

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 467

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO CORPORATIONS; ENACTING THE BENEFIT CORPORATION ACT;
PROVIDING FOR A VOLUNTARY DESIGNATION AS A BENEFIT CORPORATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Benefit Corporation Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Benefit Corporation Act:

A. "beneficial owner" includes a person for whom shares or equity interests are held in a voting trust or by a nominee on behalf of the person;

B. "benefit corporation" means a business corporation or a professional corporation that is subject to the Benefit Corporation Act;

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1 C. "general public benefit" means a material
2 positive impact on society and the environment, taken as a
3 whole, from the business and operations of a benefit
4 corporation as assessed against a third-party standard;

5 D. "independent" means having no material
6 relationship with a benefit corporation or a subsidiary of a
7 benefit corporation;

8 E. "material relationship" includes:

9 (1) an individual who is, or has been within
10 the last three years, an employee other than a benefit officer
11 of the benefit corporation or a benefit corporation subsidiary;

12 (2) an immediate family member of the
13 individual who is, or has been within the last three years, an
14 executive officer other than a benefit officer of the benefit
15 corporation or a benefit corporation subsidiary; or

16 (3) a beneficial owner or owner of record of
17 five percent or more of the outstanding shares of the benefit
18 corporation, calculated as if all outstanding rights to acquire
19 equity interests in the benefit corporation had been exercised,
20 held by:

21 (a) the individual; or

22 (b) an entity: 1) of which the
23 individual is a director, an officer or a manager; or 2) in
24 which the individual is the beneficial owner or owner of record
25 of five percent or more of the outstanding equity interests,

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1 calculated as if all outstanding rights to acquire equity
2 interests in the entity had been exercised;

3 F. "minimum status vote" means:

4 (1) in the case of a business corporation, in
5 addition to any other required approval or vote, that:

6 (a) the shareholders of every class or
7 series are entitled to vote as a class on the corporate action
8 regardless of a limitation stated in the articles of
9 incorporation or bylaws on the voting rights of any class or
10 series; and

11 (b) the corporate action is approved by
12 the affirmative vote of at least two-thirds of the shareholders
13 of each class or series entitled to vote as a class on the
14 corporate action; and

15 (2) in the case of a domestic entity other
16 than a business corporation, in addition to any other required
17 approval, vote or consent, that:

18 (a) the holders of every class or series
19 of equity interest in the entity that are entitled to receive a
20 distribution of any kind from the entity are entitled to vote
21 on or consent to the action regardless of any otherwise
22 applicable limitation on the voting or consent rights of any
23 class or series; and

24 (b) the action is approved by the
25 affirmative vote or consent of at least two-thirds of the

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1 holders of every class or series of equity interest in the
2 entity that are entitled to receive a distribution of any kind
3 from the entity;

4 G. "specific public benefit" means a specific
5 material positive impact on society or the environment and
6 includes:

7 (1) providing low-income or underserved
8 individuals or communities with beneficial products or
9 services;

10 (2) promoting economic opportunity for
11 individuals or communities beyond the creation of jobs in the
12 normal course of business;

13 (3) protecting or restoring the environment;

14 (4) improving human health;

15 (5) promoting the arts, sciences or the
16 advancement of knowledge;

17 (6) increasing the flow of capital to entities
18 with a purpose to benefit society or the environment; or

19 (7) conferring any other particular benefit on
20 society or the environment; and

21 H. "third-party standard" means a recognized
22 standard for assessing or reporting the overall social and
23 environmental effects of a benefit corporation.

24 SECTION 3. [NEW MATERIAL] BENEFIT CORPORATION STATUS--
25 ELECTION--TERMINATION.--

1 A. A benefit corporation shall be incorporated
 2 pursuant to Section 53-6-4 NMSA 1978 as a professional
 3 corporation or pursuant to Sections 53-12-1 through 53-12-3
 4 NMSA 1978 as a business corporation.

5 B. A benefit corporation shall include in its
 6 articles of incorporation a statement that it is a benefit
 7 corporation.

8 C. An existing business corporation or professional
 9 corporation may become a benefit corporation by amending its
 10 articles of incorporation in accordance with the procedures of
 11 Sections 53-13-1 through 53-13-8 NMSA 1978 so that the articles
 12 of incorporation contain a statement that the corporation is a
 13 benefit corporation; provided that to be effective, the
 14 amendment shall be adopted by at least the minimum status vote.

15 D. A corporation may terminate its status as a
 16 benefit corporation by amending its articles of incorporation
 17 in accordance with the procedures of Sections 53-13-1 through
 18 53-13-8 NMSA 1978 to remove the statement that it is a benefit
 19 corporation; provided that the amendment shall be approved by
 20 at least the minimum status vote.

21 E. If a domestic entity that is not a benefit
 22 corporation is a party to a merger or consolidation and the
 23 surviving or new entity in the merger or consolidation is to be
 24 a benefit corporation, the plan of merger or consolidation
 25 shall be approved by the domestic entity by at least the

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1 minimum status vote. This subsection shall not apply to a
2 corporation that is a party to a merger if the shareholders of
3 the corporation are not entitled to vote on the merger pursuant
4 to Section 53-14-5 NMSA 1978.

5 SECTION 4. [NEW MATERIAL] CORPORATE PURPOSES--PUBLIC
6 BENEFIT.--

7 A. In addition to any other purpose, a benefit
8 corporation shall have a purpose of creating general public
9 benefit.

10 B. The articles of incorporation of a benefit
11 corporation may identify the creation of one or more specific
12 public benefits as a purpose of the benefit corporation in
13 addition to any other purpose. The identification of a
14 specific public benefit shall not limit or restrict the benefit
15 corporation in its creation of general public benefit.

16 C. The creation of general public benefit or a
17 specific public benefit shall be considered to be in the best
18 interests of the benefit corporation.

19 D. A benefit corporation may amend its articles of
20 incorporation to add, amend or delete the identification of a
21 specific public benefit as a purpose of the benefit
22 corporation.

23 E. A professional corporation that is a benefit
24 corporation does not violate the requirement of a professional
25 corporation to render one specific type of professional service

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1 and services ancillary thereto pursuant to Section 53-6-5 NMSA
2 1978 by having a purpose to create general public benefit or a
3 specific public benefit.

4 SECTION 5. [NEW MATERIAL] DIRECTORS--STANDARD OF
5 CONDUCT--BEST INTERESTS OF THE BENEFIT CORPORATION.--

6 A. In considering the best interests of the benefit
7 corporation, the board of directors, a committee of the board
8 or an individual director:

9 (1) shall consider the effects of any action
10 or inaction upon:

11 (a) the shareholders of the benefit
12 corporation;

13 (b) the employees and workforce of the
14 benefit corporation, its subsidiaries and its suppliers;

15 (c) the interests of customers as
16 beneficiaries of the general public benefit or a specific
17 public benefit purpose of the benefit corporation;

18 (d) community and societal factors,
19 including those of each community in which offices or
20 facilities of the benefit corporation, its subsidiaries or its
21 suppliers are located;

22 (e) the local and global environment;

23 (f) the short-term and long-term
24 interests of the benefit corporation, including benefits that
25 may accrue to the benefit corporation from its long-term plans

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1 or the possibility that the benefit corporation's interests may
2 be best served by the continued independence of the benefit
3 corporation; and

4 (g) the ability of the benefit
5 corporation to accomplish its general public benefit purpose
6 and any specific public benefit purpose;

7 (2) may consider other pertinent factors or
8 the interests of any other group deemed appropriate; but

9 (3) need not give priority to a particular
10 interest or factor referred to in Paragraph (1) or (2) of this
11 subsection over any other interest or factor unless the benefit
12 corporation has stated in its articles of incorporation an
13 intention to give priority to certain interests or factors
14 related to the accomplishment of its general public benefit
15 purpose or of a specific public benefit purpose.

