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FISCAL IMPACT REPORT

SPONSOR Cook ORIGINAL DATE 1/24/19
LAST UPDATED 1/29/19 HB 118
SHORT TITLE Benefit Corporation Act SB _____
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB467 from the 2017 session

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Secretary of State (SOS)

Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 118 enacts a new section of law titled the Benefit Corporation Act that allows business or professional corporations to consider public good in making business decisions and protects corporation directors and officers from liability when taking actions that do not solely benefit shareholders.

SIGNIFICANT ISSUES

Under HB118, corporations could include in its business decisions actions protecting the environment, promoting economic opportunity outside the creation of jobs, improving human health, and promoting the arts, sciences, and education.

The bill immunizes directors and officers from individual liability for making decisions that do not solely benefit the shareholders. In addition, a benefit corporation is not liable for monetary damages for any failure to pursue or create the general or specific public benefit. Claims or actions for failing to pursue or create the identified public benefit can be brought only by its shareholders, directors, or other persons specified in the articles of incorporation.

In addition to the standard fiduciary duty an officer owes a corporation, the bill requires an

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officer to consider the interests and factors of a benefit corporation and provides that an officer has discretion to act on a matter that may have material effect on the benefit corporation's creation of a general public benefit or a specific public benefit.

A business or professional corporation becomes a benefit corporation by stating in its bylaws that it is a benefit corporation. Entirely discretionary, the status can be invoked during the creation of a corporation, added to an existing corporation, or terminated by amendment of its articles of incorporation.

HB118 requires a benefit corporation to file with the state the same reports required of traditional profit and professional corporations. In addition, a benefit corporation must file annual reports to shareholders that include whether the corporation acted in keeping with its specific public purpose. Annual reports must be published on the corporation's website or provided on request at no cost.

The bill requires that a benefit corporation shall assess whether it provided a general public benefit or specific benefit against a "third-party standard," a recognized standard developed by an outside entity for assessing or reporting on the overall social and environmental effects of the corporation.

Under the bill, a benefit corporation may also designate an "benefit director," who must be independent at a business corporation.

The bill amends existing sections of law to align with the Benefit Corporation Act.

FISCAL IMPLICATIONS

EDD reports states that have enacted this type of law have seen stimulated investment and creation of socially responsible nonprofits.

OTHER SUBSTANTIVE ISSUES

EDD indicates the market for socially responsible investments is growing, with the U.S. Social Investment Forum reporting almost \$6 trillion is currently invested in some form of socially responsible investing. The department suggests the bill could draw additional investment flow into New Mexico.

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 nonfinancial interests when making decisions,
- 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

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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.

Since Maryland became the first state to enact benefit corporation legislation in 2010, Benefit Corporation reports 33 additional states and Washington D.C. have passed similar legislation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will be one of the few states that have not enacted this type of law.

HFG/sb/al