

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
April 16, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:16 a.m. on Tuesday, April 16, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24
Assemblywoman Lesley E. Cohen, Assembly District No. 29

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Luke Andrew Busby, B-Lab
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary
of State
Tray Abney, The Chamber, Reno-Sparks-Northern Nevada
Kyle Davis, Nevada Conservation League

Senate Committee on Judiciary
April 16, 2013
Page 2

Lea Tauchen, Retail Association of Nevada
Silvia Villanueva, Las Vegas Metro Chamber of Commerce
Elisa P. Cafferata, Reno Collective
Megan N. Salcido, City of Reno
Sue Meuschke, Executive Director, Nevada Network Against Domestic Violence
Margaret Flint, Nevada Humane Society; Canine Rehabilitation Center and Sanctuary
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Robert Roshak, Nevada Sheriffs' and Chiefs' Association
Alan Glover, Clerk/Recorder, Carson City
Nancy Parent, Chief Deputy Clerk, Washoe County
Diana Alba, Clerk, Clark County

Chair Segerblom:

I will open the hearing of the Senate Committee on Judiciary with Assembly Bill (A.B.) 89.

ASSEMBLY BILL 89: Authorizes the formation of benefit corporations.
(BDR 7-28)

Assemblyman David P. Bobzien (Assembly District No. 24):

This bill authorizes the formation of benefit corporations, which are different from traditional corporations. Benefit corporations are private for-profit businesses acting like other corporations seeking to generate revenue. The difference is that benefit corporations are obligated by their voluntarily elected corporate structure to consider the consequences of their actions on the environment and society. I have submitted my written testimony ([Exhibit C](#)).

Senator Hutchison:

This is about notice. If you are going to invest in this type of company, you are put on notice that this company is going to have an interest other than profits at its heart. Is there any specific notice beyond the structure of the organization to alert people that a benefit corporation is different from a regular corporation?

Assemblyman Bobzien:

Yes. In the process of voluntarily registering as a benefit corporation, you must articulate in a report what benefits you are offering. Your accountability mechanism is the regular production of that report describing what you did to further your stated benefit.

When there is a big purpose people want to serve with their company, they can enshrine that in their corporate structure. That way, there is never a question about whether the company's actions are detracting from shareholder value because of their pursuit of the good. With this structure, that benefit pursuit is protected.

Chair Segerblom:

For example, if a family starts a corporation and the patriarch or matriarch dies, the shareholders—who are often the children—can get into disputes that might include talk about profits. This bill would allow the corporation to go forward without shareholders complaining about maximizing profits.

Senator Hutchison:

One thing that attracts corporations to Nevada is its tax structure. Would that still be an attraction for this type of corporation?

Assemblyman Bobzien:

A benefit corporation would have the same concerns about taxation as a for-profit corporation. The other intangibles that would make the State attractive to benefit corporations are quality of life, outdoor recreation, environmental benefit, renewable energy possibilities, etc.

Luke Andrew Busby (B-Lab):

Benefit corporation legislation can be divided into three categories—purpose, accountability and transparency. I have submitted my written testimony explaining benefit corporations in further detail ([Exhibit D](#)).

In the bill, section 14 and section 15 embody the purpose of a benefit corporation, which is to have a material, positive impact on society and the environment assessed against a third-party standard.

In section 4 and section 18, this legislation adds accountability requirements that directors consider society and the environment and provide shareholders with a private right of action to ensure the company is moving toward that purpose. If a legal action is brought, no money damages are available. All that is available is injunctive relief from a judge directing the corporation to act in accordance with the stated purpose.

Section 16 refers to transparency, requiring the company to produce an annual benefit report, which is similar to a financial report.

This bill will not cost the State anything for implementation. It is optional. It may be a revenue generator for the State if many companies decide to incorporate here because of our beneficial tax and regulatory environment.

Chair Segerblom:

Is this a uniform bill? Is it the same as other states or unique?

Mr. Busby:

This is very close to the model legislation. The original bill drafter, William Clark, worked closely with us to develop the language. The primary driver behind a benefit corporation is that the company is required to have an overreaching public benefit obligation, accountability to shareholders and impact transparency. This is the same as in other legislation passed in other states. I have a state-by-state breakdown of the differences, but these differences are largely technical and based on specific corporate law rules in each state. The essential elements are the same in all 12 states that have passed legislation on benefit corporations.

