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H.B. No. 3488

A BILL TO BE ENTITLED

AN ACT

relating to authorizing public benefit corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3.007, Business Organizations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Section 2.008, instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes as provided by Subsection (d), a for-profit corporation may elect to be a public benefit corporation governed by Subchapter S, Chapter 21, by including in its initially filed certificate of formation, or, subject to Section 21.954, by amending its certificate of formation to include:

(1) one or more specific public benefits, as defined by Section 21.952, to be promoted by the corporation; and

(2) instead of the statement required by Section 3.005(a)(2), a statement that the filing entity is a for-profit corporation electing to be a public benefit corporation.

SECTION 2. Section 10.352(2), Business Organizations Code, is amended to read as follows:

(2) "Responsible organization" means:

(A) the organization responsible for:

(i) the provision of notices under this subchapter; and

1 (ii) the primary obligation of paying the
2 fair value for an ownership interest held by a dissenting owner;

3 (B) with respect to a merger or conversion:

4 (i) for matters occurring before the merger
5 or conversion, the organization that is merging or converting; and

6 (ii) for matters occurring after the merger
7 or conversion, the surviving or new organization that is primarily
8 obligated for the payment of the fair value of the dissenting
9 owner's ownership interest in the merger or conversion;

10 (C) with respect to an interest exchange, the
11 organization the ownership interests of which are being acquired in
12 the interest exchange; ~~and~~

13 (D) with respect to the sale of all or
14 substantially all of the assets of an organization, the
15 organization the assets of which are to be transferred by sale or in
16 another manner; and

17 (E) with respect to an amendment to a domestic
18 for-profit corporation's certificate of formation described by
19 Section 10.354(a)(1)(G), the corporation.

20 SECTION 3. Section 10.354, Business Organizations Code, is
21 amended by amending Subsection (a) and adding Subsection (d) to
22 read as follows:

23 (a) Subject to Subsection (b), an owner of an ownership
24 interest in a domestic entity subject to dissenters' rights is
25 entitled to:

26 (1) dissent from:

27 (A) a plan of merger to which the domestic entity

1 is a party if owner approval is required by this code and the owner
2 owns in the domestic entity an ownership interest that was entitled
3 to vote on the plan of merger;

4 (B) a sale of all or substantially all of the
5 assets of the domestic entity if owner approval is required by this
6 code and the owner owns in the domestic entity an ownership interest
7 that was entitled to vote on the sale;

8 (C) a plan of exchange in which the ownership
9 interest of the owner is to be acquired;

10 (D) a plan of conversion in which the domestic
11 entity is the converting entity if owner approval is required by
12 this code and the owner owns in the domestic entity an ownership
13 interest that was entitled to vote on the plan of conversion;

14 (E) a merger effected under Section 10.006 in
15 which:

16 (i) the owner is entitled to vote on the
17 merger; or

18 (ii) the ownership interest of the owner is
19 converted or exchanged; ~~or~~

20 (F) a merger effected under Section 21.459(c) in
21 which the shares of the shareholders are converted or exchanged; or

22 (G) if the owner owns shares that were entitled
23 to vote on the amendment, an amendment to a domestic for-profit
24 corporation's certificate of formation to:

25 (i) add the provisions required by Section
26 3.007(e) to elect to be a public benefit corporation; or

27 (ii) delete the provisions required by

1 Section 3.007(e), which in effect cancels the corporation's
2 election to be a public benefit corporation; and

3 (2) subject to compliance with the procedures set
4 forth in this subchapter, obtain the fair value of that ownership
5 interest through an appraisal.

6 (d) Notwithstanding Subsection (a), an owner of an
7 ownership interest in a domestic for-profit corporation subject to
8 dissenters' rights may not dissent from an amendment to the
9 corporation's certificate of formation described by Subsection
10 (a)(1)(G) if the shares held by the owner are part of a class or
11 series of shares, on the record date set for purposes of determining
12 which owners are entitled to vote on the amendment:

13 (1) listed on a national securities exchange; or

14 (2) held of record by at least 2,000 owners.

15 SECTION 4. Chapter 21, Business Organizations Code, is
16 amended by adding Subchapter S to read as follows:

17 SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

18 Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS;
19 FORMATION. (a) A for-profit corporation may elect under Section
20 3.007(e) to be a public benefit corporation that is governed by this
21 subchapter.

22 (b) If a corporation elects to be a public benefit
23 corporation, the corporation is subject to the other provisions of
24 this chapter and other provisions of this code applicable to
25 for-profit corporations.

26 (c) To the extent of a conflict between this subchapter and
27 another provision of this chapter or another provision of this code

1 applicable to for-profit corporations, this subchapter controls.

