

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 26
PROPOSED COMMITTEE SUBSTITUTE S26-PCS55149-RO-5

Short Title: North Carolina Benefit Corporation Act.

(Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"The North Carolina Benefit Corporation Act.

"Part 1. Preliminary Provisions.

"§ 55-18-1. Short title.

This Article may be cited as "The North Carolina Benefit Corporation Act."

"§ 55-18-2. Application and effect of Article.

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall be controlling.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"§ 55-18-3. Definitions.

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:



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- 1 a. Failing to pursue the general public benefit purpose or any specific
2 public benefit purpose set forth in its articles of incorporation.
3 b. Violating a duty or standard of conduct under this Article.
4 (4) Benefit officer. – The officer of the benefit corporation designated as such
5 pursuant to G.S. 55-18-42.
6 (5) General public benefit. – A material positive impact on society and the
7 environment, taken as a whole, as measured by a third-party standard, from
8 the business and operations of a benefit corporation.
9 (6) Independent person. – With respect to a benefit corporation, a person who
10 does not have any material relationship with the benefit corporation or a
11 subsidiary of the benefit corporation, either (i) directly as a shareholder of
12 the benefit corporation or as a partner, a member, or an owner of a
13 subsidiary of the benefit corporation or (ii) indirectly as a director, an
14 officer, a general partner, or a manager of an entity that has a material
15 relationship with the benefit corporation or a subsidiary of the benefit
16 corporation. A person shall not be deemed to have such a material
17 relationship solely by virtue of serving as the benefit director or the benefit
18 officer of the benefit corporation or of any subsidiary of the benefit
19 corporation that is itself a benefit corporation. A material relationship
20 between a person and the benefit corporation or any of its subsidiaries will
21 be conclusively presumed to exist if any of the following apply:
22 a. The person is, or has been within the last three years, an employee,
23 other than the benefit officer, of the benefit corporation or a
24 subsidiary of the benefit corporation.
25 b. An immediate family member of the person is, or has been within the
26 last three years, an officer, other than the benefit officer, of the
27 benefit corporation or a subsidiary of the benefit corporation.
28 c. The person, or an entity in which the person (i) is a director, an
29 officer, a general partner, or a manager or (ii) owns, directly or
30 indirectly, five percent (5%) or more of the outstanding equity
31 interests, owns, directly or indirectly, five percent (5%) or more of
32 the outstanding shares of any series or class of stock of the benefit
33 corporation.
34 (7) Specific public benefit purpose. – A corporate purpose conferring any
35 particular benefit on society or the environment, including, but not limited
36 to, any of the following:
37 a. Providing low-income or underserved individuals or communities
38 with beneficial products or services.
39 b. Promoting economic opportunity for individuals or communities
40 beyond the creation of jobs in the normal course of business.
41 c. Preserving or improving the environment.
42 d. Improving human health.
43 e. Promoting the arts, sciences, or advancement of knowledge.
44 f. Increasing the flow of capital to entities with a public benefit
45 purpose.
46 (8) Subsidiary of a person. – An entity in which the person owns, directly or
47 indirectly, fifty percent (50%) or more of the outstanding voting equity
48 interests.
49 (9) Third-party standard. – A standard for defining, reporting, and assessing
50 overall corporate social and environmental performance that meets all of the
51 following requirements:

- 1 a. The standard assesses the effect of the business and its operations
2 upon the interests listed in subdivisions (2) through (5) of
3 G.S. 55-18-40(a).
- 4 b. The standard is developed by an entity that is independent of the
5 benefit corporation and satisfies the following:
- 6 1. Not more than one-third of the members of the governing
7 body of the entity are representatives of either of the
8 following:
- 9 I. An association of businesses operating in a specific
10 industry the performance of whose members is
11 measured by the standard.
- 12 II. Businesses whose performance is measured by the
13 standard.
- 14 2. The entity is not materially financed by an association or
15 business described in sub-sub-subdivision 1. of this
16 sub-subdivision.
- 17 c. The standard is developed by an entity that satisfies the following:
- 18 1. Has access to necessary expertise to assess overall corporate
19 social and environmental performance.
- 20 2. Uses a balanced multistakeholder approach including a public
21 comment period of at least 30 days to develop the standard.
- 22 d. The standard is transparent because the following information about
23 the standard is publicly available:
- 24 1. The criteria considered when measuring the overall social and
25 environmental performance of a business, as well as the
26 relative weightings of those criteria.
- 27 2. The process for the development and revision of the standard,
28 including the following:
- 29 I. The identity of the directors, officers, any material
30 owners, and the governing body of the entity that
31 developed and controls revisions to the standard.
- 32 II. The process by which revisions to the standard and
33 changes to the membership of the governing body are
34 made.
- 35 III. An accounting of the sources of financial support for
36 the entity, with sufficient detail to disclose any
37 relationships that could reasonably be considered to
38 present a potential conflict of interest.

