

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 801
HOUSE BILL 939

AN ACT TO AMEND THE NONPROFIT CORPORATION ACT CONTAINED IN CHAPTER 55A OF THE GENERAL STATUTES OF NORTH CAROLINA AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO AMEND THE BUSINESS CORPORATION ACT CONTAINED IN CHAPTER 55 OF THE GENERAL STATUTES OF NORTH CAROLINA TO PROVIDE FOR RESTRICTIONS ON CUMULATIVE VOTING FOR DIRECTORS AND ON CALLING MEETINGS OF STOCKHOLDERS OF PUBLICLY HELD COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55A-2(8) is amended in the third line thereof by inserting after the language "or officers," and before the word "and" the language "except as permitted by Section 55A- 28,".

Sec. 2. G.S. 55A-4(a)(6) is amended in the first line thereof by deleting the words "be promptly delivered" and substituting in lieu thereof the language ", within 60 days after the receipt by the corporation or its representative, be delivered".

Sec. 3. G.S. 55A-7(a)(2) is amended by adding at the end thereof the following new sentence:

"When the articles fail to state the period of duration, it shall be considered perpetual."

Sec. 4. G.S. 55A-7(a)(3) is amended by adding at the end thereof the following new sentence:

"It shall be sufficient to state, either alone or with other purposes, that the purpose for which the corporation is organized is to engage in any lawful act or activity for which corporations may be organized under this Chapter; and by such statement all lawful acts and activities for corporations organized under this Chapter shall be within the purposes of the corporation, subject to any express limitations."

Sec. 5. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-8.1. Exercise of corporate franchises not granted.-The Attorney General may upon his own information or upon complaint of a private party bring an action in the name of the State to restrain any person from exercising corporate franchises not granted."

Sec. 6. G.S. 55A-9 is amended in the last line thereof by deleting the citation "G.S. 55A-86" and inserting in lieu thereof the citation "G.S. 55A-33.1".

Sec. 7. G.S. 55A-10 is amended by adding at the end thereof the following new subsection:

"(j) The issuance of a corporate charter to any domestic corporation shall not authorize the use in this State of the corporate name in violation of the rights of any third party under the Federal Trademark Act, the Trademark Act of this State, or the common law; and the issuance of such charter shall not be a defense to an action for violation of any such rights."

Sec. 8. G.S. 55A-15(a)(6) is repealed.

Sec. 9. G.S. 55A-15(a)(7) is rewritten to read:

"(7) To lend money to its employees and otherwise to assist its employees, officers, and directors, subject to the provisions of G.S. 55A-18."

Sec. 10. G.S. 55A-15(a)(8) is rewritten to read as follows:

"(8) To provide for indemnification in accordance with the provisions of G.S. 55A-17.1, G.S. 55A-17.2 and G.S. 55A-17.3."

Sec. 11. G.S. 55A-15(a)(10) is repealed.

Sec. 12. G.S. 55A-15(a) is amended by adding at the end thereof the following new subdivision:

"(11) To pay pensions and establish pension plans, pension trusts, bonus plans and other incentive plans for its officers, directors and employees."

Sec. 13. G.S. 55A-15(b) is amended by adding at the end thereof the following new subdivisions:

"(9) To make contributions or gifts to corporations (foreign or domestic), trusts, community chests, funds, foundations, or associations organized and operated exclusively for religious, charitable, literary, scientific, or educational, cultural or artistic purposes, or for public welfare, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any member or individual, when such contributions or gifts are authorized or approved by its boards of directors.

(10) To enter into contracts of guaranty or suretyship or to make other financial arrangements for the benefit of any person, firm or corporation.

(11) To enter into any arrangement with others for the sharing of benefits or union of interests with respect to any transaction, operation or venture which the corporation has power to conduct by itself, even if such arrangement involves sharing or delegation of control of such transaction, operation or venture with or to others."

Sec. 14. G.S. 55A-15(b)(4) is amended in the last line thereof by inserting after the words "pledge of" and before the words "all or" the words "or other form of security upon".

Sec. 15. G.S. 55A-17.1(a) is rewritten to read as follows:

"(a) Subject to any restrictions in its charter, a corporation may provide, by bylaw, agreement, vote of board of directors or members, or otherwise, for indemnification of

any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against liabilities and reasonable litigation expenses, including attorneys' fees, incurred by him in connection with any action, suit or proceeding in which he is made or threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason of willful misconduct in the performance of duty. The indemnification authorized by this statute shall be in addition to that permitted by G.S. 55A-17.2 and 55A-17.3."

