

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 440\*

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

Sponsors: Representatives McGrady, Daughtry, Harrison, and Bryan (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary Subcommittee A, if favorable, Commerce and Job Development.

March 28, 2013

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.



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

- 1           a.     The standard assesses the effect of the business and its operations  
2           upon the interests listed in subdivisions (2) through (5) of  
3           G.S. 55-18-40(a).
- 4           b.     The standard is developed by an entity that is independent of the  
5           benefit corporation and satisfies the following:
- 6                 1.     Not more than one-third of the members of the governing  
7                 body of the entity are representatives of either of the  
8                 following:
- 9                         I.     An association of businesses operating in a specific  
10                        industry, the performance of whose members is  
11                        measured by the standard.
- 12                        II.    Businesses whose performance is measured by the  
13                        standard.
- 14                 2.     The entity is not materially financed by an association or  
15                 business described in sub-sub-subdivision 1. of this  
16                 sub-subdivision.
- 17           c.     The standard is developed by an entity that satisfies the following:
- 18                 1.     Has access to necessary expertise to assess overall corporate  
19                 social and environmental performance.
- 20                 2.     Uses a balanced multistakeholder approach, including a  
21                 public comment period of at least 30 days to develop the  
22                 standard.
- 23           d.     The standard is transparent because the following information about  
24           the standard is publicly available:
- 25                 1.     The criteria considered when measuring the overall social and  
26                 environmental performance of a business, as well as the  
27                 relative weightings of those criteria.
- 28                 2.     The process for the development and revision of the standard,  
29                 including the following:
- 30                         I.     The identity of the directors, officers, any material  
31                         owners, and the governing body of the entity that  
32                         developed and controls revisions to the standard.
- 33                         II.    The process by which revisions to the standard and  
34                         changes to the membership of the governing body are  
35                         made.
- 36                         III.   An accounting of the sources of financial support for  
37                         the entity, with sufficient detail to disclose any  
38                         relationships that could reasonably be considered to  
39                         present a potential conflict of interest.

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

43           **"§ 55-18-04. Benefit corporation not entitled to property tax exemption.**

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

46                         "Part 2. Adoption and Change of Status.

47           **"§ 55-18-20. Incorporation as a benefit corporation.**

48           A domestic corporation, including a domestic corporation incorporated upon a conversion  
49           effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit  
50           corporation by including in its initial articles of incorporation a provision providing that the  
51           corporation shall be a benefit corporation governed by this Article. The articles of incorporation

1 must also include an identification of any specific public benefit purpose or purposes as  
2 required by G.S. 55-18-30 and must include all provisions required by, and may include any  
3 provision permitted by, G.S. 55-2-02.

4 **"§ 55-18-21. Transition to benefit corporation status.**

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

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

27 **"§ 55-18-22. Termination of benefit corporation status.**

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

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

38 **"§ 55-18-23. Heightened voting requirements.**

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

- 42 (1) With respect to a corporation, including a benefit corporation, such matter  
43 must be approved by the affirmative vote of sixty-six and two-thirds percent  
44 (66 2/3%) of the outstanding shares or each class and series of stock of the  
45 corporation, voting as separate voting groups, regardless of any limitation in  
46 the corporation's articles of incorporation or bylaws of the voting rights of  
47 such class or series.
- 48 (2) With respect to any entity incorporated under Chapter 55A of the General  
49 Statutes, the matter must be approved by the affirmative vote of sixty-six  
50 and two-thirds percent (66 2/3%) of the votes cast by the members entitled  
51 to vote thereon.



1           (1) Any act taken as a director, or any omission to act as a director, other than  
2 any act or omission that the director at the time of such act or omission knew  
3 or believed to be clearly in conflict with the benefit corporation's general  
4 public benefit purpose and any specific public benefit purpose stated in its  
5 articles of incorporation.

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

8 **"§ 55-18-41. Benefit director.**

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

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

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

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

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

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

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

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

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

38 **"§ 55-18-42. Benefit officer.**

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

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

41               (1) Monitoring the benefit corporation's pursuit of the general and any specific  
42 public benefit purpose of the benefit corporation and the general and any  
43 specific public benefit created by the benefit corporation.

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

46                   a. The bylaws of the benefit corporation.

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

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

50 **"§ 55-18-43. Right of action; benefit enforcement proceeding.**



1           (7) A statement of any relationship, including a financial or governance  
2           relationship, between the benefit corporation and the entity that developed  
3           the third-party standard that might affect the credibility of the objective  
4           assessment of the third-party standard, including any relationships between  
5           the directors, officers, or material owners of the benefit corporation and the  
6           directors, officers, or material owners of the entity that developed the  
7           third-party standard.

8           (b) The benefit report must be sent annually to each shareholder (i) within 120 days  
9           following the end of the fiscal year of the benefit corporation or (ii) at the same time that the  
10          benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

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

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

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

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

26           ...  
27           (9) Consummation of a designation of the corporation as a benefit corporation  
28           pursuant to Part 2 of Article 18 of this Chapter."

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