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SENATE BILL DRS45242-MVf-6

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

Sponsors: Senators Moffitt, Woodard, and Alexander (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

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, or (vii) 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)** This section becomes effective October 1, 2023, and applies to plans
32 of mergers adopted on or after that date.

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

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

36 **"§ 55A-16-22.1. Annual report to the Secretary of State.**

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

- 40 (1) The name of the corporation and the state or country under whose law it is
41 incorporated.
- 42 (2) The street address, and the mailing address if different from the street address,
43 of the registered office in this State, the county in which the registered office
44 is located, the name and email address of its registered agent at that office, and
45 a statement of any change of the registered office or registered agent.
- 46 (3) The address and telephone number of its principal office.
- 47 (4) The names, titles, and business street addresses of its principal officers and
48 the name, mailing address, email address, and telephone number of an
49 individual who is authorized to provide information regarding persons with
50 the authority to bind the corporation.
- 51

1 (5) A brief description of the nature of its activities.
 2 (6) An email address for the corporation, if different from the email address
 3 provided under subdivision (2) of this subsection.

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

6 (c) The corporation shall submit an annual report to the Secretary of State by November
 7 15 of each year following (i), in the case of a domestic corporation, the calendar year in which
 8 the corporation was formed or (ii), in the case a foreign corporation, the calendar year in which
 9 the Secretary of State issued to the foreign corporation a certificate of authority to conduct affairs
 10 in this State. An annual report is due each year until (i), in the case of a domestic corporation, the
 11 effective date of a voluntary or judicial dissolution or (ii), in the case of a foreign corporation,
 12 the effective date of a certificate of withdrawal or revocation of a certificate of authority.

13 (d) If an annual report does not contain the information required by this section, the
 14 Secretary of State shall promptly notify the reporting corporation in writing and return the report
 15 to it for correction. If the report is corrected to contain the information required by this section
 16 and submitted to the Secretary of State within 30 days after the notice, the report shall be deemed
 17 to be timely submitted.

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

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

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

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

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

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

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

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

40 **"§ 55A-1-22. Filing, service, and copying fees.**

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

Document	Fee
43 ...	
44 (29) Annual report	No fee
45 "	

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

47 **"§ 55A-14-20. Grounds for administrative dissolution.**

48 The Secretary of State may commence a proceeding under G.S. 55A-14-21 to dissolve
 49 administratively a corporation ~~if~~ if any of the following occurs:
 50

- 1 (1) The corporation does not pay within 60 days after they are due any penalties,
 2 fees, or other payments due under this ~~Chapter;~~Chapter.
 3 (2) Repealed by Session Laws 1995, c. 539, s. 24.
 4 (2a) The corporation is delinquent in submitting its annual report.
 5 (3) The corporation is without a registered agent or registered office in this State
 6 for 60 days or ~~more;~~more.
 7 (4) The corporation does not notify the Secretary of State within 60 days that its
 8 registered agent or registered office has been changed, that its registered agent
 9 has resigned, or that its registered office has been ~~discontinued;~~discontinued.
 10 (5) The corporation's period of duration stated in its articles of incorporation
 11 ~~expires;~~expires.
 12 (6) The corporation knowingly fails or refuses to answer truthfully and fully
 13 within the time prescribed in this Chapter interrogatories propounded by the
 14 Secretary of State in accordance with the provisions of this ~~Chapter;~~
 15 ~~or~~Chapter.
 16 (7) The corporation does not designate the address of its principal office with the
 17 Secretary of State or does not notify the Secretary of State within 60 days that
 18 the principal office has changed."

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

20 **"§ 55A-14-22. Reinstatement following administrative dissolution.**

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

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

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

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

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

43 **SECTION 2.(e)** Until January 1, 2026, the Secretary of State may waive the fee
 44 payable under G.S. 55A-1-22(a)(17) by a corporation seeking reinstatement following
 45 administrative dissolution for delinquent filing pursuant to G.S. 55A-14-20(2a).

