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FISCAL IMPACT REPORT

SPONSOR: Maes DATE TYPED: 03/01/01 HB _____
 SHORT TITLE: Business Law Modernization SB 331/aSJC
 ANALYST: Dotson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	None				None

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 20.0	Unknown	Recurring	General

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Public Regulation Commission

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments provides that publically traded corporations can adopt the simple majority voting requirement by adopting a bylaw. Large publically traded companies do not have to change their articles of incorporation to adopt the simple majority voting requirement.

Significant Issues of SJC Amendments

Changing articles of incorporation for publically traded companies is difficult.

Synopsis of Original Bill

Senate Bill 331/aSJC -- Page 2

The purpose of SB 331 is: (1) To make business corporation laws in New Mexico more consistent with the practice of other states; and (2) To provide for the efficient administration of business corporations and other corporations and associations authorized under New Mexico statutes.

Significant Issues

The modernization of the laws regulating corporations follows in large part the “Model Business Corporation Act”. A large majority of states follow this act in creating laws regulating corporations.

According to the Public Regulation Commission, the significant issues involving SB 331 are as follows:

- C Allows for staggered boards of directors;
- C Ends the requirement of shareholder approval of stock options;
- C Permits conversions, especially to and from LLCs;
- C Allows reacquired shares to be treated as “treasury shares;”
- C Permits shares to be issued for future services, promissory notes, etc.;
- C Allows the use of electronic proxies;
- C Allows corporate documents to be signed by “an authorized officer” instead of two, and in some places more, officers;
- C The filing of corporate documents with the Commission would require a single original, plus a copy which may either be signed, photocopied, or conformed instead of duplicate originals;
- C Allows the Commission to promulgate rules on electronic payment and filing of corporate documents;
- C Makes uniform with corporations the requirements for filing of registered offices and agents for sanitary projects, cooperative, and water user associations.
- C Sets up a simplified procedure for administrative revocation of corporations that are inactive, allows for reinstatement as if the corporation had never been revoked up to two years after revocation;
- C Establishes an entity in New Mexico known as a “foreign business trust”; and
- C Limits liability of corporate directors;

FISCAL IMPLICATIONS

According to the Public Regulation Commission, SB 331 will provide approximately \$20,000 from entities that file conversions at the Corporations Bureau to the General Fund. The amount of money generated from conversions in subsequent fiscal years is undetermined but will most likely increase slightly from \$20,000. In addition, passage of SB 331 may result in additional revenues to the General Fund in an undetermined amount from additional incorporations in New Mexico.

ADMINISTRATIVE IMPLICATIONS

According to the Public Regulation Commission, enactment of SB 331 would make the filing procedures simpler for entities that are required to file incorporation and other documents at the Public Regulation Commission. In addition, passage of SB 331 simplifies and makes more uniform with other states the revocation procedure for corporations that are no longer active. Allowing the Corporations Bureau to strike revoked corporations from its files without further proceedings will “clean-up” the database used by the bureau which contains many corporations that are no longer active. This change will save time and money by not having to mail report forms to these dormant entities. When the changes contemplated by SB 331 are fully implemented, the Corporations Bureau of the Commission will function more efficiently.

OTHER SUBSTANTIVE ISSUES

The desire for many corporation located in New Mexico to incorporate under in other states will largely be eliminate with these revisions. Creating uniformity with the majority of other states and eliminating the need for out of state legal expertise based on out of state cooperate law.

Attached is a detailed analysis of SB 331 prepared by the Public Regulation Commission.

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The following table is a section by section analysis of SB 331, including a list of the affected cite, the reason for the proposed change, and what the bill does:

Bill Section	Item Identification and Statutory Cite	Reason for proposed change	What the Bill Does* *in addition to solely technical changes
Sanitary Projects Act			
1-8	Filing requirements NMSA Sections 3-29-1, 3-29-16 and 17 and new sections are added	Current statutes do not require various minor administrative reports and procedures required of other associations created under New Mexico statutes which are needed to facilitate administration by the PRC; technical changes needed	Requires Sanitary Projects Act associations to maintain and identify their registered offices and agents, establishes requirements for changing their registered offices or agents, establishes method of service of process on registered agents, and requires annual and supplemental reports
Fees and Miscellaneous Corporation Law			
9-13	Filing fees NMSA Sections 53-2-1, 53-2-3, 53-2-4, 53-2-8, new sections are added	Current statutes do not contain provisions for conversions of an entity from one form to another; such conversions will be permitted by this bill and so fees need to be established; technical changes needed	Sets fees by providing for fees for filing conversion documents, for providing expedited services and handing of alternatives forms of fee payments to the PRC); also permits PRC to adopt rules permitting electronic filing and certification of documents and acceptance of electronic payment

