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SENATE BILL DRS45293-MVf-22

Short Title: Various Changes to Nonprofit Corporations Act. (Public)

Sponsors: Senators Woodard, Burgin, and Mayfield (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA NONPROFIT  
3 CORPORATIONS ACT.

4 The General Assembly of North Carolina enacts:

6 PART I. MODIFY LIMITATIONS ON MERGERS AND SALES OF ASSETS

7 SECTION 1.(a) G.S. 55A-11-02 reads as rewritten:

8 "§ 55A-11-02. Limitations on mergers by charitable or religious corporations.

9 (a) Without the prior approval of the superior court in a proceeding in which the Attorney  
10 General has been given written notice, a charitable or religious corporation may merge only with  
11 any of the following:

12 ...

13 (5) A limited liability company that satisfies both of the following conditions:

14 a. Its sole member is a domestic or foreign corporation that is exempt  
15 from income tax under section 501(c)(3) of the Internal Revenue Code  
16 of 1986 or any successor section.

17 b. It is disregarded for income tax purposes but would be eligible for an  
18 exemption under section 501(c)(3) of the Internal Revenue Code of  
19 1986 or any successor section if it were not disregarded for income tax  
20 purposes.

21 ...."

22 SECTION 1.(b) G.S. 55A-11-09 reads as rewritten:

23 "§ 55A-11-09. Merger with unincorporated entity.

24 (a) As used in this section, "business entity" means a (i) domestic business corporation  
25 ~~(including corporation, including a professional corporation as defined in G.S. 55B-2), a~~  
26 G.S. 55B-2, (ii) foreign business corporation (including corporation, including a foreign  
27 professional corporation as defined in G.S. 55B-16), a G.S. 55B-16, (iii) domestic or foreign  
28 nonprofit corporation, a-(iv) domestic or foreign limited liability company, a-(v) domestic or  
29 foreign limited partnership, a-(vi) registered limited liability partnership or foreign limited  
30 liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36  
31 whether or not formed under the laws of this State, State, or (vii) a nonprofit association as defined  
32 in G.S. 59B-2 whether or not formed under the laws of this State.

33 (b) One or more domestic nonprofit corporations may merge with one or more  
34 unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic  
35 business corporations, or foreign business corporations ~~if~~ if all of the following apply:



- 1 (1) The merger is permitted by the laws of the state or country governing the  
2 organization and internal affairs of each of the other merging business  
3 ~~entities;entities.~~  
4 (2) Each merging domestic nonprofit corporation and each other merging  
5 business entity comply with the requirements of this section and, to the extent  
6 applicable, the laws referred to in subdivision (1) of this ~~subsection;~~  
7 ~~and~~subsection.  
8 (3) The merger complies with G.S. 55A-11-02, if applicable.

9 ...  
10 (c3) In the case of a merging domestic nonprofit corporation, approval of the plan of  
11 merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any member  
12 of a merging domestic nonprofit corporation has or will have personal liability for any existing  
13 or future obligation of the surviving business entity solely as a result of holding an interest in the  
14 surviving business entity, then in addition to the requirements of G.S. 55A-11-03, approval of  
15 the plan of merger by the domestic nonprofit corporation shall require the affirmative vote or  
16 written consent of the member. In the case of each other merging business entity, the plan of  
17 merger ~~must~~shall be approved in accordance with the laws of the state or country governing the  
18 organization and internal affairs of such merging business entity.

19 ...  
20 (d) After a plan of merger has been approved by each merging domestic nonprofit  
21 corporation and each other merging business entity as provided in subsection (c) of this section,  
22 the surviving business entity shall deliver articles of merger to the Secretary of State for filing.  
23 The articles of merger shall set ~~forth;~~forth all of the following:

24 ...  
25 (e) A merger takes effect when the articles of merger become effective. When a merger  
26 takes ~~effect;effect,~~ all of the following apply:

- 27 (1) Each other merging business entity merges into the surviving business entity  
28 and the separate existence of each merging business entity except the  
29 surviving business entity ~~ceases;ceases.~~  
30 (2) The title to all real estate and other property owned by each merging business  
31 entity is vested in the surviving business entity without reversion or  
32 ~~impairment;impairment.~~  
33 (3) The surviving business entity has all liabilities of each merging business  
34 ~~entity;entity.~~  
35 (4) A proceeding pending by or against any merging business entity may be  
36 continued as if the merger did not occur, or the surviving business entity may  
37 be substituted in the proceeding for a merging business entity whose separate  
38 existence ceases in the ~~merger;merger.~~  
39 (5) If a domestic nonprofit corporation is the surviving business entity, its articles  
40 of incorporation shall be amended to the extent provided in the articles of  
41 ~~merger;merger.~~  
42 (6) The interests in each merging business entity that are to be converted into  
43 interests, obligations, or securities of the surviving business entity or into the  
44 right to receive cash or other property are ~~thereupon~~ so converted, and the  
45 former holders of the interests are entitled only to the rights provided to them  
46 in the plan of merger or, in the case of former holders of shares in a domestic  
47 business corporation, any rights they may have under Article 13 of Chapter  
48 55 of the General ~~Statutes; and~~Statutes.