46 **SECTION 2.(f)** This section becomes effective January 1, 2025, and applies to
 47 annual reports due on or after that date.

48
 49 **PART III. AUTHORIZE DOMESTICATION**

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

"Article 11B.

"Domestication.

"§ 55A-11B-01. Definitions.

In this Article, the following definitions apply:

- (1) Domesticated corporation. – The domesticating nonprofit corporation as it continues in existence after a domestication.
- (2) Domesticating corporation. – The domestic nonprofit corporation that approves a plan of domestication pursuant to G.S. 55A-11B-04 or the foreign corporation that approves a domestication pursuant to the law of the jurisdiction of the foreign corporation.
- (3) Domestication. – A transaction pursuant to this Article.
- (4) Interest holder liability. – Any of the following:
 - a. Personal liability for a liability of a domestic or foreign nonprofit corporation that is imposed on a person by either of the following:
 1. Solely by reason of the status of the person as an interest holder.
 2. By a provision of the articles of incorporation or bylaws that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.
 - b. An obligation of an interest holder under the bylaws to contribute to the domestic or foreign nonprofit corporation.
- (5) Law of the jurisdiction. – The law of the jurisdiction governing the organization and internal affairs of the corporation.

"§ 55A-11B-02. Domestication; preliminary provisions.

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

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

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

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

"§ 55A-11B-03. Plan of domestication.

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

- (1) The name of the domesticating corporation.
- (2) The name and governing jurisdiction of the domesticated corporation.
- (3) The manner and basis of converting the memberships, if any, of the domesticating corporation into memberships, obligations, rights to acquire memberships, cash, other property, or any combination thereof.
- (4) The proposed articles of incorporation and bylaws of the domesticated corporation.
- (5) The other terms and conditions of the domestication.

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

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

7 (1) Statistical or market indices, market prices of any security or group of
8 securities, interest rates, currency exchange rates, or similar economic or
9 financial data.

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

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

14 **"§ 55A-11B-04. Approval of domestication.**

15 (a) If a domestic nonprofit corporation is to be the domesticating corporation, the plan of
16 domestication shall be adopted in the following manner:

17 (1) The plan of domestication shall first be adopted by the board of directors. The
18 board may set conditions for (i) approval of the plan of domestication by the
19 members or (ii) the effectiveness of the plan of domestication. If the
20 domesticating corporation does not have any members entitled to vote on the
21 domestication, a plan of domestication is adopted by the corporation when it
22 has been adopted by the board of directors pursuant to this subdivision.

23 (2) Except as provided in subdivision (1) of this subsection, the plan of
24 domestication shall then be approved by the members. In submitting the plan
25 of domestication to the members for approval, the board of directors shall
26 recommend that the members approve the plan, unless the board of directors
27 makes a determination that because of conflicts of interest or other special
28 circumstances it should not make the recommendation, in which case the
29 board shall inform the members of the basis for not making the
30 recommendation.

31 (3) If the plan of domestication is required to be approved by the members, and if
32 the approval is to be given at a meeting, the corporation shall notify each
33 member entitled to vote of the meeting of the members at which the plan of
34 domestication is to be submitted for approval. The notice shall (i) state that
35 the purpose, or one of the purposes, of the meeting is to consider the plan of
36 domestication and (ii) contain or be accompanied by a copy or summary of
37 the plan. The notice shall include or be accompanied by a copy of the articles
38 of incorporation and the bylaws as they will be in effect immediately after the
39 domestication.

40 (4) Unless the articles of incorporation or bylaws, or the board of directors acting
41 pursuant to subdivision (1) of this subsection, require a greater vote or a
42 greater quorum, approval of the plan of domestication requires (i) the approval
43 of the members at a meeting at which a quorum exists consisting of a majority
44 of the votes entitled to be cast on the plan and (ii), if any class of membership
45 is entitled to vote as a separate group on the plan of merger, the approval of
46 each class of members voting as a separate voting group at a meeting at which
47 a quorum of the voting group exists consisting of a majority of the votes
48 entitled to be cast on the plan by that voting group.

