

1 AN ACT
2 RELATING TO CORPORATIONS; PROVIDING FOR A VOLUNTARY
3 DESIGNATION AS A BENEFIT CORPORATION.
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. A new section of the Business Corporation
7 Act is enacted to read:

8 "DESIGNATION AS A BENEFIT CORPORATION--
9 REQUIREMENTS--STANDARD OF CONDUCT.--

10 A. A corporation, including a professional
11 corporation, may elect to be designated as a benefit
12 corporation. A professional corporation that elects to be
13 designated as a benefit corporation does not violate the
14 provisions of Section 53-6-5 NMSA 1978. A provision of the
15 articles of incorporation or bylaws of a benefit corporation
16 shall not limit, conflict with or supersede the provisions of
17 this section. A corporation that elects to be designated as
18 a benefit corporation:

19 (1) shall include a statement in the
20 corporation's articles of incorporation that the corporation
21 is a benefit corporation;

22 (2) in addition to the purpose for which the
23 corporation is organized pursuant to Paragraph (3) of
24 Subsection A of Section 53-12-2 NMSA 1978, shall have a
25 purpose to create through its business and operations the

1 general public benefit of a positive impact on society and
2 the environment, taken as a whole, that is material taking
3 into consideration the corporation's size and the nature of
4 its business;

5 (3) may identify in the corporation's
6 articles of incorporation that it has a purpose to create a
7 specific public benefit of a positive effect on one or more
8 communities or categories of persons, other than shareholders
9 solely in their capacity as shareholders, or on the
10 environment, including effects of an artistic, charitable,
11 economic, educational, cultural, literary, medical,
12 religious, social, ecological or scientific nature;

13 (4) shall prepare and provide to
14 shareholders a benefit report annually that:

15 (a) describes the corporation's
16 progress in achieving its general public benefit purpose and
17 any specific public benefit purpose stated in the articles of
18 incorporation;

19 (b) describes the process and rationale
20 for selecting or changing the third-party standard used to
21 measure achieving the general public benefit or a specific
22 public benefit;

23 (c) assesses the overall social and
24 environmental performance of the benefit corporation against
25 a third-party standard;

1 (d) identifies each member of the board
2 of directors and the duties and compensation as a director;
3 provided that the benefit corporation may omit information
4 regarding director compensation and financial or proprietary
5 information from the benefit report that is made public; and

6 (e) discloses any connection with the
7 entity that established the third-party standard used to
8 assess the general public benefit or a specific public
9 benefit; and

10 (5) shall publish the benefit report on the
11 public portion of its internet website, if any, or provide a
12 copy free of charge to any person that requests the benefit
13 report.

14 B. When performing and discharging the duties of a
15 director set forth in Section 53-11-35 NMSA 1978, a director
16 of a benefit corporation, in determining what that director
17 reasonably believes to be in, or not opposed to, the best
18 interests of the benefit corporation, shall take into
19 consideration:

20 (1) the interests of the benefit
21 corporation's shareholders, employees, workforce and
22 customers as beneficiaries of the general public benefit or a
23 specific public benefit;

24 (2) community and societal factors;

25 (3) the local and global environment;

1 (4) the short-term and long-term interests
2 of the benefit corporation, including benefits that may
3 accrue to the benefit corporation from its long-term plans
4 and the possibility that these interests may be best served
5 by the continued independence of the benefit corporation; and

6 (5) the ability of the benefit corporation
7 to accomplish its general public benefit purpose and any
8 specific public benefit purpose stated in the corporation's
9 articles of incorporation.

10 C. A director of a benefit corporation is not
11 required to give priority to the interests of a particular
12 person or group listed in Subsection B of this section over
13 the interests of any other person or group unless the benefit
14 corporation has stated in its articles of incorporation the
15 intention to give priority to certain interests related to
16 its accomplishment of the general public benefit or a
17 specific public benefit.

18 D. An officer of a benefit corporation shall
19 consider the interests and factors listed in Subsection B of
20 this section if the officer:

21 (1) has the discretion to act with respect
22 to a matter; and

23 (2) reasonably believes that the matter may
24 have a material effect in achieving the corporation's general
25 public benefit purpose or any specific public benefit purpose

1 identified in the articles of incorporation.

2 E. The board of directors of a publicly traded
3 corporation designated as a benefit corporation shall elect
4 an independent director who shall prepare the benefit report.
5 Any other corporation may designate a director or officer to
6 prepare the benefit report.

7 F. A benefit corporation shall not be liable for
8 monetary damages pursuant to this section for any failure to
9 pursue or create general public benefit or a specific public
10 benefit.

11 G. A claim or action against a benefit corporation
12 for failure to pursue or create general public benefit or a
13 specific public benefit as set forth in the articles of
14 incorporation, or a violation of any obligation, duty or
15 standard of conduct pursuant to this section, may only be
16 commenced or maintained by the benefit corporation or on
17 behalf of the corporation in a derivative lawsuit by:

18 (1) a person or group of persons that, at
19 the time of the action or inaction that gave rise to the
20 complaint, owned beneficially or of record at least two
21 percent of the total number of shares or of a class of
22 shares;

23 (2) a director of the benefit corporation;

24 (3) a person or group of persons that, at
25 the time of the action or inaction that gave rise to the

1 complaint, owned beneficially or of record five percent or
2 more of the outstanding equity interests in an entity of
3 which the benefit corporation is a subsidiary; or

4 (4) other persons as specified in the
5 articles of incorporation or bylaws of the benefit
6 corporation.

7 H. The amendments to the articles of incorporation
8 that relate to the designation or termination of the
9 designation of the benefit corporation or the general public
10 benefit or a specific public benefit of the corporation shall
11 only be adopted upon receiving the affirmative vote of the
12 holders of a two-thirds' majority of the shares entitled to
13 vote, unless any class of shares is entitled to vote as a
14 class, in which event, the proposed amendment shall be
15 adopted upon receiving the affirmative vote of the holders of
16 a two-thirds' majority of the shares of each class of shares
17 entitled to vote as a class and of the total shares entitled
18 to vote.

19 I. A benefit corporation may terminate its
20 designation as a benefit corporation by amending its articles
21 of incorporation to delete the requirements of Paragraphs (1)
22 and (2) of Subsection A of this section. The termination of
23 the designation shall be effective upon the adoption of the
24 amendment." _____