

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS45246-MV-18

Short Title: Inspection Rights Regarding Subsidiaries. (Public)

Sponsors: Senator Sawrey (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE RIGHT OF A SHAREHOLDER OF A CORPORATION TO
3 INSPECT THE RECORDS OF A SUBSIDIARY ENTITY OF THAT CORPORATION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 55-16-01.1 reads as rewritten:

6 "§ 55-16-01.1. Definitions.

7 In this Article, the following definitions apply:

8 (1) Reserved.

9 (2) Reserved.

10 (3) Qualified shareholder. – A person who has been a shareholder in the
11 corporation for at least six months immediately preceding the shareholder's
12 demand for inspection of records or who holds at least five percent (5%) of
13 the corporation's outstanding shares of any class.

14 (4) Shareholder. – A record shareholder or a beneficial shareholder whose shares
15 are held in a voting trust or by a nominee on the beneficial shareholder's behalf
16 and whose beneficial ownership is certified to the corporation by that voting
17 trust or nominee.

18 (5) Subsidiary. – Any domestic or foreign entity directly or indirectly owned, in
19 whole or in part, by the corporation of which the shareholder is a shareholder
20 and over the affairs of which the corporation directly or indirectly exercises
21 control. The term includes domestic and foreign corporations, including
22 professional corporations and nonprofit corporations, partnerships, limited
23 partnerships, limited liability partnerships, limited liability companies,
24 business trusts, and joint ventures."

25 SECTION 2. G.S. 55-16-02 reads as rewritten:

26 "§ 55-16-02. Inspection of records by shareholders.

27 (a) A qualified shareholder of a corporation is entitled to inspect and copy, during regular
28 business hours at the corporation's principal office, any of the records of the corporation
29 described in G.S. 55-16-01(a), excluding minutes of meetings of, and records of actions taken
30 without a meeting by, the corporation's board of directors and board committees established
31 under G.S. 55-8-25, if the qualified shareholder gives the corporation written notice of the
32 qualified shareholder's demand at least five business days before the date on which the qualified
33 shareholder wishes to inspect and copy.

34 (b) A qualified shareholder of a corporation is entitled to inspect and copy, during regular
35 business hours at a reasonable location specified by the corporation, any of the following records
36 of the corporation if the qualified shareholder meets the requirements of subsection (c) of this



1 section and gives the corporation written notice of the qualified shareholder's demand at least
2 five business days before the date on which the qualified shareholder wishes to inspect and copy:

- 3 (1) Records of any final action taken with or without a meeting by the board of
4 directors, or by a committee of the board of directors while acting in place of
5 the board of directors on behalf of the corporation maintained in accordance
6 with G.S. 55-16-01(a).
- 7 (2) Accounting records of the corporation.
- 8 (3) The record of shareholders maintained in accordance with G.S. 55-16-01(c).
- 9 (4) The financial statements of the corporation maintained in accordance with
10 G.S. 55-16-01(b).

11 A shareholder of a public corporation is not entitled to inspect or copy any accounting records of
12 the corporation or any records of the corporation with respect to any matter ~~which~~that the
13 corporation determines in good faith may, if disclosed, adversely affect the corporation in the
14 conduct of its business or may constitute material nonpublic information at the time the
15 shareholder's notice of demand to inspect and copy is received by the corporation.

16 (c) A qualified shareholder may inspect and copy the records described in subsection (b)
17 of this section only if all of the following apply:

- 18 (1) The qualified shareholder's demand is made in good faith and for a proper
19 purpose.
- 20 (2) The qualified shareholder describes with reasonable particularity the qualified
21 shareholder's purpose and the records the qualified shareholder desires to
22 inspect.
- 23 (3) The records are directly connected with the qualified shareholder's purpose.

24 (c1) The corporation may impose reasonable restrictions on the confidentiality, use, or
25 distribution of records described in subsection (b) of this section.

26 (d) The right of inspection granted by this section shall not be abolished or limited by a
27 corporation's articles of incorporation or bylaws.

28 (e) This section does not affect any of the following:

- 29 (1) The right of a shareholder to inspect records under G.S. 55-7-20 or, if the
30 shareholder is in litigation with the corporation, to inspect the records to the
31 same extent as any other litigant.
- 32 (2) The power of a court, independently of this Chapter, to compel the production
33 of corporate records for examination and to impose reasonable restrictions as
34 provided in G.S. 55-16-04(c), so long as, in the case of production of records
35 described in subsection (b) of this section at the request of a qualified
36 shareholder, the qualified shareholder has met the requirements of subsection
37 (c) of this section.

38 (f), (g) Repealed by Session Laws 2021-106, s. 6(c), effective October 1, 2021, and
39 applicable to demands for inspection and requests for financial statements received by a
40 corporation on or after that date.

41 (h) A qualified shareholder of a corporation ~~that has the power to elect, appoint, or~~
42 ~~designate a majority of the directors of another domestic or foreign corporation or of a domestic~~
43 ~~or foreign nonprofit corporation,~~ has the inspection rights provided in this section with respect to
44 the records of ~~that other corporation,~~ a subsidiary of the corporation to the extent that either of the
45 following applies:

- 46 (1) The corporation has actual possession and control of the records of the
47 subsidiary.
- 48 (2) The corporation could obtain the records through the exercise of control over
49 the subsidiary so long as, as of the date of the making of the demand, both of
50 the following apply:

1 a. The qualified shareholder inspection of the books and records of the
2 subsidiary would not constitute a breach of an agreement between the
3 corporation or the subsidiary and a person not affiliated with the
4 corporation.

5 b. The subsidiary would not have the right under the law applicable to it
6 to deny the corporation access to the books and records upon demand
7 by the corporation.

8 (i) Notwithstanding the provisions of this section or any other provisions of this Chapter
9 or interpretations to the contrary, a shareholder of a public corporation has no common law rights
10 to inspect or copy any accounting records of the corporation or any other records of the
11 corporation that may not be inspected or copied by a shareholder of a public corporation as
12 provided in subsection (b) of this section."

13 **SECTION 3.** This act becomes effective October 1, 2023, and applies to written
14 notices of demand for inspection given on or after that date.