BUSINESS LAW SECTION

CORPORATIONS COMMITTEE
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TO: The Honorable Jared Huffman
Member of the Assembly
State Capitol, Room 3120
Sacramento, California 95814

FROM: The Corporations Committee of the Business Law Section of the State Bar of California

DATE: April 26, 2011

RE: AB 361 (Huffman), as proposed to be amended

POSITION

OPPOSE

The Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California (the "Section") welcomes this opportunity to submit this letter in comment on Assembly Bill 361, as amended March 14, 2011, and as proposed to be further amended by Assembly Member Huffman ("AB 361" or the "Bill"). (A copy of the proposed amendment is attached to this letter as Exhibit A.) While we support the enactment of a new law designed to facilitate the organization of California businesses with greater flexibility for combining profitability with a broader social or environmental purpose, the Committee has come to the conclusion that the Bill is flawed. After due consideration, the Committee respectfully opposes enactment of the Bill for the reasons set forth in this letter.

BASIS FOR POSITION

DESCRIPTION OF AB 361

AB 361 seeks to add a new Part 13 to Division 3 ("Corporations for Specific Purposes") to the California Corporations Code (the "Code") that would provide separate recognition to a new corporate form referred to as a "benefit corporation." This label is apparently intended to distinguish these entities from "for profit" corporations formed under Division 1 of the Code, the General Corporation Law. The Bill represents a fundamental shift away from the traditional fiduciary duty principles which require directors to act in the best interests of the corporation and its shareholders. (Code Sec. 309.) Under the Bill, directors are required to consider other specified "benefits" (including the general public benefit, as defined) and may consider additional factors they deem appropriate.

The text of the Bill is based closely on model legislation drafted, adopted and promoted by a nonprofit corporation in Philadelphia called "B Lab." According to the promoters of the

Bill, the Bill is part of a movement to give specific recognition to "B Corporations," a status that is bestowed by B Lab. The Bill specifies that a "benefit corporation" must pursue certain benefits and imposes required standards of governance on these corporations. To our knowledge, B Lab is the principal organization at this time that publishes and promotes the standards required by the Bill to be used by benefit corporations.

THE COMMITTEE'S POSITION

History

In 2008, AB 2944 proposed amending portions of Section 309 of the Code that specify fiduciary duties applicable to corporate directors of all California corporations. The amendment proposed by AB 2944 was substantively similar to the proposed changes to fiduciary standards set forth in the Bill. The Committee opposed AB 2944 principally because it would have imposed a new governance standard on all California corporations *without consent of the corporation or its shareholders*. Governor Schwarzenegger vetoed AB 2944 and it did not become law.

In 2010, Senator DeSaulnier introduced a bill (SB 1463) that was substantially the same as the current Senate Bill 201 ("SB 201"). The Committee submitted a letter in support of SB 1463, but the bill did not move forward before the end of the 2009-2010 legislative session. In this session, Senator DeSaulnier has introduced SB 201, a bill which like AB 361, allows corporations that opt into its regime to pursue alternative purposes to the traditional purposes of serving the corporation and the shareholders embodied in Section 309 of the Code.[1]

Bases for Opposition

The Committee opposes the Bill. AB 361 marginalizes shareholders, relies on a third-party standard largely beneficial to one organization, is not well integrated into the existing Code, and fails to make benefit corporations easily recognizable to the public. AB 361 also requires adoption of a broad, fixed general public purpose that will exclude participation by many non-profit and for-profit organizations that may have more specialized goals than the formula required by AB 361.

Marginalization of Shareholders

An existing corporation may "opt into" the provisions of the Bill upon a two-thirds vote of shareholders. After such approval, however, the Board of Directors has full authority to utilize corporate assets in a manner that it determines to be a benefit to the corporation. The Board may also determine what standards should be applied to determine compliance with their own fiduciary duties. This is so even when the shareholders have not approved those specific benefits or standards. Indeed, the directors are not even obligated to inform the shareholders of such decisions or their uniquely determined and adopted fiduciary duty standards. As further explained in Exhibit B, it is unclear if directors of benefit corporations have duties to

[1] The Committee has submitted a letter in support of SB 201.

shareholders. Under the Bill, there is little protection for shareholders who do not agree with the directors' unilaterally adopted fiduciary duty standards. Nor does the Bill require disclosure when directors take actions that do not fit within the traditional fiduciary duty standards.

