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
H.B. No. 3488

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

(B) with respect to a merger or conversion:

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

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

(C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange; [and]

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

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

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

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

(1) dissent from:

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

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

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

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

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

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

(ii) the ownership interest of the owner is converted or exchanged; (e*)

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

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

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

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

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

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

(1) listed on a national securities exchange; or
(2) held of record by at least 2,000 owners.

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

SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

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

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

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

Sec. 21.952. DEFINITIONS. In this subchapter:

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

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

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

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

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

(1) the shareholders' pecuniary interests;

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

(3) the public benefit or benefits specified in the corporation's certificate of formation.
(c) The name of the public benefit corporation specified in its certificate of formation may contain the words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC."

If the name does not contain those words or that abbreviation or designation, the corporation must, before issuing unissued shares or disposing of treasury shares and except as provided by Subsection (d), provide notice that the corporation is a public benefit corporation to any person:

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

(2) who acquires the treasury shares.

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

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

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

(e) Section 5.054(a) does not apply to a public benefit corporation that includes in its name the words, abbreviation, or designation permitted by Subsection (c).
the corporation entitled to vote on the matter, which must be a vote
by class or series of shares if otherwise required by Section
21.364, 21.457, or 21.458:

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

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

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

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

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

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

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

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

(2) convert into a domestic or foreign entity:
   (A) that is not a public benefit corporation or similar entity; and
   (B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c); or

(3) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign entity:
   (A) that is not a public benefit corporation or similar entity; and
   (B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit
corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c).

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

1. with respect to a merger governed by this section, be a party to the merger; or

2. convert into a public benefit corporation.

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

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

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

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

1. the pecuniary interests of the shareholders;

2. the best interests of those persons materially affected by the corporation's conduct; and

3. the specific public benefit or benefits specified
in the corporation's certificate of formation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. This Act takes effect September 1, 2017.
H.B. No. 3488

President of the Senate

I certify that H.B. No. 3488 was passed by the House on May 6, 2017, by the following vote: Yeas 135, Nays 7, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3488 was passed by the Senate on May 19, 2017, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

APPROVED: 6-13-2017

Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE 3:15 PM O'CLOCK

Secretary of State
To: Honorable Craig Estes, Chair, Senate Committee on Natural Resources & Economic Development

From: Ursula Parks, Director, Legislative Budget Board

In Re: HB3488 by Hinojosa, Gina (Relating to authorizing public benefit corporations.), As Engrossed

| No significant fiscal implication to the State is anticipated. |

The bill would amend the Business Organizations Code relating to authorizing public benefit corporations.

The Secretary of State assumes any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect on September 1, 2017.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: UP, SZ, CL, WP, ASa, NV
LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 23, 2017

TO: Honorable Angie Chen Button, Chair, House Committee on Economic & Small Business Development

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3488 by Hinojosa, Gina (Relating to authorizing public benefit corporations.), Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Business Organizations Code relating to authorizing public benefit corporations.

The Secretary of State assumes any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect on September 1, 2017.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: UP, CL, WP, ASa, NV
TO: Honorable Angie Chen Button, Chair, House Committee on Economic & Small Business Development

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3488 by Hinojosa, Gina (Relating to authorizing the formation of public benefit corporations.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Business Organizations Code relating to authorizing the formation of public benefit corporations.

The Secretary of State assumes any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect on September 1, 2017.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: UP, CL, NV, ASa