



# SENATE BILL 622: Business Corporation Act Revisions.

2017-2018 General Assembly

<b>Committee:</b>	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 21, 2017
<b>Introduced by:</b>	Sens. Barringer, Newton	<b>Prepared by:</b>	Nicholas Giddings Staff Attorney
<b>Analysis of:</b>	Second Edition		

**OVERVIEW:** *Senate Bill 622 would make revisions to the Business Corporation Act based upon changes made to the Model Corporation Act and to the corporation law of other jurisdictions, as recommended by the Business Corporations Committee of the Business Law Section of the North Carolina Bar Association.*

*Senate Bill 622 is in Senate Finance because Section 1 of the bill requires the Secretary of State to collect a fee of \$150 from corporations when filing articles of validation, which are required under Section 3 to ratify certain defective corporate acts.*

### BILL ANALYSIS:

**Section 1** of the bill would impose a fee of \$150 payable to the Secretary of State when filing articles of validation (required by Section 3 of the bill under certain circumstances when ratifying a prior corporate action).

**Section 2** would authorize the articles of incorporation to include a provision limiting or eliminating any duty of a director, officer or any other person to offer the corporation the right to have or participate in one or more specific classes or categories of business opportunities before the director, officer, or other person pursues that opportunity. (**Sections 10 and 12** would make related conforming changes.)

**Section 3** would provide that a corporate action is not void or voidable for failure to meet authorization requirements if the corporation ratifies the action following prescribed procedures.

**Section 4** would require the holders of two or more series of a class of shares to vote together as a single voting group on a proposed plan of merger or conversion if the plan would entitle them to vote as separate voting groups and would affect those series in the same or a substantially similar way.

**Section 5** would remove the statutory 10-year limit on the duration of a voting trust and would provide that its duration shall be as set forth in the voting trust, in the case of voting trusts that become effective on or after October 1, 2017.

**Section 6** would remove the statutory 10-year limit on the duration of a shareholders' agreement for agreements that become effective on or after October 1, 2017. Section 6 would also permit enforcement of an agreement among shareholders of a privately-held corporation governing the exercise of various corporate powers, management of the corporation's business and affairs, or the relationship between or among the shareholders, directors, and the corporation, even if the agreement is inconsistent with one or more provisions of the Business Corporations Act, as long as it is not contrary to public policy. Such a shareholder agreement would cease to be effective if the corporation subsequently becomes a public corporation, and any references to it in the articles of incorporation or bylaws could be deleted without

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shareholder action by an amendment to the articles or bylaws adopted by the board of directors. (Sections 14 and 15 would make related conforming changes.)

**Section 7** would provide that the compensation of directors of a public corporation or of a corporation that so provides in its articles of incorporation is presumed to be fair to the corporation unless it is proven not to be fair by a preponderance of the evidence.

**Section 8** would provide that a director who is present at a meeting of a subcommittee of the board of directors is deemed to have assented to the action taken at the meeting under specified circumstances.

**Section 9** would authorize a committee created by the board of directors to establish a subcommittee to which it may delegate its powers and authority, and would authorize the appointment of alternate committee members who could replace any absent or disqualified member at a meeting of the committee or any of its subcommittees. (Sections 10 and 11 would make related conforming changes.)

**Section 13** would limit the circumstances under which rights to indemnification and advancement of expenses could be impaired retroactively.

**Sections 16, 20, 23, 29, 30, 31, and 32** would amend various entity merger statutes to clarify that a plan of merger may provide for cancellation of shares or interests at the merger closing.

**Sections 17** would permit the approval of a plan of merger or share exchange without a shareholder vote if the merger follows a tender offer made on the terms provided in the plan of merger or share exchange, and the offeror acquires enough shares to permit it to approve the merger or share exchange if the matter were submitted to a vote at a meeting of shareholders. (Sections 25, 26 and 27 would make related conforming changes.)

**Section 22** recodifies G.S. 55-11-11 as G.S. 55-11-20. (Section 19 makes a related conforming change.)

**Section 23** would establish procedures for conducting a merger between an unincorporated parent entity and a subsidiary corporation without the approval of the subsidiary corporation's board of directors or shareholders. (Sections 18, 21, 24, 25, 26 and 28 would make related conforming changes.)

**Sections 25, 26, 27 and 28** would provide appraisal rights to shareholders with non-voting shares and would require notice of intent to demand appraisal rights to be given before the proposed corporate action becomes effective.

**Section 33** would authorize the Revisor of Statutes to print portions of the Official Comments to the Model Business Corporation Act and drafters' explanatory comments as the Revisor deems appropriate.

**Section 33.1** would make a technical correction to the definition of "mail" as used in Chapter 55.

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

**BACKGROUND:** Senate Bill 239 is a recommendation of the Business Corporations Committee of the Business Law Section of the North Carolina Bar Association, which periodically reviews revisions made to the Model Act by the American Bar Association and to the business laws of other states to determine whether similar changes to the Business Corporations Act are appropriate.

*Bill Patterson, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.*