39 (b) For purposes of the definitions of "independent person" and "subsidiary" in
40 subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all
41 outstanding rights to acquire equity interests in the entity had been exercised.

42 **"§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

43 A benefit corporation shall not be entitled to claim an exemption from any property tax
44 imposed under Subchapter II of Chapter 105 of the General Statutes.

45 "Part 2. Adoption and Change of Status.

46 **"§ 55-18-20. Incorporation as a benefit corporation.**

47 A domestic corporation, including a domestic corporation incorporated upon a conversion
48 effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit
49 corporation by including in its initial articles of incorporation a provision providing that the
50 corporation shall be a benefit corporation governed by this Article. The articles of incorporation
51 must also include an identification of any specific public benefit purpose or purposes as

1 required by G.S. 55-18-30 and must include all provisions required by, and may include any
2 provision permitted by, G.S. 55-2-02.

3 **"§ 55-18-21. Transition to benefit corporation status.**

4 (a) An existing domestic corporation shall become a benefit corporation upon the
5 effectiveness of an amendment to its articles of incorporation to include a provision providing
6 that the corporation shall be a benefit corporation governed by this Article. As amended, such
7 articles of incorporation must also include an identification of any specific public benefit
8 purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be
9 approved in the manner required by G.S. 55-18-23. In addition to other requirements of
10 applicable law, the notice of the meeting of shareholders to approve the amendment must
11 include a statement by the board of directors of the reasons why the board is proposing the
12 amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit
13 corporation.

14 (b) If a corporation or other entity that is not a benefit corporation is a party to a merger,
15 conversion, or share exchange, and the surviving or acquiring corporation in the merger,
16 conversion, or share exchange is, or is to be as a result of such transaction, a benefit
17 corporation, the plan of merger, conversion, or share exchange must be approved in the manner
18 required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the
19 meeting of shareholders to approve the plan of merger, conversion, or share exchange must
20 include a discussion of the anticipated effect on the shareholders resulting from the surviving or
21 acquiring corporation being a benefit corporation. Upon the completion of such transaction, the
22 surviving or acquiring corporation to be a benefit corporation must include a provision in its
23 articles of incorporation providing that the corporation shall be a benefit corporation governed
24 by this Article and an identification of any specific public benefit purpose or purposes as
25 required by G.S. 55-18-30.

26 **"§ 55-18-22. Termination of benefit corporation status.**

27 (a) A benefit corporation may terminate its status and cease to be subject to this Article
28 by amending its articles of incorporation to delete the provision that the corporation shall be a
29 benefit corporation governed by this Article. Such an amendment must be approved in the
30 manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the
31 amendment must include a statement by the board of directors of the reasons why the board is
32 proposing the amendment and a discussion of the anticipated effect on the shareholders of
33 terminating the status of the corporation as a benefit corporation.

34 (b) If a plan of merger, conversion, or share exchange would have the effect of
35 terminating the status of a benefit corporation as a benefit corporation, the plan must be
36 approved in the manner required by G.S. 55-18-23.

37 **"§ 55-18-23. Heightened voting requirements.**

38 In addition to any other requirements of applicable law, where specified in this Article that
39 approval of a matter shall be in the manner required by this section, the following requirements
40 apply:

- 41 (1) With respect to a corporation, including a benefit corporation, such matter
42 must be approved by the affirmative vote of sixty-six and two-thirds percent
43 (66 2/3%) of the outstanding shares or each class and series of stock of the
44 corporation, voting as separate voting groups, regardless of any limitation in
45 the corporation's articles of incorporation or bylaws of the voting rights of
46 such class or series.
- 47 (2) With respect to any entity incorporated under Chapter 55A of the General
48 Statutes, the matter must be approved by the affirmative vote of sixty-six
49 and two-thirds percent (66 2/3%) of the votes cast by the members entitled
50 to vote thereon.

1 (3) With respect to an entity organized under Chapter 57C or Chapter 59 of the
2 General Statutes, the matter must be approved in the same manner as would
3 be required for the approval of a merger of such entity, unless otherwise
4 provided in the articles of entity, operating agreement or partnership
5 agreement of the entity.

6 "Part 3. Corporate Purposes.

