

LFC Requester:

Emily Hilla

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/14/2025

Check all that apply:

Bill Number: HB363

Original Correction
Amendment Substitute

Sponsor: Rep. Meredith Dixon and
Rep. Joshua Hernandez

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Decentralized Unincorporated
Nonprofit Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB 363 would create a new “Decentralized Unincorporated Nonprofit Act,” which would govern unincorporated associations that: 1) have two or more members joined under a written agreement for a common purpose, 2) elect to be formed under the Act, and 3) are not formed under any other law governing the association’s organization or operation.

Sections 1 and 2 contain the short title and definitions. Section 3 provides that a decentralized unincorporated nonprofit association may be formed for any lawful purpose except the individual profit of members of the association.

Section 4 requires decentralized unincorporated nonprofit associations to file a statement with the names of the association and those forming it and a written agreement containing the association’s rules and regulations with the secretary of state. Section 5 provides that New Mexico law governs decentralized unincorporated nonprofit associations formed in New Mexico. It also requires association agreements to identify the jurisdiction where they were formed and an initial administrator for the first year.

Section 6 prohibits payment of dividends and distribution of income, profit, and assets to an association’s members, but allows for reasonable compensation for services rendered. Section 7 provides that an association may hold real property. It further provides that a member’s interests in an association terminate upon that member's death, and that a member’s interests in an association are not subject to execution for that member’s individual debts. Section 8 allows for mortgage or sale of an association’s real or personal property.

Section 9 allows for suits by and against associations, including suits by and against members. It specifies that judgments against an association only apply to common property of the association and that members are not jointly and severally liable for debts of the association. It provides that service of process may be made upon the administrator of the association. Similarly, Section 10 allows an association to sue or be sued without members being individually named and allows an association to sue and obtain judgment against a member. Section 11 provides that venue shall be the county where the association has an office or the place of business of the administrator.

Section 12 provides that associations shall have perpetual duration unless specified by the agreement and allows for dissolution per the agreement or vote of two thirds of the members.

Section 13 outlines membership requirements, and further allows for expulsion of a member based on a majority vote. Likewise, Section 14 allows for the resignation of a member. Section 15 provides that a membership interest is transferable, subject to any limitations in the formation agreement.

Section 16 requires a majority membership vote for certain actions and provides that membership interest shall be calculated in proportion to a member's voting rights.

Section 17 allows for use of distributed ledger technology and Section 18 allows for an association to adopt algorithmic means for establishing consensus.

Under Section 19, members of an association may select an administrator by majority vote. If no administrator is selected, members are not considered administrators, but the formation agreement must designate an individual to execute documents and perform other administrative tasks. Section 19(D) allows an association to limit an administrator's liability except for certain acts.

Section 20 entitles a member or administrator to access to association records as long as the information is material to the member or administrator's duties or rights. It further allows an association to put reasonable restrictions on access to and use of information. The Section also allows entitles former members or administrators to access information in certain circumstances.

Section 21 allows for indemnification of an association's member or administrator unless the member or administrator breached its duties and the breach constituted willful misconduct or recklessness.

Section 22 outlines the dissolution process for an association and provides for distribution of assets upon dissolution.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

N/A

SIGNIFICANT ISSUES

Section 9(D) provides that service of process may be made on an association's administrator. Section 19(B) states that if there is no administrator selected, the formation agreement shall provide for an individual who may "execute documents and perform other administrative tasks." It is not clear if this individual is also the person who would accept service of process if there is no administrator, as Section 9(D) allows for service of process on the administrator alone.

Additionally, Section 15 states that "a member interest, property or other right of membership in the association is freely transferable to another person through conveyance." It is not clear whether this would include sale of a member interest for profit. If it does include for-profit sales, this would potentially be in contradiction to Section 6 of the Act, which prohibits income, profit, or assets of an association from being distributed to members.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

Section 13 provides for the expulsion of members. Section 14(A) provides for the resignation of members. Yet, Section 14(B) contains the exact same language as Section 13(C): “expulsion of a member does not relieve the member of obligation incurred...before the expulsion.” Legislators may consider revising the language of Section 14(B) to clarify that resignation, instead of expulsion, does not relieve a member of previously incurred obligations.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS