

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 440*
PROPOSED COMMITTEE SUBSTITUTE H440-PCS30524-RN-28

Short Title: North Carolina Benefit Corporation Act.

(Public)

Sponsors:

Referred to:

March 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.
3 The General Assembly of North Carolina enacts:

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

6 "Article 18.

7 "The North Carolina Benefit Corporation Act.

8 "Part 1. Preliminary Provisions.

9 **"§ 55-18-01. Short title.**

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

11 **"§ 55-18-02. Application and effect of Article.**

12 (a) This Article applies to all benefit corporations.

13 (b) The provisions of the other articles of this Chapter apply to benefit corporations. If
14 any provision of this Article conflicts with any provision of the other articles of this Chapter,
15 the provision of this Article shall control.

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

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

22 **"§ 55-18-03. Definitions.**

23 (a) The following definitions apply to this Article:

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

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

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

34 a. Failing to pursue the general public benefit purpose or any specific
35 public benefit purpose set forth in its articles of incorporation.

36 b. Violating a duty or standard of conduct under this Article.



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

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

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

40 **"§ 55-18-04. Benefit corporation not entitled to property tax exemption.**

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

43 "Part 2. Adoption and Change of Status.

44 **"§ 55-18-20. Incorporation as a benefit corporation.**

45 A domestic corporation, including a domestic corporation incorporated upon a conversion
46 effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit
47 corporation by including in its initial articles of incorporation a provision providing that the
48 corporation shall be a benefit corporation governed by this Article. The articles of incorporation
49 must also include an identification of any specific public benefit purpose or purposes as
50 required by G.S. 55-18-30 and must include all provisions required by, and may include any
51 provision permitted by, G.S. 55-2-02.

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

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this subsection must be approved by the affirmative vote of 90 percent (90%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved by the affirmative vote of 90 percent (90%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

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

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

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

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

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

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

1 and two-thirds percent (66 2/3%) of the votes cast by the members entitled
2 to vote thereon.

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

8 "Part 3. Corporate Purposes.

9 **"§ 55-18-30. Corporate purposes.**

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

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

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

20 "Part 4. Accountability.

21 **"§ 55-18-40. Standard of conduct for directors.**

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

- 24 (1) The shareholders of the benefit corporation.
25 (2) The employees and workforce of the benefit corporation, its subsidiaries,
26 and suppliers.
27 (3) The interests of customers to the extent they are beneficiaries of the general
28 or specific public benefit purposes of the benefit corporation.
29 (4) The local community and society, including the interests of each community
30 in which offices or facilities of the benefit corporation, its subsidiaries, or
31 suppliers are located.
32 (5) The local and global environment.
33 (6) The short-term and long-term interests of the benefit corporation, including
34 benefits that may accrue to the benefit corporation from its long-term plans
35 and the possibility that these interests may be best served by the continued
36 independence of the benefit corporation.
37 (7) The ability of the benefit corporation to accomplish its general and any
38 specific public benefit purpose.

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

- 42 (1) The resources, intent, and conduct (past, stated, and potential) of any person
43 seeking to acquire control of the benefit corporation.
44 (2) Other pertinent factors or the interests of any other group that the director in
45 good faith considers to be appropriate.

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

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

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

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

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

10 **"§ 55-18-41. Benefit director.**

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

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

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

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

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

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

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

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

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

40 **"§ 55-18-42. Benefit officer.**

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

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

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

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

48 a. The bylaws of the benefit corporation.

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

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

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

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

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

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

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

b. A director.

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

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

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

"Part 5. Annual Reporting.

"§ 55-18-50. Annual benefit report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 "(a) In addition to any rights granted under Article 9, a shareholder is entitled to
25 appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event
26 of any of the following corporate actions:

27 ...

28 (4) An amendment of the articles of incorporation (i) with respect to a class or
29 series of shares that reduces the number of shares of a class or series owned
30 by the shareholder to a fraction of a share if the corporation has an obligation
31 or right to repurchase the fractional share so created or (ii) changes the
32 corporation into a benefit corporation, nonprofit corporation or cooperative
33 organization.

34 ...

35 (9) Consummation of a designation of the corporation as a benefit corporation
36 pursuant to Part 2 of Article 18 of this Chapter."

37 **SECTION 3.** This act becomes effective October 1, 2013.