

**Testimony before the
Kansas House Taxation Committee
in regards to
Benefit Corporation Legislation**

Presented by (in order),

- 1.) Don Stebbins, Principal, CLM Co. (Stilwell, KS)**
- 2.) Holly Ensign-Barstow, Policy Associate, "B Lab"**

February 7, 2013

Chairman Carlson and Committee Members,

It is an honor to provide a briefing to the Taxation Committee today, upon the thoughtful invitation from Chairman Carlson, regarding the prospect of new legislation to enact "Benefit Corporations" as a form of corporate organization for businesses in the great state of Kansas. It is a corporate form that is already in place in several states which compete with our state to attract entrepreneurs.

My name is Don Stebbins, and I operate CLM Company in Johnson County, KS, which develops and provides educational programming for schools and communities in the Greater Kansas City region.

The manner by which CLM has developed various forms of educational programming is through public-private partnerships. We have put in place these partnerships with government agencies, foundations, major media companies, and corporations in many industries. This partnership process has found much success with funder companies such as Hallmark, American Century, Blue Cross/Blue Shield, and the Kauffman Foundation. However, there are inherent roadblocks to public-private partnerships, when it comes to providing an efficient means for providing various public benefits to Kansas citizens.

These roadblocks relate directly to the value of Benefit Corporations to the citizens of our great state. It is why I am here to testify about the benefit of establishing this new means for corporations to organize their business missions, one which will permit for-profit companies to prioritize the development of new ways to serve the public good, without requisitioning a single added tax dollar from Topeka.

I hope that our briefing today will result in a prospective sponsor or sponsors of a Bill to enact this new economic development tool for Kansas and its businesses through the necessary legislation. It is a tool which, by the way, has found unanimous support in a number of state legislatures around the nation since it is the best kind of economic development tool: the kind that involves no added tax dollars.

Especially in the current civic environment, in which Kansas is becoming a national leader in tax reduction, I do not want other states to leave Kansas behind when it comes to permitting corporations to operate at optimal productivity when it comes to maximizing the value of their company missions.

Our state's guest today, Holly Ensign-Barstow, will also brief the Committee following my remarks. Ms. Ensign-Barstow has advocated in Washington and in other state capitals on behalf of the non-profit "B Lab," which is the nation's expert in facilitating legislation to enact Benefit Corporations (also known as B Corps) within forward looking states nationwide, including many of our neighbors.

Let me put some flesh on those bones, because it is likely that many if not most of the Committee may not be familiar with Benefit Corporations. So let me share with the Committee, to that end, that in addition to my business activities I am also a licensed teacher here in Kansas, where I have worked for several years with students who attend Title 1 schools in Johnson and Wyandotte counties, as well as in the greater urban core region. Like many of you, I also serve on non-profit boards that are consistent with my own community interests, which are primarily organizations that serve youth and families.

My company has developed educational partnerships with major media companies in our region in order to bring new curricula into schools. These curricula, for example, have featured learning and career opportunities in the STEM fields like Science and Engineering, as well as curricula which feature healthy living activities for families; others I have put in place foster a higher level of personal financial education. These curricula are especially needed in the areas of our state which are economically challenged, yet it is in those areas that schools often (although not always) downplay such practical approaches to living and learning. Often times, we have found that corporations and foundations have the welfare of their market areas most firmly in mind, when they step up to pay the costs for us to put in place new learning opportunities for youth and families.

The educational curricula which these very disparate organizations have put in place have been organized through public-private partnerships. We have also put in place community education assets with state agencies, major museums, and foundations such as the Health Care Foundation of Greater Kansas City, and with federal agencies like the Forest Service and National Park Service.

These partnership-type arrangements have put more than 1 million copies of curricula into students hands, which have been requisitioned by eager teachers at no cost to their students or districts. Typically, such curricula is not otherwise made available to them by their public schools.