16 B. The consideration of interests and factors in
17 the manner provided by Subsection A of this section shall be
18 considered to be in the best interests of the benefit
19 corporation and shall not constitute a violation of Section
20 53-11-35 NMSA 1978.

21 C. Except as provided in the articles of
22 incorporation of a benefit corporation, a director is not
23 personally liable for monetary damages for:

24 (1) any action or inaction in the course of
25 performing the duties of a director under Subsection A of this

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1 section if the director was not interested with respect to the
2 action or inaction; or

3 (2) a failure of the benefit corporation to
4 pursue or create general public benefit or a specific public
5 benefit.

6 D. A director shall not have a duty to a person who
7 is a beneficiary of the general public benefit purpose or a
8 specific public benefit purpose of a benefit corporation
9 arising from the status of the person as a beneficiary.

10 E. A director who makes a business judgment in good
11 faith fulfills the director's duty under this section if the
12 director:

13 (1) is not interested in the subject of the
14 business judgment;

15 (2) is informed with respect to the subject of
16 the business judgment to the extent the director reasonably
17 believes to be appropriate under the circumstances; and

18 (3) rationally believes that the business
19 judgment is in the best interests of the benefit corporation.

20 SECTION 6. [NEW MATERIAL] BENEFIT DIRECTOR--DESIGNATION--
21 DUTIES.--

22 A. The board of directors of a benefit corporation
23 may include a director designated as the benefit director and
24 who shall have, in addition to the powers, duties, rights and
25 immunities of the other directors of the benefit corporation,

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1 the powers, duties, rights and immunities provided in this
2 section.

3 B. A benefit director shall be elected in the
4 manner provided for the election of directors pursuant to
5 Section 53-11-36 NMSA 1978 and may be removed in the manner
6 provided for the removal of directors pursuant to Section
7 53-11-39 NMSA 1978.

8 C. A benefit director of a business corporation
9 shall be an individual who is independent. The benefit
10 director of a professional corporation is not required to be
11 independent.

12 D. A benefit director may serve as the benefit
13 officer at the same time as serving as the benefit director.

14 E. The benefit director shall prepare, and the
15 benefit corporation shall include in the annual benefit report
16 to shareholders, a report on:

17 (1) whether the benefit corporation acted in
18 accordance with its general public benefit purpose and any
19 specific public benefit purpose in all material respects during
20 the period covered by the report, and if it did not, a
21 description of the ways in which it failed to act or comply;
22 and

23 (2) whether the directors or officers complied
24 with the standard of conduct for directors or officers pursuant
25 to Sections 5 and 7 of the Benefit Corporation Act, and if they

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1 did not, a description of the ways in which they failed to act
2 or comply.

3 F. The act or inaction of a benefit director shall
4 be subject to the same standards as action or inaction of
5 directors generally.

6 G. A person shall not be personally liable for an
7 act or omission in the capacity of a benefit director unless
8 the act or omission constitutes self-dealing, willful
9 misconduct or a knowing violation of law.

10 SECTION 7. [NEW MATERIAL] OFFICERS--STANDARD OF
11 CONDUCT.--

12 A. An officer of a benefit corporation shall
13 consider the interests and factors described in Subsection A of
14 Section 5 of the Benefit Corporation Act if:

15 (1) the officer has discretion to act with
16 respect to a matter; and

17 (2) it reasonably appears to the officer that
18 the matter may have a material effect on the benefit
19 corporation's creation of general public benefit or a specific
20 public benefit identified in the articles of incorporation.

21 B. A person is not personally liable for monetary
22 damages for:

23 (1) action or inaction as an officer in the
24 course of performing the duties of an officer under Subsection
25 A of this section if the person was not interested with respect

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1 to the action or inaction; or

2 (2) failure of the benefit corporation to
3 pursue or create general public benefit or a specific public
4 benefit.