Third-Party Standard

The Bill empowers and requires the directors of a benefit corporation to select a third-party standard by which its actions will be measured. We are troubled that the Bill apparently is designed to enact in statute a regime that will provide ready constituents for B Lab's certification service. According to its website, B Lab holds trademark rights to the term "B Corporation,"[2] which form of business entity it also identifies on its website as a "Benefit Corporation."[3] The Bill's proponents insist that benefit corporations will be able to pick any third-party standard that satisfies the terms of the Bill. Because of the fixed nature of the general public benefit and the criteria of the third-party standard as well as B Lab's existing recognition in the marketplace, we perceive that B Lab is uniquely positioned to take advantage of this Bill. Thus under AB 361, B Lab apparently would become the principal certification agency of corporations qualified to bear the benefit corporation label.

The Bill does not indicate what effect changes in B Lab's criteria or any other third-party criteria selected by a benefit corporation would have on the fiduciary duties of benefit corporations. If the third-party standard is altered, will the measurement of the fiduciary duties change as well or would they remain grounded in the earlier standard? The Bill does not address this issue other than allowing directors to select the applicable standard. If multiple third-party standards do become available to benefit corporations, directors will be free to shop for the standard that suits them best. Outside the control of the shareholders, defensive directors would be free to select the most convenient and protective standard to forestall shareholder claims. Alternatively, zealous directors would be free to choose increasingly demanding standards that elevate the general public purpose above the profit-making interests of the corporation and the shareholders. We do not oppose pursuing socially or environmentally beneficial purposes at the expense of profits, but those choices should be presented to and approved by the shareholders.

Failure to Integrate Into the Corporations Code

AB 361 is based on "model" legislation drafted and promoted by B-Lab.[4] As such, it is intended to be dropped whole cloth into an existing statutory structure. Either it is accompanied by a detailed effort to fit within that structure or problems will arise in integrating that "model" into it. Unfortunately, the Bill makes only a limited attempt to fit into the existing structure and provisions of the Code. The list attached hereto as Exhibit B is but an abbreviated list of areas where potential conflicts, ambiguities and issues could arise, should the Bill be adopted in its current form. As shown on Exhibit B, adoption of AB 361 would create an environment conducive to uncertainty and confusion. (While we acknowledge that the proposed amendment

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2 See http://www.bcorporation.net (last visited April 21, 2011).

3 See http://www.bcorporation.net/publicpolicy (last visited April 21, 2011).

4 See the press release issue by B Lab on April 14, 2010: http://www.csrwire.com/press_releases/29332-Maryland-First-State-in-Union-to-Pass-Benefit-Corporation-Legislation (last visited April 2, 2011).

provides an initial step in the direction of integration into the larger Code, many additional changes to the Bill would be needed to avoid conflicts with the Code.)

Benefit Corporations Should Have a Recognizable Identifier and be Addressed in a New Division of the Code to Avoid Confusion

In their analysis of AB 361, the proponents assert that the goal is to create a new corporate form. The Bill, however, fails to do that. Like regular corporations, all "benefit corporations" would be formed under the General Corporation Law (the "GCL") and would largely rely on Division 1 of the Corporations Code.

Because of the fundamental change in the purposes and the fiduciary duties associated with those purposes envisioned by the Bill, it is important for the protection of third parties that benefit corporations, if allowed to be formed, be formed under a different division with distinct recognition of their special status in their name. This will allow consumers, vendors and other businesses to easily recognize benefit corporations so they can take into account their unique nature. Failure of the benefit corporations to have a readily identifiable separate status raises concerns about whether these new and experimental entities, which are fundamentally different from traditional corporations, would be recognized by the general public.

