



Governor Brown Signs Flexible Purpose And Benefit Corporation Bills – Confusion To Follow

By Keith Paul Bishop on October 11, 2011

A Tale of Two Bills

In an action that is likely to lead to concern, confusion and consternation, Governor Brown has signed not one, but two bills that will allow for the formation of corporations that combine profitability with public or other purposes.

Flexible Purpose Corporations

[SB 201](#) (DeSaulnier) was the handiwork of a working group of lawyers who worked for over a year to write a new division to the California Corporations Code to provide for the formation and operation of flexible purpose corporations.^[1] Far from operating in secrecy, the working group published a draft of the bill and solicited comments. When Senator Mark DeSaulnier introduced the bill, moreover, he included the proposed substantive text for all the world to see.

Benefit Corporations

In stark contrast, [AB 361](#) (Huffman) enjoyed no such public exposure. Although at the time I didn't know the ultimate purpose of the bill, I identified it last February as a spot bill in "[Out, damned spot!](#)" The bill, moreover, was opposed by both the Corporations Committee and the Nonprofit and Unincorporated Organizations Committee of the Business Law Section of the State Bar of California. A key feature of AB 361 is the concept of a third party standard for defining, reporting, and assessing overall corporate social and environmental performance of the benefit corporation. Thus, it is no surprise that the source of the legislation was [B Lab](#), an organization that provides certification in exchange for an annual fee of up to \$25,000 per year.

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[1] The members of the Working Group were: W. Derrick Britt (Co-chair), Partner, Doty, Barlow, Britt, and Thomas, LLP, R. Todd Johnson (Co-chair), Partner, Jones Day, Susan H. MacCormac (Co-chair), Partner, Morrison Foerster, Keith Paul Bishop, Partner, Allen Matkins Leck Gamble & Mallory LLP, Edward A. Deibert, Director, Howard Rice Nemerovski Canady Falk & Rabkin, William P. Fitzpatrick, General Counsel, Omidyar Network, Steven K. Hazen, Retired, Former Vice-Chair for Legislation of the State Bar of California Business Law Section, David M. Hernand, Partner, Gibson Dunn & Crutcher LLP, Jay A. Mitchell, Director, Organizations and Transactions Clinic, Stanford Law School and former chief corporate counsel of Levi Strauss & Co., and Robert A. Wexler, Partner, Adler & Colvin.

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