5 C. An officer does not have a duty to a person that
6 is a beneficiary of the general public benefit purpose or a
7 specific public benefit purpose of a benefit corporation
8 arising from the status of the person as a beneficiary.

9 D. An officer who makes a business judgment in good
10 faith fulfills the duty under this section if the officer:

11 (1) is not interested in the subject of the
12 business judgment;

13 (2) is informed with respect to the subject of
14 the business judgment to the extent the officer reasonably
15 believes to be appropriate under the circumstances; and

16 (3) rationally believes that the business
17 judgment is in the best interests of the benefit corporation.

18 SECTION 8. [NEW MATERIAL] BENEFIT OFFICER--DESIGNATION--
19 DUTIES.--

20 A. A benefit corporation may designate an officer
21 as the benefit officer.

22 B. A benefit officer shall:

23 (1) have powers and duties relating to the
24 purpose of the corporation to create general public benefit or
25 a specific public benefit. The benefit officer's powers and

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1 duties shall be provided by resolution or order of the board of
2 directors or in the benefit corporation's articles of
3 incorporation; and

4 (2) prepare the annual benefit report.

5 SECTION 9. [NEW MATERIAL] RIGHT OF ACTION--BENEFIT
6 ENFORCEMENT PROCEEDING.--

7 A. Except in a benefit enforcement proceeding, no
8 action or claim shall be maintained against a benefit
9 corporation, its officers or directors relating to:

10 (1) any failure of a benefit corporation to
11 pursue or create general public benefit or a specific public
12 benefit as set forth in the benefit corporation's articles of
13 incorporation; or

14 (2) a violation of an obligation, duty or
15 standard of conduct under the Benefit Corporation Act.

16 B. A benefit corporation shall not be liable for
17 monetary damages for any failure of the benefit corporation to
18 pursue or create general public benefit or a specific public
19 benefit.

20 C. A benefit enforcement proceeding may only be
21 commenced or maintained:

22 (1) directly by the benefit corporation; or

23 (2) derivatively in accordance with the
24 procedures relating to the actions of shareholders pursuant to
25 Section 53-11-47 NMSA 1978 by a:

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1 (a) person or group of persons who are
2 the beneficial owners or owners of record of at least two
3 percent of the total number of shares of a class or series
4 outstanding at the time of the act or omission complained of;

5 (b) director; or

6 (c) person or group of persons who were
7 the beneficial owners or owners of record of five percent or
8 more of the outstanding equity interests in an entity of which
9 the benefit corporation is a subsidiary at the time of the act
10 or omission complained of.

11 SECTION 10. [NEW MATERIAL] THIRD-PARTY STANDARD--
12 REQUIREMENTS.--

13 A. A benefit corporation shall assess its annual
14 performance in meeting its general public benefit purpose and
15 any specific benefit purpose against a third-party standard.

16 B. The third-party standard shall assess the
17 effects of a benefit corporation's business and operations
18 upon:

19 (1) the shareholders of the benefit
20 corporation;

21 (2) the employees and workforce of the benefit
22 corporation, its subsidiaries and its suppliers;

23 (3) the interests of customers as
24 beneficiaries of the general public benefit or a specific
25 public benefit purpose of the benefit corporation;

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1 (4) community and society, including each
2 community in which offices or facilities of the benefit
3 corporation, its subsidiaries or its suppliers are located; and

4 (5) the local and global environment.