49 ...  
50 (e1) If the surviving business entity is not a domestic limited liability company, a domestic  
51 business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when

1 the merger takes effect the surviving business entity is ~~deemed~~:deemed to have done all of the  
 2 following:

- 3 (1) ~~To agree~~ Agreed that it may be served with process in this State in any  
 4 proceeding for enforcement of (i) any obligation of any merging domestic  
 5 limited liability company, domestic business corporation, domestic nonprofit  
 6 corporation, domestic limited partnership, or other partnership as defined in  
 7 G.S. 59-36 that is formed under the laws of this State, or nonprofit association  
 8 as defined in G.S. 59B-2 that is formed under the laws of this State, (ii) the  
 9 appraisal rights of shareholders of any merging domestic business corporation  
 10 under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation  
 11 of the surviving business entity arising from the ~~merger~~; and merger.
- 12 (2) ~~To have appointed~~ Appointed the Secretary of State as its agent for service of  
 13 process in ~~any such~~ the proceeding. Service on the Secretary of State of ~~any~~  
 14 ~~such~~ process shall be made by delivering to and leaving with the Secretary of  
 15 State, or with any clerk authorized by the Secretary of State to accept service  
 16 of process, duplicate copies of ~~such~~ the process and the fee required by  
 17 G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving  
 18 business entity in the manner provided for in this section, the Secretary of  
 19 State shall immediately mail a copy of the process by registered or certified  
 20 mail, return receipt requested, to the surviving business entity. If the surviving  
 21 business entity is authorized to transact business or conduct affairs in this  
 22 State, the address for mailing shall be its principal office designated in the  
 23 latest document filed with the Secretary of State that is authorized by law to  
 24 designate the principal office or, if there is no principal office on file, its  
 25 registered office. If the surviving business entity is not authorized to transact  
 26 business or conduct affairs in this State, the address for mailing shall be the  
 27 mailing address designated pursuant to subdivision (3) of subsection (d) of  
 28 this section.

29 (f) This section does not apply to a merger that does not include a merging  
 30 unincorporated entity."

31 **SECTION 1.(c)** G.S. 55A-12-02 reads as rewritten:

32 **"§ 55A-12-02. Sale of assets other than in regular course of activities.**

33 ...

34 (b) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors or  
 35 members (acting pursuant to subsection (d) of this section) require a greater vote or voting by  
 36 class, the proposed transaction to be authorized shall be ~~approved~~:approved by all of the  
 37 following:

- 38 (1) ~~By the board~~:The board.
- 39 (2) ~~By the~~The members entitled to vote thereon by two-thirds of the votes cast or  
 40 a majority of the votes entitled to be cast on the proposed transaction,  
 41 whichever is ~~less~~; and less.
- 42 (3) In writing by any person or persons whose approval is required by a provision  
 43 of the articles of incorporation authorized by G.S. 55A-10-30 for an  
 44 amendment to the articles of incorporation or bylaws.

45 (c) If the corporation does not have members entitled to vote thereon, the transaction  
 46 shall be approved by a vote of a majority of the directors then in office. The corporation shall  
 47 provide at least five days' written notice of any directors' meeting at which ~~such~~ the approval will  
 48 be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to  
 49 consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property  
 50 or assets of the corporation and contain or be accompanied by a description of the transaction.

51 ...

1 (g) A-Other than dispositions to a charitable or religious corporation authorized under a  
2 plan of dissolution adopted pursuant to Article 14 of this Chapter, a charitable or religious  
3 corporation shall give written notice to the Attorney General 30 days before it sells, leases,  
4 exchanges, or otherwise disposes of all, or a majority of, its property if the transaction is not in  
5 the usual and regular course of its activities unless the Attorney General has given the corporation  
6 a written waiver of this subsection. This notice shall include all the information the Attorney  
7 General determines is required for a complete review of the proposed transaction. The Attorney  
8 General may require an additional 30-day period to review the proposed transaction by providing  
9 written notice to the charitable or religious corporation prior to the expiration of the initial notice  
10 period. During this 30-day period, the transaction may not be finalized.

11 (h) After a sale, lease, exchange, or other disposition of property is authorized, the  
12 transaction may be ~~abandoned~~ (subject abandoned, subject to any contractual rights), rights,  
13 without further action by the members or any other person who approved the transaction, in  
14 accordance with the procedure set forth in the resolution proposing the transaction or, if none is  
15 set forth, in the manner determined by the board of directors."

16 **SECTION 1.(d)** This section becomes effective October 1, 2021, and applies to  
17 plans of mergers adopted on or after that date.

## 18 **PART II. REQUIRE ANNUAL REPORTS TO THE SECRETARY OF STATE**

19 **SECTION 2.(a)** Article 16 of Chapter 55A of the General Statutes is amended by  
20 adding a new section to read:

### 21 **"§ 55A-16-22.1. Annual report to the Secretary of State.**

22 (a) Each domestic corporation and each foreign corporation authorized to conduct affairs  
23 in this State shall submit an annual report to the Secretary of State, in electronic form as  
24 prescribed by the Secretary of State, that sets forth all of the following:

- 25 (1) The name of the corporation and the state or country under whose law it is  
26 incorporated.
- 27 (2) The street address, and the mailing address if different from the street address,  
28 of the registered office in this State, the county in which the registered office  
29 is located, the name and email address of its registered agent at that office, and  
30 a statement of any change of the registered office or registered agent.
- 31 (3) The address and telephone number of its principal office.
- 32 (4) The names, titles, and business street addresses of its principal officers and  
33 the name, mailing address, email address, and telephone number of an  
34 individual who is authorized to provide information regarding persons with  
35 the authority to bind the corporation.
- 36 (5) A brief description of the nature of its activities.
- 37 (6) An email address for the corporation, if different from the email address  
38 provided under subdivision (2) of this subsection.

39 (b) The information in the annual report shall be current as of the date the annual report  
40 is submitted on behalf of the corporation.