Exclusion of Specialized Non-profit and For-profit Entities

By requiring a broad and fixed general purpose, AB 361 fails to recognize the desires of non-profit businesses to operate affiliated for-profit businesses that focus on and serve the same goals as the parent non-profit organizations. Under California law, nonprofits are permitted to select narrowly focused or broad purposes. But AB 361 only allows participation of benefit corporations that are willing to adopt its particular formula of general public benefit. In contrast, SB 201 permits flexible purpose corporations to adopt any charitable or public purpose – broad or narrow, as determined by the founders -- available to California non-profit corporations. Where SB 201 allows non-profits to pursue parallel purposes inside a for-profit business, AB 361 instead adopts a fixed and inflexible formula that would require such nonprofits to adopt purposes that may vary dramatically from their stated non-profit purpose, and thus be of little utility to them. Similarly, for-profit business owners who desire to pursue a more specialized public purpose than set forth in AB 361 would have no alternative but to adopt the particular formula promoted by AB 361.

Establishment of Benefit Corporations is Unnecessary Because "B Corporation" Status is Already Available in California

Currently, the "benefit corporation" form is not specifically recognized by the Code. Nonetheless, various California businesses self-identify as such and receive recognition by B Lab as being "B Corporations." Even without passage of the Bill, California corporations will continue to be free to associate themselves with B Lab and the "benefit corporation" movement it seeks to foster.

We understand that each of the three California attorneys who participated with B Lab's Philadelphia counsel in drafting AB 361 is a member of a law firm identified by B Lab on its website as holding the "B Corporation" certification from B Lab.[5] Thus, the primary persons promoting AB 361 are either affiliated with B Lab or hold recognition from B Lab -- without any need for a statutory framework to provide that status. B Lab's past work in California is ample evidence of its ability to carry out its program without adoption of the Bill.

CONCLUSION

For the reasons set forth in this letter, including AB 361's marginalization of shareholders, its reliance on a third-party standard, its fixed approach to the pursuit of alternative purposes and its technical defects, the Committee opposes AB 361. Notwithstanding the Committee's opposition, the Committee is willing to work with Assembly Member Huffman and the bill's proponents to address the Committee's concerns regarding AB 361.

CONTACTS

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cc: Hon. Mike Feuer, Chair, Assembly Judiciary Committee
John C. Oehmke, Co-Chair, Corporations Committee
Charles P. Ortmeyer, Co-Chair, Corporations Committee
Steven Stokdyk, Vice Chair Legislation, Business Law Section Executive Committee
W. Alex Voxman, Vice Chair Legislation, Corporations Committee
Mark Weideman, State Bar Section Legislative Representative
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[5] See http://www.bcorporation.net/community/search (last visited April 21, 2011).

EXHIBIT A

Proposed Amendment

(See attachment.)

AMENDMENTS TO ASSEMBLY BILL NO. 361
AS AMENDED IN ASSEMBLY MARCH 14, 2011

Amendment 1
Below line 2 of the heading, insert:

(Coauthor: Senator Leno)

Amendment 2
On page 3, strike out lines 25 to 27, inclusive

Amendment 3
On page 4, line 1, strike out "(c)" and insert:

(b)

Amendment 4
On page 4, strike out lines 2 and 3, and insert:

relating to any of

Amendment 5
On page 4, strike out lines 10 to 12, inclusive

Amendment 6
On page 4, line 13, strike out "(e)" and insert:

(c)

Amendment 7
On page 4, strike out lines 17 to 33, inclusive

Amendment 8
On page 4, line 34, strike out "(g)" and insert:

(d)

Amendment 9
On page 5, line 5, strike out "(h)" and insert:

(e)

Amendment 10
On page 5, line 18, strike out "(i) Subject to subdivision (k), "subsidiary" " and insert:

(f) "Subsidiary"

Amendment 11
On page 5, line 19, strike out "association" and insert:

entity

Amendment 12
On page 5, line 20, after the period, insert:

For purposes of this definition, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

Amendment 13
On page 5, line 21, strike out "(j)" and insert:

(g)

Amendment 14
On page 5, line 23, strike out "both" and insert:

all

Amendment 15
On page 5, line 26, strike out "consideration listed in" and insert:

considerations listed in paragraphs (2), to (5), inclusive, of subdivision (b) of

Amendment 16
On page 5, lines 27 and 28, strike out "organization that is independent of" and insert:

entity that has no material financial relationship with

Amendment 17
On page 5, line 28, after "corporation" insert:

or any of its subsidiaries

Amendment 18
On page 5, line 31, strike out "organization are representatives of either" and insert:

entity are representatives of any

Amendment 19
On page 5, between lines 34 and 35, insert:

(ii) Businesses from a specific industry or an association of businesses in that industry.