5 C. The third-party standard shall:

6 (1) be developed by an entity that:

7 (a) is not controlled by the benefit
8 corporation;

9 (b) has access to the expertise
10 necessary to assess overall corporate social and environmental
11 performance; and

12 (c) uses a balanced multi-stakeholder
13 approach to develop the standard, including a reasonable public
14 comment period; and

15 (2) make the following information publicly
16 available:

17 (a) the criteria considered under the
18 standard to measure the overall social and environmental
19 performance of a benefit corporation and the relative
20 weightings, if any, of the criteria;

21 (b) the identity of the directors,
22 officers, material owners and the governing body of the entity
23 that developed and controls revisions to the standard;

24 (c) the process by which revisions to
25 the standard and changes to the membership of the governing

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1 body are made; and

2 (d) an accounting of the revenue and
3 sources of financial support for the entity, with sufficient
4 detail to disclose any relationships that could reasonably be
5 considered to present a potential conflict of interest.

6 SECTION 11. [NEW MATERIAL] ANNUAL BENEFIT REPORT--
7 PREPARATION.--

8 A. A benefit corporation shall prepare an annual
9 benefit report including:

10 (1) a narrative description of the ways in
11 which the benefit corporation pursued general public benefit
12 during the year and the extent to which general public benefit
13 was created;

14 (2) the ways in which the benefit corporation
15 pursued a specific public benefit and the extent to which the
16 specific public benefit was created;

17 (3) any circumstances that hindered the
18 creation by the benefit corporation of general public benefit
19 or a specific public benefit;

20 (4) the process and rationale for selecting or
21 changing the third-party standard used to assess the benefit
22 corporation's performance;

23 (5) an assessment of the overall social and
24 environmental effects of the performance of the benefit
25 corporation, taking into account the effects of the benefit

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1 corporation as reported against the third-party standard. The
2 third-party standard shall be applied consistently year to
3 year, and the benefit report shall provide an explanation of
4 any inconsistent application or a change to the third-party
5 standard from the one used in the report immediately preceding
6 the current year; and

7 (6) the report of the benefit director
8 pursuant to Section 6 of the Benefit Corporation Act.

9 B. If during the year covered by a benefit report a
10 benefit director resigned from or refused to stand for
11 reelection to the position of benefit director or was removed
12 from the position of benefit director and the benefit director
13 furnished the benefit corporation with any written
14 correspondence concerning the circumstances surrounding the
15 resignation, refusal or removal, the benefit report shall
16 include that correspondence as an exhibit in the benefit
17 report.

18 SECTION 12. [NEW MATERIAL] ANNUAL BENEFIT REPORT--
19 AVAILABILITY.--

20 A. A benefit corporation shall send the annual
21 benefit report to each shareholder on the earlier of:

22 (1) one hundred twenty days following the end
23 of the fiscal year of the benefit corporation; or

24 (2) the same time that the benefit corporation
25 sends any other annual report to shareholders.

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1 B. A benefit corporation that is a business
2 corporation shall post all benefit reports to the public
3 portion of its internet website, if any; but financial or
4 proprietary information included in the benefit reports may be
5 omitted from the benefit reports as posted.

6 C. If a benefit corporation does not have an
7 internet website, the benefit corporation shall provide a copy
8 of its most recent benefit report, without charge, to any
9 person that requests a copy, but financial or proprietary
10 information included in the benefit report may be omitted from
11 the copy of the benefit report provided.

12 SECTION 13. [NEW MATERIAL] APPLICABILITY.--

13 A. Except as otherwise provided in the Benefit
14 Corporation Act, the Business Corporation Act shall be
15 generally applicable to all benefit corporations.

16 B. The Benefit Corporation Act shall not affect a
17 statute or rule of law that is applicable to a business
18 corporation or professional corporation that is not a benefit
19 corporation.

20 C. If provisions of the Benefit Corporation Act
21 conflict with provisions of the Business Corporation Act or the
22 Professional Corporation Act, the provisions of the Benefit
23 Corporation Act shall prevail.

24 D. The articles of incorporation or bylaws of a
25 benefit corporation shall not limit, be inconsistent with or

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1 supersede a provision of the Benefit Corporation Act.