Cooperative Association Act			
14-25	<p>Filing requirements</p> <p>NMSA Sections 53-4-5 through 53-4-7, 53-4-34, 53-4-35, 53-4-37, 53-4-40, 53-4-41 and new sections are added</p>	<p>Current statutes do not require various minor administrative reports and procedures required of other associations created under New Mexico statutes which are necessary to facilitate administration by the PRC</p>	<p>Requires coops to maintain and identify their registered offices and agents, establishes requirements and methods for changing registered offices or agents, establishes methods of service of process</p>
Corporate Reports Act			
26-32	<p>Various administrative procedures</p> <p>NMSA Sections 53-5-2, 53-5-3, 53-5-6, 53-5-7 through 53-5-9 and a new section is added</p>	<p>Various administrative procedures at the PRC need to be updated; also various technical changes are required</p>	<p>Permits PRC to strike from files without further proceedings domestic and foreign corporations whose certificates have been canceled; eliminates requirement to report the character of the business of the corporation or file supplemental reports if the business of the corporation changes or if the name of the corporation changes</p>
Professional Corporation Act			

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33	Disqualifications, dissolutions NMSA Section 53-6-12	Requires technical changes	Makes technical changes only
Business Development Corporation Act			
34-36	Amending articles of incorporation; annual reports NMSA Sections 53-7-35, 53-7-36, 53-7-39	Requires technical changes	Makes technical changes only
Nonprofit Corporation Act			
37	Number and election of directors NMSA Section 53-8-18	Current statute requires the number of directors of nonprofits to be set forth in the bylaws, resulting in frequent filings of bylaw changes with the PRC	Allows number of directors to be changed without amendment to the Bylaws, eliminating need to amend Bylaws (Sec. 37) and file Bylaw amendment with the PRC
38	Revocation and reinstatement NMSA Section 53-8-54	No current provision for reinstatement of revoked certificates of incorporation	Allows nonprofits whose certificates have been revoked to apply for reinstatement within two years
39	Annual Reports NMSA Section 53-8-83	No need for nonprofit corporations to report changes in the character of their business; requires technical changes	Eliminates requirement for corporation to amend its annual report if the character of its business changes

Business Corporation Act			
40-41	Title, definitions NMSA Section 53-11-1 and 53-11-2	Requires technical changes	Makes technical changes only
42	Treasury shares NMSA Section 53-11-5	Current statutes, unlike most states, do not allow reacquired stock to be designated as treasury stock and thereby entitled to certain privileges accorded "treasury stock" in employee benefit plan and other instances	Allows corporations to treat reacquired stock as treasury stock
43	Dissolution, revocation and reinstatement of corporations NMSA Sections 53-11-12	Current statutes require overly complex dissolution, revocation and reinstatement procedures	Streamlines process for revocation of articles of incorporation but allows reinstatement within two years
44	Changes of registered office or agent NMSA Section 53-11-13	Current statutes require the filing of two original signed copies of most documents, often resulting in needless delays	Requires filing only one, instead of two, original notices that registered agent has resigned
45	Payment for shares NMSA Section 53-11-	Current statute imposes outdated restrictions on what corporation may accept in payment for stock, unrec-	Allows stock to be issued in broader range of circumstances than currently allowed, consistent with law in other states including promissory notes and future

	19	essarily limiting, for example, the corporation's ability to put stock in the hands of key employees or to implement leveraged ESOPs	services
46	Shareholder approval of stock rights or options for directors, officers and employees NMSA Section 53-11-20	Current statute is outdated and requires shareholder approval of stock rights or options given to directors, officers and employees	Eliminates requirement of shareholder approval for stock rights or options issued to directors, officers and employees as in all but three states in U.S.
47	Default location for shareholder meetings NMSA Section 53-11-28	Current statute requires that if the place for shareholder meetings is not specified in the Bylaws, the meetings must be held at the registered office	Provides that shareholder meetings in such circumstances will be held at the corporation's principal place of business
48	Granting and voting of proxies NMSA Section 53-11-33	Current statute requirements do not reflect modern telecommunications capabilities	Allows granting of proxies and voting by proxy utilizing electronic means
49-50	Staggered board terms; removal of directors NMSA Sections 53-11-	Current statute requires that there be at least 9 directors before a corporation may stagger board terms to make takeovers more difficult; also	Broadens ability to establish staggered boards by reducing the minimum number of directors necessary to permit staggering from 9 to 2; directors of staggered boards may only be removed for cause