Sec. 16. G.S. 55A-17.1(d) is amended by deleting the words "this section, or in G.S. 55A-17.2 or 55A-17.3, or by any bylaw, agreement, vote of board of directors or members, or otherwise." and inserting in lieu thereof the words: "G.S. 55A- 17.2 or 55A-17.3 or as authorized in any bylaw, agreement, vote of board of directors or members, or other arrangement permitted by this section."

Sec. 17. G.S. 55A-18 is rewritten to read:

"§ **55A-18. LOANS AND GUARANTIES.-NO LOAN, GUARANTY OR OTHER** form of security shall be made or provided by a corporation to or for the benefit of its directors or officers, except that loans, guaranties or other forms of security may be made to full-time employees of the corporation who are also directors or officers by action of its board of directors in accordance with G.S. 55A- 24.2(b)(1)."

Sec. 18. G.S. 55A-19 is rewritten to read:

"§ **55A-19. Board of directors.-**(a) Subject to the provisions of the charter, the bylaws or agreements between the members otherwise lawful, the business and affairs of a corporation shall be managed by a board of directors.

(b) No limitation upon the authority which the directors would have in the absence of such limitation, whether contained in the charter or the bylaws or otherwise, shall be effective against other persons without actual knowledge of such limitation.

(c) The directors need not be residents of this State or members of the corporation unless the charter or the bylaws so require. The charter or the bylaws may prescribe other qualifications for directors."

Sec. 19. G.S. 55A-20(c) is rewritten to read:

"(c) The first board of directors shall consist of those named in the articles of incorporation. Thereafter, directors shall be elected or appointed or designated ex officio in the manner and for the terms provided in the charter or bylaws. Directors to be elected by members shall be elected by the members entitled to vote at the first meeting of the members held for that purpose and at each subsequent annual meeting of the members. Such election may be by mail if the bylaws so provide. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified."

Sec. 20. G.S. 55A-20(d) is amended by deleting the second sentence thereof which begins with the word "Each" and ends with the word "qualified".

Sec. 21. G.S. 55A-20(e) is amended in the first line thereof by deleting the word "Election" and substituting in lieu thereof the language "If any member so

demands, election"; and is further amended in the first line thereof by inserting a comma after the word "ballot" and before the word "unless".

Sec. 22. G.S. 55A-23(a) is amended by adding at the end thereof a new subdivision to read:

"(5) The fixing of compensation of the directors for serving on the board or on any such committee."

Sec. 23. G.S. 55A-23(c) is amended in the third line thereof by deleting the statutory reference "55A-86" and substituting in lieu thereof the statutory reference "55A-33.1"; and is further amended in the last line thereof by inserting after the word "law" and before the period the language "; and any resolutions adopted or other action taken by any such committee within the scope of the authority delegated to it by the board of directors shall be deemed for all purposes to be adopted or taken by the board of directors".

Sec. 24. G.S. 55A-24(c) is rewritten to read:

"(c) Regular meetings of the board of directors may be held with or without notice, as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is provided in the bylaws, or in the absence of any such provision, upon notice sent by any usual means of communication not less than five days before the meeting. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed 10 days in any one adjournment."

Sec. 25. G.S. 55A-24(d) is repealed.

Sec. 26. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-24.2. **Director's adverse interest.**—(a) A corporation may, by action of its board of directors or otherwise, compensate its directors for their services as directors, salaried officers or otherwise.

(b) No corporate transaction in which a director has an adverse interest is either void or voidable by virtue of the adverse interest, if:

- (1) With knowledge on the part of the other directors of such adverse interest, the transaction is approved in good faith by a majority, not less than two, of the disinterested directors present even though less than a quorum, irrespective of the participation of the adversely interested director in the approval, or if
- (2) In the case of a corporation with members, after full disclosure of all the material facts to all the members, the transaction is specifically approved by a vote of the majority of the votes entitled to be cast by the members other than votes entitled to be cast by the adversely

interested directors or by members controlled by the adversely interested directors, or if

- (3) The adversely interested party proves that the transaction was just and reasonable to the corporation at the time when entered into or approved. In the case of compensation paid or voted for services of a director as director or as officer or employee the standard of what is 'just and reasonable' is what would be paid for such services at arm's length under competitive conditions."

