

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 25, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:06 a.m. on Monday, February 25, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Wesley Duncan (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Washoe County Assembly District
No. 24



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Erik Trojan, Director of Policy, B-Lab, New York, New York
Luke Busby, representing B-Lab, New York, New York
Scott Anderson, Deputy for Commercial Recordings, Office of the
Secretary of State
Stacey Shinn, representing the Progressive Leadership Alliance of Nevada
Colin Loretz, CEO, Reno Collective Coworking
Susan Clark, CEO, Nevada Venture Accelerator; Board Member, REA 250
Ron Hunter, Environmental Associate, Patagonia
Kyle Davis, representing the Nevada Conservation League
George A. Ross, representing the Las Vegas Metro Chamber of
Commerce
Tray Abney, representing The Chamber of Reno/Sparks/Northern Nevada
Cadence Matijevich, representing the City of Reno
Lea Tauchen, representing the Retail Association of Nevada
Joe Johnson, representing the Toiyabe Chapter, Sierra Club

Chairman Frierson:

[Meeting called to order.] Welcome to the fourth week of the legislative session. I will open the hearing on Assembly Bill 89. Welcome, Assemblyman Bobzien.

Assembly Bill 89: Authorizes the formation of benefit corporations. (BDR 7-28)

Assemblyman David P. Bobzien, Washoe County Assembly District No. 24:

Most people are surprised to hear that if faced with a choice between doing the right thing and the profitable thing, the officers of traditional corporations are often legally bound to maximize profits for shareholders and make business decisions that choose the most profitable courses of action, even if those choices may have negative effects on society and the environment. [Continued to read from prepared text ([Exhibit C](#)).]

Mr. Chairman, with your permission, Mr. Trojan can bring a larger-perspective, state-by-state, big-picture presentation this morning. Mr. Busby is available to walk through the sections of the bill.

Erik Trojan, Director of Policy, B-Lab, New York, New York:

B-Lab is a nonprofit whose mission is to use the power of business to solve social and environmental problems. We try to work with businesses that think in this space and also work with investors and become the glue that connects them. Both of them have socially-minded individuals, and the current laws, which go all the way back to the turn of the last century with *Ford*, *Dodge*, and most recently *eBay* versus *Craigslist*, and the *Revlon* ruling, have all dictated that companies must maximize profit only. [*Dodge v. Ford Motor Company*, 204 Mich. 459, 170 N.W. 668 (1919); *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010); and *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986)]. It is perfectly fine for the vast majority of most businesses, but as the Assemblyman mentioned, it stymies the growth of some companies that want to think outside of the box.

Through our research, we have seen that there are about 60 million of what we call "conscious consumers," who are people that want to buy a product or service, but also want to pay attention to how the company performs. There is a collective pool of potential consumers. There are about 150,000 companies that think in this space. There are \$3 trillion in our economy right now that are socially impacted investments, either positive or negative filters. I will not buy from companies that do this, or I will buy from companies that do that. There are \$3 trillion out there in this space looking for these types of investments.

Assemblywoman Fiore:

Which other states have implemented this?

Erik Trojan:

There are 12 states, including Maryland, Vermont, Virginia, New Jersey, New York, South Carolina, Louisiana, and Massachusetts, as well as the District of Columbia; I will have to give you the remainder of them. We have the list of all of the states on our website at <www.benefitcorp.net>. The District of Columbia is the thirteenth entity to do it. Adding to that confusion, there are 16 other states that have bills in the legislature this year. That will be over half the country that will have either passed it or is trying to pass it this year.

We saw the lack of our current legal structure to allow this to occur, so that is where this legislation created by Bill Clark, who is on the American Bar Association's "corporations committee," was drafted. Fortunately, it has gone

through those 13 jurisdictions that have vetted this legislation and the 16 that have currently done it. It has been well vetted, well understood, and looked at.

There are currently 200 companies that have taken this form. For each effective date that the legislation has come into effect, we have seen 12 to 15 companies in line. We are seeing investors investing in these companies. I was told by a lawyer last week that he has a \$600,000 investment in a New York state benefit corporation, so we are now starting to see this. Investors in this space thrive on information by not only having the financial reports, which all companies have, but we are also providing qualitative reports, which really reduces their due diligence in these companies, so they can see if that matches the same theory and mission that the investor has with the company. Anytime we can reduce that aspect of investments, the quicker the money can go out, and the more likely these investors are investing.