Assemblyman Bobzien:

I learned about this concept during the interim and thought it was a good idea for Nevada. I worked with B-Lab and Mr. Busby, and we engaged the State Bar of Nevada early on, as well as the Legislative Counsel Bureau.

Senator Brower:

It seems like under existing law, corporations could achieve the same end by careful drafting. Why do we need this in statute?

Assemblyman Bobzien:

Caselaw calls into question whether what you described would be sufficient if challenged. That is driving the need for it in statute.

Mr. Busby:

In caselaw and corporate law in Nevada, we follow the rulings of Delaware, as many states do, because Delaware is a center for corporate law activity. The main case Assemblyman Bobzien is citing is *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1 (2010), originally tried in the Court of Chancery of the

State of Delaware. This case affirmed that a corporation's ultimate duty is to maximize profits for shareholders above all other considerations. Nevada has a liberal constituency statute which states how regular corporations can consider other factors in making decisions.

The difference with benefit corporation legislation is the obligation to perform in a certain manner. If you are an investor wanting to invest in a company that makes money while also doing a specific good for society and the environment, a benefit corporation is for you. If you invest in something other than a benefit corporation, you have no recourse if your company chooses not to pursue its stated goal. Under benefit corporation legislation, a shareholder has a means to hold a company accountable. That is the primary difference.

Senator Brower:

Several other states have enacted similar laws. Wisconsin and Florida chose not to enact the laws. Do you know why they rejected the idea?

Mr. Busby:

According to documents I have from B-Lab, Wisconsin and Florida are still working on the idea of benefit corporation legislation. I could get information on that for you.

Senator Brower:

How does our law differ from Arizona's law, or the law Arizona legislators are working on?

Mr. Busby:

It is my understanding that Arizona legislators are in the process of sending their similar bill through committee. Their bill takes the same form as this S.B. 89, I believe.

Senator Hammond:

How does the oversight work? Who looks at the corporation and decides if the parties involved are achieving the stated goals?

Mr. Busby:

Section 16 of the bill requires the directors to prepare a report confirming that the benefit corporation has complied with its stated goals. That assessment report is based on a third-party standard. This legislation does not specify the

details of that standard. There are many standards available to the benefit corporation. The important thing is to do an evaluation based on standards someone else sets. That information must be posted on the benefit corporation's Website for the public to access.

Senator Hammond:

The directors do the evaluations based on someone else's standards and then put that information on a Website. What if there is no Website?

Mr. Busby:

Section 19 includes the directive to deliver compliance information to each shareholder. Subsection 3 of section 19 contains the reference to posting the information on a Website. Section 19, subsection 4 states that if there is not a Website, a copy of the most recent annual benefit report must be provided at no cost to any person requesting a copy.

Assemblyman Bobzien:

It would be in most benefit corporations' best interests to have Websites and to get those reports out. That report is the accountability mechanism so customers can decide if they want to do business with the company. There is a market advantage to having clear, understandable information readily available to investors, potential investors and customers.

Senator Jones:

I want to get on record that I appreciate this bill and the opportunity to cosponsor it with Assemblyman Bobzien.

Chair Segerblom:

Are there any benefit corporations we would be familiar with?

Assemblyman Bobzien:

Patagonia, Inc., is one of my favorites. That company has a distribution center in Reno and is registered as a benefit corporation in California. Another benefit corporation, Warby Parker, is an eyeglass company that produces high quality, stylish eyeglass frames at a great price point. The company's benefit purpose is to help bring glasses to people in need. With each pair of frames purchased, a second pair of glasses is given to someone in developing countries.

I posted a Public Broadcasting Service show, "Benefit Corporations Aim to Make Profit, Positive Impact," on my Weblog, <<http://www.davidbobzien.com>>. The show aired February 29, 2012, and illustrates how benefit corporations work.

Senator Brower:

This is an interesting concept, but I can see benefit corporations being ripe for litigation as to whether the stated benefits of the company are being fulfilled. Do you have any information about litigations like this taking place?