49 (5) Subject to subdivision (6) of this subsection, separate voting by voting groups
50 on a plan of domestication is required in the following circumstances:

51 a. By each class of memberships that is either of the following:

- 1 1. To be converted under the plan of domestication into security
2 interests, obligations, rights to acquire securities or interests,
3 cash, other property, or any combination thereof.
4 2. Entitled to vote as a separate group on a provision in the plan
5 that constitutes a proposed amendment to the articles or bylaws
6 of the domesticated corporation that requires action by separate
7 voting groups under the provisions of this Chapter.
8 b. If the voting group is entitled under the articles of incorporation or
9 bylaws to vote as a group to approve a plan of domestication.
10 (6) The articles of incorporation or bylaws may expressly limit or eliminate the
11 separate voting rights provided in sub-sub-subdivision (5)a.1. of this
12 subsection as to any class of members, except when the plan includes what
13 would be in effect an amendment subject to sub-sub-subdivision (5)a.2. of this
14 subsection.
15 (7) If, as a result of a domestication, one or more members of the domesticating
16 corporation would become subject to new interest holder liability, approval of
17 the plan of domestication requires the signing in connection with the
18 domestication, by each affected member, of a separate consent in a record to
19 become subject to the new interest holder liability. This subdivision does not
20 apply in the case of a member that already has interest holder liability with
21 respect to the domesticating corporation, if the terms and conditions of the
22 new interest holder liability with respect to the domesticated corporation are
23 substantially identical to those of the existing interest holder liability, other
24 than for changes that eliminate or reduce the interest holder liability.
25 (8) In addition to the adoption and approval of the plan of domestication by the
26 board of directors and members as required by this section, the plan of
27 domestication shall also be approved in a record by any person or group of
28 persons whose approval is required under G.S. 55A-10-30 to amend the
29 articles or bylaws.
30 (b) The plan of domestication of a charitable or religious corporation is subject to the
31 approval requirements described in G.S. 55A-11B-02(c).
32 **§ 55A-11B-05. Amendment or abandonment of plan of domestication; abandonment.**
33 (a) Before articles of domestication have taken effect, a plan of domestication of a
34 domestic nonprofit corporation may be amended, except as otherwise provided in the plan.
35 (b) A domestic nonprofit corporation may approve an amendment of a plan of
36 domestication in any of the following ways:
37 (1) In the same manner as the plan was approved, if the plan does not provide for
38 the manner in which it may be amended.
39 (2) In the manner provided in the plan, except that a member that was entitled to
40 vote on or consent to approval of the plan is entitled to vote on or consent to
41 any amendment of the plan that will change any of the following:
42 a. The amount or kind of memberships, securities, obligations, money
43 rights to acquire memberships, securities, money, other property, or
44 any combination thereof to be received by any of the members of the
45 domesticating corporation under the plan.
46 b. The articles of incorporation or bylaws of the domesticated
47 corporation that will be in effect immediately after the domestication
48 becomes effective, except for changes that do not require approval of
49 the members of the domesticated corporation under the law of the
50 jurisdiction of the domesticated corporation or its proposed articles or
51 bylaws as set forth in the plan.

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

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

9 (d) If a domestication is abandoned after articles of domestication have been delivered to
10 the Secretary of State for filing but before the articles are effective, articles of abandonment,
11 signed by the domesticating nonprofit corporation, shall be delivered to the Secretary of State for
12 filing before the articles of domestication are effective. The articles of abandonment take effect
13 upon filing, and the domestication is abandoned and does not become effective. The articles of
14 abandonment shall contain all of the following:

15 (1) The name of the domesticating corporation.

16 (2) The date on which the articles of domestication were filed by the Secretary of
17 State.

18 (3) A statement that the domestication has been abandoned in accordance with
19 this section.

20 "**§ 55A-11B-06. Articles of domestication; effective date.**"

21 (a) Articles of domestication shall be signed by the domesticating corporation and
22 delivered to the Secretary of State for filing.

