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HOUSE BILL 118

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

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

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

SECTION 1. A new section of the Business Corporation Act
is enacted to read:

"[NEW MATERIAL] DESIGNATION AS A BENEFIT CORPORATION--
REQUIREMENTS--STANDARD OF CONDUCT.--

A. A corporation, including a professional
corporation, may elect to be designated as a benefit
corporation. A professional corporation that elects to be
designated as a benefit corporation does not violate the
provisions of Section 53-6-5 NMSA 1978. A provision of the
articles of incorporation or bylaws of a benefit corporation
shall not limit, conflict with or supersede the provisions of

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1 this section. A corporation that elects to be designated as a
2 benefit corporation:

3 (1) shall include a statement in the
4 corporation's articles of incorporation that the corporation is
5 a benefit corporation;

6 (2) in addition to the purpose for which the
7 corporation is organized pursuant to Paragraph (3) of
8 Subsection A of Section 53-12-2 NMSA 1978, shall have a purpose
9 to create through its business and operations the general
10 public benefit of a positive impact on society and the
11 environment, taken as a whole, that is material taking into
12 consideration the corporation's size and the nature of its
13 business;

14 (3) may identify in the corporation's articles
15 of incorporation that it has a purpose to create a specific
16 public benefit of a positive effect on one or more communities
17 or categories of persons, other than shareholders solely in
18 their capacity as shareholders, or on the environment,
19 including effects of an artistic, charitable, economic,
20 educational, cultural, literary, medical, religious, social,
21 ecological or scientific nature;

22 (4) shall prepare a benefit report that:

23 (a) describes the corporation's progress
24 in achieving its general public benefit purpose and any
25 specific public benefit purpose stated in the articles of

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1 incorporation;

2 (b) describes the process and rationale
3 for selecting or changing the third-party standard used to
4 measure achieving the general public benefit or a specific
5 public benefit;

6 (c) assesses the overall social and
7 environmental performance of the benefit corporation against a
8 third-party standard;

9 (d) identifies each member of the board
10 of directors and the duties and compensation as a director;
11 provided that the benefit corporation may omit information
12 regarding director compensation and financial or proprietary
13 information from the benefit report that is made public; and

14 (e) discloses any connection with the
15 entity that established the third-party standard used to assess
16 the general public benefit or a specific public benefit;

17 (5) shall provide the benefit report to each
18 shareholder at the time the annual report is due; and

19 (6) shall publish the benefit report on the
20 public portion of its internet website, if any, or provide a
21 copy free of charge to any person that requests the benefit
22 report.

23 B. When performing and discharging the duties of a
24 director set forth in Section 53-11-35 NMSA 1978, a director of
25 a benefit corporation, in determining what that director

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1 reasonably believes to be in, or not opposed to, the best
2 interests of the benefit corporation, shall take into
3 consideration:

4 (1) the interests of the benefit corporation's
5 shareholders, employees, workforce and customers as
6 beneficiaries of the general public benefit or a specific
7 public benefit;

8 (2) community and societal factors;

9 (3) the local and global environment;

10 (4) the short-term and long-term interests of
11 the benefit corporation, including benefits that may accrue to
12 the benefit corporation from its long-term plans and the
13 possibility that these interests may be best served by the
14 continued independence of the benefit corporation; and

15 (5) the ability of the benefit corporation to
16 accomplish its general public benefit purpose and any specific
17 public benefit purpose stated in the corporation's articles of
18 incorporation.

19 C. A director of a benefit corporation is not
20 required to give priority to the interests of a particular
21 person or group listed in Subsection B of this section over the
22 interests of any other person or group unless the benefit
23 corporation has stated in its articles of incorporation the
24 intention to give priority to certain interests related to its
25 accomplishment of the general public benefit or a specific

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1 public benefit.

2 D. An officer of a benefit corporation shall
3 consider the interests and factors listed in Subsection B of
4 this section if the officer:

5 (1) has the discretion to act with respect to
6 a matter; and

7 (2) reasonably believes that the matter may
8 have a material effect in achieving the corporation's general
9 public benefit purpose or any specific public benefit purpose
10 identified in the articles of incorporation.

11 E. The board of directors of a publicly traded
12 corporation designated as a benefit corporation shall elect an
13 independent director who shall prepare the benefit report. Any
14 other corporation may designate a director or officer to
15 prepare the benefit report.

16 F. A benefit corporation shall not be liable for
17 monetary damages pursuant to this section for any failure to
18 pursue or create general public benefit or a specific public
19 benefit. This subsection does not apply to a claim for
20 personal injuries caused by the negligence or willful
21 misconduct of the benefit corporation or any of its directors,
22 officers, employees or agents.

23 G. A claim or action against a benefit corporation
24 for failure to pursue or create general public benefit or a
25 specific public benefit as set forth in the articles of

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1 incorporation, or a violation of any obligation, duty or
2 standard of conduct pursuant to this section, may only be
3 commenced or maintained by the benefit corporation or on behalf
4 of the corporation in a derivative lawsuit by:

5 (1) a person or group of persons that, at the
6 time of the action or inaction that gave rise to the complaint,
7 owned beneficially or of record at least two percent of the
8 total number of shares or of a class of shares;

9 (2) a director of the benefit corporation;

10 (3) a person or group of persons that, at the
11 time of the action or inaction that gave rise to the complaint,
12 owned beneficially or of record five percent or more of the
13 outstanding equity interests in an entity of which the benefit
14 corporation is a subsidiary; or

15 (4) other persons as specified in the articles
16 of incorporation or bylaws of the benefit corporation.

17 H. The amendments to the articles of incorporation
18 that relate to the designation or termination of the
19 designation of the benefit corporation or the general public
20 benefit or a specific public benefit of the corporation shall
21 only be adopted upon receiving the affirmative vote of the
22 holders of a two-thirds' majority of the shares entitled to
23 vote, unless any class of shares is entitled to vote as a
24 class, in which event, the proposed amendment shall be adopted
25 upon receiving the affirmative vote of the holders of a two-

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1 thirds' majority of the shares of each class of shares entitled
2 to vote as a class and of the total shares entitled to vote.

3 I. A benefit corporation may terminate its
4 designation as a benefit corporation by amending its articles
5 of incorporation to delete the requirements of Paragraphs (1)
6 and (2) of Subsection A of this section. The termination of
7 the designation shall be effective upon the adoption of the
8 amendment."

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