett LLP, Harrington Investments Inc., Heller Consulting, Herriford Consulting, IdeaEncore Network, Image Integration, Imprint Capital, Indigenous Designs Corporation, Inquiring Systems, Inc., Inspiring Results, Institute for Social Entrepreneurship, Integral Partnerships LLC, Integrative Psychophysical Therapy, Johnson and Associates, Jungwirth, Blackburn and Associates, KC Building, KINeSYS Inc., Lake Royal Apartments, Latham Film LLC, Leadership and Strategy for Sustainable Systems, Living City Partners, LO*OP Center, Inc., Longsplice Investments, Mal Warwick Associates| Donordigital, Mark Leibowitz Photography, Inc., Marti Spiegelman MFA, Mendocino Wine Group, LLC, Meridian University, Merlone Geier Partners, Method Home Products Inc., Mindful Investors, Minerva Consulting, MJ Everson Financial, Nancy Southern and Associates, Natural Logic, Inc., Nest Collective, New Avenue, New Foundry Ventures, New Harvest Capital, New Leaf Paper, New Paradigm Digest, New Resource Bank, New Voice of Business, NZ Consulting, Conscious Business, Opticos, Design, Inc., Oxford Leadership Academy USA, Partnership Capital Growth Advisors, Planet Cents, Planning for Sustainable Communities, Presidio Graduate School, Progressive Wealth Management, Project: Liftoff, Public Works, LLC, Quantum Intech, Inc., Raphael Medicine and Therapies, Raymond H Katz, DMD, ReliaTech, Renesch Advisory Services, Rethink, Development, Revolution Foods, Rimon Law Group, RippleQ, RSF Social Alliance, SABEResPODER, Salesforce.com Foundation, Sara Ellis Conant Coaching and Consulting, Sergio Lub Handcrafted Jewelry, Inc., ShareExchange, Silicon Valley Innovation Associates, Silicon Valley Leadership Group, Small Business California, Social Venture Network, Solar Works, Sparked, Spirit Rising Productions, Sun Light and Power, Sustainable Enterprise Conference, Sustainable World Coalition, SVT Group, Swanton Berry Farm, TGNA, The Ballroom, The Clarity Project, The Green Riders, The Redwood Grove Group, The Rosebud Agency, The Sanders Partnership, The Terry Mandel Collaborative, The Vianova Group, TomZanders.com LLC, Tracking the Wisdom, Traditional Medicinals, Transportation Power, Inc., Transpower, Turner Real Estate, US Green Building Council - CA Advocacy Committee, VeeV Spirits, Veritable Vegetable, Wendel Rosen, Wespay, West Company, WildEarth Guardians, Wise Solutions, Inc., WorkLore, World Centric

Opposition: Associated Builders and Contractors, Golden Gate Chapter, California Association of Nonprofits, California Park and Recreation Society, California Peace Officers Association, California Society of Association Executives, CASSS, Corporations and Government subcommittees of the Business, Law Section of the State Bar of California, Credit Management Association, San Diego, County Apartment Association, The Diving Equipment and Marketing Association

VOTES

Concurrence	08/29/11	Y: 50	N: 14
Assembly Floor	05/26/11	Y: 58	N: 17
Senate Floor	08/22/11	Y: 23	N: 7

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