

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 696
Committee Substitute Favorable 6/16/21

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

Sponsors:

Referred to:

April 28, 2021

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:

5
6 **PART I. MODIFY LIMITATIONS ON MERGERS AND OTHER TECHNICAL**
7 **CORRECTIONS**

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

9 "**§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

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

13 ...

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

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

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

22"

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

24 "**§ 55A-11-09. Merger with unincorporated entity.**

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

34 (b) One or more domestic nonprofit corporations may merge with one or more
35 unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic
36 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;~~ andStatutes.

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

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

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

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

12 **"§ 55A-16-22.1. Annual report to the Secretary of State.**

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

16 (1) The name of the corporation and the state or country under whose law it is
17 incorporated.

18 (2) The street address, and the mailing address if different from the street address,
19 of the registered office in this State, the county in which the registered office
20 is located, the name and email address of its registered agent at that office, and
21 a statement of any change of the registered office or registered agent.

22 (3) The address and telephone number of its principal office.

23 (4) The names, titles, and business street addresses of its principal officers and
24 the name, mailing address, email address, and telephone number of an
25 individual who is authorized to provide information regarding persons with
26 the authority to bind the corporation.

27 (5) A brief description of the nature of its activities.

28 (6) An email address for the corporation, if different from the email address
29 provided under subdivision (2) of this subsection.

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

32 (c) The corporation shall submit an annual report to the Secretary of State by November
33 15 of each year following (i) in the case of a domestic corporation, the calendar year in which
34 the corporation was formed or (ii) in the case a foreign corporation, the calendar year in which
35 the Secretary of State issued to the foreign corporation a certificate of authority to conduct affairs
36 in this State. An annual report is due each year until (i) in the case of a domestic corporation, the
37 effective date of a voluntary or judicial dissolution or (ii) in the case of a foreign corporation, the
38 effective date of a certificate of withdrawal or revocation of a certificate of authority.

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

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

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

50 (g) The Secretary of State may provide by email any notice or form required under this
51 section if the submitting domestic or foreign corporation to be notified has consented to receiving

1 notices and forms via email and has provided the Secretary of State an email address for receiving
 2 the notices or forms. Any email address provided by a submitting corporation in accordance with
 3 this section is confidential information and is not a public record under Chapter 132 of the
 4 General Statutes.

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

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

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

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

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

14 "**§ 55A-1-22. Filing, service, and copying fees.**

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

Document	Fee
17 ...	
18 (29) <u>Annual report</u>	<u>No fee</u>
19"	

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

21 "**§ 55A-14-20. Grounds for administrative dissolution.**

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

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

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

27 (2a) The corporation is delinquent in submitting its annual report.

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

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

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

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

39 (7) The corporation does not designate the address of its principal office with the
 40 Secretary of State or does not notify the Secretary of State within 60 days that
 41 the principal office has changed."
 42

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

44 "**§ 55A-14-22. Reinstatement following administrative dissolution.**

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

47 (1) Recite the name of the corporation and the effective date of its administrative
 48 ~~dissolution;~~ dissolution.

49 (2) State that the ground or grounds for dissolution either did not exist or have
 50 been eliminated.

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

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

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

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

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

22 23 **PART III. AUTHORIZE DOMESTICATION**

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

26 "Article 11B.

27 "Domestication.

28 **"§ 55A-11B-01. Definitions.**

29 In this Article, the following definitions apply:

- 30 (1) Domesticated corporation. – The domesticating nonprofit corporation as it
31 continues in existence after a domestication.
- 32 (2) Domesticating corporation. – The domestic nonprofit corporation that
33 approves a plan of domestication pursuant to G.S. 55A-11B-06 or the foreign
34 corporation that approves a domestication pursuant to the law of the
35 jurisdiction of the foreign corporation.
- 36 (3) Domestication. – A transaction pursuant to this Article.
- 37 (4) Interest holder liability. – Any of the following:
- 38 a. Personal liability for a liability of a domestic or foreign nonprofit
39 corporation that is imposed on a person by either of the following:
- 40 1. Solely by reason of the status of the person as an interest
41 holder.
- 42 2. By a provision of the articles of incorporation or bylaws that
43 make one or more specified interest holders or categories of
44 interest holders liable in their capacity as interest holders for
45 all or specified liabilities of the entity.
- 46 b. An obligation of an interest holder under the bylaws to contribute to
47 the domestic or foreign nonprofit corporation.
- 48 (5) Law of the jurisdiction. – The law of the jurisdiction governing the
49 organization and internal affairs of the corporation.

50 **"§ 55A-11B-04. Domestication; preliminary provisions.**

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

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

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

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

15 **"§ 55A-11B-05. Plan of domestication.**

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

18 (1) The name of the domesticating corporation.

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

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

23 (4) The proposed articles of incorporation and bylaws of the domesticated
24 corporation.