Luke Busby, representing B-Lab, New York, New York:

I am a lobbyist for B-Lab, and I have been retained this session to promote benefit corporation legislation. I am also a practicing attorney in Reno, Nevada. Part of my practice is corporate law, so I am very excited about being able to offer this choice to my clients, if the Legislature passes this legislation. I would like to do a brief technical overview of the nuts and bolts of the bill, what it does, and answer any questions you may have about the structure of it.

There are three main components of a benefit corporation: purpose, accountability, and transparency. The purpose of a benefit corporation is to have a material positive impact on society and the environment, taking it as a whole and assessed against a third-party standard. That essentially means that these companies, when they operate, are allowed to consider the impacts that they have on stakeholders, not just shareholders, when they run their companies. Examples of material positive impact are given in the legislation. The company ultimately gets to determine what a material positive impact is on the society and the environment, so although it may look restrictive under that component, it really is not. It is deregulating the purpose for corporations.

In terms of accountability, the statute imposes certain directives on officers of a corporation in that they must run the corporation according to its original purpose, the material positive impact on society and the environment that was delineated when the corporation was founded. In terms of transparency, that is achieved via the legislation by an annual report. That is the "assessed against a third-party standard" component to the bill. Basically, it means that at the end of every year, a benefit corporation takes a third-party standard established by someone else and measures how well it is achieving its stated goals. Is it actually having a material positive impact on society and the environment?

The purpose sections are defined in sections 5 through 9, accountability in sections 15 and 17, and transparency in sections 16 and 19. There are various other components of the bill, but I do not want to take up all your time this morning explaining each one, so if you have a particular question about anything I have said or any components of the bill, I would be glad to answer them.

Chairman Frierson:

What if we were to pass this measure and have benefit corporations and the corporations subsequently decided to change the purpose? I know that is addressed, but could you go through it and what is required in the law regarding the shareholders and how that would compare to existing corporate law?

Luke Busby:

When a typical C corporation changes its form, there is an issue of dissenters' rights. Dissenters' rights allow people who do not agree with the change to opt out of the corporation and to receive fair market value for their share of it. This legislation states that if an existing company wants to become a benefit corporation, dissenters' rights are preserved under our regular corporation statutory scheme for doing so. If any corporation wants to become a benefit corporation and certain shareholders disagree with that change, then they can opt out at that point according to our existing dissenters' rights rules. A supermajority vote is required to transition from a regular corporation to a benefit corporation.

Assemblywoman Spiegel:

Would you say that the key benefit that a benefit corporation has is the shift in fiduciary responsibility from being just for profit to the defined stakeholders?

Erik Trojan:

We are providing liability protection for the directors and also protection for the shareholders. Right now their sole duty is to maximize profit. There is the business judgment rule, which allows some flexibility, but that must be for the ultimate end of maximizing profit. You may consider certain things, but you must maximize profit at the end. Here we are treating all three entities equally, society, environment, and the shareholders. All three are treated equally, so we achieve it in that manner. Importantly, something that should not be put down are the protections given to the shareholders. Right now, if you are an investor using that \$3 trillion that we had mentioned, you have no right to come to me and say, "Hey, we had a handshake agreement that you were going to consider society and environment, and you are not." I have no way to enforce that, because your sole duty is to maximize profit. Now, as an investor, I can invest in it and know I have the legal footing to make sure that you stay on there.

Chairman Frierson:

Does this bill exempt directors from all liabilities, specifically making maximization of profit the only goal?

Erik Trojan:

Yes, it is only in regards to that. The rest of the corporate code applies except for how it is specified here in this bill. The vast majority of the corporate code applies and all of the laws governing corporations apply except for as specified here. They are exempt from the liability for not maximizing profit. They still have liability in the sense that there is a private right of action that the shareholders have. It is a nonmonetary relief that they have. They are allowed injunctive relief to get the company back on course and have the judge say, "You are not doing what you said you were doing. Start doing that," and then force the company to do it.