After my preamble here about educational partnerships, in particular, you might be wondering why this report today about the value of enacting Benefit Corporations is not being heard in Representative Kelley's Education Committee, instead of here in Chairman Carlson's Taxation Committee. There is a simple reason for that, and the reason is due to the difficulties which are inherent to the hyphenated term mentioned in the prior paragraph.

Partnership-type arrangements among entities who do not speak the same operational language always present a challenge, and those challenges often get in the way of providing a public good. Let's face it: schools, corporations, non-profit agencies, municipalities, and certainly state agencies all have difficulty judging the motivations and inclinations of people who belong to organizations which reside on the opposite side of the public-private fence.

But in a perfect world -- one which this Committee can begin to foster today, in order to attract new entrepreneurs here to Kansas -- we would all act swiftly to reduce any and all fences that separate people who seek to provide a public good. That's what being entrepreneurial as a state is all about, I believe. But instead of gaming the system to tear down the fences among the established institutional players, it is more realistic to enact a different piece on the monopoly board to embody new moves ahead.

Mrs. Ensign-Barstow and I are appealing to you today -- to one or more of you who might sponsor; to many of you to support; and, for all of you to consider at the earliest opportunity -- to embrace what Texas, Iowa, and Colorado are moving ahead to do already. We are asking you to add a new kind of player to Kansas' monopoly board, so to speak, one which would be for businesses of all sizes.

The B Corporation model would also serve businesses whose shapes and styles and frames of mind incline them to find ways, as my company has done, to help people by bringing people together who have disparate inclinations. But let's face it, the demarcation between the public and private spheres will not disappear because of anything we say here today.

Yet it is nevertheless true that there is a power that resides here in the Capitol, exclusively, to create an environment where countless corporations, Benefit Corporations, could openly declare that they wish to exist to profitably and beneficially serve the people of Kansas.

That power resides in you, to add a piece to Kansas' monopoly board. Thanks to the non-profit B Lab organization, a template of such legislation can be made available for your consideration and review. In those manner of details I yield to my counterpart here today, Holly Ensign-Barstow. Upon the conclusion of her remarks, we will address any questions, as well as provide an ideal object lesson with respect to the disadvantages to the people of Kansas without Benefit Corporations in place.

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Chairman Carlson and Committee Members,

My name is Holly Ensign-Barstow and I am here to provide testimony regarding benefit corporations. Benefit corporations are a new voluntary business form that gives the freedom to entrepreneurs and business owners to consider other factors in addition to profit while operating their business.

I work for the non-profit B Lab, whose mission is to use the power of business to solve social and environmental problems. We believe that business is the greatest source of solutions for the issues that we face as a society and that the free market can address many problems quickly and efficiently. However, the corporate laws in many states, including Kansas, prevent companies from doing more than solely seeking the highest profit. There is nothing wrong with profit and it does many good things, but if a company wishes to combine the quest for profit with the desire to consider society and the environment they are impeded by the current corporate laws. Benefit corporation legislation solves this problem by granting this freedom and deregulating the traditional corporate form.

Yes, corporations do consider some factors other than profit, but to a limited extent and also with added risks. For those that wish to consider operating their business with a combined mission of profit and addressing societal and environmental problems they are at risk of a shareholder lawsuit when not maximizing profit.

Conversely, investors that wish to invest in companies that consider other factors than profit are at risk of having the company's mission change at any time with no recourse but to sell their stock. This jeopardizes their investment, especially for mission oriented social impact funds. There is an estimated three (3) trillion dollars in social impact investment money available in the marketplace today. Benefit corporation legislation provides the free market the legal protection and information for these two

actors, business and investors, to work and grow together effectively. In a benefit corporation, the majority of the current corporate law will still apply. This legislation simply alters a company's statutorily mandated purpose from maximizing profit, to now considering profit and these other factors.

