GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H.B. 534 Apr 1, 2015 HOUSE PRINCIPAL CLERK D

HOUSE DRH10160-ML-186 (3/18)

	Short Title:	North Carolina Benefit Corporation Act.	(Public)
	Sponsors:	Representatives McGrady, Daughtry, Harrison, and Reives (Primary Spo	onsors).
	Referred to:		
1		A BILL TO BE ENTITLED	
2		ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.	
3		Assembly of North Carolina enacts:	
4		ECTION 1. Chapter 55 of the General Statutes is amended by addin	g a new
5	Article to rea		
6		" <u>Article 18.</u>	
7		"The North Carolina Benefit Corporation Act.	
8		"Part 1. Preliminary Provisions.	
9	" <u>§ 55-18-01.</u>		
10		cle may be cited as "The North Carolina Benefit Corporation Act."	
11		Application and effect of Article.	
12		nis Article applies to all benefit corporations.	
13		ne provisions of the other Articles of this Chapter apply to benefit corporation	
14	• •	n of this Article conflicts with any provision of the other Articles of this	<u>Chapter,</u>
15		of this Article shall control.	
16		ther than as provided in G.S. 55-18-21, corporations that are not	
17	-	shall not be subject to this Article, and this Article shall not otherwise	
18		e of law that is applicable to a corporation that is not a benefit corporation.	
19		provision of the articles of incorporation or bylaws of a benefit corporat	-
20		sistent with or supersede a provision of this Article, except to the extent e	<u>expressly</u>
21	permitted in t		
22	" <u>§ 55-18-03.</u>		
23		ne following definitions apply to this Article:	
24	<u>(1</u>		
25		subject to this Article by including a provision in its articles of incom	-
26		providing that it shall be a benefit corporation governed by this Ar	
27		that has not terminated its status as a benefit corporation pur	<u>suant to</u>
28		<u>G.S. 55-18-22.</u>	
29	<u>(2</u>		<u>l as such</u>
30		pursuant to G.S. 55-18-41.	
31	<u>(3</u>		
32		G.S. 55-18-43 against a director of a benefit corporation for any	<u>y of the</u>
33		following:	
34		a. Failing to pursue the general public benefit purpose or any	
35		public benefit purpose set forth in its articles of incorporation	<u>l.</u>
36		b. Violating a duty or standard of conduct under this Article.	



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1	<u>(4)</u>	Benefit officer The officer of the benefit corporation designated as such
2		pursuant to G.S. 55-18-42.
3	<u>(5)</u>	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	<u>(6)</u>	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 or (ii) owns, directly or
27		indirectly, five percent (5%) or more of the outstanding equity
28		interests, owns, directly or indirectly, five percent (5%) or more of
29		the outstanding shares of any series or class of stock of the benefit
30		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. <u>Providing low-income or underserved individuals or communities</u>
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. <u>Preserving or improving the environment.</u>
39		<u>d.</u> <u>Improving human health.</u>
40		 <u>d.</u> <u>Improving human health.</u> <u>e.</u> <u>Promoting the arts, sciences, or advancement of knowledge.</u> f. Increasing the flow of capital to entities with a public benefit
41		f. Increasing the flow of capital to entities with a public benefit
42		purpose.
43	<u>(8)</u>	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	<u>(9)</u>	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		<u>G.S. 55-18-40(a).</u>

