

1-1 By: Hinojosa, et al. (Senate Sponsor - Estes) H.B. No. 3488
 1-2 (In the Senate - Received from the House May 8, 2017;
 1-3 May 10, 2017, read first time and referred to Committee on Natural
 1-4 Resources & Economic Development; May 18, 2017, reported favorably
 1-5 by the following vote: Yeas 8, Nays 2, 1 present not voting;
 1-6 May 18, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11		X		
1-12	X			
1-13	X			
1-14	X			
1-15				X
1-16	X			
1-17	X			
1-18	X			
1-19		X		

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to authorizing public benefit corporations.
 1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-24 SECTION 1. Section 3.007, Business Organizations Code, is
 1-25 amended by adding Subsection (e) to read as follows:
 1-26 (e) Notwithstanding Section 2.008, instead of including in
 1-27 its certificate of formation or amending its certificate of
 1-28 formation to include one or more social purposes as provided by
 1-29 Subsection (d), a for-profit corporation may elect to be a public
 1-30 benefit corporation governed by Subchapter S, Chapter 21, by
 1-31 including in its initially filed certificate of formation, or,
 1-32 subject to Section 21.954, by amending its certificate of formation
 1-33 to include:
 1-34 (1) one or more specific public benefits, as defined
 1-35 by Section 21.952, to be promoted by the corporation; and
 1-36 (2) instead of the statement required by Section
 1-37 3.005(a)(2), a statement that the filing entity is a for-profit
 1-38 corporation electing to be a public benefit corporation.
 1-39 SECTION 2. Section 10.352(2), Business Organizations Code,
 1-40 is amended to read as follows:
 1-41 (2) "Responsible organization" means:
 1-42 (A) the organization responsible for:
 1-43 (i) the provision of notices under this
 1-44 subchapter; and
 1-45 (ii) the primary obligation of paying the
 1-46 fair value for an ownership interest held by a dissenting owner;
 1-47 (B) with respect to a merger or conversion:
 1-48 (i) for matters occurring before the merger
 1-49 or conversion, the organization that is merging or converting; and
 1-50 (ii) for matters occurring after the merger
 1-51 or conversion, the surviving or new organization that is primarily
 1-52 obligated for the payment of the fair value of the dissenting
 1-53 owner's ownership interest in the merger or conversion;
 1-54 (C) with respect to an interest exchange, the
 1-55 organization the ownership interests of which are being acquired in
 1-56 the interest exchange; ~~and~~
 1-57 (D) with respect to the sale of all or
 1-58 substantially all of the assets of an organization, the
 1-59 organization the assets of which are to be transferred by sale or in
 1-60 another manner; and
 1-61 (E) with respect to an amendment to a domestic

2-1 for-profit corporation's certificate of formation described by
 2-2 Section 10.354(a)(1)(G), the corporation.

2-3 SECTION 3. Section 10.354, Business Organizations Code, is
 2-4 amended by amending Subsection (a) and adding Subsection (d) to
 2-5 read as follows:

2-6 (a) Subject to Subsection (b), an owner of an ownership
 2-7 interest in a domestic entity subject to dissenters' rights is
 2-8 entitled to:

2-9 (1) dissent from:

2-10 (A) a plan of merger to which the domestic entity
 2-11 is a party if owner approval is required by this code and the owner
 2-12 owns in the domestic entity an ownership interest that was entitled
 2-13 to vote on the plan of merger;

2-14 (B) a sale of all or substantially all of the
 2-15 assets of the domestic entity if owner approval is required by this
 2-16 code and the owner owns in the domestic entity an ownership interest
 2-17 that was entitled to vote on the sale;

2-18 (C) a plan of exchange in which the ownership
 2-19 interest of the owner is to be acquired;

2-20 (D) a plan of conversion in which the domestic
 2-21 entity is the converting entity if owner approval is required by
 2-22 this code and the owner owns in the domestic entity an ownership
 2-23 interest that was entitled to vote on the plan of conversion;

2-24 (E) a merger effected under Section 10.006 in
 2-25 which:

2-26 (i) the owner is entitled to vote on the
 2-27 merger; or

2-28 (ii) the ownership interest of the owner is
 2-29 converted or exchanged; [~~or~~]

2-30 (F) a merger effected under Section 21.459(c) in
 2-31 which the shares of the shareholders are converted or exchanged; or

2-32 (G) if the owner owns shares that were entitled
 2-33 to vote on the amendment, an amendment to a domestic for-profit
 2-34 corporation's certificate of formation to:

2-35 (i) add the provisions required by Section
 2-36 3.007(e) to elect to be a public benefit corporation; or

2-37 (ii) delete the provisions required by
 2-38 Section 3.007(e), which in effect cancels the corporation's
 2-39 election to be a public benefit corporation; and

2-40 (2) subject to compliance with the procedures set
 2-41 forth in this subchapter, obtain the fair value of that ownership
 2-42 interest through an appraisal.