	37 and 53-11-39	permits immediate removal of any director, or the entire board, despite staggered terms, without cause	
51	Articles of incorporation; Liability of corporate directors NMSA Section 53-12-2	Current statute restricts ability of corporations to limit personal liability of their directors as in most other states	Allows corporations, if they choose, to limit the personal liability of their directors except where there is wrongdoing, such as receipt of improper financial benefit, intentional harm, payment of wrongful dividend or criminal act, as recommended in current Model Business Corporation Act; also specifies what articles of incorporation may include and what is required
52	Filing articles of incorporation and signatures required NMSA Section 53-12-3	Requirement to file two original copies is obsolete, especially with authority to file electronically; also requiring signature only by chairman or president is unnecessary, others should be permitted to sign	Eliminates requirement that duplicate original articles of incorporation be filed and permits signature by any authorized officer
53	Class voting on amendments to articles of incorporation NMSA Section 53-13-3	Current statute requires a class vote on certain matters where not ordinarily required	Eliminates requirement for class voting on proposals to change the aggregate number of authorized shares of a specified class of stock
54-69, 71-72	Number of original documents to be filed with PRC, signatures	Requirement to file two original copies of each document is obsolete, especially with new authority to file electronically; similarly, requirements that only the Chairman or Presi-	Eliminates requirement that duplicate original documents of various types be filed with the PRC, and permits signature by any authorized officer, in the case of

	<p>required (various documents)</p> <p>NMSA Sections 53-13-4, 53-13-7, 53-13-8, 53-14-4, 53-14-5, 53-16-1 through 53-16-3, 53-16-7 through 53-16-9, 53-16-11, 53-16-12, 53-17-5, 53-17-6, 53-17-10, 53-17-15, 53-17-16</p>	<p>dent may sign also should be changed to permit others authorized to do so</p>	<p>--articles of amendment (Sec 54) --restated articles of amendment (Sec 55) --articles of amendment in reorganization (Sec 56) --articles of merger (Sec 57) --articles of merger of subsidiary corporations (Sec 58) --articles of dissolution by incorporators (Sec 59) --statement of intent to dissolve (Secs 60-61) --statement of revocation of dissolution (Secs 62-63) --statement of revocation of dissolution (Sec 64) --articles of dissolution by corporation (Secs 65-66) --application for certificate of authority (Secs 67-68) --change of registered agent or office of foreign corp (Sec 69) --withdrawal by foreign (out-of-state) corp (Secs 71-72)</p>
70	<p>Conversions of foreign (out-of-state) corporations from one type of entity to another</p> <p>NMSA Section 53-17-13</p>	<p>Because conversions to LLCs or other types of entities by corporations are now common, statutes should be updated to recognize foreign corporations that do so</p>	<p>Allows recognition of conversions of foreign corporations and requires appropriate filings of notice</p>
73	<p>Dissolution, revocation and reinstatement procedures for certificates of authority (out-of-</p>	<p>Present procedures for revocation cumbersome; reinstatement now permitted</p>	<p>Simplifies procedures for revocation of certificates of authority and permits reinstatement within two years</p>

	state corporations) NMSA Section 53-17-18		
Limited Liability Company Act			
74-75	Revocation and reinstatement procedures for LLCs NMSA Section: new sections are added	Presently no authority to revoke LLCs if no registered agent is appointed and maintained	Permits revocation if LLC fails to appoint and maintain registered agent; provides process for reinstatement within two years
76	Certificates of good standing filed by foreign (out-of-state) LLCs NMSA Section 53-19-48	Current statute allows limited liability companies to file certificates of good standing in their state of incorporation that are not current	Requires foreign LLCs to provide current certificates of good standing when registering
77	Foreign (out-of-state) limited liability company registrations	Current statute contains confusing requirements for amending certificates of registration of foreign (out-	Clarifies requirements regarding filing of amendments to certificates of registration of out-of-state LLCs

	NMSA Section 53-19-51	of-state) limited liability companies	
78-80	Conversions from one type of business entity to another NMSA Section 53-19-60, new section 53-19-60.1 and 53-19-61	Limited Liability Company Act currently does not authorize conversion of corporations to LLCs or LLCs to convert to other types of business organizations	Allows corporations to convert to convert to corporate partnerships; conforms
81	Fees charged LLCs by PRC NMSA Section 53-19-63	With conversions now authorized, fees need to be established for filing conversion documents	Establishes same fee for mergers and consolidation

Water Users' Associations

82	Filing requirements NMSA Section 73-5-2	Current statutes do not require various minor administrative reports and procedures required of other associations created under New Mexico statutes	Requires reporting of initial agent
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Foreign Business Trusts

83-99	Requirements regarding foreign (out-of-state) business trusts NMSA Sections – new sections are added	Current statutes do not regulate how foreign business trusts created under the laws of other states may do business in New Mexico	Adopts the “Foreign Business Trusts Act” enabling foreign trusts and requiring them to register with PRC in a similar manner to other entities
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