



SENATE BILL 622: Business Corporation Act Revisions.

2017-2018 General Assembly

Committee:		Date:	August 8, 2018
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2018-45		

OVERVIEW: *S.L. 2018-45 amends the Business Corporation Act, as recommended by the Business Corporations Committee of the Business Law Section of the North Carolina Bar Association, to incorporate provisions based on revisions to the Model Corporation Act and to corporation law of other selected jurisdictions.*

The act becomes effective on October 1, 2018.

BILL ANALYSIS:

Filing Fee for Articles of Validation – The act imposes a fee of \$150 payable to the Secretary of State when filing of articles of validation.

Articles of Incorporation May Eliminate Duty to Bring Business Opportunity to the Corporation – The act authorizes 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.

Defective Corporate Action not Void or Voidable if Ratified in Accordance with Act's Procedures – The act sets forth procedures by which a corporation can ratify corporate actions taken without proper authorization, and provides that such actions are not void or voidable if they are ratified according to the prescribed procedures.

Certain Holders of Two or More Series of a Class of Shares Required to Vote Together as Single Voting Group on Proposed Plan of Merger – The act provides that holders of two or more series of a class of shares must 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.

Modernize Treatment of Voting Trusts and Shareholder Agreements – The act removes the statutory 10-year limit on the duration of a voting trust and shareholder agreements, and clarifies when a purchaser of shares without notice of a shareholder agreement can nevertheless be bound by it.

Director Compensation Presumed Fair to Corporation – The act creates a presumption that director compensation is fair to the corporation unless it is proven to be unfair by a preponderance of the evidence.

Authority Granted to Create and Delegate Committee Powers to Subcommittees and to Appoint Alternate Committee Members – The act permits a board committee to establish a subcommittee to which it can delegate its powers and authority, and authorizes the appointment of alternate committee

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Director



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members for the purpose of taking the place of any absent or disqualified member at a committee or subcommittee meeting.

Limit on Retroactive Impairment of Rights to Indemnification and Advancement of Expenses – The act limits the circumstances under which rights to indemnification and advancement of expenses could be impaired retroactively.

Clarification that a Plan of Merger May Provide for Cancellation of Shares or Interests at Closing - The act amends various entity merger statutes to clarify that a plan of merger may provide for cancellation of shares or interests at the merger closing.

Certain Approvals of Plans of Merger or of Share Exchange without Shareholder Vote Permitted – The act permits 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.

"Short Form" Merger of Corporate Subsidiary and Unincorporated Parent – The act permits the merger of an unincorporated entity with its corporate subsidiary without the approval of the subsidiary's board of directors or shareholders.

Appraisal Rights of Shareholders with Non-voting Shares – The act provides appraisal rights to shareholders with non-voting shares and requires that shareholders intending to demand appraisal rights must give the corporation notice of that intent before the proposed corporate action becomes effective.

Printing of Official Comments and Drafters' Explanatory Comments – The act authorizes the Revisor of Statutes to print all portions of the explanatory comments of the drafters of the act and of the Official Comments to the Model Business Corporation Act as the Revisor deems appropriate.

EFFECTIVE DATE: This act becomes effective on October 1, 2018.

BACKGROUND: S.L. 2018-45 comprises recommendations 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 changes to the business laws of other states to determine whether similar changes to the Business Corporations Act are appropriate to:

- Maintain North Carolina's reputation as a business-friendly jurisdiction
- Attract and retain qualified officers and board members of North Carolina corporations
- Facilitate the efficient discharge of board duties, particularly for public companies subject to the Sarbanes-Oxley Act
- Facilitate efficient corporate reorganizations and acquisitions
- Protect shareholders' reasonable investment expectations