7 **"§ 55-18-30. Corporate purposes.**

8 (a) A benefit corporation shall have as one of its corporate purposes the creation of a
9 general public benefit. A benefit corporation may include in its articles of incorporation other
10 corporate purposes, including the purpose of engaging in any lawful business.

11 (b) A benefit corporation may include as a corporate purpose in its articles of
12 incorporation one or more specific public benefit purposes in addition to its purposes under
13 subsection (a) of this section.

14 (c) A benefit corporation may amend its articles of incorporation to add, amend, or
15 delete the identification of a specific public benefit purpose. Such an amendment must be
16 approved by the shareholders of the benefit corporation in the manner required by
17 G.S. 55-18-23.

18 "Part 4. Accountability.

19 **"§ 55-18-40. Standard of conduct for directors.**

20 (a) In discharging their duties as directors of a benefit corporation, directors shall
21 consider the effects of any action or decision not to act upon the following:

22 (1) The shareholders of the benefit corporation.

23 (2) The employees and workforce of the benefit corporation, its subsidiaries,
24 and suppliers.

25 (3) The interests of customers to the extent they are beneficiaries of the general
26 or specific public benefit purposes of the benefit corporation.

27 (4) The local community and society, including the interests of each community
28 in which offices or facilities of the benefit corporation, its subsidiaries, or
29 suppliers are located.

30 (5) The local and global environment.

31 (6) The short-term and long-term interests of the benefit corporation, including
32 benefits that may accrue to the benefit corporation from its long-term plans
33 and the possibility that these interests may be best served by the continued
34 independence of the benefit corporation.

35 (7) The ability of the benefit corporation to accomplish its general and any
36 specific public benefit purpose.

37 (b) In addition to the required considerations in subsection (a) of this section, a director
38 of a benefit corporation may consider the effects of any action or decision not to act upon the
39 following:

40 (1) The resources, intent, and conduct (past, stated, and potential) of any person
41 seeking to acquire control of the benefit corporation.

42 (2) Other pertinent factors or the interests of any other group that the director in
43 good faith considers to be appropriate.

44 (c) A director of a benefit corporation need not give priority to the interests of a
45 particular person or group referred to in subsections (a) and (b) of this section over the interests
46 of any other person or group unless the benefit corporation's articles of incorporation explicitly
47 specify a priority of interests.

48 (d) The consideration of interests and factors in the manner required by this section
49 shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

50 (e) A director is not liable for monetary damages arising out of an action under this
51 Article with respect to any of the following:

1 (1) Any act taken as a director, or any omission to act as a director, other than
2 any act or omission that the director at the time of such act or omission knew
3 or believed to be clearly in conflict with the benefit corporation's general
4 public benefit purpose and any specific public benefit purpose stated in its
5 articles of incorporation.

6 (2) Failure of the benefit corporation to create a general or specific public
7 benefit.

8 **"§ 55-18-41. Benefit director.**

9 (a) The board of directors of a benefit corporation must by resolution designate one
10 director who is an independent person to be the benefit director. The benefit director shall have,
11 in addition to the powers, duties, rights, and immunities of the other directors of the benefit
12 corporation, the powers, duties, rights, and immunities provided in this section.

13 (b) The benefit director may serve as the benefit officer at the same time as serving as
14 the benefit director. The articles of incorporation or bylaws of a benefit corporation may
15 prescribe additional qualifications of the benefit director not inconsistent with this section.

16 (c) The benefit director must prepare, and the benefit corporation must include in the
17 annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit
18 director on the following:

19 (1) Whether the benefit corporation acted in accordance with its general and any
20 specific public benefit purpose in all material respects during the period
21 covered by the report.

22 (2) Whether the benefit corporation conferred a general public benefit and any
23 specific public benefit during the period covered by the report.

24 (3) Whether the directors complied with G.S. 55-18-40.

25 If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the
26 benefit director shall include in the annual benefit report a description, to the extent relevant, of
27 the ways in which the benefit corporation or its directors failed to act or comply.

28 (d) If a benefit corporation dispenses with a board of directors pursuant to
29 G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the
30 persons who perform the duties of the board of directors designate an independent person with
31 the powers, duties, rights, and immunities of a benefit director.

32 (e) Regardless of whether the articles of incorporation or the bylaws of a benefit
33 corporation include a provision limiting or eliminating the personal liability of directors
34 authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally
35 liable for monetary damages for any act or omission taken in such capacity unless the act or
36 omission constitutes (i) a transaction from which the director derived an improper personal
37 benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

38 **"§ 55-18-42. Benefit officer.**

39 (a) A benefit corporation may have an officer designated as the benefit officer.

