

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2013**

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**SENATE BILL 239**  
**PROPOSED COMMITTEE SUBSTITUTE S239-CSTG-22 [v.1]**

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Short Title: Amend NC Business Corporation Act.

(Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED  
AN ACT TO MAKE VARIOUS REVISIONS TO THE NORTH CAROLINA BUSINESS  
CORPORATION ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 55-6-21(a) reads as rewritten:

"(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation. Unless the articles of incorporation or bylaws provide otherwise, the powers granted in this section to the board of directors may be delegated, within limits prescribed by the board of directors, to one or more officers of the corporation who are designated by the board of directors."

**SECTION 2.** G.S. 55-6-24(a) reads as rewritten:

"(a) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of ~~directors~~ directors, or officers of the corporation who are designated by the board of directors pursuant to G.S. 55-6-21(a), shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued."

**SECTION 3.** G.S. 55-7-05(a) reads as rewritten:

"(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to G.S. 55-7-09 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless this Chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting."

**SECTION 4.** G.S. 55-7-08 is repealed.

**SECTION 5.** Article 7 of Chapter 55 is amended by adding a new section to read:

**"§ 55-7-09. Remote participation in meetings.**

(a) To the extent authorized by a corporation's board of directors, shareholders of any class or series designated by the board of directors may participate in any meeting of shareholders by means of remote communication. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to do all of the following:

(1) Verify that each person participating remotely is a shareholder.



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(2) Provide each shareholder participating remotely a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and read or hear the proceedings of the meeting, substantially concurrently with such proceedings."

**SECTION 6.** G.S. 55-7-20(c) reads as rewritten:

"(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, personally or by or with his representative, is entitled to inspect the list at any time during the meeting or any adjournment. The corporation is not required to make the list available through electronic or other means of remote communication to a shareholder or proxy attending the meeting by remote communication pursuant to ~~G.S. 55-7-08~~. G.S. 55-7-09."

**SECTION 7.** Article 8 of Chapter 55 is amended by adding a new section to read:

**"§ 55-8-26. Submission of matters for shareholder vote.**

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter."

**SECTION 8.** G.S. 55-10-03 reads as rewritten:

**"§ 55-10-03. Amendment by board of directors and shareholders.**

...

(b) Except as provided in G.S. 55-10-02, 55-10-07, and 55-14A-01, after adopting the proposed amendment the board of directors ~~must~~shall submit the amendment to the shareholders for their approval. The board of directors ~~must~~shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless (i) the board of directors determines that, because of conflict of interest or other special circumstances, it should not make ~~such a recommendation, in which event~~ a recommendation that the shareholders approve the amendment or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subsection applies, the board of directors must ~~shall~~ communicate the basis for ~~that determination not recommending approval of the amendment to the shareholders with the amendment at the time it submits the amendment to the shareholders.~~

...

(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved ~~by~~ by all of the following:

- (1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create appraisal ~~rights;~~ and rights.
- (2) The votes required by G.S. 55-7-25 and G.S. 55-7-26 by every other voting group entitled to vote on the amendment."

**SECTION 9.** G.S. 55-11-03 reads as rewritten:

**"§ 55-11-03. Action on plan.**

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.

(b) ~~For~~ The following requirements shall be met for a plan of merger or share exchange to be approved:

- (1) The board of directors ~~must~~shall recommend to the shareholders that the plan of merger or share exchange to the shareholders be approved, unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no recommendation, in which event~~ a recommendation that the shareholders approve the plan of merger or

share exchange or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the basis for ~~its lack of a recommendation~~not recommending approval of the plan of merger or share exchange to the shareholders ~~with the plan; and~~at the time it submits the plan of merger or share exchange to the shareholders.

- (2) The shareholders entitled to vote must approve the ~~plan~~plan of merger or share exchange.

...  
(e) Unless this Chapter, the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group and, for the purpose of Article 9 or any provision in the articles of incorporation or bylaws adopted prior to July 1, 1990, a merger shall be deemed to include a share exchange. If any shareholder of a merging corporation has or will have personal liability for any existing or future obligation of the surviving corporation in the merger solely as a result of owning one or more shares in the surviving corporation, then, in addition to the requirements of this subsection, authorization of the plan of merger by the merging corporation shall require the affirmative vote or written consent of that shareholder.

- (f) Separate voting by voting groups is ~~required~~required for the following:

- (1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under G.S. 55-10-04, except where the consideration to be received in exchange for the shares of that group consists solely of ~~cash~~cash.
- (2) On a plan of share exchange by each class or series of shares to be acquired in the exchange, with each class or series constituting a separate voting group.

...."