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<u>b.</u>	The standar	d is developed by an entity that is independent of the
—		pration and satisfies the following:
		more than one-third of the members of the governing
		of the entity are representatives of either of the
		wing:
	<u>I.</u>	An association of businesses operating in a specific
	<u></u>	industry, the performance of whose members is
		measured by the standard.
	II.	Businesses whose performance is measured by the
		standard.
	<u>2.</u> <u>The</u>	entity is not materially financed by an association or
		ness described in sub-sub-subdivision 1. of this
		subdivision.
<u>c.</u>		l is developed by an entity that satisfies the following:
—		access to necessary expertise to assess overall corporate
		l and environmental performance.
	<u>2.</u> <u>Uses</u>	a balanced multi-stakeholder approach, including a
	<u>publi</u>	c comment period of at least 30 days to develop the
	stand	lard.
<u>d.</u>	The standard	d is transparent because the following information about
	the standard	is publicly available:
	<u>1.</u> <u>The c</u>	criteria considered when measuring the overall social and
		conmental performance of a business, as well as the
		ve weightings of those criteria.
		process for the development and revision of the standard,
		ding the following:
	<u>I.</u>	The identity of the directors, officers, any material
		owners, and the governing body of the entity that
		developed and controls revisions to the standard.
	<u>II.</u>	The process by which revisions to the standard and
		changes to the membership of the governing body are
		made.
	<u>III.</u>	An accounting of the sources of financial support for
		the entity, with sufficient detail to disclose any
		relationships that could reasonably be considered to
(\mathbf{h}) Equation \mathbf{h}	a of the defi	present a potential conflict of interest.
		nitions of "independent person" and "subsidiary" in tage of ownership in an entity shall be calculated as if all
	-	erests in the entity had been exercised.
		entitled to property tax exemption.
		e entitled to claim an exemption from any property tax
		er 105 of the General Statutes.
mposed under Subendp	-	loption and Change of Status.
§ 55-18-20. Incorpora		÷ •
		a domestic corporation incorporated upon a conversion
		11A of this Chapter, may be incorporated as a benefit
		articles of incorporation a provision providing that the
± •	-	on governed by this Article. The articles of incorporation
▲	*	of any specific public benefit purpose or purposes as
		nclude all provisions required by, and may include any
provision permitted by.		• • <i>µ µ µ µ µ µ µ µ µ µ</i>

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1	1 " <u>§ 55-18-21. Transition to benefit corporation status.</u>	
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3	•	
4		
5		
6		er this section must be
7		other requirements of
8		the amendment must
9	9 include a statement by the board of directors of the reasons why the	board is proposing the
10	amendment and a discussion of the anticipated effect on the shareholders	s of becoming a benefit
11	1 <u>corporation.</u>	
12	2 (b) If a corporation or other entity that is not a benefit corporation	n is a party to a merger,
13	3 conversion, or share exchange, and the surviving or acquiring corpo	oration in the merger,
14	4 <u>conversion</u> , or share exchange is, or is to be as a result of such	transaction, a benefit
15	5 corporation, the plan of merger, conversion, or share exchange must be a	approved in the manner
16	6 required by G.S. 55-18-23. In addition to other requirements of applicable	e law, the notice of the
17	7 meeting of shareholders to approve the plan of merger, conversion, or	r share exchange must
18	8 include a discussion of the anticipated effect on the shareholders resultin	g from the surviving or
19	acquiring corporation being a benefit corporation. Upon the completion	of such transaction, the
20	3 surviving or acquiring corporation to be a benefit corporation must inc	clude a provision in its
21	articles of incorporation providing that the corporation shall be a benefi	t corporation governed
22	2 by this Article and an identification of any specific public benefit p	urpose or purposes as
23	3 <u>required by G.S. 55-18-30.</u>	
24	4 " <u>§ 55-18-22. Termination of benefit corporation status.</u>	
25		e subject to this Article
26		e corporation shall be a
27	· · ·	ist be approved in the
28		holders to approve the
29		asons why the board is
30		on the shareholders of
31		
32		
33		ion, the plan must be
34		
35		
36		
37		following requirements
38		
39		*
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42		•
43		of the voting rights of
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46		
47		y the members entitled
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49 50		-
50		
51	be required for the approval of a merger of such e	ntity, unless otherwise