41 (c) The corporation shall submit an annual report to the Secretary of State by November  
42 15 of each year following (i) in the case of a domestic corporation, the calendar year in which  
43 the corporation was formed or (ii) in the case a foreign corporation, the calendar year in which  
44 the Secretary of State issued to the foreign corporation a certificate of authority to conduct affairs  
45 in this State. An annual report is due each year until (i) in the case of a domestic corporation, the  
46 effective date of a voluntary or judicial dissolution or (ii) in the case of a foreign corporation, the  
47 effective date of a certificate of withdrawal or revocation of a certificate of authority.

48 (d) If an annual report does not contain the information required by this section, the  
49 Secretary of State shall promptly notify the reporting corporation in writing and return the report  
50 to it for correction. If the report is corrected to contain the information required by this section  
51

1 and submitted to the Secretary of State within 30 days after the notice, the report shall be deemed  
 2 to be timely submitted.

3 (e) Amendments to any previously filed annual report may be submitted for filing to the  
 4 Secretary of State at any time for the purpose of correcting, updating, or augmenting the  
 5 information contained in the annual report.

6 (f) If the Secretary of State does not receive an annual report within 60 days after the  
 7 date the report is due, the Secretary of State may presume that the annual report is delinquent.  
 8 This presumption may be rebutted by evidence of submission presented by the filing corporation.

9 (g) The Secretary of State may provide by email any notice or form required under this  
 10 section if the submitting domestic or foreign corporation to be notified has consented to receiving  
 11 notices and forms via email and has provided the Secretary of State an email address for receiving  
 12 the notices or forms. Any email address provided by a submitting corporation in accordance with  
 13 this section is confidential information and is not a public record under Chapter 132 of the  
 14 General Statutes.

15 (h) A domestic or foreign corporation shall be deemed to have filed the annual report  
 16 required by this section if all of the following have occurred:

17 (1) The corporation is a charitable organization or sponsor that is licensed under  
 18 Article 2 of Chapter 131F of the General Statutes.

19 (2) The corporation applies for the license electronically in a form prescribed by  
 20 the Secretary and provides additional information in that application that is  
 21 required for the annual report in this section.

22 (3) The corporation is licensed on the annual report due date."

23 **SECTION 2.(b)** G.S. 55A-1-22 reads as rewritten:

24 **"§ 55A-1-22. Filing, service, and copying fees.**

25 (a) The Secretary of State shall collect the following fees when the documents described  
 26 in this subsection are ~~delivered~~ submitted to the Secretary for filing:

Document	Fee
27 ...	
28	
29 <u>(29) Annual report</u>	<u>No fee</u>
30 ...."	

31 **SECTION 2.(c)** G.S. 55A-14-20 reads as rewritten:

32 **"§ 55A-14-20. Grounds for administrative dissolution.**

33 The Secretary of State may commence a proceeding under G.S. 55A-14-21 to dissolve  
 34 administratively a corporation ~~if~~ if any of the following occurs:

35 (1) The corporation does not pay within 60 days after they are due any penalties,  
 36 fees, or other payments due under this ~~Chapter;~~ Chapter.

37 (2) Repealed by Session Laws 1995, c. 539, s. 24.

38 (2a) The corporation is delinquent in submitting its annual report.

39 (3) The corporation is without a registered agent or registered office in this State  
 40 for 60 days or ~~more;~~ more.

41 (4) The corporation does not notify the Secretary of State within 60 days that its  
 42 registered agent or registered office has been changed, that its registered agent  
 43 has resigned, or that its registered office has been ~~discontinued;~~ discontinued.

44 (5) The corporation's period of duration stated in its articles of incorporation  
 45 ~~expires;~~ expires.

46 (6) The corporation knowingly fails or refuses to answer truthfully and fully  
 47 within the time prescribed in this Chapter interrogatories propounded by the  
 48 Secretary of State in accordance with the provisions of this ~~Chapter;~~  
 49 ~~or~~ Chapter.

- 1 (7) The corporation does not designate the address of its principal office with the  
2 Secretary of State or does not notify the Secretary of State within 60 days that  
3 the principal office has changed."

4 **SECTION 2.(d)** G.S. 55A-14-22 reads as rewritten:

5 **"§ 55A-14-22. Reinstatement following administrative dissolution.**

6 (a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the  
7 Secretary of State for reinstatement. The application ~~shall~~shall do all of the following:

- 8 (1) Recite the name of the corporation and the effective date of its administrative  
9 ~~dissolution; and~~dissolution.  
10 (2) State that the ground or grounds for dissolution either did not exist or have  
11 been eliminated.

12 (a1) If, at the time the corporation applies for reinstatement, the name of the corporation  
13 is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21,  
14 ~~then~~ the corporation ~~must~~shall change its name to a name that is distinguishable upon the records  
15 of the Secretary of State from the name of the other entity before the Secretary of State may  
16 prepare a certificate of reinstatement.

17 (b) If the Secretary of State determines that the application contains the information  
18 required by subsection (a) of this section, that the information is correct, ~~and~~ that the name of the  
19 corporation complies with G.S. 55D-21 and any other applicable section, and that any penalties,  
20 fees, or other payments due under this Chapter have been paid, the Secretary of State shall cancel  
21 the certificate of ~~dissolution and~~dissolution, prepare a certificate of reinstatement that recites the  
22 Secretary of State's determination and the effective date of reinstatement, file the original of the  
23 ~~certificate,~~certificate of reinstatement, and mail a copy of it to the corporation.

24 (c) When the reinstatement is effective, it relates back to and takes effect as of the  
25 effective date of the administrative dissolution and the corporation resumes carrying on its  
26 activities as if the administrative dissolution had never occurred, subject to the rights of any  
27 person who reasonably relied to ~~his~~the person's prejudice upon the certificate of dissolution."

28 **SECTION 2.(e)** Until January 1, 2024, the Secretary of State may waive the fee  
29 payable under G.S. 55A-1-22(17) by a corporation seeking reinstatement following  
30 administrative dissolution for delinquent filing pursuant to G.S. 55A-14-20(2a).

