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SENATE DRS65009-ML-21 (12/19)

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors: Senators Brunstetter 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 **"§ 55-18-01. Short title.**

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

11 **"§ 55-18-02. Application and effect of Article.**

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

13 (b) The provisions of the other articles of this Chapter apply to benefit corporations. If  
14 any provision of this Article conflicts with any provision of the other articles of this Chapter,  
15 the provision of this Article shall control.

16 (c) Other than as provided in G.S. 55-18-21, corporations that are not benefit  
17 corporations shall not be subject to this Article, and this Article shall not otherwise affect a  
18 statute or rule of law that is applicable to a corporation that is not a benefit corporation.

19 (d) A provision of the articles of incorporation or bylaws of a benefit corporation may  
20 not be inconsistent with or supersede a provision of this Article, except to the extent expressly  
21 permitted in this Article.

22 **"§ 55-18-03. Definitions.**

23 (a) The following definitions apply to this Article:

24 (1) Benefit corporation. – A domestic corporation that has elected to become  
25 subject to this Article by including a provision in its articles of incorporation  
26 providing that it shall be a benefit corporation governed by this Article and  
27 that has not terminated its status as a benefit corporation pursuant to  
28 G.S. 55-18-22.

29 (2) Benefit director. – The director of the benefit corporation designated as such  
30 pursuant to G.S. 55-18-41.

31 (3) Benefit enforcement proceeding. – Any claim or action brought under  
32 G.S. 55-18-43 against a director of a benefit corporation for any of the  
33 following:

34 a. Failing to pursue the general public benefit purpose or any specific  
35 public benefit purpose set forth in its articles of incorporation.

36 b. Violating a duty or standard of conduct under this Article.



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- 1           (4)   Benefit officer. – The officer of the benefit corporation designated as such  
2           pursuant to G.S. 55-18-42.
- 3           (5)   General public benefit. – A material positive impact on society and the  
4           environment, taken as a whole, as measured by a third-party standard, from  
5           the business and operations of a benefit corporation.
- 6           (6)   Independent person. – With respect to a benefit corporation, a person who  
7           does not have any material relationship with the benefit corporation or a  
8           subsidiary of the benefit corporation, either (i) directly as a shareholder of  
9           the benefit corporation or as a partner, a member, or an owner of a  
10           subsidiary of the benefit corporation or (ii) indirectly as a director, an  
11           officer, a general partner, or a manager of an entity that has a material  
12           relationship with the benefit corporation or a subsidiary of the benefit  
13           corporation. A person shall not be deemed to have such a material  
14           relationship solely by virtue of serving as the benefit director or the benefit  
15           officer of the benefit corporation or of any subsidiary of the benefit  
16           corporation that is itself a benefit corporation. A material relationship  
17           between a person and the benefit corporation or any of its subsidiaries will  
18           be conclusively presumed to exist if any of the following apply:
- 19           a.   The person is, or has been within the last three years, an employee,  
20           other than the benefit officer, of the benefit corporation or a  
21           subsidiary of the benefit corporation.
- 22           b.   An immediate family member of the person is, or has been within the  
23           last three years, an officer, other than the benefit officer, of the  
24           benefit corporation or a subsidiary of the benefit corporation.
- 25           c.   The person, or an entity in which the person (i) is a director, an  
26           officer, a general partner, or a manager; (ii) owns, directly or  
27           indirectly, five percent (5%) or more of the outstanding equity  
28           interests; or (iii) owns, directly or indirectly, five percent (5%) or  
29           more of the outstanding shares of any series or class of stock of the  
30           benefit corporation.
- 31           (7)   Specific public benefit purpose. – A corporate purpose conferring any  
32           particular benefit on society or the environment, including, but not limited  
33           to, any of the following:
- 34           a.   Providing low-income or underserved individuals or communities  
35           with beneficial products or services.
- 36           b.   Promoting economic opportunity for individuals or communities  
37           beyond the creation of jobs in the normal course of business.
- 38           c.   Preserving or improving the environment.
- 39           d.   Improving human health.
- 40           e.   Promoting the arts, sciences, or advancement of knowledge.
- 41           f.   Increasing the flow of capital to entities with a public benefit  
42           purpose.
- 43           (8)   Subsidiary of a person. – An entity in which the person owns, directly or  
44           indirectly, fifty percent (50%) or more of the outstanding voting equity  
45           interests.
- 46           (9)   Third-party standard. – A standard for defining, reporting, and assessing  
47           overall corporate social and environmental performance that meets all of the  
48           following requirements:
- 49           a.   The standard assesses the effect of the business and its operations  
50           upon the interests listed in subdivisions (2) through (5) of  
51           G.S. 55-18-40(a).