Sec. 27. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-24.3. Jurisdiction over and service on nonresident director.—(a) Every nonresident of this State who shall become a director of a domestic corporation shall by becoming such director be subjected to the jurisdiction of the courts of this State in all actions or proceedings brought therein by, or on behalf of, or against said corporation in which said director is a necessary or proper party, or in any action or proceeding by members or creditors against said director for violation of his duty as director. Every nonresident who is a director of a domestic corporation as of the effective date of this act shall be likewise so subject to the jurisdiction of the courts of this State unless he shall, on or before January 1, 1987, resign his office and file in the office of the Secretary of State a notice of such resignation.

(b) Every nonresident by serving as a director of a domestic corporation at any time after January 1, 1987, shall be subject to the jurisdiction of the courts of this State in any action or proceeding for violation of his duty while in office.

(c) Every resident in this State who shall become a director of a domestic corporation and thereafter removes his residence from this State shall be subject to the jurisdiction of the courts of this State in all actions or proceedings brought therein by, or on behalf of, or against said corporation in which said director is a necessary or proper party, or in any action or proceeding by members or creditors against said director for violation of his duty as a director.

(d) In all actions or proceedings wherein a director or former director is made a party and cannot with due diligence be found within the State, service of process, notice or demand on said director or former director shall be made by mailing or otherwise delivering duplicate copies thereof to the Secretary of State, who shall be deemed to have been constituted the process agent of such director or former director by the act of such director in becoming a director or continuing as director after January 1, 1987. When such copies are to be delivered to the Secretary of State the procedure to be followed shall be, as against such director or former director, substantially the same as that set forth in G.S. 55A-68 relating to service on foreign corporations by serving the Secretary of State, and service made pursuant to such procedure shall have the same legal force and validity as if the service had been made personally in this State."

Sec. 28. G.S. 55A-25 is rewritten to read:

"§ 55A-25. Officers.—(a) Every corporation organized under this Chapter shall have such officers with such titles and duties as shall be stated in the bylaws and as may be necessary to enable it to sign instruments and to conduct its business in compliance with

this Chapter. Any number of offices may be held by the same person and any one office may be held collectively by one or more persons unless the charter or bylaws otherwise provide, but no officer may act in more than one capacity where action of two or more officers is required. Whenever a specific office is referred to in this Chapter, it shall be deemed to include any person who, individually or collectively with one or more persons, holds or occupies such office.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided either specifically or generally in the bylaws, or as may be determined by action of the board of directors not inconsistent with the bylaws.

(c) The chief executive officer has authority to institute or defend legal proceedings when the directors are deadlocked."

Sec. 29. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-26.1. Duty of directors and officers to corporation.— Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and to its members, if any, and shall discharge the duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions."

Sec. 30. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-26.2. Execution of corporate instruments; authority and proof.—(a) Notwithstanding anything to the contrary in the charter or bylaws, any deed, mortgage, contract, note, evidence of indebtedness, proxy, or other instrument in writing, or any assignment or endorsement thereof, whether heretofore or hereafter executed, when signed in the ordinary course of business on behalf of a corporation by its president, a vice-president or an assistant vice-president and attested or countersigned by its secretary or an assistant secretary, not acting in dual capacity, shall with respect to the rights of innocent third parties, be as valid as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The foregoing shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation or to the execution of corporate securities which are required, by corporate regulations or resolutions formally adopted, to be signed or countersigned by a transfer agent or registrar who has agreed to act in that capacity.

(b) Any instrument purporting to create a security interest in personal property of a corporation, is sufficiently executed on behalf of the corporation if heretofore or hereafter signed in his official capacity by the president, a vice-president, an assistant vice-president, the secretary, an assistant secretary, the treasurer, or an assistant treasurer. Any instrument so executed shall, with respect to the rights of innocent holders, be as valid as if authorized by the board of directors and upon acknowledgment may be ordered to registration as provided by law.

(c) Deeds, mortgages, contracts, notes, evidences of indebtedness and other instruments purporting to be executed, heretofore or hereafter, by a corporation, foreign

or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, are prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that such instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(d) The provisions of the foregoing subsections of this section shall apply to all instruments therein mentioned executed on behalf of foreign corporations when their authorization, admissibility in evidence or legal effect is challenged in any action or other proceeding in this State.