31 **SECTION 2.(f)** This section becomes effective January 1, 2023, and applies to  
32 annual reports due on or after that date.

### 33 **PART III. AUTHORIZE DOMESTICATION**

34 **SECTION 3.1.** Chapter 55A of the General Statutes is amended by adding a new  
35 Article to read:

36 "Article 11B.

37 "Domestication.

#### 38 **"§ 55A-11B-01. Definitions.**

39 In this Article, the following definitions apply:

- 40 (1) Domesticated corporation. – The domesticating nonprofit corporation as it  
41 continues in existence after a domestication.  
42 (2) Domesticating corporation. – The domestic nonprofit corporation that  
43 approves a plan of domestication pursuant to G.S. 55A-11B-06 or the foreign  
44 corporation that approves a domestication pursuant to the law of the  
45 jurisdiction of the foreign corporation.  
46 (3) Domestication. – A transaction pursuant to this Article.  
47 (4) Interest holder liability. – Any of the following:  
48 a. Personal liability for a liability of a domestic or foreign nonprofit  
49 corporation that is imposed on a person by either of the following:  
50

1                   1.     Solely by reason of the status of the person as an interest  
2                   holder.

3                   2.     By a provision of the articles of incorporation or bylaws that  
4                   make one or more specified interest holders or categories of  
5                   interest holders liable in their capacity as interest holders for  
6                   all or specified liabilities of the entity.

7                   b.     An obligation of an interest holder under the bylaws to contribute to  
8                   the domestic or foreign nonprofit corporation.

9                   (5)    Law of the jurisdiction. – The law of the jurisdiction governing the  
10                  organization and internal affairs of the corporation.

11    **"§ 55A-11B-04. Domestication; preliminary provisions.**

12                  (a)    By complying with the provisions of this Article applicable to foreign nonprofit  
13                  corporations, a foreign nonprofit corporation may become a domestic nonprofit corporation, if  
14                  the domestication is permitted by the law of the jurisdiction of the foreign corporation.

15                  (b)    By complying with the provisions of this Article, a domestic nonprofit corporation  
16                  may become a foreign nonprofit corporation pursuant to a plan of domestication, if the  
17                  domestication is permitted by the law of the jurisdiction of the foreign corporation.

18                  (c)    A charitable or religious corporation may only become a foreign nonprofit  
19                  corporation in accordance with the requirements of G.S. 55A-11-02 for mergers involving  
20                  charitable or religious corporations, and the domesticated corporation shall meet the same  
21                  requirements as the survivor in a merger.

22                  (d)    Any devise, gift, grant, or promise contained in a will or other instrument of donation,  
23                  subscription, or conveyance, that is made to a domesticating corporation and that takes effect or  
24                  remains payable after the domestication becomes effective, inures to the domesticated  
25                  corporation unless the will or other instrument otherwise specifically provides.

26    **"§ 55A-11B-05. Plan of domestication.**

27                  (a)    A domestic nonprofit corporation may become a foreign nonprofit corporation by  
28                  approving a plan of domestication. The plan of domestication shall include all of the following:

29                       (1)    The name of the domesticating corporation.

30                       (2)    The name and governing jurisdiction of the domesticated corporation.

31                       (3)    The manner and basis of converting the memberships, if any, of the  
32                       domesticating corporation into memberships, obligations, rights to acquire  
33                       memberships, cash, other property, or any combination thereof.

34                       (4)    The proposed articles of incorporation and bylaws of the domesticated  
35                       corporation.

36                       (5)    The other terms and conditions of the domestication.

37                  (b)    In addition to the requirements of subsection (a) of this section, a plan of  
38                  domestication may contain any other provision not prohibited by law.

39                  (c)    The terms of a plan of domestication, other than the terms described in subdivisions  
40                  (1), (2), and (4) of subsection (a) of this section, may be made dependent upon facts objectively  
41                  ascertainable outside the plan if the plan sets forth the manner in which the facts will operate  
42                  upon the terms of the plan. The facts may include any of the following:

43                       (1)    Statistical or market indices, market prices of any security or group of  
44                       securities, interest rates, currency exchange rates, or similar economic or  
45                       financial data.

46                       (2)    A determination or action by any person or body, including the nonprofit  
47                       corporation or any other party to the plan.

48                       (3)    The terms of, or actions taken under, an agreement to which the corporation  
49                       is a party, or any other agreement or record.

