

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS75006-ME-9B (01/14)

Short Title: North Carolina Benefit Corporation Act.

(Public)

Sponsors: Senators Vaughan, Stevens, and Kinnaird (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Chapter 55 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 18.

7 "The North Carolina Benefit Corporation Act.

8 "Part 1. Preliminary Provisions.

9 "**§ 55-18-1. Short title.**

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

11 "**§ 55-18-2. Application and effect of Article.**

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

13 (b) Benefit corporations are business corporations that have elected to become subject
14 to this Article. The other Articles of this Chapter apply to benefit corporations, including their
15 organization. Benefit corporations shall enjoy the powers and privileges and shall be subject to
16 the duties, restrictions, and liabilities of other corporations under this Chapter, except as may be
17 limited or enlarged by this Article. If any provision of this Article conflicts with the law in the
18 rest of this Chapter, the provision of this Article shall prevail.

19 (c) The existence of a provision of this Article shall not of itself create an implication
20 that a contrary or different rule of law is applicable to a business corporation that is not a
21 benefit corporation. This Article shall not affect a statute or rule of law that is applicable to a
22 business corporation that is not a benefit corporation.

23 (d) A provision of the articles or bylaws of a benefit corporation may not be
24 inconsistent with or supersede a provision of this Article, unless specifically stated otherwise in
25 a particular provision of this Article.

26 (e) A document required or permitted by this Article to be delivered to the Secretary of
27 State for filing shall be filed under Chapter 55D of the General Statutes.

28 "**§ 55-18-3. Definitions.**

29 (a) As used in this Article, the following words shall, unless the context requires
30 otherwise, have the following meanings:

31 (1) "Benefit corporation" means a business corporation that has elected to
32 become subject to this Article and that has not terminated its status as a
33 benefit corporation under G.S. 55-18-23.

34 (2) "Benefit director" means the director designated under G.S. 55-18-31.



- 1 (3) "Benefit enforcement proceeding" means any claim or action brought under
2 G.S. 55-18-44 against a director or officer for any of the following:
3 a. Failing to pursue the general public benefit purpose of the benefit
4 corporation or any specific public benefit purpose set forth in its
5 articles of incorporation.
6 b. Violating a duty or standard of conduct under this Article.
7 (4) "Benefit officer" means the individual designated under G.S. 55-18-43.
8 (5) "General public benefit" means a material positive impact on society and the
9 environment taken as a whole, as measured by a third-party standard, from
10 the business and operations of a benefit corporation.
11 (6) "Independent" means having no material relationship with a benefit
12 corporation or a subsidiary of the benefit corporation, either (i) directly as a
13 shareholder of the benefit corporation or as a partner, a member, or an owner
14 of a subsidiary of the benefit corporation or (ii) indirectly as a director, an
15 officer, or a manager of an entity that has a material relationship with the
16 benefit corporation or a subsidiary of the benefit corporation. The term does
17 not include the relationship of serving as benefit director or benefit officer.
18 A material relationship between a person and a benefit corporation or any of
19 its subsidiaries will be conclusively presumed to exist if any of the following
20 apply:
21 a. The person is, or has been within the last three years, an employee
22 other than a benefit officer of the benefit corporation or a subsidiary
23 of the benefit corporation.
24 b. An immediate family member of the person is, or has been within the
25 last three years, an executive officer other than a benefit officer of
26 the benefit corporation or its subsidiary.
27 c. There is a beneficial or record ownership of five percent (5%) or
28 more of the outstanding shares of the benefit corporation by either of
29 the following:
30 1. The person.
31 2. An entity in which the person (i) is a director, an officer, or a
32 manager or (ii) the person owns beneficially or of record five
33 percent (5%) or more of the outstanding equity interests.
34 This definition is subject to subsection (b) of this section.
35 (7) "Specific public benefit" means conferring any particular benefit on society
36 or the environment, including, but not limited to, any of the following:
37 a. Providing low-income or underserved individuals or communities
38 with beneficial products or services.
39 b. Promoting economic opportunity for individuals or communities
40 beyond the creation of jobs in the normal course of business.
41 c. Preserving the environment.
42 d. Improving human health.
43 e. Promoting the arts, sciences, or advancement of knowledge.
44 f. Increasing the flow of capital to entities with a public benefit
45 purpose.
46 (8) "Subsidiary" of a person means an entity in which the person owns
47 beneficially or of record fifty percent (50%) or more of the outstanding
48 equity interests. This definition is subject to subsection (b) of this section.
49 (9) "Third-party standard" means a recognized standard for defining, reporting,
50 and assessing corporate social and environmental performance that meets the
51 following requirements:

