

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 239  
PROPOSED COMMITTEE SUBSTITUTE S239-PCS35313-TG-22

Short Title: Amend NC Business Corporation Act.

(Public)

Sponsors:

Referred to:

March 11, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS  
3 CORPORATION ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 55-6-21(a) reads as rewritten:

6 "(a) The powers granted in this section to the board of directors may be reserved to the  
7 shareholders by the articles of incorporation. Unless the articles of incorporation or bylaws  
8 provide otherwise, the powers granted in this section to the board of directors may be  
9 delegated, within limits prescribed by the board of directors, to one or more officers of the  
10 corporation who are designated by the board of directors."

11 **SECTION 2.** G.S. 55-6-24(a) reads as rewritten:

12 "(a) A corporation may issue rights, options, or warrants for the purchase of shares of the  
13 corporation. The board of ~~directors~~ directors, or officers of the corporation who are designated  
14 by the board of directors pursuant to G.S. 55-6-21(a), shall determine the terms upon which the  
15 rights, options, or warrants are issued, their form and content, and the consideration for which  
16 the shares are to be issued."

17 **SECTION 3.** G.S. 55-7-05(a) reads as rewritten:

18 "(a) A corporation shall notify shareholders of the date, time, and place of each annual  
19 and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting  
20 date. If the board of directors has authorized participation by means of remote communication  
21 pursuant to G.S. 55-7-09 for any class or series of shareholders, the notice to such class or  
22 series of shareholders shall describe the means of remote communication to be used. Unless  
23 this Chapter or the articles of incorporation require otherwise, the corporation is required to  
24 give notice only to shareholders entitled to vote at the meeting."

25 **SECTION 4.** G.S. 55-7-08 is repealed.

26 **SECTION 5.** Article 7 of Chapter 55 is amended by adding a new section to read:

27 "**§ 55-7-09. Remote participation in meetings.**

28 (a) To the extent authorized by a corporation's board of directors, shareholders of any  
29 class or series designated by the board of directors may participate in any meeting of  
30 shareholders by means of remote communication. Participation by means of remote  
31 communication shall be subject to such guidelines and procedures as the board of directors  
32 adopts and shall be in conformity with subsection (b) of this section.

33 (b) Shareholders participating in a shareholders' meeting by means of remote  
34 communication shall be deemed present and may vote at such a meeting if the corporation has  
35 implemented reasonable measures to do all of the following:

36 (1) Verify that each person participating remotely is a shareholder.



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1           (2) Provide each shareholder participating remotely a reasonable opportunity to  
2           participate in the meeting and to vote on matters submitted to the  
3           shareholders, including an opportunity to communicate and read or hear the  
4           proceedings of the meeting, substantially concurrently with such  
5           proceedings."

6           **SECTION 6.** G.S. 55-7-20(c) reads as rewritten:

7           "(c) The corporation shall make the shareholders' list available at the meeting, and any  
8           shareholder, personally or by or with his representative, is entitled to inspect the list at any time  
9           during the meeting or any adjournment. The corporation is not required to make the list  
10          available through electronic or other means of remote communication to a shareholder or proxy  
11          attending the meeting by remote communication pursuant to ~~G.S. 55-7-08.~~G.S. 55-7-09."

12          **SECTION 7.** Article 8 of Chapter 55 is amended by adding a new section to read:

13          "**§ 55-8-26. Submission of matters for shareholder vote.**

14          A corporation may agree to submit a matter to a vote of its shareholders even if, after  
15          approving the matter, the board of directors determines it no longer recommends the matter."

16          **SECTION 8.** G.S. 55-10-03 reads as rewritten:

17          "**§ 55-10-03. Amendment by board of directors and shareholders.**

18          ...

19          (b) Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the  
20          proposed amendment the board of directors ~~must~~shall submit the amendment to the  
21          shareholders for their approval. The board of directors ~~must~~shall also transmit to the  
22          shareholders a recommendation that the shareholders approve the amendment, unless (i) the  
23          board of directors determines that, because of conflict of interest or other special  
24          circumstances, it should not make ~~such a recommendation, in which event~~recommendation that  
25          the shareholders approve the amendment or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii)  
26          of this subsection applies, the board of directors mustshall communicate the basis for ~~that~~  
27          ~~determination~~not recommending approval of the amendment to the shareholders with the  
28          ~~amendment~~at the time it submits the amendment to the shareholders.

29          ...

30          (e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the  
31          shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote  
32          or a vote by voting groups, the amendment to be adopted must be approved ~~by~~by all of the  
33          following:

34               (1) A majority of the votes entitled to be cast on the amendment by any voting  
35               group with respect to which the amendment would create appraisal ~~rights;~~  
36               ~~and~~rights.

37               (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting  
38               group entitled to vote on the amendment."