2 Sec. 21.952. DEFINITIONS. In this subchapter:

3 (1) "Public benefit" means a positive effect, or a
4 reduction of a negative effect, on one or more categories of
5 persons, entities, communities, or interests, other than
6 shareholders in their capacities as shareholders of the
7 corporation, including effects of an artistic, charitable,
8 cultural, economic, educational, environmental, literary, medical,
9 religious, scientific, or technological nature.

10 (2) "Public benefit corporation" means a domestic
11 for-profit corporation that elects under Section 3.007(e) to be a
12 public benefit corporation governed by this subchapter.

13 (3) "Public benefit provisions" means the provisions
14 of a certificate of formation that are required by Section 3.007(e)
15 and this subchapter.

16 Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF
17 CORPORATION. (a) A public benefit corporation is a domestic
18 for-profit corporation that is intended to produce a public benefit
19 or benefits and to operate in a responsible and sustainable manner.

20 (b) To accomplish the purpose of the corporation described
21 by Subsection (a), a public benefit corporation shall be managed in
22 a manner that balances:

23 (1) the shareholders' pecuniary interests;

24 (2) the best interests of those persons materially
25 affected by the corporation's conduct; and

26 (3) the public benefit or benefits specified in the
27 corporation's certificate of formation.

1 (c) The name of the public benefit corporation specified in
2 its certificate of formation may contain the words "public benefit
3 corporation," the abbreviation "P.B.C.," or the designation "PBC."
4 If the name does not contain those words or that abbreviation or
5 designation, the corporation must, before issuing unissued shares
6 or disposing of treasury shares and except as provided by
7 Subsection (d), provide notice that the corporation is a public
8 benefit corporation to any person:

- 9 (1) to whom the unissued shares are issued; or
10 (2) who acquires the treasury shares.

11 (d) Notice is not required to be provided under Subsection
12 (c) if:

- 13 (1) the issuance or disposal of shares described by
14 that subsection is under an offering registered under the
15 Securities Act of 1933 (15 U.S.C. Section 77a et seq.); or
16 (2) at the time of the issuance or disposal of shares
17 described by that subsection, the corporation has a class of
18 securities registered under the Securities Exchange Act of 1934 (15
19 U.S.C. Section 78a et seq.).

20 (e) Section 5.054(a) does not apply to a public benefit
21 corporation that includes in its name the words, abbreviation, or
22 designation permitted by Subsection (c).

23 Sec. 21.954. CERTAIN AMENDMENTS, MERGERS, EXCHANGES, AND
24 CONVERSIONS; VOTER APPROVAL REQUIRED. (a) Notwithstanding any
25 other provision of this chapter, a domestic for-profit corporation
26 that is not a public benefit corporation may not, without the
27 approval of the owners of two-thirds of the outstanding shares of

1 the corporation entitled to vote on the matter, which must be a vote
2 by class or series of shares if otherwise required by Section
3 21.364, 21.457, or 21.458:

4 (1) amend the corporation's certificate of formation
5 to comply with the requirements of Section 3.007(e) to elect for the
6 corporation to be governed as a public benefit corporation;

7 (2) merge or effect an interest exchange with another
8 entity if, as a result of the merger or exchange, the shares in the
9 corporation would become, or be converted into or exchanged for the
10 right to receive, shares or other equity interests in a domestic or
11 foreign public benefit corporation or similar entity; or

12 (3) convert into a foreign public benefit corporation
13 or similar entity.

14 (b) Subsection (a) does not apply until the corporation has
15 issued and outstanding shares of the corporation's capital stock.

16 (c) A domestic entity that is not a domestic for-profit
17 corporation may not, without the approval of the owners of
18 two-thirds of the outstanding ownership interests of the entity
19 entitled to vote on the matter:

20 (1) merge or effect an interest exchange with another
21 entity if, as a result of the merger or exchange, the ownership
22 interests in the entity would become, or be converted into or
23 exchanged for the right to receive, shares or other equity
24 interests in a domestic or foreign public benefit corporation or
25 similar entity; or

26 (2) convert into a domestic or foreign public benefit
27 corporation or similar entity.

1 (d) Notwithstanding any other provision of this chapter, a
2 public benefit corporation may not, without the approval of
3 two-thirds of the outstanding shares of the corporation entitled to
4 vote on the matter, which must be a vote by class or series of shares
5 if otherwise required by Section 21.364, 21.457, or 21.458:

6 (1) amend the corporation's certificate of formation
7 to delete or amend a provision required by Section 3.007(e) or
8 described by Section 21.957(c);

9 (2) convert into a domestic or foreign entity:

10 (A) that is not a public benefit corporation or
11 similar entity; and

12 (B) that does not contain in its certificate of
13 formation or similar governing document provisions identical to the
14 provisions in the certificate of formation of the public benefit
15 corporation containing the public benefit or benefits specified
16 under Section 3.007(e) or imposing requirements under
17 Section 21.957(c); or

18 (3) merge or effect an interest exchange with another
19 entity if, as a result of the merger or exchange, the shares in the
20 corporation would become, or be converted into or exchanged for the
21 right to receive, shares or other equity interests in a domestic or
22 foreign entity:

23 (A) that is not a public benefit corporation or
24 similar entity; and

25 (B) that does not contain in its certificate of
26 formation or similar governing document provisions identical to the
27 provisions in the certificate of formation of the public benefit

1 corporation containing the public benefit or benefits specified
2 under Section 3.007(e) or imposing requirements under
3 Section 21.957(c).