Amendment 20
On page 5, line 35, strike out "(ii)" and insert:

(iii)

Amendment 21
On page 5, line 35, strike out "measured by" and insert:

assessed against

Amendment 22
On page 5, line 36, strike out "organization" and insert:

entity

Amendment 23
On page 5, line 38, strike out "a person" and insert:

an entity

Amendment 24
On page 6, line 12, strike out "organization" and insert:

entity

Amendment 25
On page 6, line 18, strike out "organization" and insert:

entity

Amendment 26
On page 6, strike out lines 21 to 25, inclusive

Amendment 27
On page 6, line 34, after the period insert:

If the amendment is adopted, a shareholder of the corporation may, by complying with Chapter 13 (commencing with Section 1300) of Division 1, require the corporation to purchase at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b) of Section 1300 in accordance with the procedures in that chapter.

Amendment 28
On page 7, line 5, after the period insert:

If the amendment is adopted, a shareholder of the corporation may, by complying with Chapter 13 (commencing with Section 1300) of Division 1, require the corporation to purchase at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b) of Section 1300 in accordance with the procedures in that chapter.

Amendment 29
On page 7, line 6, after "reorganization" insert:

(Section 181)

Amendment 30
On page 7, line 9, strike out "adopted" and insert:

approved

Amendment 31
On page 7, between lines 9 and 10, insert:

(c) If a benefit corporation is the converting corporation (Section 1150) in a conversion (Section 161.9), the conversion shall not be effective unless the conversion is approved by at least the minimum status vote.

(d) A sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and ordinary course of business of the benefit corporation, shall not be effective unless the transaction is approved by at least the minimum status vote. If the transaction is approved, a shareholder of the corporation may, by complying with Chapter 13 (commencing with Section 1300) of Division 1, require the corporation to purchase at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b) of Section 1300 in accordance with the procedures in that chapter.

Amendment 32
On page 7, line 28, strike out the first comma

Amendment 33
On page 7, line 36, after "(a)" insert:

A director shall perform the duties of a director including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in the best interests of the benefit corporation and with that care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b)

Amendment 34
On page 8, line 19, strike out "(b)" and insert:

(c)

Amendment 35
On page 8, lines 20 and 21, strike out "(a) may consider the impacts of any action, or proposed action upon" and insert:

(b) may consider

Amendment 36
On page 8, strike out lines 26 and 27, and insert:

person or group.

Amendment 37
On page 8, line 28, strike out "(c)" and insert:

(d)

Amendment 38
On page 8, strike out lines 35 to 39, inclusive, on page 9, strike out lines 1 and 2

Amendment 39
On page 9, strike out lines 3 to 6, inclusive, and insert:

(e) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the benefit corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters that the director believes to be within that person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any of those cases, the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause that reliance to be unwarranted.

Amendment 40
On page 9, line 7, strike out "(2) Any" and insert:

(f) A director shall not be liable for monetary damages under this part for any

Amendment 41
On page 9, between lines 8 and 9, insert:

(g) A person who performs the duties of a director in accordance with this part shall not be liable for monetary damages for any alleged failure to discharge the person's obligations as a director.

(h) In addition to the limitations provided in subdivisions (f) and (g), the liability of a director for monetary damages may be eliminated or limited in a benefit corporation's articles to the extent provided in paragraph (10) of subdivision (a) of Section 204.

Amendment 42
On page 9, line 9, strike out "(f)" and insert:

(i)

Amendment 43
On page 9, between lines 12 and 13, insert:

(j) A director of a foreign corporation that is subject to Section 2115 shall not be subject to Section 309 and shall be subject instead to this section if the director of the foreign corporation is subject to duties under its articles of incorporation, bylaws, or the law of its jurisdiction of incorporation similar to the duties of directors under this section.

Amendment 44
On page 9, strike out lines 14 to 26, inclusive, in line 27, strike out "corporation shall include in its" and insert:

shall prepare for inclusion in the

Amendment 45
On page 9, line 29, strike out "benefit director" and insert:

board of directors

Amendment 46
On page 9, line 30, strike out "acted in accordance with" and insert:

failed to pursue

Amendment 47
On page 9, strike out lines 32 and 33, and insert:

covered by the report.