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

24 (1) The name and governing jurisdiction of the domesticating corporation.

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

26 (3) If the domesticating corporation is a domestic nonprofit corporation, a
27 statement that the plan of domestication was approved in accordance with this
28 Article or, if the domesticating corporation is a foreign nonprofit corporation,
29 a statement that the domestication was approved in accordance with its law of
30 jurisdiction.

31 (4) If the domesticated corporation is a domestic nonprofit corporation, its articles
32 of incorporation, as an attachment, except that provisions that would not be
33 required to be included in restated articles of incorporation may be omitted
34 from the articles of the domesticated corporation and the articles do not need
35 to be signed.

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

38 (d) If the domesticated corporation is a domestic nonprofit corporation, the domestication
39 becomes effective when the articles of domestication are effective. If the domesticated
40 corporation is a foreign nonprofit corporation, the domestication becomes effective on the later
41 of the following:

42 (1) The date and time provided by the law of the jurisdiction of the domesticated
43 corporation.

44 (2) When the articles of domestication are effective.

45 "**§ 55A-11B-07. Effect of domestication.**"

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

47 (1) All property owned by, and every contract right possessed by, the
48 domesticating corporation becomes the property and contract rights of the
49 domesticated corporation without transfer, reversion, or impairment.

- 1 (2) All debts, obligations, and other liabilities of the domesticating corporation
- 2 remain the debts, obligations, and other liabilities of the domesticated
- 3 corporation.
- 4 (3) The name of the domesticated corporation may be, but is not required to be,
- 5 substituted for the name of the domesticating corporation in any pending
- 6 proceeding.
- 7 (4) The articles of incorporation and bylaws of the domesticated corporation
- 8 become effective.
- 9 (5) The memberships of the domesticating corporation are reclassified into
- 10 memberships, obligations, rights to acquire memberships, cash, or other
- 11 property in accordance with the terms of the domestication, and the members
- 12 of the domesticating corporation are entitled only to the rights provided to
- 13 them by those terms.
- 14 (6) The domesticated corporation is all of the following:
- 15 a. Incorporated under and subject to the current law of the jurisdiction of
- 16 the domesticated corporation.
- 17 b. The same corporation without interruption as the domesticating
- 18 corporation.
- 19 c. Deemed to have been incorporated on the date the domesticating
- 20 corporation was originally incorporated.
- 21 (b) Except as otherwise provided under the law of the jurisdiction or the articles of
- 22 incorporation or bylaws of a foreign nonprofit corporation that is the domesticating corporation,
- 23 the interest holder liability of a member in a foreign corporation that is domesticated into this
- 24 State who had interest holder liability in respect of the domesticating corporation before the
- 25 domestication becomes effective shall be as follows:
- 26 (1) The domestication does not discharge that prior interest holder liability with
- 27 respect to any interest holder liabilities that arose before the domestication
- 28 becomes effective.
- 29 (2) The provisions of the law of the jurisdiction of the domesticating corporation
- 30 shall continue to apply to the collection or discharge of any interest holder
- 31 liabilities preserved by subdivision (1) of this subsection, as if the
- 32 domestication had not occurred.
- 33 (3) The member shall have such rights of contribution from other persons as are
- 34 provided by the law of the jurisdiction of the domesticating corporation with
- 35 respect to any interest holder liabilities preserved by subdivision (1) of this
- 36 subsection, as if the domestication had not occurred.
- 37 (4) The member shall not, by reason of the prior interest holder liability, have
- 38 interest holder liability with respect to any interest holder liabilities that are
- 39 incurred after the domestication becomes effective.
- 40 (c) A member who becomes subject to interest holder liability in respect of the
- 41 domesticated corporation as a result of the domestication shall have such interest holder liability
- 42 only in respect of interest holder liabilities that arise after the domestication becomes effective.
- 43 (d) A domestication does not constitute or cause the dissolution of the domesticating
- 44 corporation."