Benefit corporation legislation also provides a cost free economic development tool for States, because companies that voluntarily choose this form create an annual benefit report, similar to an annual financial report but rather focused on the company's qualitative activities. This report helps investors by giving them credible, independent and transparent analysis of the company, so they can make wise and quick investment decisions. By reducing the due diligence required to make an investment in a company, an investor's cost to perform the transaction is lowered, resulting in an increased likelihood the investment will occur. This is all done through the free market and without the interference of the government.

Benefit corporation legislation does not provide tax or procurement incentives, but simply removes the barriers that prevent companies from considering other factors in addition to profit. There also are no costs to the state, since there is no additional requirement than what the state does for traditional corporations.

At the end of 2012, twelve (12) states have enacted benefit corporation legislation. The legislation has received 13 unanimous floor votes and been signed into law by many notable governors, including South Carolina Governor Nikki Haley, Louisiana Governor Bobby Jindal, Pennsylvania Governor Tom Corbett, Virginia Governor Bob McDonnell and New Jersey Governor Chris Christie. Conservatives like Representative Gordon Denlinger from Pennsylvania, Representative Tommy Stringer from South Carolina, and Senator Cam Ward from Alabama have sponsored the bill.

To date over 150 companies have already taken advantage of this new corporate form, many of them in the last six months alone. Companies such as Patagonia, the clothing company, and King Arthur Flour, one of the oldest companies in America, have become benefit corporations in their respective states. Some companies have even left Delaware to return to their home state to take advantage of the benefit corporation status.

Benefit corporation legislation is a completely voluntary option that deregulates the traditional fiduciary duty of a corporation and allows business to solve some of the pressing issues facing society. Benefit

corporations can attract high quality jobs and investment and provide economic development opportunities without costing the state.

Benefit Corporation Legislation

Benefit corporation legislation provides flexibility and new freedoms to businesses and allows them to address societal problems rather than relying on government action and the use of taxpayer dollars. Benefit corporation legislation allows for the creation of a new and voluntary corporate entity that grants businesses the freedom to consider both the interests of shareholders and society when making decisions. Benefit corporation legislation has no impact on existing corporate forms, but rather gives businesses and investors more options in the free market by deregulating current corporate law which requires a single purpose to maximize shareholder value. The purpose of a corporation is freed up to allow investors and entrepreneurs that wish to deploy their time, talent, and treasure in corporations that consider society and the environment the right to do so with legal protection.

Benefit corporation legislation does not dictate what is good for society and the environment. Instead, the legislation leaves it to the business to determine what is a material positive impact on society and the environment. Additionally, just as shareholders enforce the requirement of traditional corporations to maximize profit, shareholders in benefit corporations have the power to enforce whether the company has created a material positive impact on society and the environment.

At the end of 2012, twelve (12) states have enacted benefit corporation legislation. The legislation has received 13 unanimous floor votes and been signed into law by many Republican governors, including South Carolina Governor Nikki Haley, Louisiana Governor Bobby Jindal, Pennsylvania Governor Tom Corbett, Virginia Governor Bob McDonnell and New Jersey Governor Chris Christie. Conservative Republicans like Representative Gordon Denlinger from Pennsylvania, Representative Tommy Stringer from South Carolina, and Senator Sam Ward from Alabama have sponsored the bill. The business community and economic development community is also strongly in support of benefit corporation legislation because it is a cost-free tool that can attract investment dollars.

South Carolina State Representative Tommy Stringer (R) said, “[By passing the benefit corporations legislation, South Carolina had] “joined the vanguard of states that are looking beyond government programs to solve our social problems...Furthermore, this legislation enhances our ability to attract new businesses to our state that are willing to invest in our future.”

Pennsylvania State Representative Gordon Denlinger (R), said, “[Benefit corporations] “direct the entrepreneurial drive of American businessmen and businesswomen to aggressively address social and environmental problems without the waste and procrastination that often plague government programs that have similar goals.”

The South Carolina Chamber of Commerce, said, “[Benefit corporation legislation will] “bring new levels of flexibility and freedom to businesses in South Carolina. This new corporate structure will encourage innovation, create jobs, attract new investment and foster growth.”