Amendment 48
On page 9, strike out lines 34 to 39, inclusive, and insert:

(b) If, in the opinion of the board of directors, the benefit corporation failed to pursue its general, and any specific, public benefit purpose, the statement required by subdivision (a) shall include a description of the ways in which the benefit corporation failed to pursue its general, and any specific, public benefit purpose.

Amendment 49
On page 10, strike out lines 1 to 16, inclusive

Amendment 50
On page 10, line 18, after the first "in" insert:

paragraphs (2) to (7), inclusive, of subdivision (b) of

Amendment 51
On page 10, line 25, strike out "subdivision (a)" and insert:

paragraphs (2) to (7), inclusive, of subdivision (b)

Amendment 52
On page 10, lines 30 and 31, strike out "personally liable for monetary damages for either" and insert:

liable for monetary damages under this part for any

Amendment 53
On page 11, strike out lines 1 to 10, inclusive

Amendment 54
On page 11, strikeout lines 11 to 13, inclusive, in line 14, strike out "enforcement proceeding." and insert:

14623. (a)

Amendment 55
On page 11, strike out lines 16 and 17, in line 18, strike out "purpose of the benefit corporation" and insert:

under this chapter

Amendment 56
On page 11, line 27, strike out "association" and insert:

entity

Amendment 57
On page 11, between lines 30 and 31, insert:

(c) A benefit corporation shall not be liable for monetary damages under this part for any failure of the benefit corporation to create a general or specific public benefit.

(d) If the court in a benefit enforcement proceeding finds that a failure to comply with this part was without justification, the court may award an amount sufficient to reimburse the plaintiff for the reasonable expenses incurred by the plaintiff, including attorneys' fees and expenses, in connection with the benefit enforcement proceeding.

Amendment 58
On page 11, between lines 36 and 37, insert:

(A) The process and rationale for selecting the third-party standard used to prepare the benefit report.

Amendment 59
On page 11, line 37, strike out "(A)" and insert:

(B)

Amendment 60
On page 12, line 1, strike out "(B)" and insert:

(C)

Amendment 61
On page 12, line 5, strike out "(C)" and insert:

(D)

Amendment 62
On page 12, line 12, after the period insert:

The assessment does not need to be audited or certified by a third party.

Amendment 63
On page 12, strike out lines 13 to 17, inclusive

Amendment 64
On page 12, line 18, strike out "(5)" and insert:

(3)

Amendment 65
On page 12, strike out lines 22 and 23, and insert:

(4) The statement required by Section 14621.

Amendment 66
On page 12, line 24, strike out "(7)" and insert:

(5)

Amendment 67
On page 13, between lines 8 and 9, insert:

14631. All certificates representing shares of a benefit corporation shall contain, in addition to any other statements required by the General Corporation Law (Division 1 (commencing with Section 100)), the following conspicuous language on the face of the certificate:

"This entity is a benefit corporation organized under Part 13 (commencing with Section 14600) of Division 3 of Title 1 of the California Corporations Code."

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EXHIBIT B

The following is an illustrative but not an exhaustive list of concepts and topics in the Code with which the provisions of AB 361 that have not been sufficiently integrated to avoid potential conflict and confusion:

1. Eligibility of Professional Corporations Unclear. Because of AB 361's proposed placement in Division 1, it is unclear if other special corporations, such as professional corporations, would be able to become benefit corporations. To be sure, the law firms of some of the supporters of AB 361 are certified B Corporations, so presumably those supporters would wish to clarify that the new Part 13 would not exclude professional corporations described in Part 4 of Division 1.

2. Conversion. In Section 14604(d), AB 361 provides that a benefit corporation that converts to another entity is subject to a minimum status vote, as defined. The Bill fails to consider how another business entity converts to a benefit corporation and whether a special vote is required. It is unclear, for example, if an LLC converting to a corporation on a majority vote is allowed to select benefit corporation status or is restricted to a traditional corporate format.