SECTION 3.2.(a) G.S. 55A-1-22 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 ~~delivered~~ submitted to the Secretary for filing:

Document	Fee
----------	-----

...

(13a) Reserved for future codification purposes.

(13b) Reserved for future codification purposes.

(13c) Articles of domestication \$25.00

(13d) Articles of abandonment of domestication \$10.00

...."

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.

..."

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

...."

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

"§ 55A-8-25. Committees of the board.

..."

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

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

- (1) Authorize ~~distributions~~; distributions.
- (2) Recommend to members or approve dissolution, ~~merger~~-domestication, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's ~~assets~~; assets.
- (3) Elect, appoint or remove directors, or fill vacancies on the board of directors or on any of its ~~committees~~; committees.
- (4) Adopt, amend, or repeal the articles of incorporation or bylaws.

...."

SECTION 3.3.(a) Sections 3.1 and 3.2 of this Part become effective October 1, 2023. Except as otherwise provided, this Part is effective when it becomes law.

SECTION 3.3.(b) If a protected agreement of a domestic domesticating nonprofit corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until the provision is first amended after October 1, 2023.

SECTION 3.3.(c) For the purposes of this section, a protected agreement is any of the following in effect immediately before October 1, 2023:

- (1) A document evidencing indebtedness of a domestic nonprofit corporation and any related agreement.
- (2) An agreement that is binding on a domestic nonprofit corporation.
- (3) The articles of incorporation or bylaws of a domestic nonprofit corporation.

- 1 (4) An agreement that is binding on any of the interest holders or directors of a
2 domestic nonprofit corporation in their capacities as interest holders or
3 directors.
4

5 **PART IV. MODIFY REQUIRED NUMBER OF DIRECTORS**

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

7 **"§ 55A-1-50. Private Foundations.**

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

- 11 (1) Shall distribute such amounts for each taxable year at ~~such the~~ time and in
12 ~~such the~~ manner required so as not to subject the corporation to tax under
13 section 4942 of the Code.
14 (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the
15 Code.
16 (3) Shall not retain any excess business holdings as defined in section 4943(c) of
17 the Code.
18 (4) Shall not make any investments in ~~such a manner as to that would~~ subject the
19 corporation to tax under section 4944 of the Code.
20 (5) Shall not make any taxable expenditures as defined in section 4945(d) of the
21 Code.

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

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

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

29 **"§ 55A-8-03. Number of directors.**

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

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

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

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

44 **"§ 55A-8-11. Vacancy on board.**

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

- 50 (1) By the members entitled to vote for directors, if any, or if the vacant office
51 was held by a director elected by a class, chapter or other organizational unit,

1 or by region or other geographic grouping, by the members of that class,
 2 chapter, unit, or ~~grouping~~; grouping.
 3 (2) By the board of ~~directors~~; or directors.
 4 (3) If the directors remaining in the office constitute fewer than a quorum of the
 5 board, by the affirmative vote of a majority of all the directors, or by the sole
 6 director, remaining in office.

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

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

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

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

17 **SECTION 4.(d)** This section becomes effective October 1, 2023, and applies to
 18 corporations organized on or after that date.

19

20 **PART V. MODIFY THE REQUIREMENT FOR ESTABLISHING COMMITTEES OF** 21 **THE BOARD OF DIRECTORS**

22 **SECTION 5.(a)** G.S. 55A-8-25 reads as rewritten:

23 **"§ 55A-8-25. Committees of the board.**

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

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

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

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

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

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

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

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

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

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

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

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

47 **SECTION 5.(b)** This section becomes effective October 1, 2023, and applies to
 48 committees created on or after that date.

49

50 **PART VI. FURTHER AUTHORIZE AND CLARIFY CONVERSION**

1 **SECTION 6.(a)** Article 11A of Chapter 55A of the General Statutes is amended by
2 adding a new Part to read:

3 "Part 1. Conversion To Nonprofit Corporation.

4 "§ 55A-11A-01. Conversion.

