



# HOUSE BILL 616: North Carolina Public Benefit Corporation Act.

2017-2018 General Assembly

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<b>Committee:</b>	House Finance	<b>Date:</b>	April 19, 2017
<b>Introduced by:</b>	Reps. McGrady, Dobson, Ross, Zachary	<b>Prepared by:</b>	Jason Moran-Bates
<b>Analysis of:</b>	Second Edition		Committee Co-Counsel

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**OVERVIEW:** *House Bill 616 would establish the North Carolina Public Benefit Corporation Act. The bill would allow the creation of public benefit corporations, which are corporation that have positive effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature. The bill would establish procedures for existing corporations to become public benefit corporations, notice requirements, duties for directors of public benefit corporations, and standards for certifying the corporation is promoting a specific public benefit. House Bill 616 would also permit derivative suits by shareholders against a public benefit corporation.*

**CURRENT LAW:** There is currently no statutory law regarding public benefit corporations.

**BILL ANALYSIS:**

**Section 1** of the bill would amend Chapter 55 of the General Statutes by adding a new Article creating and regulating public benefit corporations.

- G.S. 55-15-01 would establish the title of the Article.
- G.S. 55-18-02 would make the Article applicable to all public benefit corporations and establish that if the Article conflicts with another provision of Chapter 55, the Article controls. This section also prohibits public benefit corporations from adopting articles of incorporation or bylaws that are inconsistent with the Article and clarifies that nothing in the Article confers tax-exempt status on public benefit corporations.
- G.S. 55-18-03 would define the terms "public benefit corporation" and "public benefit."
- G.S. 55-18-04 would require the articles of incorporation of a public benefit corporation to state that the corporation is a public benefit corporation and identify the public benefit the corporation promotes. It would also prohibit a public benefit corporation from issuing stock unless the phrase "public benefit corporation" or the initials "P.B.C." was on the stock certificate, except in certain specific circumstances.
- G.S. 55-18-05 would permit existing corporations to become public benefit corporations by amending their articles of incorporation or by merger or share exchange, provided the transition is approved unanimously by the outstanding shares entitled to vote.
- G.S. 55-18-07 would require a public benefit corporation to conspicuously state it is a public benefit corporation on all stock certificates and notices required under G.S. 55-1-41.
- G.S. 55-18-08 would require directors of a public benefit corporation to manage its business in a manner that balances the pecuniary interests of the corporation, the best interests of those

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materially affected by the corporation, and the public benefits identified in the articles of incorporation. Directors would not have any obligations to any individual because of that individual's interest in the public benefit identified in the corporation's articles of incorporation. Directors would be deemed to have met the balance requirement of this section if their actions are informed, disinterested, and would be approved by a person of ordinary, sound judgment. A public benefit corporation may adopt articles of incorporation that include provisions that disinterested failures to satisfy this section are not grounds for bad faith or a breach of a director's duties.

- G.S. 55-18-09 would require a public benefit corporation to biennially provide its shareholders with a statement regarding the corporation's promotion of the public interest listed in its articles of incorporation. This statement must include at least:
  - The objectives established by the board of directors to promote specific public benefits and the interests of those persons materially affected by the corporation's conduct.
  - The standards the board of directors has adopted to measure the corporation's progress in promoting specific public benefits.
  - Objective factual information based on the adopted standards regarding the corporation's success in meeting its objectives.
  - An assessment of the corporation's success in meeting its objectives.

This section would also permit a public benefit corporation to provide the required statement more than biennially, make the statement available to the public, and use a third-party standard or certification for making the assessment required in the statement.

- G.S. 55-18-10 would allow shareholders of a public benefit corporation to bring a derivative suit against the corporation if the shareholders bringing the suit own at least 2% of the corporation's outstanding shares. In addition to the 2% threshold, if the corporation is traded on a national securities exchange, the shareholders may bring suit if they own shares with a market value of at least \$2,000,000.

**Section 2** would amend G.S. 55-13-02(a) to add a provision allowing a shareholder in a corporation to have appraisal rights and obtain fair value of the shareholder's shares if the corporation is transitioning to a public benefit corporation, unless the shareholder voted in favor of the transition or any class of shares were listed on a national securities exchange or held by more than 2,000 shareholders.

**EFFECTIVE DATE:** This bill would become effective October 1, 2017.