Assemblyman Hansen:

What you said seems to conflict with the bill. Section 18, subsection 3 states, "A benefit corporation is not liable for monetary damages under this chapter for any failure of the benefit corporation to create general public benefit or any specific public benefit identified in the articles of incorporation" It seems to me it goes way beyond just monetary damages. It sounds like anything you do wrong you have absolutely no liability for anyone who is the head honcho for this organization.

Erik Trojan:

You do not have monetary liability, but you do have liability to consider society and the environment. That is where the benefit enforcement proceeding comes in and where the shareholders have the right to take the directors to court to get the company back on track. These issues are not monetary issues, but issues if you have not been considering society and the environment. We did not want to have strike suits and things like that. We want to have the company put back on track.

Chairman Frierson:

This is something new for me, and obviously for Nevada. There would be liability for directors deviating from the corporation's stated purpose, whatever that purpose may be?

Erik Trojan:

Absolutely. If you steal money from the corporation, you are absolutely liable. All of the regular corporate code liability requirements on directors still apply. It is addressing that sole issue of the need to maximize profit.

Assemblyman Martin:

This is a very intriguing idea. Are there any special tax relief considerations in the other states, or is it just like any other normal corporation? How do our friends at the IRS perceive these entities?

Erik Trojan:

There are no tax issues. You are a C corporation or an S corporation because those are separate issues and addressed under tax law, and you are considered a corporation, like a closed corporation, professional corporation, et cetera.

As for other states' incentives, that is something that we at B-Lab have not been seeking. The only thing that I know about is the City of San Francisco has provided a procurement incentive for benefit corporations. That is something they have done; it was not something that the community was seeking. The most important thing is the right to do this, and that is the first thing.

Assemblyman Bobzien:

We have the research pulled up for Assemblywoman Fiore on the number of specific states. May I provide you with that list?

Chairman Frierson:

Thank you.

Assemblyman Bobzien:

The states are: California, Illinois, Louisiana, Vermont, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Hawaii, and the District of Columbia.

The states that are working on it are: Oregon, Arizona, New Mexico, Colorado, Texas, Alabama, Georgia, Florida, North Carolina, Connecticut, Michigan, Iowa, and we understand hot-off-the-press Montana, and of course, Nevada.

Assemblyman Wheeler:

Who in the Secretary of State's office is going to actually administer this particular corporation? Will we have to add another layer of bureaucracy and will there be any cost involved?

Assemblyman Bobzien:

We will be hearing from the Secretary of State's office so they can provide you with an answer on that.

Assemblywoman Fiore:

Are the directors required to post compensation with a benefit corporation?

Erik Trojan:

That is only for private information. It is nonpublic information. The financial information is removed when the annual benefit report is issued on the website. Right now shareholders are already entitled to that information, so it is nothing that is not currently provided to shareholders. It is currently provided to them, and once that information is made public, they are allowed to remove the compensation.

Chairman Frierson:

Are there any questions? [There were none.]

Those who are here to testify in support of A.B. 89, please come forward and fill up the chairs.

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

We come in support of A.B. 89. We thank Assemblyman Bobzien and the sponsors for bringing this forward and making this entity available to Nevada and those wishing to do business in Nevada. The way this legislation is crafted, there is minimal modification that will be needed to our existing systems, maybe a checkbox and allowing for additional information to be included in the articles of incorporation. We believe that this will fall within our current budget and the enhancements that we make to our system on a regular basis. We do not feel that this is going to have a significant impact on our office. With the limited number of these entities, we do not see any significant impact.

Chairman Frierson:

Are there any questions for Mr. Anderson? [There were none.]

Stacey Shinn, representing the Progressive Leadership Alliance of Nevada:

We support A.B. 89 for many reasons, but the one I want to point out to you today is that this piece of legislation is a possible candidate for our racial equity report card due to intent for providing low-income and underserved individuals and communities, products, and services.

Chairman Frierson:

Are there any questions for Ms. Shinn? [There were none.]

Colin Loretz, CEO, Reno Collective Coworking:

I am the chief executive officer of a local company in Reno, Nevada. We are the Reno Collective and are here in support of A.B. 89. We have been following the B-Lab since its inception and waiting for this to happen in Nevada. We exist for the benefit of the community. We have been trying to find metrics that we

can actually use to measure the impact that we have on the community, and what the B-Lab is proposing and A.B. 89 proposes finally gives us that structure. It allows us to not only serve the community in the way that we already are, but also to be held accountable for it as the other directors of the Reno Collective and I already are today.