2-43 (d) Notwithstanding Subsection (a), an owner of an
 2-44 ownership interest in a domestic for-profit corporation subject to
 2-45 dissenters' rights may not dissent from an amendment to the
 2-46 corporation's certificate of formation described by Subsection
 2-47 (a)(1)(G) if the shares held by the owner are part of a class or
 2-48 series of shares, on the record date set for purposes of determining
 2-49 which owners are entitled to vote on the amendment:

2-50 (1) listed on a national securities exchange; or

2-51 (2) held of record by at least 2,000 owners.

2-52 SECTION 4. Chapter 21, Business Organizations Code, is
 2-53 amended by adding Subchapter S to read as follows:

2-54 SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

2-55 Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS;
 2-56 FORMATION. (a) A for-profit corporation may elect under Section
 2-57 3.007(e) to be a public benefit corporation that is governed by this
 2-58 subchapter.

2-59 (b) If a corporation elects to be a public benefit
 2-60 corporation, the corporation is subject to the other provisions of
 2-61 this chapter and other provisions of this code applicable to
 2-62 for-profit corporations.

2-63 (c) To the extent of a conflict between this subchapter and
 2-64 another provision of this chapter or another provision of this code
 2-65 applicable to for-profit corporations, this subchapter controls.

2-66 Sec. 21.952. DEFINITIONS. In this subchapter:

2-67 (1) "Public benefit" means a positive effect, or a
 2-68 reduction of a negative effect, on one or more categories of
 2-69 persons, entities, communities, or interests, other than

3-1 shareholders in their capacities as shareholders of the
 3-2 corporation, including effects of an artistic, charitable,
 3-3 cultural, economic, educational, environmental, literary, medical,
 3-4 religious, scientific, or technological nature.

3-5 (2) "Public benefit corporation" means a domestic
 3-6 for-profit corporation that elects under Section 3.007(e) to be a
 3-7 public benefit corporation governed by this subchapter.

3-8 (3) "Public benefit provisions" means the provisions
 3-9 of a certificate of formation that are required by Section 3.007(e)
 3-10 and this subchapter.

3-11 Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF
 3-12 CORPORATION. (a) A public benefit corporation is a domestic
 3-13 for-profit corporation that is intended to produce a public benefit
 3-14 or benefits and to operate in a responsible and sustainable manner.

3-15 (b) To accomplish the purpose of the corporation described
 3-16 by Subsection (a), a public benefit corporation shall be managed in
 3-17 a manner that balances:

3-18 (1) the shareholders' pecuniary interests;

3-19 (2) the best interests of those persons materially
 3-20 affected by the corporation's conduct; and

3-21 (3) the public benefit or benefits specified in the
 3-22 corporation's certificate of formation.

3-23 (c) The name of the public benefit corporation specified in
 3-24 its certificate of formation may contain the words "public benefit
 3-25 corporation," the abbreviation "P.B.C.," or the designation "PBC."
 3-26 If the name does not contain those words or that abbreviation or
 3-27 designation, the corporation must, before issuing unissued shares
 3-28 or disposing of treasury shares and except as provided by
 3-29 Subsection (d), provide notice that the corporation is a public
 3-30 benefit corporation to any person:

3-31 (1) to whom the unissued shares are issued; or

3-32 (2) who acquires the treasury shares.

3-33 (d) Notice is not required to be provided under Subsection
 3-34 (c) if:

3-35 (1) the issuance or disposal of shares described by
 3-36 that subsection is under an offering registered under the
 3-37 Securities Act of 1933 (15 U.S.C. Section 77a et seq.); or

3-38 (2) at the time of the issuance or disposal of shares
 3-39 described by that subsection, the corporation has a class of
 3-40 securities registered under the Securities Exchange Act of 1934 (15
 3-41 U.S.C. Section 78a et seq.).

