



# HOUSE BILL 741: Modify/Nonprofits & Charitable Solicitation.

2023-2024 General Assembly

<b>Committee:</b>	House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	June 14, 2023
<b>Introduced by:</b>	Reps. Warren, Lofton, Howard, Reives	<b>Prepared by:</b>	Greg Roney Staff Attorney
<b>Analysis of:</b>	PCS to Second Edition H741-CSTMf-15		

**OVERVIEW:** *The Proposed Committee Substitute (PCS) for House Bill 741 would make the following changes to laws governing nonprofit corporations:*

- *Authorize new categories of mergers and sales of assets.*
- *Require annual reports to the Secretary of State.*
- *Authorize domestication.*
- *Require the board of directors of a private foundation have at least 1 natural person and increase the minimum number of natural persons required for a nonprofit corporation from 1 to 3.*
- *Modify the requirements for establishing committees of the board of directors.*
- *Further authorize and clarify conversion.*
- *Modify charitable solicitation licensing laws.*

*The PCS for House Bill 741 would authorize the following fees:*

- *New annual report has no filing fee. An existing \$100 fee applies for reinstatement after dissolution for failure to file.*
- *Filing Articles of domestication has a \$25 fee and filing Articles of abandonment of domestication has a \$10 fee.*

*Compared to the second edition of House Bill 741, the PCS would:*

- *Add an additional year to the period that the Secretary of State would be authorized to waive the reinstatement fee (\$100) following administrative dissolution for delinquent filing from January 1, 2027 to January 1, 2028.*
- *Maintain the current law requiring that charitable or religious corporations give 30 days' advance notice to the Attorney General prior to disposing of all or a majority of its property.*

## CURRENT LAW AND BILL ANALYSIS:

### PART I. MODIFY LIMITATIONS ON MERGERS AND SALES OF ASSETS

**CURRENT LAW:** Article 11 of Chapter 55A of the General Statutes establishes requirements for the merger of nonprofit corporations.

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G.S. 55A-11-01 generally authorizes one or more nonprofit corporations to merge into another nonprofit corporation if the merger is properly approved. However, charitable or religious corporations can only merge with other entities in limited situations, including with other charitable or religious corporations or with a wholly owned foreign or domestic corporation when the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the merger. G.S. 55A-11-02.

G.S. 55A-11-09 authorizes domestic nonprofit corporations to merge with one or more unincorporated entities and one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations, if certain criteria are met.

G.S. 55A-12-02 requires a charitable or religious corporation to give written notice to the Attorney General 30 days before it sells, leases, exchanges or otherwise disposes of all or a majority of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

Article 14 of Chapter 55A of the General Statutes establishes the requirements and procedures related to the dissolution of a nonprofit corporation.

**BILL ANALYSIS:** This section would authorize a merger between a charitable or religious corporation and either of the following:

- A limited liability company if the limited liability company has a 501(c)(3) nonprofit corporation as its sole member and would be eligible for a 501(c)(3) exemption if it were not disregarded for income tax purposes.
- An unincorporated association consisting of two or more members joined by mutual consent for a common, nonprofit purpose (excluding organizations created by a trust and limited liability companies).

## **PART II. REQUIRE ANNUAL REPORTS TO THE SECRETARY OF STATE**

**CURRENT LAW:** Part 2 of Article 16 of Chapter 55A of the General Statutes outlines reporting requirements for nonprofit corporations, including information that must be provided upon request to members of the nonprofit corporation and the public.

Part 2 of Article 14 of Chapter 55A of the General Statutes establishes the grounds and procedures related to administrative dissolutions of nonprofit corporations. G.S. 55A-14-21 requires the Secretary of State to administratively dissolve a nonprofit corporation if one or more statutory grounds for dissolution exist and have not been corrected within 60 days. Nonprofit corporations can apply for reinstatement if they correct the issue. G.S. 55A-1-22 establishes a \$100 fee to apply for reinstatement following administrative dissolution.

Article 2 of Chapter 131F establishes requirements related to licensure for solicitation of contributions.

**BILL ANALYSIS:** This section would require domestic and foreign nonprofit corporations authorized to conduct affairs in this State to submit annual reports electronically to the Secretary of State. The annual reports would be required to include specified information, such as the state or country under whose law the corporation is incorporated, address of the registered office, and basic information about principal officers. If the Secretary of State does not receive the report within 60 days of the due date, the report would be presumed delinquent and could be grounds for administrative dissolution of the corporation. Corporations that are licensed under Article 2 of Chapter 131F of the General Statutes would be deemed to have met the reporting requirement if certain criteria are met.

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The Secretary of State would be authorized to waive the reinstatement fee following administrative dissolution for delinquent filing until January 1, 2028.

This section would become effective January 1, 2026, and would apply to annual reports due on or after that date.

## **PART III. AUTHORIZE DOMESTICATION**

**BILL ANALYSIS:** This section would authorize and set forth domestication procedures for the following:

- A foreign nonprofit corporation to become a domestic nonprofit corporation, if the domestication is permitted by the law of the jurisdiction of the foreign corporation.
- A domestic nonprofit corporation to become a foreign nonprofit corporation pursuant to a plan of domestication, if the domestication is permitted by the law of the jurisdiction of the foreign corporation.

This section includes provisions related to the following:

- Domestication eligibility.
- Plans of domestication.
- Procedures for approving and adopting a plan of domestication.
- Domestication plan abandonment.
- Effects of being a domesticated nonprofit corporation.

This section would also 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.

