

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 616
PROPOSED COMMITTEE SUBSTITUTE H616-PCS40496-BC-14

Short Title: North Carolina Public Benefit Corporation Act.

(Public)

Sponsors:

Referred to:

April 10, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA PUBLIC 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 Public Benefit Corporation Act.

8 **"§ 55-18-01. Short title.**

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

10 **"§ 55-18-02. Application and effect of Article.**

11 (a) Applicability. – This Article applies to all public benefit corporations.

12 (b) Applicability of Chapter. – The provisions of the other Articles of this Chapter
13 apply to public benefit corporations. If any provision of this Article conflicts with any
14 provision of the other Articles of this Chapter, the provision of this Article shall control.

15 (c) Effect of Article on Other Corporations. – Other than as provided in G.S. 55-18-05,
16 corporations that are not public benefit corporations shall not be subject to this Article, and this
17 Article shall not otherwise affect any law that is applicable to a corporation that is not a public
18 benefit corporation.

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

22 (e) Not Tax Exempt. – Nothing in this Article shall be construed as conferring
23 tax-exempt status under applicable law on a public benefit corporation formed under the
24 provisions of this Article.

25 **"§ 55-18-03. Definitions.**

26 The following definitions apply in this Article:

27 (1) Public benefit corporation. – A corporation for profit that is incorporated
28 under and subject to the requirements of this Chapter and that is intended to
29 produce one or more public benefits and to operate in a responsible manner
30 by managing in a manner that balances the stockholders' pecuniary interests,
31 the best interests of those materially affected by the corporation's conduct,
32 and the one or more specific public benefits identified in its articles of
33 incorporation.

34 (2) Public benefit. – A positive effect or reduction of a negative effect on one or
35 more categories of persons, entities, communities, or interests. This term
36 includes effects of an artistic, charitable, cultural, economic, educational,



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1 environmental, literary, medical, religious, scientific, or technological
2 nature. This term does not include effects on shareholders in their capacities
3 as shareholders.

4 **"§ 55-18-04. Articles of incorporation; name.**

5 (a) Articles of Incorporation. – In addition to the required information set forth in
6 G.S. 55-2-02, a public benefit corporation shall include both of the following in its articles of
7 incorporation:

8 (1) A statement that the corporation is a public benefit corporation.

9 (2) An identification of one or more specific public benefits to be promoted by
10 the corporation.

11 (b) Name. – The name of a public benefit corporation may satisfy the requirements of
12 G.S. 55D-20 by including the words "public benefit corporation," or the abbreviation "P.B.C.,"
13 or the designation "PBC." If the name does not contain this language, the corporation shall,
14 prior to issuing unissued shares or reissuing shares acquired by the corporation, provide notice
15 to any person acquiring a share that it is a public benefit corporation, unless either of the
16 following conditions exists:

17 (1) The issuance or reissuance is pursuant to an offering registered under the
18 Securities Act of 1933, as amended.

19 (2) At the time of the issuance or reissuance, the corporation has a class of
20 shares that is registered under the Exchange Act, as defined in
21 G.S. 55-9-01(b).

22 **"§ 55-18-05. Transition to public benefit corporation status.**

23 (a) Amendment. – An existing corporation may become a public benefit corporation by
24 amending its articles of incorporation to include the information set forth in G.S. 55-18-04(a).
25 Notwithstanding any provision of Article 10 of this Chapter to the contrary, an existing
26 corporation may amend its articles of incorporation pursuant to this subsection only upon
27 unanimous approval of the outstanding shares of the corporation entitled to vote thereon.

28 (b) Merger or Share Exchange. – Notwithstanding any provision of Article 11 of this
29 Chapter to the contrary, if a corporation that is not a public benefit corporation is a party to a
30 merger or share exchange, and the surviving or acquiring corporation in the merger or share
31 exchange is, or is to be as a result of the transaction, a public benefit corporation, the plan of
32 merger or share exchange must be approved unanimously by the outstanding shares of the
33 corporation entitled to vote thereon.

34 **"§ 55-18-06. Termination of public benefit corporation status.**

35 (a) Amendment. – A public benefit corporation may terminate its status and cease to be
36 subject to this Article by amending its articles of incorporation to delete the information set
37 forth in G.S. 55-18-04(a). Notwithstanding any provision of Article 10 of this Chapter to the
38 contrary, a public benefit corporation may amend its articles of incorporation pursuant to this
39 subsection only upon two-thirds approval of the outstanding shares of the corporation entitled
40 to vote thereon.

41 (b) Merger or Share Exchange. – Notwithstanding any provision of Article 11 of this
42 Chapter to the contrary, if a plan of merger or share exchange would have the effect of
43 terminating the status of a corporation as a public benefit corporation, the plan must be
44 approved by two-thirds of the outstanding shares of the corporation entitled to vote thereon.