Chairman Frierson:

Are there any questions from the Committee? [There were none.]

Susan Clark, CEO, Nevada Venture Accelerator; Board Member, REA 250:

I am here in support of A.B. 89. It is a great opportunity for our state. Clean technology commercialization is one of our projects at Nevada Venture Accelerator. We would be very interested in having a benefit corporation structure in the state for two important purposes. One, we are attracting a number of investors who are not interested in traditional venture capital pathways, who are not only looking for a return on investment, but a return on community—a triple bottom line as indicated in A.B. 89. We are interested in bringing them forward into some new funding structures, so it would be very valuable for us to have a benefit corporation here.

The other side is from the side of a director and as a chief executive officer (CEO). We do need the ability to talk to investors in a way that indicates they are interested in the bottom line, thinking about both the environment and the community in the process. We are very excited about this possibility. We see it bringing more money here to the state. We have talked to folks both in New York and in California who would be very interested in investing in technologies here in Nevada with a B corporation structure in place.

Chairman Frierson:

Are there any questions for Ms. Clark?

Assemblyman Hansen:

What is lacking now in our current structure for nonprofit organizations? The people that you just mentioned are not willing to invest in Nevada. Is there some gap in our current law that nonprofits cannot take advantage of?

Susan Clark:

You can donate to nonprofits. We have individuals who would like to get a return on investment, not just make a donation. They are interested in the value structure of a nonprofit, but they are not very interested in putting in an investment and not getting a return on their investment.

Assemblyman Hansen:

So you want them to be able to invest, but not have any kind of profit incentive if they have to pay a tax if they make something on it. To me, an investment means that you are trying to make something, but in this case you are saying they are going to invest but they are not going to get taxed on the profit side? How does it work?

Susan Clark:

We are interested in that they have the ability to get a return on their investment, like a normal C corporation would, and they are also focusing on allowing us to make our decisions based on community and environmental issues as well as the profit issues.

Erik Trojan:

These are purely for-profit entities that just want the flexibility to think of things other than profit. For example, if I wish to buy parts for my widget here in my local community and not have to go to China, if the parts are more expensive, I am jeopardizing the fact that I am not maximizing profit. But yet I want to do that because I want to support my community. It gives you the flexibility to think of things like that. Maybe I am not getting a 20 percent return; I am getting a 15 percent return. Under current law, I would be violating that need to maximize profit, but here I am protected where I can consider ancillary issues in addition to profit. These are not nonprofits; these are for-profit entities that want to touch on other issues. Oftentimes they donate ten times more than the market average to nonprofits, who then do the nonprofit activity. The investors are not doing nonprofit activity.

Assemblyman Hansen:

I am still a little confused on it, and I hope it will get cleared up in some future testimony.

Chairman Frierson:

For example, you have a corporation that is for-profit that decides the cheapest paper they can buy for the office comes from a source that is derived out of rain forests. If the corporation decides that is the cheapest and as a corporation does not want to support that type of industry, then they can make a decision to buy more expensive paper if it serves their purpose without being liable as directors for making that decision. It is not exclusively without any regard for the purpose of the organization, of which the bottom line is maximizing profit.

Erik Trojan:

That is exactly it. It just gives the directors the ability to think about other things when operating their business. The next person to testify will be a prime example of a real live business that is doing this.

Ron Hunter, Environmental Associate, Patagonia:

I coordinate environmental programs for Patagonia. Patagonia supports A.B. 89, the Nevada benefit corporation legislation. Benefit corporations are a new voluntary business form that gives the freedom to entrepreneurs and businesses to consider other facts in addition to profit when operating their businesses, while also providing greater clarity and accountability to investors and shareholders. [Continued to read from prepared text ([Exhibit D](#)).]

Chairman Frierson:

Are there any questions? [There were none.]

Kyle Davis, representing the Nevada Conservation League:

Mr. Hunter basically outlined why an environmental group like ours would be supporting legislation like this, so I will not belabor the point any further.