39          **SECTION 9.** G.S. 55-11-03 reads as rewritten:

40          "**§ 55-11-03. Action on plan.**

41          (a) After adopting a plan of merger or share exchange, the board of directors of each  
42          corporation party to the merger, and the board of directors of the corporation whose shares will  
43          be acquired in the share exchange, shall submit the plan of merger (except as provided in  
44          subsection (g)) or share exchange for approval by its shareholders.

45          (b) ~~For~~The following requirements shall be met for a plan of merger or share exchange  
46          to be approved:

47               (1) The board of directors ~~must~~shall recommend to the shareholders that the  
48               plan of merger or share exchange to the shareholders, be approved, unless (i)  
49               the board of directors determines that because of conflict of interest or other  
50               special circumstances it should not make no recommendation, in which  
51               eventa recommendation that the shareholders approve the plan of merger or

1 share exchange or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this  
 2 subdivision applies, the board of directors ~~must~~shall communicate the basis  
 3 for ~~its lack of a recommendation~~not recommending approval of the plan of  
 4 merger or share exchange to the shareholders with the plan; and at the time it  
 5 submits the plan of merger or share exchange to the shareholders.

6 (2) The shareholders entitled to vote must approve the ~~plan~~plan of merger or  
 7 share exchange.

8 ...  
 9 (e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the  
 10 shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote,  
 11 the plan of merger or share exchange to be authorized must be approved by each voting group  
 12 entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the  
 13 plan by that voting group and, for the purpose of Article 9 or any provision in the articles of  
 14 incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a  
 15 share exchange. If any shareholder of a merging corporation has or will have personal liability  
 16 for any existing or future obligation of the surviving corporation in the merger solely as a result  
 17 of owning one or more shares in the surviving corporation, then, in addition to the requirements  
 18 of this subsection, authorization of the plan of merger by the merging corporation shall require  
 19 the affirmative vote or written consent of that shareholder.

20 (f) Separate voting by voting groups is ~~required~~required for the following:

- 21 (1) On a plan of merger if the plan contains a provision that, if contained in a  
 22 proposed amendment to articles of incorporation, would require action by  
 23 one or more separate voting groups on the proposed amendment under  
 24 G.S. 55-10-04, except where the consideration to be received in exchange  
 25 for the shares of that group consists solely of ~~cash~~cash.  
 26 (2) On a plan of share exchange by each class or series of shares to be acquired  
 27 in the exchange, with each class or series constituting a separate voting  
 28 group.

29 ...."

30 **SECTION 10.** G.S. 55-11-04 reads as rewritten:

31 "**§ 55-11-04. Merger ~~with subsidiary~~between parent and subsidiary or between**  
 32 **subsidiaries.**

33 (a) Subject to Article 9, a parent corporation owning shares of a domestic or foreign  
 34 subsidiary corporation that carry at least ninety percent (90%) of the ~~outstanding shares~~voting  
 35 power of each class and series of ~~at the outstanding shares of the~~ subsidiary corporation ~~that~~  
 36 have the current power to vote in the election of directors may merge the subsidiary into itself  
 37 or into another such subsidiary without approval of the shareholders of the parent corporation  
 38 unless the articles of incorporation of the parent corporation require approval of the  
 39 shareholders or the plan of merger contains one or more amendments to the articles of  
 40 incorporation of the parent corporation for which shareholder approval is required by  
 41 G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary  
 42 corporation unless the articles of incorporation of the subsidiary corporation require approval of  
 43 the shareholders of the subsidiary ~~corporation~~corporation, or if the subsidiary is a foreign  
 44 corporation, approval by the subsidiary's board of directors or shareholders is required by the  
 45 laws under which the subsidiary is organized. Subject to Article 9, a parent corporation owning  
 46 shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%)  
 47 of the ~~outstanding shares~~voting power of each class and series of ~~at the outstanding shares of the~~  
 48 subsidiary corporation that have the current power to vote in the election of directors may  
 49 merge itself into the subsidiary corporation without approval of the board of directors or  
 50 shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary  
 51 corporation provide ~~otherwise~~ ~~or otherwise~~, the plan of merger contains one or more

1 amendments to the articles of incorporation of the subsidiary corporation for which shareholder  
2 approval is required by ~~G.S. 55-10-03~~;G.S. 55-10-03, or, if the subsidiary is a foreign  
3 corporation, approval by the subsidiary's board of directors or shareholders is required by the  
4 laws under which the subsidiary is organized. Except as otherwise provided in this subsection,  
5 the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this  
6 subsection.

7 (b) If a merger is consummated without approval of the subsidiary corporation's  
8 shareholders, the surviving corporation shall, within 10 days after the effective date of the  
9 merger, notify each shareholder of the subsidiary corporation as of the effective date of the  
10 merger, that the merger has become effective.

11 (c) Repealed by Session Laws 2005, c. 268, s. 21.