- 1 a. The standard is developed by a person that is independent of the
2 benefit corporation.
- 3 b. The standard is transparent because the following information about
4 the standard is publicly available:
- 5 1. The factors considered when measuring the performance of a
6 business.
- 7 2. The relative weightings of those factors.
- 8 3. The identity of the persons that develop and control changes
9 to the standard and the process by which those changes are
10 made.

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

14 "Part 2. Formation and Change of Status.

15 **"§ 55-18-20. Formation of benefit corporation.**

16 A benefit corporation must be formed in accordance with the other Articles of this Chapter,
17 but its articles of incorporation must also state it is a benefit corporation.

18 **"§ 55-18-21. Heightened voting requirements for some actions.**

19 Some actions and changes within benefit corporations are subject to heightened voting
20 requirements that are in addition to any other approval or vote required by any other Articles in
21 this Chapter, the articles of incorporation, or the bylaws. When a provision of this Article
22 references a heightened voting requirement under this section, those votes are subject to the
23 following conditions:

- 24 (1) The shareholders of every class or series must be entitled to vote on the
25 corporate action regardless of a limitation stated in the articles of
26 incorporation or bylaws on the voting rights of any class or series.
- 27 (2) The corporate action must be approved by vote of the shareholders of each
28 class or series entitled to cast at least two-thirds of the votes that all
29 shareholders of the class or series are entitled to cast on the action.

30 **"§ 55-18-22. Election of benefit corporation status.**

31 (a) A business corporation may become a benefit corporation under this Article by
32 amending its articles of incorporation so that they contain, in addition to the requirements of
33 G.S. 55-2-02(a), a statement that the corporation is a benefit corporation. In order to be
34 effective, the amendment must be adopted under the heightened voting requirements in
35 G.S. 55-18-21.

36 (b) If a corporation that is not a benefit corporation is a party to a merger or share
37 exchange, and the surviving or new corporation in the merger or share exchange is to be a
38 benefit corporation, the plan of merger or share exchange shall not be effective unless it is
39 adopted under the heightened voting requirements in G.S. 55-18-21.

40 **"§ 55-18-23. Termination of benefit corporation status.**

41 (a) A benefit corporation may terminate its status and cease to be subject to this Article
42 by amending its articles of incorporation to delete the provision required by G.S. 55-18-20 to
43 be stated in the articles of a benefit corporation. In order to be effective, the amendment must
44 be adopted by the heightened voting requirements in G.S. 55-18-21.

45 (b) If a plan of merger or share exchange would have the effect of terminating the status
46 of a business corporation as a benefit corporation, the plan, in order to be effective, must be
47 adopted under the heightened voting requirements in G.S. 55-18-21.

48 "Part 3. Corporate Purposes.

49 **"§ 55-18-30. Corporate purposes.**

1 (1) Any action taken as a director, or any failure to take any action, if the
2 director performed the duties of office in compliance with G.S. 55-8-30 and
3 this section.

4 (2) Failure of the benefit corporation to create general or specific public benefit.

5 **§ 55-18-41. Benefit director.**

6 (a) The board of directors of a benefit corporation shall include one director who shall
7 be designated the benefit director. This benefit director shall have, in addition to the powers,
8 duties, rights, and immunities of the other directors of the benefit corporation, the powers,
9 duties, rights, and immunities provided in this section.