Chairman Frierson:

Are there any questions for Mr. Davis? [There were none.]

George A. Ross, representing the Las Vegas Metro Chamber of Commerce:

The Las Vegas Metro Chamber definitely supports the benefit corporation bill, A.B. 89. We think it is an excellent step forward for the state of Nevada.

Chairman Frierson:

Are there any questions for Mr. Ross? [There were none.]

Tray Abney, representing The Chamber of Reno/Sparks/Northern Nevada:

I am here representing the 90,000 employees of the 2,500 member businesses of the Reno, Sparks, and Northern Nevada Chamber. We strongly support A.B. 89. We believe it is another tool in the toolbox and one more way to diversify our economy and promote economic development. I would like to point out for the record that The Chamber and the Progressive Leadership Alliance of Nevada are supporting the same bill.

Cadence Matijevich, representing the City of Reno:

I, too, am here in support of A.B. 89. I think this could be a valuable tool as we look to expand and diversify our economy and attract entrepreneurs. I would also add that the types of employees who seek to work for these organizations will further help diversify the economy and our communities.

Chairman Frierson:

Are there any questions? [There were none.]

Lea Tauchen, representing the Retail Association of Nevada:

I would like to add a me too, as we believe this is a unique opportunity for Nevada corporations to evolve for the greater good of society and the environment.

Joe Johnson, representing the Toiyabe Chapter, Sierra Club:

We are in support of this bill. It is good for the environment and good for business.

Chairman Frierson:

Are there any questions? [There were none.] Is there anyone else in Carson City to testify in support of A.B. 89? Is there anyone in Las Vegas to testify in support of A.B. 89? [There was no one.] Is there anyone in Carson City to testify in opposition to A.B. 89? Is there anyone in Las Vegas to testify in opposition to A.B. 89? [There was no one.] Is there anyone in Carson City to testify in a neutral position with respect to A.B. 89? Is there anyone in Las Vegas to testify in a neutral position on A.B. 89? [There was no one.] Assemblyman Bobzien, if you would like, you can give any closing remarks you may have.

I will take the opportunity to say that it is not often folks come forward and collectively say that they want to do something they think might be good, even if it might not necessarily make a profit. Oftentimes, we hear about the government wanting to intervene and stop a business from being able to do what that business had set up as its purpose. For once, we have everyone in agreement. If a supermajority wants to do something that is not necessarily maximizing profit in and of itself, why not let them. I applaud you. I was excited to see this idea and thrilled to see the amount of support you generated today.

Assemblyman Bobzien:

This was an idea that I just happened upon through reading online during the interim. The more I read about it and the more I researched it, I thought, "I should put in a bill draft request for this and get it rolling." This has been a great learning process for me. I will be sharing with the members of the Committee a quick eight-minute video that the Public Broadcasting Service did looking at B corporations and profiling different B corporations, so you can get a sense of the breadth of the types of companies that we are talking about.

I would like to give a personal perspective of the consumer benefit that is derived and the benefit that can then accrue to the companies that go this route in terms of presenting their own brand. I am looking for some new eyeglasses. I am due for some and I have always hated shopping for eyeglasses because they just seem so expensive and the styles are not that good. I heard about this company called Warby Parker that is trying to break open the eyeglass market. They have some reasonably priced frames and they look pretty good. As I was watching this video last night, I realized, "Oh, Warby Parker is a B corporation," because every pair of glasses that you buy from them, they then give a pair to a person in need. Right then and there I decided to go right back on their website. They have this great try-on program; you can get a couple of eyeglass frames, they will send them to you, you can try them on, see what you like, and then send them back for the placement with the prescription.

So right there, companies like that. I am sure we all have personal values for things that we want to maximize when we are making our purchases, and this is one more way to provide that structure to benefit society.

Chairman Frierson:

Thank you for bringing this measure forward. I appreciate the effort.

I will close the hearing on A.B. 89, and open up the opportunity for any public comment. I see none. I do not have any BDRs to introduce today. This is a wonderful Monday and a wonderful start to the week. The Committee on Judiciary is now adjourned [at 9:50 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 25, 2013

Time of Meeting: 9:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 89	C	Assemblyman David Bobzien	Presentation
A.B. 89	D	Ron Hunter	Written Testimony