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

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

28 (c) The terms of a plan of domestication, other than the terms described in subdivisions
29 (1), (2), and (4) of subsection (a) of this section, may be made dependent upon facts objectively
30 ascertainable outside the plan if the plan sets forth the manner in which the facts will operate
31 upon the terms of the plan. The facts may include any of the following:

32 (1) Statistical or market indices, market prices of any security or group of
33 securities, interest rates, currency exchange rates, or similar economic or
34 financial data.

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

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

39 **"§ 55A-11B-06. Approval of domestication.**

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

42 (1) The plan of domestication shall first be adopted by the board of directors. The
43 board may set conditions for (i) approval of the plan of domestication by the
44 members or (ii) the effectiveness of the plan of domestication. If the
45 domesticating corporation does not have any members entitled to vote on the
46 domestication, a plan of domestication is adopted by the corporation when it
47 has been adopted by the board of directors pursuant to this subdivision.

48 (2) Except as provided in subdivision (1) of this subsection, the plan of
49 domestication shall then be approved by the members. In submitting the plan
50 of domestication to the members for approval, the board of directors shall
51 recommend that the members approve the plan, unless the board of directors

1 makes a determination that because of conflicts of interest or other special
2 circumstances it should not make the recommendation, in which case the
3 board shall inform the members of the basis for not making the
4 recommendation.

5 (3) If the plan of domestication is required to be approved by the members, and if
6 the approval is to be given at a meeting, the corporation shall notify each
7 member entitled to vote of the meeting of the members at which the plan of
8 domestication is to be submitted for approval. The notice shall (i) state that
9 the purpose, or one of the purposes, of the meeting is to consider the plan of
10 domestication and (ii) contain or be accompanied by a copy or summary of
11 the plan. The notice shall include or be accompanied by a copy of the articles
12 of incorporation and the bylaws as they will be in effect immediately after the
13 domestication.

14 (4) Unless the articles of incorporation or bylaws, or the board of directors acting
15 pursuant to subdivision (1) of this subsection, require a greater vote or a
16 greater quorum, approval of the plan of domestication requires (i) the approval
17 of the members at a meeting at which a quorum exists consisting of a majority
18 of the votes entitled to be cast on the plan and (ii) if any class of membership
19 is entitled to vote as a separate group on the plan of merger, the approval of
20 each class of members voting as a separate voting group at a meeting at which
21 a quorum of the voting group exists consisting of a majority of the votes
22 entitled to be cast on the plan by that voting group.

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

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

26 1. To be converted under the plan of domestication into security
27 interests, obligations, rights to acquire securities or interests,
28 cash, other property, or any combination thereof.

29 2. Entitled to vote as a separate group on a provision in the plan
30 that constitutes a proposed amendment to the articles or bylaws
31 of the domesticated corporation that requires action by separate
32 voting groups under the provisions of this Chapter.

33 b. If the voting group is entitled under the articles of incorporation or
34 bylaws to vote as a group to approve a plan of domestication.

35 (6) The articles of incorporation or bylaws may expressly limit or eliminate the
36 separate voting rights provided in sub-sub-subdivision (5)a.1. of this
37 subsection as to any class of members, except when the plan includes what
38 would be in effect an amendment subject to sub-sub-subdivision (5)a.2. of this
39 subsection.

40 (7) If, as a result of a domestication, one or more members of the domesticating
41 corporation would become subject to new interest holder liability, approval of
42 the plan of domestication requires the signing in connection with the
43 domestication, by each affected member, of a separate consent in a record to
44 become subject to the new interest holder liability. This subdivision does not
45 apply in the case of a member that already has interest holder liability with
46 respect to the domesticating corporation, if the terms and conditions of the
47 new interest holder liability with respect to the domesticated corporation are
48 substantially identical to those of the existing interest holder liability, other
49 than for changes that eliminate or reduce the interest holder liability.

50 (8) In addition to the adoption and approval of the plan of domestication by the
51 board of directors and members as required by this section, the plan of

1 domestication shall also be approved in a record by any person or group of
2 persons whose approval is required under G.S. 55A-10-30 to amend the
3 articles or bylaws.

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

6 **"§ 55A-11B-07. Amendment or abandonment of plan of domestication; abandonment.**

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

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

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

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

16 a. The amount or kind of memberships, securities, obligations, money
17 rights to acquire memberships, securities, money, other property, or
18 any combination thereof, to be received by any of the members of the
19 domesticating corporation under the plan.

20 b. The articles of incorporation or bylaws of the domesticated
21 corporation that will be in effect immediately after the domestication
22 becomes effective, except for changes that do not require approval of
23 the members of the domesticated corporation under the law of the
24 jurisdiction of the domesticated corporation or its proposed articles or
25 bylaws as set forth in the plan.

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

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

34 (d) If a domestication is abandoned after articles of domestication have been delivered to
35 the Secretary of State for filing but before the articles are effective, articles of abandonment,
36 signed by the domesticating nonprofit corporation, shall be delivered to the Secretary of State for
37 filing before the articles of domestication are effective. The articles of abandonment take effect
38 upon filing, and the domestication is abandoned and does not become effective. The articles of
39 abandonment shall contain all of the following:

40 (1) The name of the domesticating corporation.

