

BILL ANALYSIS

C.S.H.B. 1928
By: Oliveira
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that both federal income tax and state corporate law have historically divided corporations into either for-profit or nonprofit corporations. Recent reports indicate that for-profit social entrepreneurship, consumer social buying, and social investing have gained prominence on the business landscape, that more consumers are aligning their purchases with their sense of social and environmental responsibility, and that more investors are focusing their investments on socially responsible companies. Consequently, studies have shown that more entrepreneurs are trying to distinguish their companies through mission-driven business goals to attract consumers and investors. However, as the parties note, certain legal uncertainties have led to new statutory solutions that address the unique need of for-profit mission-driven businesses with a growing number of states authorizing a role for social purposes and benefits in decision making as it relates to a corporation's business and activities.

C.S.H.B. 1928 seeks to address the needs of for-profit mission-driven businesses by revising applicable laws to allow a for-profit corporation to adopt a social purpose in its certificate of formation and to allow the directors and officers of the corporation to consider such social purposes in making decisions relating to the corporation's business and activities.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1928 amends the Business Organizations Code to authorize a for-profit corporation to include in its certificate of formation one or more social purposes in addition to the purpose or purposes required to be stated in the certificate of formation and to also include in such certificate a provision requiring the board of directors and officers of the corporation to consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under the Business Organizations Code or otherwise. The bill defines "social purposes" as one or more purposes of a for-profit corporation that are specified in the corporation's certificate of formation and that consist of promoting one or more positive impacts on society or the environment or of minimizing one or more adverse impacts of the corporation's activities on society or the environment.

C.S.H.B. 1928 authorizes the shareholders of a corporation to enter into an agreement that, with regard to one or more social purposes specified in the corporation's certificate of formation, governs the exercise of corporate powers, the management of the operations and affairs of the corporation, the approval by shareholders or other persons of corporate actions, or the relationship among the shareholders, the directors, and the corporation.

C.S.H.B. 1928 entitles, rather than authorizes, a director, in discharging the duties of director under the Business Organizations Code or otherwise and in considering the best interests of the

corporation, to consider the long-term and short-term interests of the corporation and its shareholders and entitles the director to consider any social purposes specified in the certificate of corporation. The bill entitles an officer, subject to direction by the board of directors of the corporation, in discharging the duties of an officer under the Business Organizations Code or otherwise, to consider the long-term and short-term interests of the corporation and its shareholders and to consider any social purposes specified in the certificate of formation. The bill specifies that these provisions do not prohibit or limit a director or officer of a corporation that does not have a social purpose specified as a purpose in the corporation's certificate of formation from considering, approving, or taking an action that promotes or has the effect of promoting a social, charitable, or environmental purpose.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1928 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted to indicate the substantial differences between the original and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (82-a) to read as follows:

(82-a) "Social purposes" means one or more purposes of a for-profit corporation, other than the creation of pecuniary benefits for the corporation's shareholders, that are specified in the corporation's certificate of formation and consist of promoting one or more material positive impacts on society or the environment or of minimizing adverse impacts of the corporation's activities on society or the environment, including:

(A) providing low-income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health;

(E) promoting the arts, sciences, or advancement of knowledge;

(F) increasing the flow of capital to entities with a social purpose; and

(G) conferring any particular benefit on society or the environment.

SECTION 2. Section 3.007, Business Organizations Code, is amended by adding

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (82-a) to read as follows:

(82-a) "Social purposes" means one or more purposes of a for-profit corporation that are specified in the corporation's certificate of formation and consist of promoting one or more positive impacts on society or the environment or of minimizing one or more adverse impacts of the corporation's activities on society or the environment. Those impacts may include

(A) providing low-income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health;

(E) promoting the arts, sciences, or advancement of knowledge;

(F) increasing the flow of capital to entities with a social purpose; and

(G) conferring any particular benefit on society or the environment.

SECTION 2. Section 3.007, Business Organizations Code, is amended by adding

Subsection (d) to read as follows:

(d) Notwithstanding Section 2.008, a for-profit corporation may include one or more social purposes in the corporation's certificate of formation. The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

SECTION 3. Section 21.101(a), Business Organizations Code, is amended.

SECTION 4. Section 21.401, Business Organizations Code, is amended.

SECTION 5. This Act takes effect September 1, 2013.

Subsection (d) to read as follows:

(d) Notwithstanding Section 2.008, a for-profit corporation may include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation's certificate of formation by Section 3.005(a)(3). The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.