

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 239  
Judiciary I Committee Substitute Adopted 4/16/13  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S239-PCS35350-TG-51

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25 **SECTION 4.** G.S. 55-7-08 is repealed.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 of the General Statutes is amended by adding  
27 a new section to read:

28 "**§ 55-7-09. Remote participation in meetings.**

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



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

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

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

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

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

16       **SECTION 7.** Article 8 of Chapter 55 of the General Statutes is amended by adding  
17 a new section to read:

18 **"§ 55-8-26. Submission of matters for shareholder vote.**

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

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

22 **"§ 55-10-03. Amendment by board of directors and shareholders.**

23 ...

24       **(b)** Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the  
25 proposed amendment the board of directors ~~must~~shall submit the amendment to the  
26 shareholders for their approval. The board of directors ~~must~~shall also transmit to the  
27 shareholders a recommendation that the shareholders approve the amendment, unless ~~the board~~  
28 ~~of directors determines that, because of conflict of interest or other special circumstances, it~~  
29 ~~should not make such a recommendation, in which event the board of directors must~~  
30 ~~communicate the basis for that determination to the shareholders with the amendment.~~one of  
31 the following circumstances exist, in which event the board of directors shall communicate the  
32 basis for not recommending approval of the amendment to the shareholders at the time it  
33 submits the amendment to the shareholders:

34           **(1)** The board of directors determines that, because of conflict of interest or  
35 other special circumstances, it should not make a recommendation that the  
36 shareholders approve the amendment.

37           **(2)** G.S. 55-8-26 applies.

38 ...

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

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

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

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

49 **"§ 55-11-03. Action on plan.**

50       **(a)** After adopting a plan of merger or share exchange, the board of directors of each  
51 corporation party to the merger, and the board of directors of the corporation whose shares will

1 be acquired in the share exchange, shall submit the plan of merger (except as provided in  
2 subsection (g)) or share exchange for approval by its shareholders.

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

5 (1) The board of directors ~~must~~shall recommend to the shareholders that the  
6 plan of merger or share exchange ~~to the shareholders, be approved, unless the~~  
7 ~~board of directors determines that because of conflict of interest or other~~  
8 ~~special circumstances it should make no recommendation, in which event~~  
9 ~~the board of directors must communicate the basis for its lack of a~~  
10 ~~recommendation to the shareholders with the plan; and~~one of the following  
11 circumstances exist, in which event the board of directors shall communicate  
12 the basis for not recommending approval of the plan of merger or share  
13 exchange to the shareholders at the time it submits the plan of merger or  
14 share exchange to the shareholders:

15 a. The board of directors determines that, because of conflict of interest  
16 or other special circumstances, it should not make a recommendation  
17 that the shareholders approve the plan of merger or share exchange.

18 b. G.S. 55-8-26 applies.

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

21 ...

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

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

34 (1) On a plan of merger if the plan contains a provision that, if contained in a  
35 proposed amendment to articles of incorporation, would require action by  
36 one or more separate voting groups on the proposed amendment under  
37 G.S. 55-10-04, except where the consideration to be received in exchange  
38 for the shares of that group consists solely of ~~cash~~cash.

39 (2) On a plan of share exchange by each class or series of shares to be acquired  
40 in the exchange, with each class or series constituting a separate voting  
41 group.

42 ...."

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

44 "**§ 55-11-04. Merger with subsidiary between parent and subsidiary or between**  
45 **subsidiaries.**

46 (a) Subject to Article 9, a parent corporation owning shares of a domestic or foreign  
47 subsidiary corporation that carry at least ninety percent (90%) of the outstanding sharesvoting  
48 power of each class and series of at the outstanding shares of the subsidiary corporation that  
49 have the current power to vote in the election of directors may merge the subsidiary into itself  
50 or into another such subsidiary without approval of the shareholders of the parent corporation  
51 unless the articles of incorporation of the parent corporation require approval of the