12 (d) Repealed by Session Laws 2005, c. 268, s. 21.

13 (e) Repealed by Session Laws 2005, c. 268, s. 21.

14 (f) The provisions of ~~G.S. 55-13-02(e)~~G.S. 55-13-02(b) do not apply to subsidiary  
15 corporations that are parties to mergers consummated under this section."

16 **SECTION 11.** G.S. 55-11A-11 reads as rewritten:

17 **"§ 55-11A-11. Plan of conversion.**

18 (a) The converting domestic corporation shall approve a written plan of conversion  
19 ~~containing~~containing all of the following:

20 (1) The name of the converting domestic ~~corporation~~corporation.

21 (2) The name of the resulting business entity into which the domestic  
22 corporation shall convert, its type of business entity, and the state or country  
23 whose laws govern its organization and internal ~~affairs~~affairs.

24 (3) The terms and conditions of the ~~conversion~~andconversion.

25 (4) The manner and basis for converting the shares of the domestic corporation  
26 into interests, obligations, or securities of the resulting business entity or into  
27 cash or other property in whole or in part.

28 (a1) The plan of conversion may contain other provisions relating to the conversion.

29 (a2) The provisions of the plan of conversion, other than the provisions required by  
30 subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts  
31 objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the  
32 manner in which the facts will operate upon the affected provisions. The facts may include any  
33 of the following:

34 (1) Statistical or market indices, market prices of any security or group of  
35 securities, interest rates, currency exchange rates, or similar economic or  
36 financial data.

37 (2) A determination or action by the converting domestic corporation or by any  
38 other person, group, or body.

39 (3) The terms of, or actions taken under, an agreement to which the converting  
40 domestic corporation is a party, or any other agreement or document.

41 (b) ~~For~~The following requirements shall be met for a plan of conversion to be  
42 approved:

43 (1) The board of directors shall recommend to the shareholders that the plan of  
44 conversion to the shareholders, be approved, unless (i) the board of directors  
45 determines that because of conflict of interest or other special circumstances  
46 it should not make no recommendation, in which event a recommendation  
47 that the shareholders approve the plan of conversion or (ii) G.S. 55-8-26  
48 applies. If either clause (i) or (ii) of this subdivision applies, the board of  
49 directors shall communicate the basis for its lack of a recommendationnot  
50 recommending approval of the plan of conversion to the shareholders with  
51 the plan; and at the time it submits the plan of conversion to the shareholders.

(2) The shareholders entitled to vote shall approve the ~~plan~~plan of conversion.

...."

**SECTION 12.** G.S. 55-12-01 reads as rewritten:

"§ 55-12-01. SaleDisposition of assets in regular course of businessnot requiring shareholder approval and mortgage of assets.

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the ~~shareholders;shareholders,~~ do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of ~~business; or~~business.

(2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation.

(3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property. If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property."

**SECTION 13.** G.S. 55-12-02 reads as rewritten:

"§ 55-12-02. SaleDisposition of assets other than in regular course of business.requiring shareholder approval.

...

(b) ~~For~~The following requirements shall be met for a transaction to be authorized:

(1) The board of directors ~~must~~shall recommend to the shareholders that the proposed transaction to the shareholders be approved unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make no recommendation, in which event a recommendation that the shareholders approve the proposed transaction or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the basis for its ~~lack of a recommendation~~not recommending approval of the proposed transaction to the shareholders ~~with the submission of the proposed transaction; and~~ at the time it submits the proposed transaction to the shareholders.

(2) The shareholders entitled to vote must approve the ~~transaction~~proposed transaction.

...."

**SECTION 14.** G.S. 55-14-02(b) reads as rewritten:

"(b) ~~For~~The following requirements shall be met for a proposal to dissolve to be adopted:

1           (1)    The board of directors ~~must~~shall recommend ~~dissolution to the~~  
2           ~~shareholders to the shareholders that the proposal to dissolve be approved~~  
3           unless (i) the board of directors determines that because of conflict of  
4           interest or other special circumstances it should ~~not~~ make ~~no~~  
5           recommendation, in which event a recommendation that the shareholders  
6           approve the proposal to dissolve or (ii) G.S. 55-8-26 applies. If either clause  
7           (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall  
8           communicate the ~~proposal and the basis for its lack of a recommendation to~~  
9           ~~the shareholders; and not recommending approval of the proposal to dissolve~~  
10          to the shareholders at the time it submits the proposal to dissolve to the  
11          shareholders.

12          (2)    The shareholders entitled to vote must approve the proposal to dissolve as  
13          provided in subsection (e)."

14          **SECTION 15.** The Revisor of Statutes may cause to be printed all relevant  
15 portions of the Official Comments to the Model Business Corporation Act and all explanatory  
16 comments of the drafters of this act as the Revisor deems appropriate.

17          **SECTION 16.** This act becomes effective October 1, 2013.