10 (b) The benefit director shall be elected, and may be removed, in the manner provided
11 by Part 1 of Article 8 of this Chapter, and shall be an individual who is independent. The
12 benefit director may serve as the benefit officer at the same time as serving as the benefit
13 director. The articles of incorporation or bylaws of a benefit corporation may prescribe
14 additional qualifications of the benefit director not inconsistent with this subsection.

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

18 (1) Whether the benefit corporation acted in accordance with its general, and
19 any specific, public benefit purpose in all material respects during the period
20 covered by the report.

21 (2) Whether the directors and officers complied with G.S. 55-18-40 and
22 G.S. 55-18-42, respectively.

23 If the benefit director finds a failure under subdivision (1) or (2) of this subsection, the benefit
24 director shall include in the annual benefit report a description of the ways in which the benefit
25 corporation, its directors, or its officers failed to act or comply.

26 (d) The acts of an individual in the capacity of a benefit director shall constitute for all
27 purposes acts of that individual in the capacity of a director of the benefit corporation.

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

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

38 **§ 55-18-42. Standard of conduct for officers.**

39 (a) Each officer of a benefit corporation shall consider the interests and factors
40 described in G.S. 55-18-40 in the manner provided in that section, provided that the following
41 are true:

42 (1) The officer has discretion to act with respect to a matter.

43 (2) It reasonably appears to the officer that the matter may have a material effect
44 on the creation of general or specific public benefit by the benefit
45 corporation.

46 (b) The consideration of interests and factors in the manner described in subsection (a)
47 of this section shall not constitute a violation of G.S. 55-8-42.

48 (c) An officer is not personally liable for monetary damages for any of the following:

49 (1) Any action taken, or any failure to take any action, as an officer, provided
50 that the officer complied with the standards of conduct in G.S. 55-8-42 and
51 in this section.

1 (2) The failure of the benefit corporation to create general or specific public
2 benefit.

3 **"§ 55-18-43. Benefit officer.**

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

5 (b) A benefit officer shall do the following:

6 (1) Perform duties relating to the purpose of the corporation to create general or
7 specific public benefits, as required by either of the following:

8 a. Bylaws.

9 b. Resolutions or orders of the board of directors, absent controlling
10 provisions in the bylaws.

11 (2) Prepare the annual benefit report required by G.S. 55-18-50.

12 **"§ 55-18-44. Right of action; benefit enforcement proceeding.**

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

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

19 (1) Directly, by the benefit corporation.

20 (2) Derivatively, by any of the following:

21 a. A shareholder.

22 b. A director.

23 c. A person or group of persons that owns beneficially or of record ten
24 percent (10%) or more of the outstanding equity interests in an entity
25 of which the benefit corporation is a subsidiary.

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

28 "Part 5. Transparency.

29 **"§ 55-18-50. Annual benefit report.**

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

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

33 a. The ways in which the benefit corporation pursued general public
34 benefit during the year and the extent to which general public benefit
35 was created.

36 b. Both (i) the ways in which the benefit corporation pursued a specific
37 public benefit stated in the articles of incorporation and (ii) the extent
38 to which that specific public benefit was created.

39 c. Any circumstances that have hindered the creation by the benefit
40 corporation of general or specific public benefit.

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

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

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

50 (5) The name of each person that owns five percent (5%) or more of the
51 outstanding shares of the benefit corporation either (i) beneficially, to the

1 extent known to the benefit corporation without independent investigation or
2 (ii) of record.

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

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

7 (c) A benefit corporation shall post all of its annual benefit reports on the public portion
8 of its Internet Web site, if any. The compensation paid to directors and any financial or
9 proprietary information included in the benefit report may be omitted from the benefit report as
10 posted.

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

17 **SECTION 2.** This act becomes effective December 1, 2011.