



The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER _____

HOUSE BILL 40

POCKET VETOED

Introduced by

REPRESENTATIVE ZACH J. COOK AND SENATOR TIMOTHY M. KELLER



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--REQUIREMENTS--
9 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 a
13 designation 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 the designation of a
18 benefit corporation shall:

19 (1) include a statement in the corporation's
20 articles of incorporation that the corporation is a benefit
21 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, have the purpose to
25 create the general public benefit of achieving a material

1 positive impact on society and the environment as assessed
2 against a third-party standard and may identify a specific
3 public benefit in the corporation's articles of incorporation;

4 (3) prepare a benefit report that:

5 (a) describes the progress or lack of
6 progress in achieving the general public benefit or specific
7 public benefit stated in the articles of incorporation;

8 (b) describes the process and rationale
9 for selecting or changing the third-party standard used to
10 measure achieving the general public benefit or a specific
11 public benefit;

12 (c) assesses the overall social and
13 environmental performance of the benefit corporation against a
14 third-party standard;

15 (d) identifies each member of the board
16 of directors and the duties and compensation as a director;
17 provided, however, that the benefit corporation may omit
18 information regarding director compensation and financial or
19 proprietary information from the benefit report that is made
20 public; and

21 (e) discloses any connection with the
22 entity that established the third-party standard used to
23 assess the general public benefit or a specific public
24 benefit;

25 (4) provide the benefit report to each

1 shareholder at the time the annual report is due; and

2 (5) publish the benefit report on the public
3 portion of its internet web site, if any, or provide a copy
4 free of charge to any person that requests the benefit report.

5 B. In addition to performing and discharging
6 duties in good faith, in a manner that the board of directors
7 believes to be in, or not opposed to, the best interests of
8 the corporation, and with such care as an ordinarily prudent
9 person would use under similar circumstances in a like
10 position pursuant to Section 53-11-35 NMSA 1978, the director
11 of a benefit corporation, in determining what that director
12 reasonably believes to be in, or not opposed to, the best
13 interests of the benefit corporation, shall take into
14 consideration the:

15 (1) interests of the benefit corporation's
16 shareholders, employees, work force and customers, as
17 beneficiaries of the general public benefit or a specific
18 public benefit;

19 (2) community and societal factors;

20 (3) local and global environment;

21 (4) short-term and long-term interests of
22 the benefit corporation, including benefits that may accrue to
23 the benefit corporation from its long-term plans and the
24 possibility that these interests may be best served by the
25 continued independence of the benefit corporation; and

1 (5) ability of the benefit corporation to
2 accomplish the general public benefit and a specific public
3 benefit stated in the benefit corporation's articles of
4 incorporation.

5 C. A director of a benefit corporation is not
6 required to give priority to the interests of a particular
7 person or group referred to in Subsection B of this section
8 over the interests of any other person or group unless the
9 benefit corporation has stated in its articles of
10 incorporation the intention to give priority to certain
11 interests related to its accomplishment of the general public
12 benefit or a specific public benefit.

13 D. An officer of a benefit corporation shall
14 consider the interests and factors pursuant to Subsection B of
15 this section if the officer:

16 (1) has the discretion to act with respect
17 to a matter; and

18 (2) reasonably believes that the matter may
19 have a material effect in achieving the general public benefit
20 or a specific public benefit identified in the articles of
21 incorporation.

22 E. The board of directors of a publicly traded
23 corporation designated as a benefit corporation shall elect an
24 independent director who shall prepare the benefit report.

25 Any other corporation may designate a director or officer who

1 shall prepare the benefit report.

2 F. A benefit corporation shall not be liable for
3 monetary damages pursuant to this section for any failure to
4 pursue or create the general public benefit or a specific
5 public benefit. A claim or action against a benefit
6 corporation for failure to pursue or create the general public
7 benefit or a specific public benefit purpose as set forth in
8 the articles of incorporation, or a violation of any
9 obligation, duty or standard of conduct pursuant to this
10 section, may only be commenced or maintained by the benefit
11 corporation or on behalf of the corporation in a derivative
12 lawsuit by:

13 (1) a person or group of persons that, at
14 the time of the action or inaction that gave rise to the
15 complaint, owned beneficially or of record at least two
16 percent of the total number of shares or of a class of shares;

17 (2) a director;

18 (3) 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 five percent or
21 more of the outstanding equity interests in an entity of which
22 the benefit corporation is a subsidiary of; or

23 (4) other persons as specified in the
24 articles of incorporation or bylaws of the benefit
25 corporation.