3-42 (e) Section 5.054(a) does not apply to a public benefit
 3-43 corporation that includes in its name the words, abbreviation, or
 3-44 designation permitted by Subsection (c).

3-45 Sec. 21.954. CERTAIN AMENDMENTS, MERGERS, EXCHANGES, AND
 3-46 CONVERSIONS; VOTER APPROVAL REQUIRED. (a) Notwithstanding any
 3-47 other provision of this chapter, a domestic for-profit corporation
 3-48 that is not a public benefit corporation may not, without the
 3-49 approval of the owners of two-thirds of the outstanding shares of
 3-50 the corporation entitled to vote on the matter, which must be a vote
 3-51 by class or series of shares if otherwise required by Section
 3-52 21.364, 21.457, or 21.458:

3-53 (1) amend the corporation's certificate of formation
 3-54 to comply with the requirements of Section 3.007(e) to elect for the
 3-55 corporation to be governed as a public benefit corporation;

3-56 (2) merge or effect an interest exchange with another
 3-57 entity if, as a result of the merger or exchange, the shares in the
 3-58 corporation would become, or be converted into or exchanged for the
 3-59 right to receive, shares or other equity interests in a domestic or
 3-60 foreign public benefit corporation or similar entity; or

3-61 (3) convert into a foreign public benefit corporation
 3-62 or similar entity.

3-63 (b) Subsection (a) does not apply until the corporation has
 3-64 issued and outstanding shares of the corporation's capital stock.

3-65 (c) A domestic entity that is not a domestic for-profit
 3-66 corporation may not, without the approval of the owners of
 3-67 two-thirds of the outstanding ownership interests of the entity
 3-68 entitled to vote on the matter:

3-69 (1) merge or effect an interest exchange with another

4-1 entity if, as a result of the merger or exchange, the ownership
 4-2 interests in the entity would become, or be converted into or
 4-3 exchanged for the right to receive, shares or other equity
 4-4 interests in a domestic or foreign public benefit corporation or
 4-5 similar entity; or

4-6 (2) convert into a domestic or foreign public benefit
 4-7 corporation or similar entity.

4-8 (d) Notwithstanding any other provision of this chapter, a
 4-9 public benefit corporation may not, without the approval of
 4-10 two-thirds of the outstanding shares of the corporation entitled to
 4-11 vote on the matter, which must be a vote by class or series of shares
 4-12 if otherwise required by Section 21.364, 21.457, or 21.458:

4-13 (1) amend the corporation's certificate of formation
 4-14 to delete or amend a provision required by Section 3.007(e) or
 4-15 described by Section 21.957(c);

4-16 (2) convert into a domestic or foreign entity:

4-17 (A) that is not a public benefit corporation or
 4-18 similar entity; and

4-19 (B) that does not contain in its certificate of
 4-20 formation or similar governing document provisions identical to the
 4-21 provisions in the certificate of formation of the public benefit
 4-22 corporation containing the public benefit or benefits specified
 4-23 under Section 3.007(e) or imposing requirements under
 4-24 Section 21.957(c); or

4-25 (3) merge or effect an interest exchange with another
 4-26 entity if, as a result of the merger or exchange, the shares in the
 4-27 corporation would become, or be converted into or exchanged for the
 4-28 right to receive, shares or other equity interests in a domestic or
 4-29 foreign entity:

4-30 (A) that is not a public benefit corporation or
 4-31 similar entity; and

4-32 (B) that does not contain in its certificate of
 4-33 formation or similar governing document provisions identical to the
 4-34 provisions in the certificate of formation of the public benefit
 4-35 corporation containing the public benefit or benefits specified
 4-36 under Section 3.007(e) or imposing requirements under
 4-37 Section 21.957(c).

4-38 (e) Notwithstanding any other provision of this section, a
 4-39 nonprofit corporation or nonprofit association may not:

4-40 (1) with respect to a merger governed by this section,
 4-41 be a party to the merger; or

4-42 (2) convert into a public benefit corporation.

4-43 (f) An owner of a domestic entity affected by an action
 4-44 described by this section has the rights of dissent and appraisal as
 4-45 an owner described by Section 10.354 and to the extent provided by
 4-46 Subchapter H, Chapter 10.

4-47 Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING
 4-48 UNCERTIFICATED STOCK. (a) A stock certificate issued by a public
 4-49 benefit corporation must note conspicuously that the corporation is
 4-50 a public benefit corporation governed by this subchapter.