45 **"§ 55-18-07. Notice requirements.**

46 Any stock certificates issued by a public benefit corporation shall note conspicuously that
47 the corporation is a public benefit corporation formed pursuant to this Article. Any notice sent
48 by a public benefit corporation pursuant to G.S. 55-1-41 shall state conspicuously that the
49 corporation is a public benefit corporation formed pursuant to this Article.

50 **"§ 55-18-08. Duties of directors.**

1 (a) General Duty. – The board of directors shall manage or direct the business and
2 affairs of the public benefit corporation in a manner that balances the pecuniary interests of the
3 shareholders, the best interests of those materially affected by the corporation's conduct, and
4 the one or more specific public benefits identified in its articles of incorporation.

5 (b) Duty to Individuals. – A director of a public benefit corporation shall not, by virtue
6 of the one or more specific public benefits identified in the public benefit corporation's articles
7 of incorporation or the provisions of subsection (a) of this section, have any duty to any person
8 on account of any interest of the person in the one or more specific public benefits identified in
9 the articles of incorporation or on account of any interest materially affected by the
10 corporation's conduct. With respect to a decision implicating the balance requirement in
11 subsection (a) of this section, a director's fiduciary duties to shareholders and the corporation
12 shall be deemed to be satisfied if the director's decision is (i) informed and disinterested and (ii)
13 would be approved by a person of ordinary, sound judgment.

14 (c) Option. – The articles of incorporation of a public benefit corporation may include a
15 provision that any disinterested failure to satisfy this section shall not, for the purposes of
16 G.S. 55-2-02(b)(3) or Part 5 of Article 8 of this Chapter, constitute an act or omission not in
17 good faith or a breach of the duty of loyalty.

18 **"§ 55-18-09. Periodic statements and third-party certification.**

19 (a) Shareholder Meeting Notice. – A public benefit corporation shall include in every
20 notice of a shareholder meeting a statement that it is a public benefit corporation formed under
21 the provisions of this Article.

22 (b) Biennial Statement. – A public benefit corporation shall no less than biennially
23 provide its shareholders with a statement as to the corporation's promotion of the one or more
24 specific public benefits identified in its articles of incorporation and of the best interests of
25 those persons materially affected by the corporation's conduct. The statement shall include all
26 of the following:

27 (1) The objectives established by the board of directors to promote the one or
28 more specific public benefits and the interests of those persons materially
29 affected by the corporation's conduct.

30 (2) The standards the board of directors has adopted to measure the
31 corporation's progress in promoting the one or more specific public benefits
32 and the interests of those persons materially affected by the corporation's
33 conduct.

34 (3) Objective factual information based on the standards adopted under
35 subdivision (2) of this subsection regarding the corporation's success in
36 meeting the objectives established under subdivision (1) of this subsection.

37 (4) An assessment of the corporation's success in meeting the objectives
38 established under subdivision (1) of this subsection.

39 (c) Options. – The articles of incorporation or bylaws of a public benefit corporation
40 may require the corporation to do any or all of the following:

41 (1) Provide the statement required under subsection (b) of this section more
42 frequently than biennially.

43 (2) Make the statement required under subsection (b) of this section available to
44 the public.

45 (3) Use either or both a third-party standard or third-party certification in
46 making the assessment required under subdivision (4) of subsection (b) of
47 this section.

48 **"§ 55-18-10. Derivative suits.**

49 Shareholders of a public benefit corporation may bring a derivative proceeding in
50 accordance with Part 4 of Article 7 of this Chapter if, at the time the proceeding is brought,
51 either of the following requirements is met:

1 (1) For a public benefit corporation with shares on a national securities
2 exchange, the shareholders bringing the proceeding own, individually or
3 collectively, the lesser of (i) at least two percent (2%) of the corporation's
4 outstanding shares or (ii) shares with a market value of at least two million
5 dollars (\$2,000,000).

6 (2) For all other public benefit corporations, the shareholders bringing the
7 proceeding own, individually or collectively, at least two percent (2%) of the
8 corporation's outstanding shares."

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

10 "(9) Consummation of a transition to public benefit corporation status in
11 accordance with G.S. 55-18-05, unless any of the following conditions
12 applies:

13 a. The shareholder voted in favor of, or consented in writing pursuant to
14 G.S. 55-7-04 to, the transition to public benefit corporation status.

15 b. Any class or series of shares at the record date fixed to determine the
16 shareholders entitled to receive notice of the meeting to act upon the
17 transition to public benefit corporation status were either (i) listed on
18 a national securities exchange or (ii) held of record by more than
19 2,000 shareholders."

20 **SECTION 3.** This act becomes effective October 1, 2017.