1 shareholders or the plan of merger contains one or more amendments to the articles of  
2 incorporation of the parent corporation for which shareholder approval is required by  
3 G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary  
4 corporation unless the articles of incorporation of the subsidiary corporation require approval of  
5 the shareholders of the subsidiary ~~corporation~~ corporation, or if the subsidiary is a foreign  
6 corporation, approval by the subsidiary's board of directors or shareholders is required by the  
7 laws under which the subsidiary is organized. Subject to Article 9, a parent corporation owning  
8 shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%)  
9 of the ~~outstanding shares~~ voting power of each class and series of ~~athe~~ outstanding shares of the  
10 subsidiary corporation that have the current power to vote in the election of directors may  
11 merge itself into the subsidiary corporation without approval of the board of directors or  
12 shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary  
13 corporation provide ~~otherwise~~ otherwise, the plan of merger contains one or more  
14 amendments to the articles of incorporation of the subsidiary corporation for which shareholder  
15 approval is required by ~~G.S. 55-10-03~~ G.S. 55-10-03, or, if the subsidiary is a foreign  
16 corporation, approval by the subsidiary's board of directors or shareholders is required by the  
17 laws under which the subsidiary is organized. Except as otherwise provided in this subsection,  
18 the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this  
19 subsection.

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

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

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

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

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

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

30 "**§ 55-11A-11. Plan of conversion.**

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

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

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

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

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

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

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

47 (1) Statistical or market indices, market prices of any security or group of  
48 securities, interest rates, currency exchange rates, or similar economic or  
49 financial data.

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

- 1 (3) The terms of, or actions taken under, an agreement to which the converting  
 2 domestic corporation is a party, or any other agreement or document.
- 3 (b) ~~For~~The following requirements shall be met for a plan of conversion to be  
 4 approved:
- 5 (1) The board of directors shall recommend to the shareholders that the plan of  
 6 conversion to the shareholders, be approved, unless the board of directors  
 7 ~~determines that because of conflict of interest or other special circumstances~~  
 8 ~~it should make no recommendation, in which event the board of directors~~  
 9 ~~shall communicate the basis for its lack of a recommendation to the~~  
 10 ~~shareholders with the plan; and~~one of the following circumstances exist, in  
 11 which event the board of directors shall communicate the basis for not  
 12 recommending approval of the plan of conversion to the shareholders at the  
 13 time it submits the plan of conversion to the shareholders:
- 14 a. The board of directors determines that, because of conflict of interest  
 15 or other special circumstances, it should not make a recommendation  
 16 that the shareholders approve the plan of conversion.
- 17 b. G.S. 55-8-26 applies.
- 18 (2) The shareholders entitled to vote shall approve the ~~plan~~plan of conversion.

19 ...."

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

21 "**§ 55-12-01. SaleDisposition of assets in regular course of businessnot requiring**  
 22 **shareholder approval and mortgage of assets.**

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

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

- 31 (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its  
 32 property in the usual and regular course of ~~business;~~orbusiness.
- 33 (2) Transfer any or all of its property to a corporation or an unincorporated  
 34 entity all the shares or ownership interests of which are owned by the  
 35 corporation.
- 36 (3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the  
 37 usual and regular course of business, if the sale, lease, exchange, or other  
 38 disposition is of less than all, or substantially all, of the corporation's  
 39 property. If the sale, lease, exchange, or other disposition would leave the  
 40 corporation with a continuing business activity that represented at least  
 41 twenty-five percent (25%) of total assets at the end of the most recently  
 42 completed fiscal year and at least twenty-five percent (25%) of either (i)  
 43 income from continuing operations before taxes or (ii) revenues from  
 44 continuing operations for that fiscal year, in each case of the corporation and  
 45 its subsidiaries on a consolidated basis, the sale, lease, exchange, or other  
 46 disposition will conclusively be deemed to be of less than all, or  
 47 substantially all, of the corporation's property."

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

49 "**§ 55-12-02. SaleDisposition of assets other than in regular course of businessrequiring**  
 50 **shareholder approval.**

51 ...

(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 the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the basis for its lack of a recommendation to the shareholders with the submission of the proposed transaction; and one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the proposed transaction to the shareholders at the time it submits the proposed transaction to the shareholders:

a. The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the proposed transaction.

b. G.S. 55-8-26 applies.

(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) ~~The board of directors must~~shall recommend dissolution to the shareholder to the shareholders that the proposal to dissolve be approved unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation, in which event the board of directors must communicate the proposal and the basis for its lack of a recommendation to the shareholders; and one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the proposal to dissolve to the shareholders at the time it submits the proposal to dissolve to the shareholders:

a. The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the proposal to dissolve.

b. G.S. 55-8-26 applies.

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

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

**SECTION 16.** This act becomes effective January 1, 2014.