Mr. Busby:

I do not think any benefit enforcement proceedings have been brought. I can get back to you on that. The reason for that might be in section 18, where it lists limitations on who can bring such a suit. The main thing limiting litigation on a benefit corporation is the fact that the complainant cannot go after money damages. This vastly limits the enticement to sue. There are also limitations on officer liability as exists in most other corporate statutes. Almost every lawsuit is brought with the hope of obtaining money judgment, so if there is no money, then people who sue must really care about what the corporation is doing. The only award the complainant will receive is an order from a judge directing an officer of the corporation to change his or her behavior.

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

We support this bill. It would benefit the State and works right into the practices of our office.

Chair Segerblom:

Is there anything unique about having to file a benefit corporation with your office?

Mr. Anderson:

The way the bill is drafted, it will be a minimal process of checking a box to indicate benefit corporation. We will reflect that on our Website, and we can accept attachments to our articles of incorporation that show the language related to the benefit.

Chair Segerblom:

Will the annual report be filed with your office?

Mr. Anderson:
No.

Tray Abney (The Chamber, Reno-Sparks-Northern Nevada):

I represent The Chamber, covering Reno, Sparks and Northern Nevada. We support this bill because it is a good incentive and choice for economic development.

Kyle Davis (Nevada Conservation League):

We support this bill. Companies that would incorporate environmental benefits into their bylaws are good for Nevada.

Lea Tauchen (Retail Association of Nevada):

We support this bill. It will provide unique opportunities for Nevada corporations to evolve for the greater good.

Silvia Villanueva (Las Vegas Metro Chamber of Commerce):

We support A.B. 89 because it will be an excellent step forward for Nevada by providing more choices for corporations. It would allow these corporations to do good things for the community. This legislation would also send a clear message that Nevada is a hospitable place to set up and operate a company wanting to make a societal impact as well as making a profit.

Elisa P. Cafferata (Reno Collective):

I am a charter member of the Reno Collective, a coworking space in Reno. We want to become a benefit corporation and we support this bill.

Megan N. Salcido (City of Reno):

We support this bill.

Chair Segerblom:

Seeing no more people wanting to testify for or against Assemblyman Bobzien's bill, I will close the hearing on A.B. 89 and open the hearing on A.B. 115.

ASSEMBLY BILL 115: Revises provisions governing the information required to be provided to suspected victims of domestic violence by law enforcement. (BDR 14-628)

Sue Meuschke (Executive Director, Nevada Network Against Domestic Violence):

I am also representing Assemblywoman Teresa Benitez-Thompson from Assembly District No. 27, one of the sponsors of this bill. This bill relates to the pets of domestic violence, often harmed in domestic violence relationships. I have submitted my written testimony ([Exhibit E](#)) which includes a copy of the victim information sheet that law enforcement personnel can distribute. In 2011, more than 28,000 of these sheets or cards were given to victims and perpetrators by law enforcement officers. In 2012, more than 7,000 victims contacted domestic violence programs as a direct result of a law enforcement referral.

Senator Hutchison:

On page 4 of [Exhibit E](#), it looks like the only thing you are adding to the category under Orders For Protection is No. 7, which directs someone to not harm a victim's animals. Is that the only change in the form?

Ms. Meuschke:

Correct.

Margaret Flint (Nevada Humane Society; Canine Rehabilitation Center and Sanctuary):

We support this bill.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

We support the bill also.

Robert Roshak (Nevada Sheriffs' and Chiefs' Association):

We support this bill.

Chair Segerblom:

I will close the hearing on A.B. 115.

SENATOR BROWER MOVED TO DO PASS A.B. 115.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on A.B. 192.

ASSEMBLY BILL 192: Repeals the prospective expiration of the authority of county clerks to charge and collect an additional fee for filing and recording a bond of a notary public. (BDR S-1037)

Assemblywoman Lesley E. Cohen (Assembly District No. 29):

Nevada Revised Statutes (NRS) 19.013 and 19.016 authorize county clerks to charge up to \$5 for the filing and recording of a notary bond. The proceeds from these fees must be accounted for separately in each county's general fund. These proceeds can only be used to acquire or improve technology used in those county clerk offices. Examples of what the money can be used for include converting and archiving records; purchasing hardware and software; maintaining technology; training employees to operate technology; and related professional services. This bill removes sunset language for this fee.

