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FISCAL IMPACT REPORT

SPONSOR	Cook/Keller	ORIGINAL DATE	01/22/13	LAST UPDATED		HB	40
SHORT TITLE	Designation of Benefit Corporations				SB		
					ANALYST	Daly	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 40 enacts a new section of the Business Corporations Act which allows a corporation to designate itself as a benefit corporation. A corporation electing such a designation must, in addition to the purpose for which it is organized, have the purpose to create a general public benefit of achieving a material positive impact on society and the environment as assessed against a third-party standard, and may identify a specific public benefit in its article of incorporation. Every benefit corporation must submit an annual report to shareholders delineating its progress in achieving the general public benefit or any specific public benefit it has identified, describing the process and rationale for selecting or changing the third-party standard used to measure that achievement, and assessing its overall social and environmental performance against the current third-party standard. The report must also be published on its website; if the corporation has no website, it must when requested provide a copy of the public portion of the report free of charge.

In addition to the standard fiduciary duty a director owes a corporation, HB 40 requires a director to consider non-financial interests, including the interests of its shareholders, employees, work force and customers as beneficiaries of the general or specified public benefit, community and societal factors, the local and global environment, the corporation's short-term and long-term interests, and the ability of the corporation to accomplish the general or specific public benefit it has identified.

HB 40 authorizes a shareholder to dissent from, and obtain payment for that holder's shares, any amendment designating a corporation as a benefit corporation. A benefit corporation is not liable for monetary damages for any failure to pursue or create the general or specified public benefit. Claims or actions for failing to pursue or create the identified public benefit, or for violation of any obligation, duty or standard of conduct applicable to benefit corporations can be brought only by or on behalf of its shareholders, directors or other persons specified in the articles of incorporation.

FISCAL IMPLICATIONS

The EDD and the PRC report no fiscal impact to the state.

SIGNIFICANT ISSUES

According to the Benefit Corporation Information Center (<http://benefitcorp.net/>) (BCIC), benefit corporations are a new class of corporation that:

- Creates a material positive impact on society and the environment;
- Expands fiduciary duty to require consideration of non-financial interests when making decisions; and
- Reports on its overall social and environmental performance using recognized third party standards.

The designation as a benefit corporation does not, the BCIC reports, affect a company's tax status.

Additionally, BCIC reports that California, South Carolina, Louisiana, Hawaii, Maryland, New Jersey, Virginia, Vermont and New York have passed benefit corporation legislation, and such legislation is pending--in addition to New Mexico--in Oregon, Nevada, Arizona, Colorado, Texas, Michigan, Minnesota, Iowa, Florida, Alabama, Georgia, North Carolina, Rhode Island and the District of Columbia.

It should be noted that HB 40 does not define or set criteria for the third-party standard to be selected by a benefit corporation and by which the corporation is to measure its performance in its efforts to achieve the identified general or specific public benefit.

MD/bm