2 SECTION 14. Section 53-6-5 NMSA 1978 (being Laws 1963,
3 Chapter 16, Section 5) is amended to read:

4 "53-6-5. PURPOSES FOR WHICH INCORPORATED.--A professional
5 corporation may be organized only for the purpose of rendering
6 one specific type of professional service and services
7 ancillary thereto and shall not engage in any business other
8 than rendering the professional service [~~which~~] that it was
9 organized to render and services ancillary thereto; provided,
10 however, that a professional corporation may own real and
11 personal property necessary or appropriate for rendering the
12 type of professional service it was organized to render and may
13 invest its funds in real estate, mortgages, stocks, bonds and
14 any other type of investments. The requirements of this
15 section shall not be interpreted to prohibit a professional
16 corporation from having a purpose of creating general public
17 benefit or a specific public benefit pursuant to the Benefit
18 Corporation Act."

19 SECTION 15. Section 53-11-35 NMSA 1978 (being Laws 1967,
20 Chapter 81, Section 34, as amended) is amended to read:

21 "53-11-35. BOARD OF DIRECTORS.--

22 A. All corporate powers shall be exercised by or
23 under authority of, and the business and affairs of a
24 corporation shall be managed under the direction of, a board of
25 directors, except as may be otherwise provided in the Business

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1 Corporation Act or the Benefit Corporation Act or the articles
2 of incorporation. If any such provision is made in the
3 articles of incorporation, the powers and duties conferred or
4 imposed upon the board of directors by the Business Corporation
5 Act or the Benefit Corporation Act shall be exercised or
6 performed to such extent and by such person or persons as
7 provided in the articles of incorporation. Directors need not
8 be residents of this state or shareholders of the corporation
9 unless the articles of incorporation or bylaws so require. The
10 articles of incorporation or bylaws may prescribe other
11 qualifications for directors. The board of directors may fix
12 the compensation of directors unless otherwise provided in the
13 articles of incorporation.

14 B. A director shall perform [~~his~~] the duties [~~as a~~]
15 of the director, including [~~his~~] duties as a member of any
16 committee of the board upon which the director may serve, in
17 good faith, in a manner the director believes to be in or not
18 opposed to the best interests of the corporation and with such
19 care as an ordinarily prudent person would use under similar
20 circumstances in a like position. In performing such duties, a
21 director shall be entitled to rely on factual information,
22 opinions, reports or statements, including financial statements
23 and other financial data, in each case prepared or presented
24 by:

- 25 (1) one or more officers or employees of the

1 corporation whom the director reasonably believes to be
 2 reliable and competent in the matters presented;

3 (2) counsel, public accountants or other persons
 4 as to matters [~~which~~] that the director reasonably believes to
 5 be within such person's professional or expert competence; or

6 (3) a committee of the board upon which the
 7 director does not serve, duly designated in accordance with a
 8 provision of the articles of incorporation or the bylaws, as to
 9 matters within its designated authority, which committee the
 10 director reasonably believes to merit confidence, but the
 11 director shall not be considered to be acting in good faith if
 12 the director has knowledge concerning the matter in question
 13 that would cause such reliance to be unwarranted. A person who
 14 so performs such duties shall have no liability by reason of
 15 being or having been a director of the corporation.

16 C. A director of a corporation who is present at a
 17 meeting of its board of directors at which action on any
 18 corporate matter is taken shall be presumed to have assented to
 19 the action taken unless the director's dissent [~~shall be~~] is
 20 entered in the minutes of the meeting or unless the director
 21 [~~shall file~~] files written dissent to such action with the
 22 secretary of the meeting before the adjournment thereof or
 23 [~~shall forward~~] forwards such dissent by registered mail to the
 24 secretary of the corporation immediately after the adjournment
 25 of the meeting. Such right to dissent shall not apply to a

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1 director who voted in favor of such action.

