

BILL ANALYSIS

Senate Research Center
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H.B. 3488
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that when a corporation states a social purpose the extent of the duty of the corporation's board of directors to consider that social purpose is unclear. H.B. 3488 seeks to provide for a new kind of corporation, a public benefit corporation, where one or more public benefits are identified and the corporation is managed in a way that balances shareholder interests and the public benefits.

H.B. 3488 amends current law relating to authorizing public benefit corporations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3.007, Business Organizations Code, by adding Subsection (e), as follows:

(e) Provides that, notwithstanding Section 2.008 (Nonprofit Corporations), 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) (relating to the contents of a for-profit corporation), a for-profit corporation is authorized to elect to be a public benefit corporation governed by Subchapter S, Chapter 21 (For Profit Corporations), 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) (relating to requiring a certificate of formation to state the type of filing entity being formed), a statement that the filing entity is a for-profit corporation electing to be a public benefit corporation.

SECTION 2. Amends Section 10.352(2), Business Organizations Code, to redefine "responsible organization."

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

(a) Provides that, subject to Subsection (b) (relating to prohibiting an owner from dissenting from a certain plan of merger or conversion), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

(1) dissent from:

(A) through (D) makes no changes to these paragraphs;

(E) and (F) makes nonsubstantive changes;

(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 add the provisions required by Section 3.007(e) to elect to be a public benefit corporation or 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) makes no changes to this subdivision.

(d) Prohibits an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights, notwithstanding Subsection (a), from dissenting 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 listed on a national securities exchange or held of record by at least 2,000 owners.

SECTION 4. Amends Chapter 21, Business Organizations Code, by adding Subchapter S, as follows:

SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

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

(b) Provides that, 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) Provides that, 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. Defines "public benefit," "public benefit corporation," and "public benefit provisions."

Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF CORPORATION. (a) Provides that 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) Requires that a public benefit corporation, to accomplish the purpose of the corporation described by Subsection (a), be managed in a manner that balances certain interests and benefits.

(c) Authorizes the name of the public benefit corporation specified in its certificate of formation to contain the words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC." Requires the corporation, if the name does not contain those words or that abbreviation or designation, to, 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 to whom the unissued shares are issued or who acquires the treasury shares.

(d) Provides that notice is not required to be provided under Subsection (c) if 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, 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) Provides that Section 5.054(a) (relating to requiring the name of a corporation or foreign corporation to contain certain words and abbreviations) does not apply to a public benefit corporation that includes in its name the words, abbreviation, or designation permitted by Subsection (c).

Sec. 21.954. CERTAIN AMENDMENTS, MERGERS, EXCHANGES, AND CONVERSIONS; VOTER APPROVAL REQUIRED. (a) Prohibits a domestic for-profit corporation that is not a public benefit corporation from, notwithstanding any other provision of this chapter, without the approval of the owners of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which are required to be a vote by class or series of shares if otherwise required by Section 21.364 (Vote Required to Approve Fundamental Action), 21.457 (General Vote Requirement for Approval of Fundamental Business Transaction), or 21.458 (Class Voting Requirements for Certain Fundamental Business Transactions):

(1) amending 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) merging or effecting 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) converting into a foreign public benefit corporation or similar entity.

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

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

(1) merging or effecting 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) converting into a domestic or foreign public benefit corporation or similar entity.

(d) Prohibits a public benefit corporation, notwithstanding any other provision of this chapter, from, without the approval of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which are required to be a vote by class or series of shares if otherwise required by Section 21.364, 21.457, or 21.458:

(1) amending 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) converting into a domestic or foreign entity that is not a public benefit corporation or similar entity and 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) merging or effecting 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 that is not a public benefit corporation or similar entity and 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) Prohibits a nonprofit corporation or nonprofit association from, notwithstanding any other provision of this section:

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

(2) converting into a public benefit corporation.

(f) Provides that 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 (Rights of Dissenting Owners), Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets).

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

(b) Requires that a notice sent by a public benefit corporation under Section 3.205 (Notice of Uncertified Ownership Interest) state conspicuously that the corporation is a public benefit corporation governed by this subchapter.

Sec. 21.956. DUTIES OF DIRECTORS. (a) Requires the board of directors of a public benefit corporation to manage or direct the business and affairs of the corporation in a manner that balances certain interests and benefits.

(b) Provides that 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 any interest the person has in the public benefit or benefits specified in the certificate of formation or any interest materially affected by the corporation's conduct.

(c) Provides that, 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) Authorizes the certificate of formation of a public benefit corporation to 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) Requires a public benefit corporation to 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) Requires a public benefit corporation, at least biennially, to 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. Requires that the statement include certain objectives, standards, and assessments.

(c) Authorizes the certificate of formation or bylaws of a public benefit corporation to require that the corporation provide the statement required by Subsection (b) more frequently than biennially or make the statement required by Subsection (b) available to the public.

Sec. 21.958. DERIVATIVE SUITS. (a) Defines "shareholder."

(b) Authorizes a shareholder of a public benefit corporation to 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. Provides that, except as provided by Section 21.954, this subchapter does not apply to a corporation that is not a public benefit corporation.

SECTION 5. Effective date: September 1, 2017.