4-51 (b) A notice sent by a public benefit corporation under
 4-52 Section 3.205 must state conspicuously that the corporation is a
 4-53 public benefit corporation governed by this subchapter.

4-54 Sec. 21.956. DUTIES OF DIRECTORS. (a) The board of
 4-55 directors of a public benefit corporation shall manage or direct
 4-56 the business and affairs of the corporation in a manner that
 4-57 balances:

4-58 (1) the pecuniary interests of the shareholders;

4-59 (2) the best interests of those persons materially
 4-60 affected by the corporation's conduct; and

4-61 (3) the specific public benefit or benefits specified
 4-62 in the corporation's certificate of formation.

4-63 (b) A director of a public benefit corporation does not, by
 4-64 virtue of the public benefit provisions included in the certificate
 4-65 of formation or by virtue of the purpose and requirements of
 4-66 Sections 21.953(a) and (b), owe any duty to any person because of:

4-67 (1) any interest the person has in the public benefit
 4-68 or benefits specified in the certificate of formation; or

4-69 (2) any interest materially affected by the

5-1 corporation's conduct.

5-2 (c) With respect to a decision implicating the balance
 5-3 requirement of Subsection (a), a director of a public benefit
 5-4 corporation is considered to have satisfied the director's duties
 5-5 to shareholders and the corporation if the director's decision is
 5-6 both informed and disinterested and is not a decision that no person
 5-7 of ordinary, sound judgment would approve.

5-8 (d) The certificate of formation of a public benefit
 5-9 corporation may include a provision that any disinterested failure
 5-10 of a director to satisfy the requirements of this section does not,
 5-11 for the purposes of the applicable provisions of this code,
 5-12 constitute an act or omission not in good faith or a breach of the
 5-13 duty of loyalty.

5-14 Sec. 21.957. PERIODIC STATEMENTS. (a) A public benefit
 5-15 corporation shall include in each notice of a meeting of
 5-16 shareholders a statement to the effect that the corporation is a
 5-17 public benefit corporation governed by this subchapter.

5-18 (b) A public benefit corporation, at least biennially,
 5-19 shall provide to the corporation's shareholders a statement
 5-20 pertaining to the corporation's promotion of the public benefit or
 5-21 benefits specified in the corporation's certificate of formation
 5-22 and promotion of the best interests of those materially affected by
 5-23 the corporation's conduct. The statement must include:

5-24 (1) the objectives the board of directors has
 5-25 established to promote the public benefit or benefits and
 5-26 interests;

5-27 (2) the standards the board of directors has adopted
 5-28 to measure the corporation's progress in promoting the public
 5-29 benefit or benefits and interests;

5-30 (3) objective factual information based on those
 5-31 standards regarding the corporation's success in meeting the
 5-32 objectives for promoting the public benefit or benefits and
 5-33 interests; and

5-34 (4) an assessment of the corporation's success in
 5-35 meeting the objectives and promoting the public benefit or benefits
 5-36 and interests.

5-37 (c) The certificate of formation or bylaws of a public
 5-38 benefit corporation may require that the corporation:

5-39 (1) provide the statement required by Subsection (b)
 5-40 more frequently than biennially; or

5-41 (2) make the statement required by Subsection (b)
 5-42 available to the public.

5-43 Sec. 21.958. DERIVATIVE SUITS. (a) In this section,
 5-44 "shareholder" means:

5-45 (1) shareholders of a public benefit corporation that
 5-46 own, individually or collectively, at least two percent of the
 5-47 corporation's outstanding shares; or

5-48 (2) shareholders of a public benefit corporation the
 5-49 shares of which are listed on a national securities exchange that
 5-50 own at least the lesser of:

5-51 (A) the percentage of shares described by
 5-52 Subdivision (1); or

5-53 (B) shares whose market value is at least \$2
 5-54 million.

5-55 (b) A shareholder of a public benefit corporation may
 5-56 maintain a derivative action on behalf of the corporation to
 5-57 enforce compliance with the requirements of Section 21.956(a).

5-58 Sec. 21.959. NO EFFECT ON OTHER CORPORATIONS. Except as
 5-59 provided by Section 21.954, this subchapter does not apply to a
 5-60 corporation that is not a public benefit corporation.

5-61 SECTION 5. This Act takes effect September 1, 2017.

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