(e) Nothing in this section shall be deemed to exclude the power of any corporate representatives to bind the corporation pursuant to express, implied or apparent authority, ratification, estoppel or otherwise.

(f) Nothing in this section shall relieve corporate officers from liability to the corporation or from any other liability that they may have incurred from any violation of their actual authority."

Sec. 31. G.S. 55A-27 is amended in the seventh line thereof by inserting after the word "inspected" and before the word "by" the words "and copied".

Sec. 32. G.S. 55A-28 is rewritten to read:

"§ 55A-28. Shares of stock and certain distributions of assets prohibited.—(a) A corporation shall neither authorize nor issue shares of stock.

(b) No distribution of assets of a corporation shall be made to its members, directors or officers except as provided in subsection (c) or (d) of this section.

(c) A corporation may pay reasonable amounts to its members, directors or officers for services rendered or other value received, may confer benefits upon its members in conformity with its purposes, and may make distributions upon dissolution or final liquidation as permitted by this Chapter.

(d) Subject to the provisions of subsection (e), a corporation may make distributions to any organization that: (i) is a corporation organized under this Chapter or (ii) qualifies as an exempt organization (foreign or domestic) under Section 501(c)(3) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws.

(e) A corporation shall not make distributions to members under subsection (d) of this section if at the time of or as a result of such distribution:

- (1) There is reasonable ground for believing that the corporation would be unable to meet its obligations as they become due in the ordinary course of business, or
- (2) The liabilities of the corporation would exceed the fair present value of its assets."

Sec. 33. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-28.1. Liability of directors in certain cases.—(a) The liabilities imposed by this section are in addition to any other liabilities imposed by law upon directors of a corporation.

(b) Directors of a corporation who vote for or assent to any distribution of the assets of a corporation contrary to the provisions of this Chapter or contrary to any lawful restrictions contained in the charter or bylaws shall be jointly and severally liable to the corporation for the amount of such distribution.

(c) The liability of directors for violation of subsection (b) of this section shall not exceed the debts, obligations and liabilities existing at the time of the violation which are not thereafter paid and discharged, plus any loss sustained from the violation by members at the time of the violation other than the members receiving the payment in question.

(d) The directors of a corporation who vote for or assent to any distribution of assets of a corporation during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known or reasonably ascertainable debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(e) The directors of a corporation who vote for or assent to the making of any loan or guaranty or other form of security in violation of G.S. 55A-18 shall be jointly and severally liable to the corporation for the repayment or return of the money or value loaned, with interest thereon at the rate of six percent (6%) a year until paid, or for any liability of the corporation upon the guaranty.

(f) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. If action taken by an executive committee is not thereafter formally considered by the board, a director may dissent from such action by filing his written objection with the secretary of the corporation with reasonable promptness after learning of such action.

(g) A director shall not be liable under subsections (b) or (d) of this section if he relied and acted in good faith and reasonably upon financial statements of the corporation represented to him to be correct and to be based upon generally accepted principles of sound accounting practice by the president or the officer of such corporation having charge of its books of account, or certified by an independent public accountant or by a certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation.

(h) Any director who is held liable upon and pays a claim asserted against him under or pursuant to this section for the unlawful distribution of assets shall be entitled

to reimbursement or exoneration from the recipients who accepted or received any such distribution, knowing such distribution to have been made in violation of this section, in proportion to the amounts received.

(i) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted and in any action against him shall, on motion, be entitled to have such directors made parties defendant.

(j) Except where the properties of a corporation are being administered in liquidation, or under court supervision for the benefit of creditors, or in the event that the official administering such properties refuses to bring an action for violation of this section, any creditor damaged by a violation of this section may in one action obtain judgment against the corporation and enforce the liability of one or more of the directors to the corporation imposed by this section to the extent necessary to satisfy his claim, or he may in a separate action obtain such judgment and then enforce such liability.

(k) No action shall be brought against the directors for liability under this section after three years from the time when the cause of action was discovered or ought to have been discovered."

Sec. 34. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-28.2. Members' and directors' derivative actions.—(a) An action may be brought in this State in the right of any domestic or foreign corporation by a director or member, if any, of such corporation; provided that, in the case of a suit by a member, the plaintiff or plaintiffs must allege, and it must appear, that each plaintiff was a member at the time of the transaction of which he complains.