1 G. The amendments to the articles of incorporation
2 that relate to the designation or termination of the
3 designation of the benefit corporation or the general public
4 benefit or a specific public benefit of the corporation shall
5 only be adopted upon receiving the affirmative vote of the
6 holders of a two-thirds' majority of the shares entitled to
7 vote, unless any class of shares is entitled to vote as a
8 class, in which event, the proposed amendment shall be adopted
9 upon receiving the affirmative vote of the holders of a two-
10 thirds' majority of the shares of each class of shares
11 entitled to vote as a class and of the total shares entitled
12 to vote.

13 H. A benefit corporation may terminate its
14 designation as a benefit corporation by amending its articles
15 of incorporation to delete the requirements of Paragraphs (1)
16 and (2) of Subsection A of this section. The termination of
17 the designation shall be effective upon the adoption of the
18 amendment.

19 I. Nothing in this section shall be construed to
20 apply to a corporation that does not elect the designation of
21 a benefit corporation."

22 SECTION 2. Section 53-15-3 NMSA 1978 (being Laws 1967,
23 Chapter 81, Section 77, as amended) is amended to read:

24 "53-15-3. RIGHT OF SHAREHOLDERS TO DISSENT AND OBTAIN
25 PAYMENT FOR SHARES.--

1 A. Any shareholder of a corporation may dissent
2 from, and obtain payment for the shareholder's shares in the
3 event of, any of the following corporate actions:

4 (1) any plan of merger or consolidation to
5 which the corporation is a party, except as provided in
6 Subsection C of this section;

7 (2) any sale or exchange of all or
8 substantially all of the property and assets of the
9 corporation not made in the usual and regular course of its
10 business, including a sale in dissolution, but not including a
11 sale pursuant to an order of a court having jurisdiction in
12 the premises or a sale for cash on terms requiring that all or
13 substantially all of the net proceeds of sale be distributed
14 to the shareholders in accordance with their respective
15 interests within one year after the date of sale;

16 (3) any plan of exchange to which the
17 corporation is a party as the corporation the shares of which
18 are to be acquired;

19 (4) any amendment of the articles of
20 incorporation that materially and adversely affects the rights
21 appurtenant to the shares of the dissenting shareholder in
22 that it:

23 (a) alters or abolishes a preferential
24 right of such shares;

25 (b) creates, alters or abolishes a

1 right in respect of the redemption of such shares, including a
2 provision respecting a sinking fund for the redemption or
3 repurchase of such shares;

4 (c) alters or abolishes an existing
5 preemptive right of the holder of such shares to acquire
6 shares or other securities;

7 (d) designates as a benefit
8 corporation; or

9 (e) excludes or limits the right of the
10 holder of such shares to vote on any matter, or to cumulate
11 the holder's votes, except as such right may be limited by
12 dilution through the issuance of shares or other securities
13 with similar voting rights; or

14 (5) any other corporate action taken
15 pursuant to a shareholder vote with respect to which the
16 articles of incorporation, the bylaws or a resolution of the
17 board of directors directs that dissenting shareholders shall
18 have a right to obtain payment for their shares.

19 B. A record holder of shares may assert
20 dissenters' rights as to less than all of the shares
21 registered in the holder's name only if the holder dissents
22 with respect to all the shares beneficially owned by any one
23 person and discloses the name and address of the person or
24 persons on whose behalf the holder dissents. In that event,
25 the holder's rights shall be determined as if the shares as to

1 which the holder has dissented and the holder's other shares
2 were registered in the names of different shareholders. A
3 beneficial owner of shares who is not the record holder may
4 assert dissenters' rights with respect to shares held on the
5 beneficial owner's behalf and shall be treated as a dissenting
6 shareholder under the terms of this section and Section
7 53-15-4 NMSA 1978 if the beneficial owner submits to the
8 corporation at the time of or before the assertion of these
9 rights a written consent of the record holder.

10 C. The right to obtain payment under this section
11 shall not apply to the shareholders of the surviving
12 corporation in a merger if a vote of the shareholders of such
13 corporation is not necessary to authorize such merger.

14 D. A shareholder of a corporation who has a right
15 under this section to obtain payment for shares shall have no
16 right at law or in equity to attack the validity of the
17 corporate action that gives rise to the shareholder's right to
18 obtain payment nor to have the action set aside or rescinded,
19 except when the corporate action is unlawful or fraudulent
20 with regard to the complaining shareholder or to the
21 corporation."

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24 OFFICE OF THE CLERK

25 JAN 21 1982 11 2:55

RECORDED

S/ W. KEN MARTINEZ
W. KEN MARTINEZ, SPEAKER
HOUSE OF REPRESENTATIVES

S/ STEPHEN R. ARIAS
STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

S/ JOHN A. SANCHEZ
JOHN A. SANCHEZ, PRESIDENT
SENATE

S/ LENORE M. NARANJO
LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this _____ day of _____, 2013

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

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