40 (b) The duties of the benefit officer shall include the following:

41 (1) Monitoring the benefit corporation's pursuit of the general and any specific
42 public benefits purpose of the benefit corporation and the general and any
43 specific public benefit created by the benefit corporation.

44 (2) Performing such other duties to the extent provided in either of the
45 following:

46 a. The bylaws of the benefit corporation.

47 b. A resolution adopted by the board of directors of the benefit
48 corporation that is not in conflict with the bylaws.

49 (3) Preparing the annual benefit report required by G.S. 55-18-50.

50 **"§ 55-18-43. Right of action; benefit enforcement proceeding.**

1 (a) The duties of directors under this Article may be enforced only in a benefit
 2 enforcement proceeding. No person may bring an action or assert a claim against a benefit
 3 corporation or its directors with respect to the duties of directors under this Article, except in a
 4 benefit enforcement proceeding.

5 (b) A benefit enforcement proceeding may be commenced or maintained by only the
 6 following:

7 (1) Directly, by the benefit corporation.

8 (2) Derivatively, by any of the following:

9 a. A shareholder that owns five percent (5%) or more of the shares in
 10 the benefit corporation.

11 b. A director.

12 c. A person or group of persons that owns, directly or indirectly, five
 13 percent (5%) or more of the outstanding equity voting interests in an
 14 entity of which the benefit corporation is a subsidiary.

15 d. Other persons specified in the articles of incorporation or bylaws of
 16 the benefit corporation.

17 (c) A benefit enforcement proceeding commenced or maintained derivatively under
 18 subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable
 19 to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such
 20 requirements shall be interpreted to reflect that a benefit enforcement proceeding may be
 21 commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this
 22 section.

23 "Part 5. Annual Reporting.

24 **"§ 55-18-50. Annual benefit report.**

25 (a) A benefit corporation shall prepare an annual benefit report that includes all of the
 26 following:

27 (1) A narrative description of all of the following:

28 a. The manner in which the benefit corporation has pursued its general
 29 public benefit purposes during the year and the extent to which a
 30 general public benefit was created.

31 b. The manner in which the benefit corporation has pursued any
 32 specific public benefit purposes during the year and the extent to
 33 which a specific public benefit was created.

34 c. Circumstances that have materially hindered the pursuit by the
 35 benefit corporation of its general and any specific public benefit
 36 purposes or the creation by the benefit corporation of a general or
 37 specific public benefit.

38 (2) An assessment of the social and environmental performance of the benefit
 39 corporation (i) prepared in accordance with a third-party standard applied
 40 consistently with any application of that standard in prior benefit reports or
 41 (ii) accompanied by an explanation of the reasons for any inconsistent
 42 application.

43 (3) The name of the benefit director and the benefit officer and the address to
 44 which correspondence to each of them may be directed.

45 (4) The compensation paid by the benefit corporation during the year to each
 46 director in the capacity as a director.

47 (5) The name of each person that owns five percent (5%) or more of the
 48 outstanding shares of the benefit corporation either (i) indirectly, to the
 49 extent known to the benefit corporation without independent investigation,
 50 or (ii) of record.

51 (6) The statement of the benefit director described in G.S. 55-18-41(c).

1 (7) A statement of any relationship, including a financial or governance
2 relationship, between the benefit corporation and the entity that developed
3 the third-party standard that might affect the credibility of the objective
4 assessment of the third-party standard, including any relationships between
5 the directors, officers, or material owners of the benefit corporation and the
6 directors, officers, or material owners of the entity that developed the
7 third-party standard.

8 (b) The benefit report must be sent annually to each shareholder (i) within 120 days
9 following the end of the fiscal year of the benefit corporation or (ii) at the same time that the
10 benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

11 (c) A benefit corporation must post each annual benefit report on the publicly
12 accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five
13 years from the date the annual benefit report is first sent to shareholders. The compensation
14 paid to directors and any financial or proprietary information included in the benefit report may
15 be omitted from the benefit report as posted.

16 (d) The annual report that a benefit corporation is required to deliver to the Secretary of
17 Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include
18 the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except
19 that the compensation paid to directors and any financial or proprietary information included in
20 the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue
21 or Secretary of State under this section."

22 **SECTION 2.** G.S. 55-13-02(a) reads as rewritten:

23 "(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent
24 from, and obtain payment of the fair value of his shares in the event of, any of the following
25 corporate actions:

26 ...
27 (6) Consummation of a designation of the corporation as a benefit corporation
28 pursuant to Part 2 of Article 18 of this Chapter."

29 **SECTION 3.** This act becomes effective December 1, 2011.