3. Merger and Exchange Reorganizations. In Section 14603(b), AB 361 provides that a corporation that disappears into a benefit corporation in a merger is protected by a two-thirds shareholder vote requirement. AB 361 fails to consider mergers in which benefit corporations absorb other types of entities, such as partnerships and LLCs. The owners of those entities presumably deserve the same protections as shareholders of a standard corporation. AB 361 does not protect them. Indeed, the board of a corporation could avoid the two-thirds vote requirement contained in Section 14603(b) simply by converting to an LLC (taxed as a corporation to avoid a tax event) and then merge into the benefit corporation as a second step. In that case, only a majority vote would be required on each step. Further, Section 14603(b) uses the term "corporation," which is defined in Section 162 of the Code to include only corporations subject to Division 1. As a result, AB 361 fails to consider other types of business entities such as foreign corporations, California and foreign LLCs and partnerships. In fact, there is no consideration of merger and reorganization with foreign business entities in AB 361. AB 361 by its terms does not consider whether domestic business owners deserve the special protections of a two-thirds vote when their California businesses are acquired by foreign benefit corporations.

4. Defined Terms Not Utilized. Numerous terms are used in AB 361 in lieu of specially defined terms in the Code. For example:

    a. In the definition of the term, "minimum status vote" separately defines shareholder approval requirements without reliance on the Code's ubiquitous

defined terms "approved by the outstanding shares" (Sec. 152) and "approved by the shareholders" (Sec. 153), which terms are not utilized.

b. AB 361 defines "subsidiary" for its purposes to include any entity of which a person owns at least 50% of the equity interests. The Code has a conflicting definition in Section 189 that defines subsidiary as a corporation of which the person owns 50% of the voting power, a technical but potentially critical difference.

c. In the definition of "Subsidiary" in Section 14601(f) of AB 361, the definition relies on the term equity interests, an undefined term under the Code, and goes on to include other rights to acquire equity interests, all of which are concepts encompassed in the Code's existing definition of "equity securities" (Section 168.)

d. In multiple places, the bill refers to a "general corporation" in reference to a corporation formed under Division 1 that is not a benefit corporation. *See e.g.*, Sections 14603(a) and 14604(b). There is no such term in the Code. Instead, the Code uses the term "corporation." (Code Section 162.)

e. In its merger and reorganization provisions, AB 361 fails to use the following applicable and carefully defined terms found in the Code: "constituent corporation," "constituent other business entity," "disappearing corporation," and "disappearing limited partnership." Use of these terms is important to integrate new provisions into the existing merger and reorganization concepts contained in the crucially important Chapters 11 and 12 of the Code, regarding merger and reorganization.

5. Fiduciary Duties to Shareholders Unclear. Section 14620(a), which is similar to Section 309 of the Code, eliminates the reference to shareholders. The effect of this limitation is ambiguous. While directors are required under Section 14620(b) to consider the effect on shareholders, Section 14620(a) gives rise to the fiduciary duties. Without a reference to shareholder, it is at best unclear whether directors should act in shareholders' interest. An argument can be made that Section 14620(a) eliminates conflicting Section 309 altogether based on Section 14600(c), which provides that provisions of Division 1 in conflict with AB 361 do not apply to benefit corporations. Section 14620(d) provides that directors are not required to give any particular factor priority over others – shareholders being one of the factors. If directors only have a duty to the corporation and not to the shareholders and shareholders are just a factor that can be moved to the bottom of the list of priorities, it is unclear what effect this would have on shareholder rights to bring claims against directors.

6. Material Financial Relationship. The term "material financial relationship" as it relates to the provider of the third-party standard is undefined. Given the potential benefit to B Lab AB 361 presents, the level of materiality should be carefully considered. Presumably the level should be set at a low threshold to ensure that the entity setting a third-party standard is not beholden to fees obtained from benefit corporations.

7. Application of Dissenters' Rights Ambiguous. Various sections of 14603 of the Bill purport to grant dissenters' rights to shareholders that vote against particular actions described in that section by "complying with Chapter 13 of Division 1." But Chapter 13 by its terms applies only to certain reorganizations. Thus it is unclear if Chapter 13 would provide any protections for shareholders when a corporation becomes a benefit corporation under Section 14603(a) because that action does not constitute a reorganization.