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	provided in the articles of organization, operating agreement, or partnership
	agreement of the entity.
	"Part 3. Corporate Purposes.
"§ 55-18-30.	Corporate purposes.
	enefit corporation shall have as one of its corporate purposes the creation of
	benefit. A benefit corporation may include in its articles of incorporation other
	oses, including the purpose of engaging in any lawful business.
<u>(b)</u> <u>A</u>	penefit corporation may include as a corporate purpose in its articles of
	one or more specific public benefit purposes in addition to its purposes under
subsection (a)	of this section.
<u>(c)</u> <u>A</u>	enefit corporation may amend its articles of incorporation to add, amend, or
delete the ide	ntification of a specific public benefit purpose. Such an amendment must be
approved by	the shareholders of the benefit corporation in the manner required by
G.S. 55-18-23	
	"Part 4. Accountability.
" <u>§ 55-18-40.</u>	tandard of conduct for directors.
	lischarging their duties as directors of a benefit corporation, directors shall
consider the e	fects of any action or decision not to act upon the following:
<u>(1)</u>	The shareholders of the benefit corporation.
<u>(2)</u>	The employees and workforce of the benefit corporation, its subsidiaries,
	and suppliers.
<u>(3)</u>	The interests of customers to the extent they are beneficiaries of the general
	or specific public benefit purposes of the benefit corporation.
<u>(4)</u>	The local community and society, including the interests of each community
	in which offices or facilities of the benefit corporation, its subsidiaries, or
	suppliers are located.
<u>(5)</u>	The local and global environment.
<u>(6)</u>	The short-term and long-term interests of the benefit corporation, including
	benefits that may accrue to the benefit corporation from its long-term plans
	and the possibility that these interests may be best served by the continued
	independence of the benefit corporation.
<u>(7</u>)	The ability of the benefit corporation to accomplish its general and any
	specific public benefit purpose.
	ddition to the required considerations in subsection (a) of this section, a director
	poration may consider the following:
<u>(1)</u>	The resources, intent, and conduct (past, stated, and potential) of any person
(2)	seeking to acquire control of the benefit corporation.
<u>(2)</u>	Other pertinent factors or the interests of any other group that the director in
	good faith considers to be appropriate.
	lirector of a benefit corporation need not give priority to the interests of a
	on or group referred to in subsections (a) and (b) of this section over the interests
	rson or group unless the benefit corporation's articles of incorporation explicitly
	ty of interests.
	consideration of interests and factors in the manner required by this section med to be inconsistent with the requirements of $G = 55$, 8, 30
	emed to be inconsistent with the requirements of G.S. 55-8-30. irector is not liable for monetary damages arising out of an action under this
	spect to any of the following: Any act taken as a director, or any omission to act as a director, other than
<u>(1)</u>	any act or omission that the director at the time of such act or omission knew
	or believed to be clearly in conflict with the benefit corporation's general
	or beneved to be clearly in contribut with the benefit corporation's general

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1			public benefit purpose and any specific pu	ublic benefit purpose stated in its
2			articles of incorporation.	
3		(2)	Failure of the benefit corporation to create	general or specific public benefit.
4	"§ 55-18-4		nefit director.	
5	(a)		oard of directors of a benefit corporation that	t is a public corporation must, and
6	the board		ectors of any other benefit corporation ma	
7	director w	ho is a	n independent person to be the benefit director	or. The benefit director shall have,
8	in additior	n to th	e powers, duties, rights, and immunities of	the other directors of the benefit
9	corporation	n, the	powers, duties, rights, and immunities provide	ed in this section.
10	<u>(b)</u>	The b	enefit director may serve as the benefit offic	cer at the same time as serving as
11	the benefi	t direc	ctor. The articles of incorporation or bylaw	ws of a benefit corporation may
12	prescribe a	additio	nal qualifications of the benefit director not in	nconsistent with this section.
13	<u>(c)</u>	The b	enefit director must prepare, and the benefi	t corporation must include in the
14	annual ber	nefit r	eport to shareholders required by G.S. 55-1	18-50, the opinion of the benefit
15	director on	n the fo	llowing:	
16		<u>(1)</u>	Whether the benefit corporation acted in ac	ccordance with its general and any
17			specific public benefit purpose in all ma	terial respects during the period
18			covered by the report.	
19		<u>(2)</u>	Whether the benefit corporation created	general public benefit and any
20			specific public benefit during the period cor	vered by the report.
21		<u>(3)</u>	Whether the directors complied with G.S. 5	<u>55-18-40.</u>
22			director finds a failure under subdivision (1)	
23			hall include in the annual benefit report a des	-
24			h the benefit corporation or its directors failed	x v
25	<u>(d)</u>		dless of whether the articles of incorpora	
26	-		ude a provision limiting or eliminating th	
27		-	.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit	· · ·
28			ary damages for any act or omission taken i	± •
29			utes (i) a transaction from which the direct	
30			ul misconduct, or (iii) a knowing violation of	law.
31			nefit officer.	
32	<u>(a)</u>		efit corporation may have an officer designat	
33	<u>(b)</u>		uties of the benefit officer shall include the fo	-
34 25		<u>(1)</u>	Monitoring the benefit corporation's pursu	• • • •
35			public benefit purpose of the benefit corp	
36		(2)	specific public benefit created by the benefit	
37 38		<u>(2)</u>	Performing such other duties to the ex	ktent provided in either of the
38 39			<u>following:</u>	an
39 40			<u>a.</u> <u>The bylaws of the benefit corporation</u>b. A resolution adopted by the box	
40 41			<u>b.</u> <u>A resolution adopted by the bo</u> corporation that is not in conflict wi	
41		(3)	Preparing the annual benefit report required	
42	"8 55-18-4		the action; benefit enforcement proceedi	•
44	(a)		duties of directors under this Article may	
45			ceeding. No person may bring an action or	•
46			s directors with respect to the duties of direct	-
47	_		ent proceeding.	tors under this riticie, except in a
48	(b)		nefit enforcement proceeding may be comm	nenced or maintained only by the
49	following:		indecement proceeding may be comm	
50	<u></u>	(1)	Directly, by the benefit corporation.	
51		$\frac{(1)}{(2)}$	Derivatively, by any of the following:	