50    **"§ 55A-11B-06. Approval of domestication.**

- 1       (a)   If a domestic nonprofit corporation is to be the domesticating corporation, the plan of  
2 domestication shall be adopted in the following manner:
- 3           (1)   The plan of domestication shall first be adopted by the board of directors. The  
4 board may set conditions for (i) approval of the plan of domestication by the  
5 members or (ii) the effectiveness of the plan of domestication. If the  
6 domesticating corporation does not have any members entitled to vote on the  
7 domestication, a plan of domestication is adopted by the corporation when it  
8 has been adopted by the board of directors pursuant to this subdivision.
- 9           (2)   Except as provided in subdivision (1) of this subsection, the plan of  
10 domestication shall then be approved by the members. In submitting the plan  
11 of domestication to the members for approval, the board of directors shall  
12 recommend that the members approve the plan, unless the board of directors  
13 makes a determination that because of conflicts of interest or other special  
14 circumstances it should not make the recommendation, in which case the  
15 board shall inform the members of the basis for not making the  
16 recommendation.
- 17          (3)   If the plan of domestication is required to be approved by the members, and if  
18 the approval is to be given at a meeting, the corporation shall notify each  
19 member entitled to vote of the meeting of the members at which the plan of  
20 domestication is to be submitted for approval. The notice shall (i) state that  
21 the purpose, or one of the purposes, of the meeting is to consider the plan of  
22 domestication and (ii) contain or be accompanied by a copy or summary of  
23 the plan. The notice shall include or be accompanied by a copy of the articles  
24 of incorporation and the bylaws as they will be in effect immediately after the  
25 domestication.
- 26          (4)   Unless the articles of incorporation or bylaws, or the board of directors acting  
27 pursuant to subdivision (1) of this subsection, require a greater vote or a  
28 greater quorum, approval of the plan of domestication requires (i) the approval  
29 of the members at a meeting at which a quorum exists consisting of a majority  
30 of the votes entitled to be cast on the plan, and (ii) if any class of membership  
31 is entitled to vote as a separate group on the plan of merger, the approval of  
32 each class of members voting as a separate voting group at a meeting at which  
33 a quorum of the voting group exists consisting of a majority of the votes  
34 entitled to be cast on the plan by that voting group.
- 35          (5)   Subject to subdivision (6) of this subsection, separate voting by voting groups  
36 on a plan of domestication is required in the following circumstances:
- 37           a.    By each class of memberships that is either of the following:
- 38               1.   To be converted under the plan of domestication into security  
39 interests, obligations, rights to acquire securities or interests,  
40 cash, other property, or any combination thereof.
- 41               2.   Entitled to vote as a separate group on a provision in the plan  
42 that constitutes a proposed amendment to the articles or bylaws  
43 of the domesticated corporation that requires action by separate  
44 voting groups under the provisions of this Chapter.
- 45           b.    If the voting group is entitled under the articles of incorporation or  
46 bylaws to vote as a group to approve a plan of domestication.
- 47          (6)   The articles of incorporation or bylaws may expressly limit or eliminate the  
48 separate voting rights provided in sub-sub-subdivision (5)a.1. of this  
49 subsection as to any class of members, except when the plan includes what  
50 would be in effect an amendment subject to sub-sub-subdivision (5)a.2. of this  
51 subsection.



1           (7)   If, as a result of a domestication, one or more members of the domesticating  
2           corporation would become subject to new interest holder liability, approval of  
3           the plan of domestication requires the signing in connection with the  
4           domestication, by each affected member, of a separate consent in a record to  
5           become subject to the new interest holder liability. This subdivision does not  
6           apply in the case of a member that already has interest holder liability with  
7           respect to the domesticating corporation, if the terms and conditions of the  
8           new interest holder liability with respect to the domesticated corporation are  
9           substantially identical to those of the existing interest holder liability, other  
10          than for changes that eliminate or reduce the interest holder liability.

11          (8)   In addition to the adoption and approval of the plan of domestication by the  
12          board of directors and members as required by this section, the plan of  
13          domestication shall also be approved in a record by any person or group of  
14          persons whose approval is required under G.S. 55A-10-30 to amend the  
15          articles or bylaws.

16          (b)   The plan of domestication of a charitable or religious corporation is subject to the  
17          approval requirements described in G.S. 55A-11B-04(c).

18          **"§ 55A-11B-07. Amendment or abandonment of plan of domestication; abandonment.**

19          (a)   Before articles of domestication have taken effect, a plan of domestication of a  
20          domestic nonprofit corporation may be amended, except as otherwise provided in the plan.

21          (b)   A domestic nonprofit corporation may approve an amendment of a plan of  
22          domestication in any of the following ways:

23               (1)   In the same manner as the plan was approved, if the plan does not provide for  
24               the manner in which it may be amended.

25               (2)   In the manner provided in the plan, except that a member that was entitled to  
26               vote on or consent to approval of the plan is entitled to vote on or consent to  
27               any amendment of the plan that will change any of the following:

28                   a.   The amount or kind of memberships, securities, obligations, money  
29                   rights to acquire memberships, securities, money, other property, or  
30                   any combination thereof, to be received by any of the members of the  
31                   domesticating corporation under the plan.

32                   b.   The articles of incorporation or bylaws of the domesticated  
33                   corporation that will be in effect immediately after the domestication  
34                   becomes effective, except for changes that do not require approval of  
35                   the members of the domesticated corporation under the law of the  
36                   jurisdiction of the domesticated corporation or its proposed articles or  
37                   bylaws as set forth in the plan.

38                   c.   Any of the other terms or conditions of the plan, if the change would  
39                   adversely affect the member in any material respect.

40          (c)   After a plan of domestication has been approved and before the articles of  
41          domestication have become effective, the plan may be abandoned as provided in the plan. Unless  
42          prohibited by the plan, a domestic nonprofit corporation may abandon the plan in the same  
43          manner as the plan was approved by the corporation without action by its members in accordance  
44          with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the  
45          manner determined by the board of directors.

46          (d)   If a domestication is abandoned after articles of domestication have been delivered to  
47          the Secretary of State for filing but before the articles are effective, articles of abandonment,  
48          signed by the domesticating nonprofit corporation, shall be delivered to the Secretary of State for  
49          filing before the articles of domestication are effective. The articles of abandonment take effect  
50          upon filing, and the domestication is abandoned and does not become effective. The articles of  
51          abandonment shall contain all of the following:

- 1           (1)   The name of the domesticating corporation.
- 2           (2)   The date on which the articles of domestication were filed by the Secretary of
- 3                   State.
- 4           (3)   A statement that the domestication has been abandoned in accordance with
- 5                   this section.

6   **"§ 55A-11B-08. Articles of domestication; effective date.**

7       (a)   Articles of domestication shall be signed by the domesticating corporation and

8   delivered to the Secretary of State for filing.

