



HOUSE BILL 696: Various Changes to Nonprofit Corporations Act.

2021-2022 General Assembly

Committee:	House State Government. If favorable, re-refer to Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 16, 2021
Introduced by:	Reps. Lofton, Howard, Reives, Moffitt	Prepared by:	Howard Marsilio Staff Attorney
Analysis of:	PCS to First Edition H696-CSBG-20		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 696 would make various changes to the Nonprofit Corporations Act.*

- The PCS removes proposed language from Section 1.(c) of the bill that relates to the disposition of assets by a charitable or religious corporation. The remainder of changes in Section 1.(c) would be technical.

[As introduced, this bill was identical to S540, as introduced by Sens. Woodard, Burgin, Mayfield, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW/BILL ANALYSIS:

Section 1 – Current law authorizes certain mergers between charitable or religious corporations with other entities with limitations, and other types of mergers involving nonprofit corporations. This section would:

- Authorize a charitable or religious corporation to merge with a limited liability company if the limited liability company has a 501(c)(3) nonprofit corporation as its sole member and the limited liability company would also be eligible for a 501(c)(3) exemption.
- Authorize the merger between nonprofit corporations and nonprofit associations.

Section 2 - Article 16 of Chapter 55A outlines the reporting requirements for nonprofit corporations, and generally speaking there is no annual reporting requirement due to the Secretary of State. This section would require that domestic and foreign nonprofit corporations submit annual reports to the Secretary of State electronically, and would set out the procedures for the Secretary of State to administratively dissolve or reinstatement corporations based on compliance with these requirements and procedures.

Section 3 – There are no current laws that relate to nonprofit corporation domestication.

Section 3.1 would authorize and set forth procedures for a domestic nonprofit corporation to become a foreign nonprofit corporation or a foreign nonprofit corporation to become a domestic nonprofit corporation (i.e. nonprofit corporation "domestication"). This includes domestication eligibility requirements, plan of domestication requirements, procedures for approving and adopting a plan of domestication, domestication plan abandonment requirements, and clarifies the effects of a domesticated nonprofit corporation.

Section 3.2 would modify the Secretary of State's fee schedule to add filing fees for Articles of Domestication (\$25) and Articles of Abandonment of Domestication (\$10), and would make other technical and conforming changes.

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Section 3.3 would specify the effective date of these changes to Article 55A as it relates to domestication, and would also clarify the treatment of protected agreements of a domesticating nonprofit in effect before the effective date of these changes.

Section 4 – Current law outlines certain requirements for boards of nonprofit corporations, which include that nonprofit corporation boards must consist of one or more natural persons. This section would:

- Specify that a board of directors for a private foundation must consist of one or more natural persons fixed by the articles of incorporation or bylaws.
- Increase the requirement that the board of directors of a nonprofit corporation must consist of one or more to three or more natural persons fixed by the articles of incorporation or bylaws, and authorize that a board may consist of less than three due to vacancies until the vacancies are filled.

Section 5 – Current law outlines the ability of nonprofit corporations to conduct certain transactions electronically. This section makes various amendments to these laws and clarifies this authority may be limited by the corporation's articles of incorporation, bylaws, or actions of the board.

Section 6 – Current law requires that the creation of a committee of the board, must be approved by the greater of a majority of all directors or the number of directors as required by the articles of incorporation or bylaws. This section would modify these requirements, by specifying that the articles of incorporation or bylaws may also provide for the approval requirements for the creation of a committee and the appointment of members to that committee.

EFFECTIVE DATE: Section 1 becomes effective October 1, 2021 and applies to plans of mergers adopted on or after that date. Section 2 becomes effective January 1, 2023 and applies to annual reports due on or after that date. Sections 3.1 and 3.2 of this act become effective October 1, 2021, the remainder of Section 3 would become effective when it becomes law. Section 4 would become effective October 1, 2021 and would apply to corporations organized on or after that date. Section 5 of this act would become effective October 1, 2021 and would apply to transactions initiated on or after that date. Section 6 of this act would become effective October 1, 2021 and apply to committees created on or after that date. The remainder of this act would become effective when it becomes law.