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation. 3 b. A director. 4 c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary. 7 d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation. 9 (c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements splicable to derivative proceedings under Part 4 of Article 7 of this. Chapter, except that such to requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section. 17 (a) A benefit report. 18 commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section. 19 (1) A narrative description of all of the following: a. The manner in which the benefit corporation has pursued its general public benefit purpose during the year and the extent to which general public benefit was created. 20 k. The manner in which the benefit corporation of general or specific public benefit. 21 public benefit. specific public benefit.		General Assemb	ly of N	North Carolina	Session 2015
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3 b. A director. 4 c. A person or group of persons that owns, directly or indirectly, five 5 percent (5%) or more of the outstanding equity voting interests in an 6 entity of which the benefit corporation is a subsidiary. 7 d. Other persons specified in the articles of incorporation or bylaws of 8 the benefit corporation. (c) 9 (c) A benefit enforcement proceeding commenced or maintained derivatively under 10 derivative proceedings under Part 4 of Article 7 of this Chapter, except that such 11 to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such 12 requirements shall be interpreted to reflect that a benefit enforcement proceeding may be 13 "Est-18-50, Annual benefit report. 14 (a) A benefit corporation shall prepare an annual benefit report that includes all of the 16 following: 1 A narrative description of all of the following: 15 The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which general public benefit was created. 16 0 C: Circumstances that have materially hindered the pursuit by the <td< td=""><td>2</td><td></td><td></td><td></td><td></td></td<>	2				
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10 subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section. 13 "Part 5. Annual Reporting. 14 section. 15 "Part 5. Annual Benefit report. 16 (a) A benefit corporation shall prepare an annual benefit report that includes all of the following: 19 (1) A narrative description of all of the following: 20 a. The manner in which the benefit corporation has pursued its general public benefit purpose during the year and the extent to which general public benefit was created. 23 b. The manner in which the benefit corporation has pursued any specific public benefit was created. 26 c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of general or specific public benefit. 27 An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application. 28 (3) The name of the benefit corporation mathe address to which correspon	8			the benefit corporation.	
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1	(b) The benefit report must be sent annually to each shareholder (i) within 120 days
2	following the end of the fiscal year of the benefit corporation or (ii) at the same time that the
3	benefit corporation delivers any other annual report to its shareholders, whichever occurs first.
4	(c) A benefit corporation must post each annual benefit report on the publicly
5	accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five
6	years from the date the annual benefit report is first sent to shareholders. The compensation
7	paid to directors and any financial or proprietary information included in the benefit report may
8	be omitted from the benefit report as posted."
9	SECTION 2. G.S. 55-13-02(a) is amended by adding a new subdivision to read:
10	"(9) Consummation of a designation of the corporation as a benefit corporation
11	pursuant to Part 2 of Article 18 of this Chapter."
12	SECTION 3. This act becomes effective October 1, 2015.