9       (b)   The articles of domestication shall contain all of the following:

- 10           (1)   The name and governing jurisdiction of the domesticating corporation.
- 11           (2)   The name and governing jurisdiction of the domesticated corporation.
- 12           (3)   If the domesticating corporation is a domestic nonprofit corporation, a
- 13                   statement that the plan of domestication was approved in accordance with this
- 14                   Article or, if the domesticating corporation is a foreign nonprofit corporation,
- 15                   a statement that the domestication was approved in accordance with its law of
- 16                   jurisdiction.
- 17           (4)   If the domesticated corporation is a domestic nonprofit corporation, its articles
- 18                   of incorporation, as an attachment, except that provisions that would not be
- 19                   required to be included in restated articles of incorporation may be omitted
- 20                   from the articles of the domesticated corporation and the articles do not need
- 21                   to be signed.

22       (c)   In addition to the requirements of subsection (b) of this section, articles of

23   domestication may contain any other provision not prohibited by law.

24       (d)   If the domesticated corporation is a domestic nonprofit corporation, the domestication

25   becomes effective when the articles of domestication are effective. If the domesticated

26   corporation is a foreign nonprofit corporation, the domestication becomes effective on the later

27   of the following:

- 28           (1)   The date and time provided by the law of the jurisdiction of the domesticated
- 29                   corporation
- 30           (2)   When the articles of domestication are effective.

31   **"§ 55A-11B-09. Effect of domestication.**

32       (a)   When a domestication becomes effective, all of the following apply:

- 33           (1)   All property owned by, and every contract right possessed by, the
- 34                   domesticating corporation becomes the property and contract rights of the
- 35                   domesticated corporation without transfer, reversion, or impairment.
- 36           (2)   All debts, obligations, and other liabilities of the domesticating corporation
- 37                   remain the debts, obligations, and other liabilities of the domesticated
- 38                   corporation.
- 39           (3)   The name of the domesticated corporation may be, but is not required to be,
- 40                   substituted for the name of the domesticating corporation in any pending
- 41                   proceeding.
- 42           (4)   The articles of incorporation and bylaws of the domesticated corporation
- 43                   become effective.
- 44           (5)   The memberships of the domesticating corporation are reclassified into
- 45                   memberships, obligations, rights to acquire memberships, cash or other
- 46                   property in accordance with the terms of the domestication, and the members
- 47                   of the domesticating corporation are entitled only to the rights provided to
- 48                   them by those terms.
- 49           (6)   The domesticated corporation is all of the following:
  - 50                   a.   Incorporated under and subject to the current law of the jurisdiction of
  - 51                       the domesticated corporation.

- b. The same corporation without interruption as the domesticating corporation.
- c. Deemed to have been incorporated on the date the domesticating corporation was originally incorporated.

(b) Except as otherwise provided under the law of the jurisdiction or the articles of incorporation or bylaws of a foreign nonprofit corporation that is the domesticating corporation, the interest holder liability of a member in a foreign corporation that is domesticated into this State who had interest holder liability in respect of the domesticating corporation before the domestication becomes effective shall be as follows:

- (1) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.
- (2) The provisions of the law of the jurisdiction of the domesticating corporation shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subdivision (1) of this subsection, as if the domestication had not occurred.
- (3) The member shall have such rights of contribution from other persons as are provided by the law of the jurisdiction of the domesticating corporation with respect to any interest holder liabilities preserved by subdivision (1) of this subsection, as if the domestication had not occurred.
- (4) The member shall not, by reason of the prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(c) A member who becomes subject to interest holder liability in respect of the domesticated corporation as a result of the domestication shall have such interest holder liability only in respect of interest holder liabilities that arise after the domestication becomes effective.

(d) A domestication does not constitute or cause the dissolution of the domesticating corporation."

**SECTION 3.2.(a)** G.S. 55A-1-22, as amended by Section 2(b) of this act, reads as rewritten:

**"§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted to the Secretary for filing:

Document	Fee
...	
<u>(13a) Reserved for future codification purposes.</u>	
<u>(13b) Reserved for future codification purposes.</u>	
<u>(13c) Articles of domestication</u>	<u>\$25.00</u>
<u>(13d) Articles of abandonment of domestication</u>	<u>\$10.00</u>

...."

**SECTION 3.2.(b)** G.S. 55A-1-60 reads as rewritten:

**"§ 55A-1-60. Judicial relief.**

(a) If for any reason it is impracticable for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles of incorporation, bylaws, or this Chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the superior court may order that ~~such~~ a meeting be held or that a written ballot or other method be used for obtaining the vote of members, delegates, or directors, in such a manner as the court finds fair and equitable under the circumstances.

...

1 (d) Whenever practical any order issued pursuant to this section shall limit the subject  
 2 matter of meetings or other forms of consent authorized to items, including amendments to the  
 3 articles of incorporation or bylaws, the resolution of which will or may enable the corporation to  
 4 continue managing its affairs without further resort to this ~~section; provided, however, that~~  
 5 section. However, an order under this section may also authorize the obtaining of whatever votes  
 6 and approvals are necessary for the dissolution, domestication, merger, or sale of assets.

7 ...."

8 **SECTION 3.2.(c)** G.S. 55A-8-25 reads as rewritten:

9 "**§ 55A-8-25. Committees of the board.**

10 ...

11 (d) To the extent specified by the board of directors or in the articles of incorporation or  
 12 bylaws, each committee of the board may exercise the board's authority under  
 13 ~~G.S. 55A-8-01.~~ G.S. 55A-8-01, except that a

14 (e) ~~A committee of the board shall not, however:~~ not exercise authority to do any of the  
 15 following:

16 (1) Authorize ~~distributions;~~ distributions.