4 (e) Notwithstanding any other provision of this section, a
5 nonprofit corporation or nonprofit association may not:

6 (1) with respect to a merger governed by this section,
7 be a party to the merger; or

8 (2) convert into a public benefit corporation.

9 (f) An owner of a domestic entity affected by an action
10 described by this section has the rights of dissent and appraisal as
11 an owner described by Section 10.354 and to the extent provided by
12 Subchapter H, Chapter 10.

13 Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING
14 UNCERTIFICATED STOCK. (a) A stock certificate issued by a public
15 benefit corporation must note conspicuously that the corporation is
16 a public benefit corporation governed by this subchapter.

17 (b) A notice sent by a public benefit corporation under
18 Section 3.205 must state conspicuously that the corporation is a
19 public benefit corporation governed by this subchapter.

20 Sec. 21.956. DUTIES OF DIRECTORS. (a) The board of
21 directors of a public benefit corporation shall manage or direct
22 the business and affairs of the corporation in a manner that
23 balances:

24 (1) the pecuniary interests of the shareholders;

25 (2) the best interests of those persons materially
26 affected by the corporation's conduct; and

27 (3) the specific public benefit or benefits specified

1 in the corporation's certificate of formation.

2 (b) A director of a public benefit corporation does not, by
3 virtue of the public benefit provisions included in the certificate
4 of formation or by virtue of the purpose and requirements of
5 Sections 21.953(a) and (b), owe any duty to any person because of:

6 (1) any interest the person has in the public benefit
7 or benefits specified in the certificate of formation; or

8 (2) any interest materially affected by the
9 corporation's conduct.

10 (c) With respect to a decision implicating the balance
11 requirement of Subsection (a), a director of a public benefit
12 corporation is considered to have satisfied the director's duties
13 to shareholders and the corporation if the director's decision is
14 both informed and disinterested and is not a decision that no person
15 of ordinary, sound judgment would approve.

16 (d) The certificate of formation of a public benefit
17 corporation may include a provision that any disinterested failure
18 of a director to satisfy the requirements of this section does not,
19 for the purposes of the applicable provisions of this code,
20 constitute an act or omission not in good faith or a breach of the
21 duty of loyalty.

22 Sec. 21.957. PERIODIC STATEMENTS. (a) A public benefit
23 corporation shall include in each notice of a meeting of
24 shareholders a statement to the effect that the corporation is a
25 public benefit corporation governed by this subchapter.

26 (b) A public benefit corporation, at least biennially,
27 shall provide to the corporation's shareholders a statement

1 pertaining to the corporation's promotion of the public benefit or
2 benefits specified in the corporation's certificate of formation
3 and promotion of the best interests of those materially affected by
4 the corporation's conduct. The statement must include:

5 (1) the objectives the board of directors has
6 established to promote the public benefit or benefits and
7 interests;

8 (2) the standards the board of directors has adopted
9 to measure the corporation's progress in promoting the public
10 benefit or benefits and interests;

11 (3) objective factual information based on those
12 standards regarding the corporation's success in meeting the
13 objectives for promoting the public benefit or benefits and
14 interests; and

15 (4) an assessment of the corporation's success in
16 meeting the objectives and promoting the public benefit or benefits
17 and interests.

18 (c) The certificate of formation or bylaws of a public
19 benefit corporation may require that the corporation:

20 (1) provide the statement required by Subsection (b)
21 more frequently than biennially; or

22 (2) make the statement required by Subsection (b)
23 available to the public.

24 Sec. 21.958. DERIVATIVE SUITS. (a) In this section,
25 "shareholder" means:

26 (1) shareholders of a public benefit corporation that
27 own, individually or collectively, at least two percent of the

1 corporation's outstanding shares; or

2 (2) shareholders of a public benefit corporation the
3 shares of which are listed on a national securities exchange that
4 own at least the lesser of:

5 (A) the percentage of shares described by
6 Subdivision (1); or

7 (B) shares whose market value is at least \$2
8 million.

9 (b) A shareholder of a public benefit corporation may
10 maintain a derivative action on behalf of the corporation to
11 enforce compliance with the requirements of Section 21.956(a).

12 Sec. 21.959. NO EFFECT ON OTHER CORPORATIONS. Except as
13 provided by Section 21.954, this subchapter does not apply to a
14 corporation that is not a public benefit corporation.

15 SECTION 5. This Act takes effect September 1, 2017.