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

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

45 **"§ 55A-11B-08. Articles of domestication; effective date.**

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

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

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

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

1 (3) If the domesticating corporation is a domestic nonprofit corporation, a
2 statement that the plan of domestication was approved in accordance with this
3 Article or, if the domesticating corporation is a foreign nonprofit corporation,
4 a statement that the domestication was approved in accordance with its law of
5 jurisdiction.

6 (4) If the domesticated corporation is a domestic nonprofit corporation, its articles
7 of incorporation, as an attachment, except that provisions that would not be
8 required to be included in restated articles of incorporation may be omitted
9 from the articles of the domesticated corporation and the articles do not need
10 to be signed.

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

13 (d) If the domesticated corporation is a domestic nonprofit corporation, the domestication
14 becomes effective when the articles of domestication are effective. If the domesticated
15 corporation is a foreign nonprofit corporation, the domestication becomes effective on the later
16 of the following:

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

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

20 **§ 55A-11B-09. Effect of domestication.**

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

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

25 (2) All debts, obligations, and other liabilities of the domesticating corporation
26 remain the debts, obligations, and other liabilities of the domesticated
27 corporation.

28 (3) The name of the domesticated corporation may be, but is not required to be,
29 substituted for the name of the domesticating corporation in any pending
30 proceeding.

31 (4) The articles of incorporation and bylaws of the domesticated corporation
32 become effective.

33 (5) The memberships of the domesticating corporation are reclassified into
34 memberships, obligations, rights to acquire memberships, cash, or other
35 property in accordance with the terms of the domestication, and the members
36 of the domesticating corporation are entitled only to the rights provided to
37 them by those terms.

38 (6) The domesticated corporation is all of the following:

39 a. Incorporated under and subject to the current law of the jurisdiction of
40 the domesticated corporation.

41 b. The same corporation without interruption as the domesticating
42 corporation.

43 c. Deemed to have been incorporated on the date the domesticating
44 corporation was originally incorporated.

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

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

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

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

13"

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

16 **SECTION 3.3.(b)** If a protected agreement of a domestic domesticating nonprofit
 17 corporation in effect immediately before the domestication becomes effective contains a
 18 provision applying to a merger of the corporation and the agreement does not refer to a
 19 domestication of the corporation, the provision applies to a domestication of the corporation as
 20 if the domestication were a merger until such time as the provision is first amended after October
 21 1, 2021.

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

- 24 (1) A document evidencing indebtedness of a domestic nonprofit corporation and
 25 any related agreement.
- 26 (2) An agreement that is binding on a domestic nonprofit corporation.
- 27 (3) The articles of incorporation or bylaws of a domestic nonprofit corporation.
- 28 (4) An agreement that is binding on any of the interest holders or directors of a
 29 domestic nonprofit corporation in their capacities as interest holders or
 30 directors.

31 32 **PART IV. MODIFY REQUIRED NUMBER OF DIRECTORS**

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

34 **"§ 55A-1-50. Private Foundations.**

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

- 38 (1) Shall distribute such amounts for each taxable year at ~~such—the~~ time and in
 39 ~~such—the~~ manner required so as not to subject the corporation to tax under
 40 section 4942 of the Code.
- 41 (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the
 42 Code.
- 43 (3) Shall not retain any excess business holdings as defined in section 4943(c) of
 44 the Code.
- 45 (4) Shall not make any investments in ~~such—a manner as to—that would~~ subject the
 46 corporation to tax under section 4944 of the Code.
- 47 (5) Shall not make any taxable expenditures as defined in section 4945(d) of the
 48 Code.

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

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

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

5 "**§ 55A-8-03. Number of directors.**

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

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

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

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

20 "**§ 55A-8-11. Vacancy on board.**

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

26 (1) By the members entitled to vote for directors, if any, or if the vacant office
27 was held by a director elected by a class, chapter or other organizational unit,
28 or by region or other geographic grouping, by the members of that class,
29 chapter, unit, or ~~grouping~~grouping.

30 (2) By the board of ~~directors~~directors.

31 (3) If the directors remaining in the office constitute fewer than a quorum of the
32 board, by the affirmative vote of a majority of all the directors, or by the sole
33 director, remaining in office.

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

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

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

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

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

46
47 **PART V. AUTHORIZE CERTAIN ELECTRONIC TRANSACTIONS EXCEPT AS**
48 **LIMITED BY ARTICLES OF INCORPORATION OR BYLAWS**

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

50 "**§ 55A-1-70. Electronic transactions.**

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

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

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

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

13 **"§ 55A-7-04. Action by written consent.**

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

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

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

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

28 **"§ 55A-8-21. Action without meeting.**

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

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

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

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

44 45 **PART VI. MODIFY THE REQUIREMENT FOR ESTABLISHING COMMITTEES OF** 46 **THE BOARD OF DIRECTORS**

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

48 **"§ 55A-8-25. Committees of the board.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
25 law.
26