17 (2) Recommend to members or approve dissolution, ~~merger-domestication,~~  
 18 merger, or the sale, pledge, or transfer of all or substantially all of the  
 19 corporation's ~~assets;~~ assets.

20 (3) Elect, appoint or remove directors, or fill vacancies on the board of directors  
 21 or on any of its ~~committees;~~ committees.

22 (4) Adopt, amend, or repeal the articles of incorporation or bylaws.

23 ...."

24 **SECTION 3.3.(a)** Sections 3.1 and 3.2 of this Part become effective October 1, 2021.  
 25 Except as otherwise provided, this Part is effective when it becomes law.

26 **SECTION 3.3.(b)** If a protected agreement of a domestic domesticating nonprofit  
 27 corporation in effect immediately before the domestication becomes effective contains a  
 28 provision applying to a merger of the corporation and the agreement does not refer to a  
 29 domestication of the corporation, the provision applies to a domestication of the corporation as  
 30 if the domestication were a merger until such time as the provision is first amended after October  
 31 1, 2021.

32 **SECTION 3.3.(c)** For the purposes of this section, a protected agreement is any of  
 33 the following in effect immediately before October 1, 2021:

34 (1) A document evidencing indebtedness of a domestic nonprofit corporation and  
 35 any related agreement.

36 (2) An agreement that is binding on a domestic nonprofit corporation.

37 (3) The articles of incorporation or bylaws of a domestic nonprofit corporation.

38 (4) An agreement that is binding on any of the interest holders or directors of a  
 39 domestic nonprofit corporation in their capacities as interest holders or  
 40 directors.

#### 41 **PART IV. MODIFY REQUIRED NUMBER OF DIRECTORS**

42 **SECTION 4.(a)** G.S. 55A-1-50 reads as rewritten:

43 "**§ 55A-1-50. Private Foundations.**

44 (a) Except where otherwise determined by a court of competent jurisdiction, a  
 45 corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code  
 46 of ~~1986;~~ 1986 shall comply with all of the following:

47 (1) Shall distribute such amounts for each taxable year at ~~such the~~ such the time and in  
 48 ~~such the~~ such the manner required so as not to subject the corporation to tax under  
 49 section 4942 of the Code.  
 50

- 1 (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the  
2 Code.
- 3 (3) Shall not retain any excess business holdings as defined in section 4943(c) of  
4 the Code.
- 5 (4) Shall not make any investments in ~~such a manner as to~~ that would subject the  
6 corporation to tax under section 4944 of the Code.
- 7 (5) Shall not make any taxable expenditures as defined in section 4945(d) of the  
8 Code.

9 All references in this section to sections of the Code shall be to sections of the Internal  
10 Revenue Code of 1986 as amended from time to time, or to corresponding provisions of  
11 subsequent internal revenue laws of the United States.

12 (b) A board of directors of a private foundation shall consist of one or more natural  
13 persons, with the number specified in or fixed in accordance with the articles of incorporation or  
14 bylaws."

15 **SECTION 4.(b)** G.S. 55A-8-03 reads as rewritten:

16 **"§ 55A-8-03. Number of directors.**

17 (a) ~~A-Except as provided in G.S. 55A-1-50(b), a board of directors shall consist of one~~  
18 ~~three~~ or more natural persons, with the number specified in or fixed in accordance with the  
19 articles of incorporation or bylaws.

20 (b) The number of directors may be increased or decreased from time to time by  
21 amendment to or in the manner prescribed in the articles of incorporation or bylaws.

22 (c) The articles of incorporation or bylaws may establish a variable range for the size of  
23 the board of directors by fixing a minimum number not inconsistent with this Chapter and  
24 maximum number of directors. If a variable range is established, the number of directors may be  
25 fixed or changed from time to time, within the minimum and maximum, by the members entitled  
26 to vote for directors ~~or (unless or, unless~~ the articles of incorporation or an agreement valid under  
27 G.S. 55A-7-30 shall otherwise ~~provide)~~ provide, the board of directors. If the corporation has  
28 members entitled to vote for directors, only ~~such those~~ members may change the range for the  
29 size of the board or change from a fixed to a variable-range size board or vice versa."

30 **SECTION 4.(c)** G.S. 55A-8-11 reads as rewritten:

31 **"§ 55A-8-11. Vacancy on board.**

32 (a) Unless the articles of incorporation or bylaws provide otherwise, and except as  
33 provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors,  
34 including, without limitation, a vacancy resulting from an increase in the number of directors or  
35 from the failure by the members to elect the full authorized number of directors, the vacancy may  
36 be ~~filled~~ filled by any of the following means:

- 37 (1) By the members entitled to vote for directors, if any, or if the vacant office  
38 was held by a director elected by a class, chapter or other organizational unit,  
39 or by region or other geographic grouping, by the members of that class,  
40 chapter, unit, or ~~grouping~~ grouping.
- 41 (2) By the board of ~~directors~~ directors.
- 42 (3) If the directors remaining in the office constitute fewer than a quorum of the  
43 board, by the affirmative vote of a majority of all the directors, or by the sole  
44 director, remaining in office.

45 (b) Unless the articles of incorporation or bylaws provide otherwise, if a vacant office  
46 was held by an appointed director, only the person who appointed the director may fill the  
47 vacancy.

48 (c) If a vacant office was held by a designated director, the vacancy shall be filled only  
49 as provided in the articles of incorporation or bylaws.

1 (d) A vacancy that will occur at a specific later date ~~(by date, by~~ reason of a resignation  
2 effective at a later date under G.S. 55A-8-07(b) or ~~otherwise)~~ otherwise, may be filled before the  
3 vacancy occurs but the new director shall not take office until the vacancy occurs.

