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FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/15
 SPONSOR McSorely LAST UPDATED 1/27/15 HB _____
 SHORT TITLE Voluntary Designation as Benefit Corporation SB 96
 ANALYST Clark

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	No Fiscal Impact		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Department (EDD)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

The bill 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 provide a copy of the public portion of the report free of charge upon request.

In addition to the standard fiduciary duty a director owes a corporation, the bill 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.

The bill 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

There are no significant fiscal implications.

SIGNIFICANT ISSUES

According to the Benefit Corporation Information Center (<http://benefitcorp.net>) (BCIC), benefit corporations are a relatively 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, BCIC reports, affect a company's tax status.

More states are encouraging "companies with a conscience" by allowing businesses to register as benefit corporations, according to The Pew Charitable Trusts. BCIC reports 27 states now allow benefit corporations and provide legal protections against the traditional requirement for corporations to maximize profits. This allows companies to avoid shareholder lawsuits while pursuing social, environmental, and economic goals. As more companies register as benefit corporations, more than 1,200 since 2010, some states see this as an economic development opportunity to attract these businesses to their states. Of New Mexico's neighboring states, three allow benefit corporations and three do not.

The bill 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.

JC/bb