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FISCAL IMPACT REPORT

SPONSOR Cook **ORIGINAL DATE** 1/28/2020
LAST UPDATED 2/05/2020 **HB** 118/aHJC

SHORT TITLE Designation as Benefit Corporation **SB** _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$10.0			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Office of the Secretary of State (SOS)
Economic Development Department (EDD)

SUMMARY

Synopsis of House Judiciary Committee Amendment

The House Judiciary Committee Amendment:

- Rearranges and makes nonsubstantive stylistic changes to the provisions of the bill requiring an annual benefit report; and
- Deletes from subsection F, which grants benefit corporations immunity from liability for money damages for failure to pursue a public benefit, the last paragraph making the subsection inapplicable to claims for personal injuries.

Synopsis of Original Bill

House Bill 118 enacts a new section of the Business Corporation Act that allows a for-profit business or professional corporation to elect to be designated a “benefit corporation.”

In addition to the business purpose for which it was organized, a benefit corporation is required to consider the public good in making business decisions, rather than solely the profit interests of shareholders. In discharging their duties, directors and officers of a benefit corporation must take

into consideration the interests of stakeholders, employees, workforce and customers as beneficiaries of the corporation's public benefit purpose, community and societal factors, the local and global environment, the short and long term interests of the corporation, and the ability of the corporation to accomplish its general and specific purposes.

Benefit corporations are not liable for monetary damages for failure to pursue or create a public benefit.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SOS estimates that the required system changes required to create a benefit designation as a type of corporation to be \$10 thousand.

SIGNIFICANT ISSUES

According to SOS, thirty-five states and Washington, D.C. have passed legislation allowing for the creation of benefit corporations. Benefit corporation legislation helps create economic development opportunities for social entrepreneurs and investors.

EDD notes that benefit corporations are attractive to a large and growing market for socially responsible investments as well as to more traditional investors. According the U.S. Social Investment Forum, benefit corporations have raised nearly \$2 billion in capital and almost \$6 trillion is currently invested in some form of socially responsible investing.

EDD suggests that passage of this bill could provide for additional investment flow into New Mexico. Neighboring states, including Arizona, Colorado and Texas, have enacted benefit corporation legislation. Passing this bill would enable NM to be competitive regionally, attract new companies to the state, and encourage existing companies to stay.

NMAG notes that the bill requires a benefit corporation to prepare a report that assesses the corporation's social and environmental performance against a "third party standard." The report requires the report to disclose any connection the corporation has with the entity that created the third party standard, but the bill does not otherwise define or indicate the criteria for a sufficient third party standard. NMAG suggests that parameters for a third party standard be provided, including criteria to insure transparency of funding sources of the entity creating the standard.

According to NMAG, if a corporation represented to consumers that it was a benefit corporation, but never provided a benefit, had no intention of actually providing a benefit, or falsified its publicly-available benefit report, those actions likely would constitute unfair trade practices that are actionable under the New Mexico Unfair Practices Act ("UPA"). NMAG is concerned that HB 118's immunity from monetary damages for failure to pursue or create a public benefit may limit potential liability for practices by a benefit corporation that would otherwise be actionable under UPA.

ADMINISTRATIVE IMPLICATIONS

SOS states that it would have to amend its business filing system to include the benefit corporation designation and to amend existing forms or create new forms to accommodate the designation.

OTHER SUBSTANTIVE ISSUES

EDD states that the University of New Mexico has created a BCorp Division within the Anderson School of Management. The Division offers technical assistance to companies that would like to certify as benefit corporations.

BG/sb/rl