4 (e) Notwithstanding G.S. 55A-8-03(a), a board of directors may have fewer than three  
5 members due to vacancies until the vacancies are filled."

6 **SECTION 4.(d)** This section becomes effective October 1, 2021, and applies to  
7 corporations organized on or after that date.

8  
9 **PART V. AUTHORIZE CERTAIN ELECTRONIC TRANSACTIONS EXCEPT AS**  
10 **LIMITED BY ARTICLES OF INCORPORATION OR BYLAWS**

11 **SECTION 5.(a)** G.S. 55A-1-70 reads as rewritten:

12 **"§ 55A-1-70. Electronic transactions.**

13 (a) A corporation may conduct a transaction by electronic means, except as limited by its  
14 articles of incorporation or bylaws or by action of its board of directors.

15 (b) Prior to conducting an electronic transaction with a person that is a member, delegate,  
16 officer, or director of the corporation, the corporation shall obtain agreement from the person to  
17 conduct the transaction by electronic means and shall inform the person how to revoke the  
18 agreement.

19 (c) For purposes of applying Article 40 of Chapter 66 of the General Statutes to  
20 transactions under this Chapter, a corporation may agree that conducts an electronic transaction  
21 in accordance with this section is deemed to have agreed to conduct a the transaction by electronic  
22 means through provision in its articles of incorporation or bylaws or by action of its board of  
23 directors means."

24 **SECTION 5.(b)** G.S. 55A-7-04 reads as rewritten:

25 **"§ 55A-7-04. Action by written consent.**

26 (a) Action required or permitted by this Chapter to be taken at a meeting of members may  
27 be taken without a meeting if the action is taken by all members entitled to vote on the action.  
28 The action shall be evidenced by one or more written consents describing the action taken, signed  
29 before or after such action by all members entitled to vote ~~thereon, on the action,~~ and delivered  
30 to the corporation for inclusion in the minutes or filing with the corporate records. ~~To the extent~~  
31 ~~the corporation has agreed pursuant to G.S. 55A-1-70, Except as limited by the articles of~~  
32 incorporation or bylaws, a member's consent to action taken without a meeting may be in  
33 electronic form and delivered by electronic means.

34 (b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date  
35 for determining members entitled to take action without a meeting is the date the first member  
36 signs the consent under subsection (a) of this section.

37 (c) A consent signed under this section has the effect of a meeting vote and may be  
38 described as such in any document."

39 **SECTION 5.(c)** G.S. 55A-8-21 reads as rewritten:

40 **"§ 55A-8-21. Action without meeting.**

41 (a) ~~Unless the articles of incorporation or bylaws provide otherwise, Except to the extent~~  
42 that the articles of incorporation or bylaws require that action by the board of directors be taken  
43 at a meeting, action required or permitted by this Chapter to be taken at a board of directors'  
44 meeting may be taken without a meeting if the action is taken by all members of the board. The  
45 action shall be evidenced by one or more written consents signed by each director before or after  
46 such action, describing the action taken, and included in the minutes or filed with the corporate  
47 records reflecting the action taken. To the extent the corporation has agreed pursuant to  
48 G.S. 55A-1-70, Except as limited by the articles of incorporation or bylaws, a director's consent  
49 to action taken without meeting may be in electronic form and delivered by electronic means.

50 (b) Action taken under this section is effective when the last director signs the consent,  
51 unless the consent specifies a different effective date.

1 (c) A consent signed under this section has the effect of a meeting vote and may be  
2 described as such in any document."

3 **SECTION 5.(d)** This section becomes effective October 1, 2021, and applies to  
4 transactions initiated on or after that date.

5  
6 **PART VI. MODIFY THE REQUIREMENT FOR ESTABLISHING COMMITTEES OF**  
7 **THE BOARD OF DIRECTORS**

8 **SECTION 6.(a)** G.S. 55A-8-25 reads as rewritten:

9 "**§ 55A-8-25. Committees of the board.**

10 (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors  
11 may create one or more committees of the board and appoint members of the board to serve on  
12 them. Each committee shall have two or more members, who serve at the pleasure of the board.

13 (b) ~~The~~ Unless the articles of incorporation or bylaws provide otherwise, the creation of  
14 a committee and appointment of members to it shall be approved by the greater of: of the  
15 following:

16 (1) A majority of all the directors in office when the action is ~~taken; or~~ taken.

17 (2) The number of directors required by the articles of incorporation or bylaws to  
18 take action under G.S. 55A-8-24.

19 (c) G.S. 55A-8-20 through G.S. 55A-8-24, which govern meetings, action without  
20 meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply  
21 to committees of the board and their members as well.

22 (d) To the extent specified by the board of directors or in the articles of incorporation or  
23 bylaws, each committee of the board may exercise the board's authority under G.S. 55A-8-01.

24 (e) A committee of the board shall not, ~~however;~~ however, take the following actions:

25 (1) Authorize ~~distributions;~~ distributions.

26 (2) Recommend to members or approve dissolution, merger or the sale, pledge,  
27 or transfer of all or substantially all of the corporation's ~~assets;~~ assets.

28 (3) Elect, appoint or remove directors, or fill vacancies on the board of directors  
29 or on any of its ~~committees;~~ committees.

30 (4) Adopt, amend, or repeal the articles of incorporation or bylaws.

31 (f) The creation of, delegation of authority to, or action by a committee does not alone  
32 constitute compliance by a director with the standards of conduct described in G.S. 55A-8-30."

33 **SECTION 6.(b)** This section becomes effective October 1, 2021, and applies to  
34 committees created on or after that date.

35  
36 **PART VII. EFFECTIVE DATE AND APPLICABILITY**

37 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes  
38 law.