2 D. For purposes of Subsection B of this section, a
3 director, in determining what [~~he~~] the director reasonably
4 believes to be in or not opposed to the best interests of the
5 corporation, shall consider the interests of the corporation's
6 shareholders and, in [~~his~~] the director's discretion, may
7 consider any of the following:

8 (1) the interests of the corporation's
9 employees, suppliers, creditors and customers;

10 (2) the economy of the state and nation;

11 (3) the impact of any action upon the
12 communities in or near which the corporation's facilities or
13 operations are located; and

14 (4) the long-term interests of the corporation
15 and its shareholders, including the possibility that those
16 interests may be best served by the continued independence of
17 the corporation.

18 E. Subsection D of this section shall not limit the
19 interests or factors allowed to be considered by a director of
20 a benefit corporation in determining what is in or opposed to
21 the best interests of the corporation pursuant to the Benefit
22 Corporation Act."

23 SECTION 16. Section 53-13-1 NMSA 1978 (being Laws 1967,
24 Chapter 81, Section 55, as amended) is amended to read:

25 "53-13-1. RIGHT TO AMEND ARTICLES OF INCORPORATION.--A

1 corporation may amend its articles of incorporation from time
 2 to time in as many respects as may be desired, so long as its
 3 articles of incorporation, as amended, contain only such
 4 provisions as might be lawfully contained in original articles
 5 of incorporation at the time of making the amendment and, if a
 6 change in shares or the rights of shareholders, or an exchange,
 7 reclassification or cancellation of shares or rights of
 8 shareholders is to be made, provisions as may be necessary to
 9 effect the change, exchange, reclassification or cancellation.
 10 In particular, and without limitation upon the general power of
 11 amendment, a corporation may amend its articles of
 12 incorporation from time to time to:

- 13 A. change its corporate name;
- 14 B. change its period of duration;
- 15 C. change, enlarge or diminish its corporate
 16 purposes;
- 17 D. increase or decrease the aggregate number of
 18 shares or shares of any class [~~which~~] that the corporation has
 19 authority to issue;
- 20 E. provide or eliminate any provision with respect to
 21 the minimum consideration for any shares or class of shares;
- 22 F. exchange, classify, reclassify or cancel all or
 23 any part of its shares, whether issued or unissued;
- 24 G. change the designation of all or any part of its
 25 shares, whether issued or unissued, and [~~to~~] change the

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1 preferences, limitations and [the] relative rights in respect
2 of all or any part of its shares, whether issued or unissued;

3 H. change the shares of any class, whether issued or
4 unissued, into a different number of shares of the same class
5 or into the same or a different number of shares of other
6 classes;

7 I. create new classes of shares having rights and
8 preferences, either prior and superior or subordinate and
9 inferior, to the shares of any class then authorized, whether
10 issued or unissued;

11 J. cancel or otherwise affect the right of the
12 holders of the shares of any class to receive dividends [which]
13 that have accrued but have not been declared;

14 K. divide any preferred or special class of shares,
15 whether issued or unissued, into series and fix and determine
16 the designation of the series and the variations in the
17 relative rights and preferences as between the shares of the
18 series;

19 L. authorize the board of directors to establish, out
20 of authorized but unissued shares, series of any preferred or
21 special class of shares and fix and determine the relative
22 rights and preferences of the shares of any series so
23 established;

24 M. authorize the board of directors to fix and
25 determine the relative rights and preferences of the authorized

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1 but unissued shares of series theretofore established in
2 respect of which either the relative rights and preferences
3 have not been fixed and determined or the relative rights and
4 preferences theretofore fixed and determined are to be changed;

5 N. revoke, diminish or enlarge the authority of the
6 board of directors to establish series out of authorized but
7 unissued shares of any preferred or special class and fix and
8 determine the relative rights and preferences of the shares of
9 any series so established; [~~or~~]

10 O. limit, deny or grant to shareholders of any class
11 the preemptive right to acquire additional shares of the
12 corporation, whether then or thereafter authorized; or

13 P. become a benefit corporation pursuant to the
14 Benefit Corporation Act."

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