The statute that requires the fee be accounted for separately and only be used for technology is NRS 19.016. The statute that sets the fee for the notary bond at \$5 is NRS 19.013.

The Legislature authorized the county clerks to charge the technology fee in 2007. The Nevada Association of Counties introduced the bill in 2007 to offset technology upgrade costs. According to testimony in 2007, most of the county clerk offices were having trouble managing the notary data information and other data due to inadequate funding. The Clark County Clerk's Office testified it had microfilm recordings dating back to 1908 that were deteriorating and needing digitization.

The ability to fund the upgrades to data processing and storage has been a big help to the county clerks. It helps them control staff costs due to the reduced need of manual record keeping. This fund improves the efficiency of the offices and provide citizens with access to important records.

The Assembly Committee on Judiciary added the sunset provision in 2007 to give the Legislature a chance to review the law, recommending a review of the law in 6 years. Something that Committee was not thinking back in 2007 is that technology is ongoing. Saving up for a few years, then fixing the technology, and not having to replace or upgrade in less than 20 years is unreasonable in today's rapidly evolving technology reality.

Chair Segerblom:

Does this require a two-thirds vote?

Assemblywoman Cohen:

No.

Alan Glover (Clerk/Recorder, Carson City):

We are one of the counties that do not collect much money. We have been trying to build up our fund. We need some program changes and we need to change our forms, which would be a good use of this money. Most rural counties, including us, do not collect much money. It is definitely important to Washoe County and Clark County because they take in substantial money and technology keeps evolving and getting more expensive.

Nancy Parent (Chief Deputy Clerk, Washoe County):

In the last 6 years since the technology fee went into effect, we have collected more than \$30,000 in Washoe County. We spent about half of it converting our microfilmed records and old hard copy notebooks into a digital format. We have \$19,000 left and want to get all our information out on the Internet so we can be more transparent. Please remove the sunset. We approve this bill. I have submitted a letter from Amy Harvey, Clerk, Washoe County ([Exhibit F](#)).

Chair Segerblom:

Do you want to double your fee or take away the limitations on what the money can be spent on?

Ms. Parent:

We would be glad to do that.

Diana Alba (Clerk, Clark County):

This fee has been important to Clark County, especially since we have had three rounds of staff reductions in the last several years. This has helped us automate

processes that were formerly manual. I have submitted my written testimony ([Exhibit G](#)).

Chair Segerblom:

Would you be willing to double the fee to \$10 and not have limitations on where the money can be spent within your office?

Ms. Alba:

That would be wonderful if we could increase the fee. We do have to save up for different projects. I have had sticker shock at times with some of the software. We paid more than \$25,000 for software that has made a positive difference in our office, but I am continually surprised at how expensive these things can be. However, if raising the fees would impede the passage of this bill, I would hate to see it bogged down. Maybe adding an increase in 2015 would be better.

Senator Hutchison:

How much does Clark County raise from this fee?

Ms. Alba:

By the end of calendar year 2012, we raised around \$99,000, so it has averaged around \$20,000 a year. We do have around \$15,000 in reserve. We have around \$28,000 for some software that is encumbered but not spent.

Assemblywoman Cohen:

The document submitted by Ms. Alba, [Exhibit G](#), has a breakdown of the Clark County technology expenditures. The smaller rural counties receive a small amount, but I have heard from them that having funds to buy something as small as a new computer monitor is much appreciated.

Chair Segerblom:

Seeing no one opposed or neutral on the bill wanting to speak, I will close the hearing on A.B. 192.

SENATOR HUTCHISON MOVED TO DO PASS A.B. 192.

SENATOR BROWER SECONDED THE MOTION.

Senate Committee on Judiciary
April 16, 2013
Page 13

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:

Seeing no one speaking under public comment, I will close the hearing of the Senate Committee on Judiciary at 10:11 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 89	C	2	Assemblyman David P. Bobzien	Written Testimony
A.B. 89	D	3	Luke Andrew Busby	Nevada Benefit Corporation Legislation Documents
A.B. 115	E	4	Susan Meuschke	Written Testimony
A.B. 192	F	2	Nancy Parent	Letter from Amy Harvey, Washoe County Clerk
A.B. 192	G	5	Diana Alba	Written Testimony and Clark County Data