- 1                    b. The standard is developed by an entity that is independent of the  
2                    benefit corporation and satisfies the following:  
3                    1. Not more than one-third of the members of the governing  
4                    body of the entity are representatives of either of the  
5                    following:  
6                    I. An association of businesses operating in a specific  
7                    industry, the performance of whose members is  
8                    measured by the standard.  
9                    II. Businesses whose performance is measured by the  
10                    standard.  
11                    2. The entity is not materially financed by an association or  
12                    business described in sub-sub-subdivision 1. of this  
13                    sub-subdivision.  
14                    c. The standard is developed by an entity that satisfies the following:  
15                    1. Has access to necessary expertise to assess overall corporate  
16                    social and environmental performance.  
17                    2. Uses a balanced multistakeholder approach, including a  
18                    public comment period of at least 30 days to develop the  
19                    standard.  
20                    d. The standard is transparent because the following information about  
21                    the standard is publicly available:  
22                    1. The criteria considered when measuring the overall social and  
23                    environmental performance of a business, as well as the  
24                    relative weightings of those criteria.  
25                    2. The process for the development and revision of the standard,  
26                    including the following:  
27                    I. The identity of the directors, officers, any material  
28                    owners, and the governing body of the entity that  
29                    developed and controls revisions to the standard.  
30                    II. The process by which revisions to the standard and  
31                    changes to the membership of the governing body are  
32                    made.  
33                    III. An accounting of the sources of financial support for  
34                    the entity, with sufficient detail to disclose any  
35                    relationships that could reasonably be considered to  
36                    present a potential conflict of interest.

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

40                    **"§ 55-18-04. Benefit corporation not entitled to property tax exemption.**

41                    A benefit corporation shall not be entitled to claim an exemption from any property tax  
42                    imposed under Subchapter II of Chapter 105 of the General Statutes.

43                    "Part 2. Adoption and Change of Status.

44                    **"§ 55-18-20. Incorporation as a benefit corporation.**

45                    A domestic corporation, including a domestic corporation incorporated upon a conversion  
46                    effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit  
47                    corporation by including in its initial articles of incorporation a provision providing that the  
48                    corporation shall be a benefit corporation governed by this Article. The articles of incorporation  
49                    must also include an identification of any specific public benefit purpose or purposes as  
50                    required by G.S. 55-18-30 and must include all provisions required by, and may include any  
51                    provision permitted by, G.S. 55-2-02.

**"§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

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

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

**"§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

- (1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.
- (2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.
- (3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise

1 provided in the articles of entity, operating agreement, or partnership  
2 agreement of the entity.

3 "Part 3. Corporate Purposes.

4 **"§ 55-18-30. Corporate purposes.**

5 (a) A benefit corporation shall have as one of its corporate purposes the creation of a  
6 general public benefit. A benefit corporation may include in its articles of incorporation other  
7 corporate purposes, including the purpose of engaging in any lawful business.

8 (b) A benefit corporation may include as a corporate purpose in its articles of  
9 incorporation one or more specific public benefit purposes in addition to its purposes under  
10 subsection (a) of this section.

11 (c) A benefit corporation may amend its articles of incorporation to add, amend, or  
12 delete the identification of a specific public benefit purpose. Such an amendment must be  
13 approved by the shareholders of the benefit corporation in the manner required by  
14 G.S. 55-18-23.

15 "Part 4. Accountability.

16 **"§ 55-18-40. Standard of conduct for directors.**

17 (a) In discharging their duties as directors of a benefit corporation, directors shall  
18 consider the effects of any action or decision not to act upon the following:

19 (1) The shareholders of the benefit corporation.

20 (2) The employees and workforce of the benefit corporation, its subsidiaries,  
21 and suppliers.

22 (3) The interests of customers to the extent they are beneficiaries of the general  
23 or specific public benefit purposes of the benefit corporation.

24 (4) The local community and society, including the interests of each community  
25 in which offices or facilities of the benefit corporation, its subsidiaries, or  
26 suppliers are located.

27 (5) The local and global environment.