**SECTION 10.** G.S. 55-11-04 reads as rewritten:

**"§ 55-11-04. Merger ~~with subsidiary~~between parent and subsidiary or between subsidiaries.**

(a) Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the outstanding shares~~voting power of each class and series of at the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors~~ may merge the subsidiary into itself or into another such subsidiary without approval of the shareholders of the parent corporation unless the articles of incorporation of the parent corporation require approval of the shareholders or the plan of merger contains one or more amendments to the articles of incorporation of the parent corporation for which shareholder approval is required by G.S. 55-10-03, and without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation require approval of the shareholders of the subsidiary ~~corporation~~corporation, or if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Subject to Article 9, a parent corporation owning shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the outstanding shares~~voting power of each class and series of at the outstanding shares of the subsidiary corporation that have the current power to vote in the election of directors~~ may merge itself into the subsidiary corporation without approval of the board of directors or shareholders of the subsidiary corporation unless the articles of incorporation of the subsidiary corporation provide ~~otherwise~~otherwise, the plan of merger contains one or more

amendments to the articles of incorporation of the subsidiary corporation for which shareholder approval is required by ~~G.S. 55-10-03~~G.S. 55-10-03, or, if the subsidiary is a foreign corporation, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized. Except as otherwise provided in this subsection, the provisions of G.S. 55-11-01 and G.S. 55-11-03 apply to any merger described in this subsection.

(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective.

(c) Repealed by Session Laws 2005, c. 268, s. 21.

(d) Repealed by Session Laws 2005, c. 268, s. 21.

(e) Repealed by Session Laws 2005, c. 268, s. 21.

(f) The provisions of ~~G.S. 55-13-02(e)~~G.S. 55-13-02(b) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

**SECTION 11.** G.S. 55-11A-11 reads as rewritten:

**"§ 55-11A-11. Plan of conversion.**

(a) The converting domestic corporation shall approve a written plan of conversion ~~containing~~containing all of the following:

(1) The name of the converting domestic ~~corporation~~corporation.

(2) The name of the resulting business entity into which the domestic corporation shall convert, its type of business entity, and the state or country whose laws govern its organization and internal ~~affairs~~affairs.

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

(4) The manner and basis for converting the shares of the domestic corporation into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

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

(2) A determination or action by the converting domestic corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic corporation is a party, or any other agreement or document.

(b) ~~For~~The following requirements shall be met for a plan of conversion to be approved:

(1) The board of directors shall recommend to the shareholders that the plan of conversion to the shareholders be approved, unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make no recommendation, in which event a recommendation that the shareholders approve the plan of conversion or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors shall communicate the basis for its lack of a recommendation not recommending approval of the plan of conversion to the shareholders with the plan; and at the time it submits the plan of conversion to the shareholders.

(2) The shareholders entitled to vote shall approve the ~~plan~~plan of conversion.

...."

**SECTION 12.** G.S. 55-12-01 reads as rewritten:

"§ 55-12-01. ~~SaleDisposition of assets in regular course of business~~not requiring shareholder approval and mortgage of assets.

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the ~~shareholders~~shareholders, do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of ~~business~~or business.

(2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation.

(3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property. If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property."

**SECTION 13.** G.S. 55-12-02 reads as rewritten:

"§ 55-12-02. ~~SaleDisposition of assets other than in regular course of business~~requiring shareholder approval.

...

(b) ~~For~~The following requirements shall be met for a transaction to be authorized:

(1) The board of directors ~~must~~shall recommend to the shareholders that the proposed transaction to the shareholders be approved unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make no recommendation, in which event a recommendation that the shareholders approve the proposed transaction or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the basis for its ~~lack of a recommendation~~not recommending approval of the proposed transaction to the shareholders ~~with the submission of the proposed transaction; and at the time it submits the proposed transaction to the shareholders.~~

(2) The shareholders entitled to vote must approve the ~~transaction~~proposed transaction.

...."

**SECTION 14.** G.S. 55-14-02(b) reads as rewritten:

"(b) ~~For~~The following requirements shall be met for a proposal to dissolve to be adopted:

(1) The board of directors ~~must~~shall recommend ~~dissolution to the shareholders~~to the shareholders that the proposal to dissolve be approved unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make ~~no~~ a recommendation, in which event a recommendation that the shareholders approve the proposal to dissolve or (ii) G.S. 55-8-26 applies. If either clause (i) or (ii) of this subdivision applies, the board of directors ~~must~~shall communicate the ~~proposal and the basis for its lack of a recommendation to the shareholders; and~~not recommending approval of the proposal to dissolve to the shareholders at the time it submits the proposal to dissolve to the shareholders.

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e)."

**SECTION 15.** The Revisor of Statutes may cause to be printed all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

**SECTION 16.** This act becomes effective October 1, 2013.