5 (a) As used in this section, "business entity" means a domestic business corporation,
6 including a professional corporation as defined in G.S. 55B-2, a foreign business corporation,
7 including a foreign professional corporation as defined in G.S. 55B-16, a domestic or foreign
8 nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign
9 limited partnership, a registered limited liability partnership or foreign limited liability
10 partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether
11 or not formed under the laws of this State.

12 (b) A business entity, other than a domestic nonprofit corporation, may convert to a
13 domestic nonprofit corporation if both of the following apply:

14 (1) The conversion is permitted by the laws of the state or country governing the
15 organization and internal affairs of the converting business entity.

16 (2) The converting business entity complies with the requirements of this Part
17 and, to the extent applicable, the laws referred to in subdivision (1) of this
18 subsection.

19 "§ 55A-11A-02. Plan of conversion.

20 (a) The converting business entity shall approve a written plan of conversion containing
21 all of the following:

22 (1) The name of the converting business entity, its type of business entity, and the
23 state or country whose laws govern its organization and internal affairs.

24 (2) The name of the resulting domestic nonprofit corporation into which the
25 converting business entity will convert.

26 (3) The terms and conditions of the conversion.

27 (4) The manner and basis for converting the interests in the converting business
28 entity, if any, into any combination of eligible interests or other securities,
29 rights to acquire interests or other securities, obligations, cash, or other
30 property of the resulting domestic nonprofit corporation.

31 (b) The plan of conversion may contain any other provisions not prohibited by law.

32 (c) The provisions of the plan of conversion, other than the provisions required by
33 subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts
34 objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the
35 manner in which the facts will operate upon the affected provisions.

36 (d) The plan of conversion shall be approved in accordance with the laws of the state or
37 country governing the organization and internal affairs of the converting business entity.

38 (e) After a plan of conversion has been approved as provided in subsection (d) of this
39 section, but before articles of incorporation for the resulting domestic nonprofit corporation
40 become effective, the plan of conversion may be amended or abandoned to the extent permitted
41 by the laws that govern the organization and internal affairs of the converting business entity.

42 "§ 55A-11A-03. Filing of articles of incorporation by converting business entity.

43 (a) After a plan of conversion has been approved by the converting business entity as
44 provided in G.S. 55A-11A-02, the converting business entity shall deliver articles of conversion
45 to the Secretary of State for filing. In addition to the matters required or permitted by
46 G.S. 55A-2-02, the articles of incorporation shall contain articles of conversion stating all of the
47 following:

48 (1) That the corporation is being formed pursuant to a conversion of a business
49 entity.

50 (2) The name of the converting business entity, its type of business entity, and the
51 state or country whose laws govern its organization and internal affairs.

1 (3) That a plan of conversion has been approved by the converting business entity
2 as required by law.

3 (b) If the plan of conversion is abandoned after the articles of incorporation have been
4 filed with the Secretary of State but before the articles of incorporation become effective, the
5 converting business entity shall deliver to the Secretary of State for filing prior to the time the
6 articles of incorporation become effective an amendment to the articles of incorporation
7 withdrawing the articles of incorporation.

8 (c) The conversion takes effect when the articles of incorporation become effective.

9 (d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

10 **"§ 55A-11A-04. Effects of conversion.**

11 When the conversion takes effect, all of the following apply:

12 (1) The converting business entity ceases its prior form of organization and
13 continues in existence as the resulting domestic nonprofit corporation.

14 (2) The title to all real estate and other property owned by the converting business
15 entity continues vested in the resulting domestic nonprofit corporation without
16 transfer, reversion, or impairment.

17 (3) Except as otherwise provided by law or by the plan of conversion, all rights,
18 privileges, immunities, powers, and purposes of the converting business entity
19 remain vested in the resulting domestic nonprofit corporation.

20 (4) All debts, obligations, and other liabilities of the converting business entity
21 continue as debts, obligations, and other liabilities of the resulting domestic
22 nonprofit corporation.