Additionally, this section would clarify how protected agreements of a domestic domesticating nonprofit in effect before the effective date of these changes would be treated.

The statutory changes in this section would become effective October 1, 2023. The remainder of the changes in this section would be effective when they become law.

## **PART IV. MODIFY REQUIRED NUMBER OF DIRECTORS**

**CURRENT LAW:** G.S. 55A-1-50 establishes various requirements for private foundations, including requirements to issue distributions in the appropriate time and manner required under section 4942 of the Internal Revenue Code, and to refrain from engaging in self-dealing.

G.S. 55A-8-03 requires that there be a minimum of one natural person on a board of directors for a nonprofit corporation. G.S. 55A-8-11 outlines the process to fill vacancies on a board of directors.

**BILL ANALYSIS:** This section would require the board of directors of a private foundation to be made up of one or more natural persons. Additionally, with the exception of private foundations, this section would expand the minimum number of natural persons required to be on a board of directors for a nonprofit corporation from one to three. A board of directors could still lawfully have fewer than three members due to a vacancy.

This section would become effective on October 1, 2023, and would apply to corporations organized on or after that date.

## **PART V. MODIFY THE REQUIREMENT FOR ESTABLISHING COMMITTEES OF THE BOARD OF DIRECTORS**

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**CURRENT LAW:** G.S. 55A-8-25 allows a board of directors of a nonprofit corporation to create committees and appoint members of the board to sit on the committees. The appointment of members is approved by the greater of (i) a majority of all the directors who are in office when the action is taken or (ii) the number of directors required by the articles of incorporation or bylaws to take action.

**BILL ANALYSIS:** This section would create an exception to allow a nonprofit corporation's articles of incorporation or bylaws to supersede the requirements related to how a board of directors could create a committee and appoint its members.

This section would become effective on October 1, 2023, and would apply to committees created on or after that date.

## **PART VI. FURTHER AUTHORIZE AND CLARIFY CONVERSION**

**CURRENT LAW:** G.S. 55A-11A-10 authorizes charitable or religious corporations to convert to a domestic limited liability company if certain requirements are met.

**BILL ANALYSIS:** This section authorizes a business entity, other than a domestic nonprofit corporation, to convert to a domestic nonprofit corporation if both of the following are met:

- The conversion is permitted by laws of the state or country governing the organization.
- The converting business entity complies with statutory requirements.

Converting business entities would be required to approve a written plan of conversion that includes specified information. Articles of conversion would be required to be filed with the Secretary of State.

This section also includes the effects of converting a business entity into a domestic nonprofit corporation.

Additionally, this section adds requirements to the plan of conversion that charitable or religious organizations must approve to convert to domestic limited liability companies, including that the plan be approved by the board of directors, voting members, and other parties, if applicable.

## **PART VII. MODIFY CHARITABLE SOLICITATION LICENSING LAWS**

**CURRENT LAW:** Under G.S. 131F-5, organizations that solicit contributions in the State must obtain a license from the NC Secretary of State. G.S. 131F-3 contains a list of exemptions from the licensure requirement including any person who receives less than \$25,000 in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund raiser, or solicitor.

Under G.S. 131F-5(c), licenses must be renewed annually. Any change in information from the original license application must be filed annually on or before the 15th day of the 5th calendar month after the close of each fiscal year in which the charitable organization or sponsor solicited in this State, or by the date of any applicable extension of the federal filing date, whichever is later. Extensions given under this section must not exceed 3 months after the initial renewal date or 8 months after the conclusion of the year for which financial information is due at the time of renewal. A charitable organization or sponsor whose federal filing date has been extended must, within 7 days after receipt, forward a copy of the document granting the extension to the Department.

Under G.S. 131F-5(d), the Department may extend the time for license renewal and the annual filing of updated information for a period not to exceed 60 days.

**BILL ANALYSIS:** This section would exempt additional charitable organizations from the requirement to obtain a charitable solicitation license from the NC Secretary of State by increasing the contribution threshold for requiring a license to \$50,000.

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The exemption from obtaining a charitable solicitation license in G.S. 131F-5 would be further expanded by allowing professional fees to be paid to an organizer or incorporator who is a licensed attorney or a licensed accountant.

This section would also amend licensure renewals in G.S. 131F-5(c) by doing all of the following:

- Deleting language specifying that extensions must not exceed 3 months after the initial renewal date or 8 months after the end of the year in which financial information is due at the time of renewal.
- Providing that the federal filing date refers to the federal information tax form filing date.
- Providing that a license renewal application is "filed" as of the date on the affixed postmark, or if filed electronically, on the date it is sent.
- Requiring that a charitable organization or sponsor whose federal informational tax form has been extended by filing the federal application for automatic extension notify the Secretary of State that the license renewal period is extended by forwarding a copy of the application.

This section would also allow the Secretary of State to extend the time for license renewal and filing of updated information for up to 60 days beyond the (i) 15th day of the 5th calendar month after the close of each fiscal year in which the charitable organization or sponsor solicited in this State or (ii) date of any applicable extension of the federal informational tax form filing date. It also would allow the Secretary of State to extend the time for a charitable organization or sponsor whose federal informational tax filing date has been extended under the federal application for automatic extension for an additional period up to 60 days.

**EFFECTIVE DATE:** Except as otherwise provided, House Bill 741 would be effective when it becomes law.

*Brian Gwyn, Brad Krehely, and Howard Marsilio, attorneys with the Legislative Analysis Division, and Kjerstin Lewis, Legal Extern with the Legislative Analysis Division, substantially contributed to this summary.*