



# California Corporate & Securities Law

## **California's New Corporate Forms – And The Winner Is . . .**

By Keith Paul Bishop on January 10, 2012

Recently, Marc Lifsher wrote this [story](#) for the Los Angeles Times regarding California's new "Benefit Corporation Law". He reports that "Chief executives, led by Yvon Chouinard, the founder of Patagonia, a 56-year-old seller of outdoor apparel and equipment based in Ventura County, marched into the secretary of state's office shortly after it opened Tuesday morning." So who won the race to be the first California benefit corporation?

I contacted the [Secretary of State's](#) office last week and was told that first place belongs to THE IDEAL WORLD. I won't say that this is an honor because I have serious concerns about the benefit corporation legislation.

The bill creating benefit corporations, [AB 361](#) (Huffman) was the product of a disreputable bit of legislative legerdemain known as the "spot bill". A "spot bill" is a bill that makes a very inconsequential change to a statute and then is later amended. Spot bills are used as placeholders but they also provide a means to sandbag possible opposition. Authors use them to mask their true plans and limit public scrutiny of a bill. See "[See Spot Run](#)" and "[A Leopard Loses His Spots – AB 361 Is Amended](#)".

Those considering creating or moving to benefit corporation status should understand that 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. These fees can be as much as \$25,000 annually! Thus, it is no surprise that the source of the legislation was [B Lab](#), an organization that provides certification services.

Fortunately, there is a much better alternative to the benefit corporation form – the flexible purpose corporation. In marked contrast to AB 361, the proponents of this legislation were careful to solicit input and to expose their ideas to public comment. [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.

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According to the Secretary of State's office, the first flexible purpose corporation is PROMETHEUS CIVIC TECHNOLOGIES, FPC.

In February, I will be joining Professor C. Hugh Friedman (University of San Diego), Jim Fotenos (Green Radovsky Maloney Share Hennigh LLP), Susan Mac Cormac (Morrison & Foerster LLP) and John Montgomery (Montgomery & Hansen LLP) in presentations in Los Angeles and San Francisco on both flexible purpose and benefit corporations. Information about these programs is available [here](#).

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