23 (5) A proceeding pending by or against the converting business entity may be
24 continued as if the conversion did not occur. The name of the resulting
25 domestic nonprofit corporation may be substituted for the name of the
26 converting business entity in any pending action or proceeding.

27 (6) The interests and obligations in the converting business entity are converted
28 to eligible interests or other securities, rights to acquire interests or other
29 securities, obligations, cash, or other property of the resulting domestic
30 corporation in accordance with the plan of conversion.

31 (7) All of the following apply to the resulting domestic nonprofit corporation:

32 a. It is incorporated under and subject to Chapter 55A of the General
33 Statutes.

34 b. It converts from the converting business entity into its new form of
35 organization interruption.

36 c. It is deemed to have been incorporated on the date that the converting
37 entity was originally incorporated or organized.

38 The conversion does not affect the liability or absence of liability of any holder of an interest
39 in the converting business entity for any acts, omissions, or obligations of the converting business
40 entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence
41 of the converting business entity in its prior form of organization in the conversion does not
42 constitute a dissolution or termination of the converting business entity."

43 **SECTION 6.(b)** Part 2 of Article 11A of Chapter 55A of the General Statutes reads
44 as rewritten:

45 "Part 2. Conversion of Nonprofit Corporation.

46 **"§ 55A-11A-10. Conversion.**

47 (a) A charitable or religious corporation may convert to a domestic limited liability
48 company if the converting charitable or religious corporation complies with the requirements of
49 this ~~part~~Part and the requirements of G.S. 57D-9-20, 57D-9-21, and 57D-9-22.

50 (b) The plan of conversion of a charitable or religious corporation to a domestic limited
51 liability company under G.S. 57D-9-21 shall comply with all of the following:

- 1 (1) If the converting charitable or religious corporation does not have any
2 members entitled to vote on the conversion, the plan shall be approved by the
3 board of directors of the converting charitable or religious corporation.
- 4 (2) If the charitable or religious corporation has members entitled to vote on the
5 conversion, the plan shall first be approved by the board of directors and then
6 by the members entitled to vote on the conversion in accordance with the
7 following:
- 8 a. In submitting the plan of conversion to the members for approval, the
9 board of directors shall recommend that the members approve the plan
10 unless the directors make a determination that because of conflicts of
11 interest or other special circumstances they should not make this
12 recommendation, in which case the directors shall inform the members
13 of the basis for so proceeding.
- 14 b. If the approval is to be given at a meeting, the charitable or religious
15 corporation shall notify each member entitled to vote of the meeting
16 of members at which the plan of conversion will be submitted for
17 approval. The notice shall state that the purpose, or one of the
18 purposes, of the meeting is to consider the plan of conversion and shall
19 contain or be accompanied by a copy or summary of the plan.
- 20 c. Unless the articles of incorporation, the bylaws, or the board of
21 directors of the charitable or religious corporation require a different
22 vote or quorum, approval of the plan of conversion requires (i) the
23 approval of the members, consisting of the majority of the votes
24 entitled to be cast on the plan, at a meeting at which a quorum exists
25 and (ii) the approval of each separate voting group, consisting of a
26 majority of the votes entitled to be cast on the plan by that voting
27 group, at a meeting at which a quorum of the voting group is present.
- 28 (3) If, as a result of the conversion, one or more members of the converting entity
29 would become subject to new member liability, approval of the plan of
30 conversion requires that each of those members sign a separate record
31 consenting to become subject to the new member liability.
- 32 (4) In addition to the adoption and approval of the plan of conversion by the board
33 of directors and members as required by this section, the plan of conversion
34 shall also be approved by any person or group of persons whose approval is
35 required under G.S. 55A-10-30 to amend the articles of incorporation or
36 bylaws of the charitable or religious corporation."

37 **SECTION 6.(c)** This section becomes effective October 1, 2023, and applies to plans
38 of conversion approved on or after that date.

39 **PART VII. EFFECTIVE DATE AND APPLICABILITY**

40 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
41 law.
42