28 (6) The short-term and long-term interests of the benefit corporation, including  
29 benefits that may accrue to the benefit corporation from its long-term plans  
30 and the possibility that these interests may be best served by the continued  
31 independence of the benefit corporation.

32 (7) The ability of the benefit corporation to accomplish its general and any  
33 specific public benefit purpose.

34 (b) In addition to the required considerations in subsection (a) of this section, a director  
35 of a benefit corporation may consider the effects of any action or decision not to act upon the  
36 following:

37 (1) The resources, intent, and conduct (past, stated, and potential) of any person  
38 seeking to acquire control of the benefit corporation.

39 (2) Other pertinent factors or the interests of any other group that the director in  
40 good faith considers to be appropriate.

41 (c) A director of a benefit corporation need not give priority to the interests of a  
42 particular person or group referred to in subsections (a) and (b) of this section over the interests  
43 of any other person or group unless the benefit corporation's articles of incorporation explicitly  
44 specify a priority of interests.

45 (d) The consideration of interests and factors in the manner required by this section  
46 shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

47 (e) A director is not liable for monetary damages arising out of an action under this  
48 Article with respect to any of the following:

49 (1) Any act taken as a director, or any omission to act as a director, other than  
50 any act or omission that the director at the time of such act or omission knew  
51 or believed to be clearly in conflict with the benefit corporation's general

1 public benefit purpose and any specific public benefit purpose stated in its  
2 articles of incorporation.

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

5 **"§ 55-18-41. Benefit director.**

6 (a) The board of directors of a benefit corporation must by resolution designate one  
7 director who is an independent person to be the benefit director. The benefit director shall have,  
8 in addition to the powers, duties, rights, and immunities of the other directors of the benefit  
9 corporation, the powers, duties, rights, and immunities provided in this section.

10 (b) The benefit director may serve as the benefit officer at the same time as serving as  
11 the benefit director. The articles of incorporation or bylaws of a benefit corporation may  
12 prescribe additional qualifications of the benefit director not inconsistent with this section.

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

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

19 (2) Whether the benefit corporation conferred a general public benefit and any  
20 specific public benefit during the period covered by the report.

21 (3) Whether the directors complied with G.S. 55-18-40.

22 If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the  
23 benefit director shall include in the annual benefit report a description, to the extent relevant, of  
24 the ways in which the benefit corporation or its directors failed to act or comply.

25 (d) If a benefit corporation dispenses with a board of directors pursuant to  
26 G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the  
27 persons who perform the duties of the board of directors designate an independent person with  
28 the powers, duties, rights, and immunities of a benefit director.

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

35 **"§ 55-18-42. Benefit officer.**

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

37 (b) The duties of the benefit officer shall include the following:

38 (1) Monitoring the benefit corporation's pursuit of the general and any specific  
39 public benefit purpose of the benefit corporation and the general and any  
40 specific public benefit created by the benefit corporation.

41 (2) Performing such other duties to the extent provided in either of the  
42 following:

43 a. The bylaws of the benefit corporation.

44 b. A resolution adopted by the board of directors of the benefit  
45 corporation that is not in conflict with the bylaws.

46 (3) Preparing the annual benefit report required by G.S. 55-18-50.

47 **"§ 55-18-43. Right of action; benefit enforcement proceeding.**

48 (a) The duties of directors under this Article may be enforced only in a benefit  
49 enforcement proceeding. No person may bring an action or assert a claim against a benefit  
50 corporation or its directors with respect to the duties of directors under this Article, except in a  
51 benefit enforcement proceeding.



1 the directors, officers, or material owners of the benefit corporation and the  
2 directors, officers, or material owners of the entity that developed the  
3 third-party standard.

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 must post each annual benefit report on the publicly  
8 accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five  
9 years from the date the annual benefit report is first sent to shareholders. The compensation  
10 paid to directors and any financial or proprietary information included in the benefit report may  
11 be omitted from the benefit report as posted.

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

18 **SECTION 2.** G.S. 55-13-02(a) is amended by adding a new subdivision to read:

19 "(a) In addition to any rights granted under Article 9, a shareholder is entitled to  
20 appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event  
21 of any of the following corporate actions:

22 ...

23 (9) Consummation of a designation of the corporation as a benefit corporation  
24 pursuant to Part 2 of Article 18 of this Chapter."

25 **SECTION 3.** This act becomes effective October 1, 2013.