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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/17

SPONSOR House Floor LAST UPDATED \_\_\_\_\_ HB 467/HFIS

SHORT TITLE Benefit Corporation Act SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Economic Development Department (EDD)  
 Office of the Attorney General (OAG)  
 Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

The House Floor Substitute for House Bill 467 enacts the Benefit Corporation Act (BCA), permitting a business corporation (BC) or a professional corporation to elect to be a benefit corporation, subject to the BCA. Under the BCA, a BC is required to have a purpose of creating a general public benefit: a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation as assessed against a third-party standard on an annual basis. “Third-party standard” means a recognized standard for reporting the overall social and environmental effects of a benefit corporation, consistent with certain criteria specified in Section 10 for its development and use. The BCA permits the articles of incorporation of a BC to identify one or more specific public benefits as a purpose of the BC in addition to any other purpose. “Specific public benefit” means a specific material positive impact on society or the environment; Section 2(G) provides examples of such benefit. The third-party standard shall be used to assess annual performance in meeting any specific public benefit as well.

In addition to the standard fiduciary duty a director owes a corporation, Section 5 requires a BCA director 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.

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 the benefit corporation or derivatively in accordance with the procedures relating to the actions of shareholders pursuant to Section 53-11-47 NMSA 1978, by a specified person or group of persons described in Section 9(C).

CS/HB 467 also amends these existing statutory provisions:

- Section 53-6-5 NMSA 1978 (governing the purposes for which professional corporations are incorporated): the requirements of the section shall not be interpreted to prohibit a professional corporation from having a purpose of creating a general public benefit or a specific public benefit pursuant to the BCA (Section 14);
- Section 53-11-35 NMSA 1978 (governing the board of directors of a business corporation): Subsection D of the section shall not limit the interests or factors allowed to be considered by a director of a BC in determining what is in or opposed to the best interests of the corporation pursuant to the BCA (Section 15); and
- Section 53-13-1 NMSA 1978 (governing the right to amend a business corporation's articles of incorporation): a corporation may amend its articles of incorporation to become a benefit corporation pursuant to the BCA (Section 16).

## **FISCAL IMPLICATIONS**

No fiscal impact to the state is anticipated.

## **SIGNIFICANT ISSUES**

EDD in its analysis of an earlier version of this bill explained the purpose of a benefit corporation is to create general public benefit, defined as a material positive impact on society and the environment. A benefit corporation's directors and officers operate the business with the same authority as in a traditional corporation but are required to consider the impact of their decisions not only on shareholders but also on society and the environment. Additionally, EDD reports:

Benefit corporations are attractive to a large and growing market for socially responsible investments as well as more traditional investors. According the U.S. Social Investment Forum, almost \$6 trillion is currently invested in some form of socially responsible investing.

EDD believed passage of this bill could provide for additional investment flow into New Mexico. In addition, becoming a benefit corporation gives entrepreneurs and investors another choice when determining which corporate form is most suitable to achieve their objectives.

## OTHER SUBSTANTIVE 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 31 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.

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