(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and the reasons for his failure to obtain the action or for not making the effort.

(c) Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interests of the members or of the creditors of the corporation, will be substantially affected by such discontinuance, dismissal, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such members or creditors whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as costs of the action.

(d) If the action on behalf of the corporation is successful, in whole or part, whether by means of a compromise and settlement or by a judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and shall direct the plaintiff to account to the corporation for the remainder of any proceeds of the action.

(e) In any such action the court, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to

the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of the action."

Sec. 35. G.S. 55A-32(a) is amended in the second line thereof by inserting after the word "charter" and before the period the words "or in the initial bylaws adopted by the directors or in any bylaws adopted by the members".

Sec. 36. G.S. 55A-35(a) is amended by adding at the end thereof a new subdivision to read:

"(3) Before the action required by G.S. 55A-9, amendments to the charter may be made, either by the directors named therein or by the incorporators, by preparing and delivering to the Secretary of State articles of amendment complying with the provisions of G.S. 55A-36."

Sec. 37. G.S. 55A-35 is amended by adding at the end thereof a new subsection to read:

"(c) At any time before delivery of the articles of amendment to the Secretary of State the board of directors may, in its discretion, abandon an amendment if so empowered in the resolutions of the members adopting the amendment."

Sec. 38. G.S. 55A-37 is amended by rewriting the catch line to read: "Effect of amendment."

Sec. 39. G.S. 55A-42.1(c) is amended in the sixth line thereof by inserting after the words "arising out of" and before the words "any act or" the words "the merger or consolidation or out of"; and is further amended in the seventh line thereof by inserting after the words "prior to" and before the words "the merger" the words "or contemporaneous with".

Sec. 40. G.S. 55A-43 is amended by designating the present section as subsection (b), by deleting the word "A" in the first line thereof and substituting in lieu thereof the words "Any other", by deleting the language ", mortgage, pledge" each time that it appears in the present section, and by adding a new subsection (a) to read:

"(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without authorization of the members, unless otherwise provided in the charter or the bylaws."

Sec. 41. G.S. 55A-44(b) is amended in the fifth line thereof by inserting after the word "and" and before the word "shall" the language "such notice shall be published once a week for four successive weeks in a newspaper published in the county wherein the corporation has its registered office, and, if there be no newspaper published in such county, then in some newspaper of general circulation in such county. The corporation".

Sec. 42. G.S. 55A-53 is amended as follows:

- (1) by rewriting the catch line to read: "Power of courts to liquidate and decree involuntary dissolution or to grant other relief.";
- (2) in sub-subdivision (a)(2)b. thereof by deleting the words "owing and it is established that the corporation is insolvent" and substituting in lieu thereof the words "it is established that the corporation is unable to pay its debts in the ordinary course of business";
- (3) by rewriting subdivision (a)(4) to read:

"(4) In an action brought by the Attorney General under G.S.

55A-51.";

- (4) in subsection (c) by deleting the words "or the principal office";
- (5) by deleting the subsection (e); and
- (6) by adding a subsection (f) to read:

"(f) In any proceeding under this section, the court may make such order or grant such relief, other than dissolution as in its discretion it deems appropriate, including, without limitation, an order:

- (1) Canceling or altering any provision contained in the charter or the bylaws of the corporation; or
- (2) Canceling, altering, or enjoining any resolution or other act of the corporation; or
- (3) Directing or prohibiting any act of the corporation or of members, directors, officers or other persons party to the action; or
- (4) Appointing a provisional director.

Such relief may be granted as an alternative to a decree of dissolution, or may be granted whenever the circumstances of the case are such that relief, but not dissolution, would be appropriate."

Sec. 43. Chapter 55A of the General Statutes is amended by inserting a new section to read:

"§ 55A-57.1. Voluntary surrender of corporate rights and franchises by incorporators.—The incorporators named in the articles of incorporation may, before the receipt of any assets and before beginning the activities for which the corporation has been incorporated, surrender the existing corporate rights and franchises, by filing a certificate in the Office of the Secretary of State in the manner prescribed by G.S. 55A-4, verified by oath, that no assets have been received and that such activities have not been begun, and surrendering all rights and franchises. Thereupon the corporation becomes nonexistent and is cancelled as if such corporation had never been created."

Sec. 44. G.S. 55-61(c) is amended by deleting the period at the end of the first sentence and substituting the following:

"; provided, however, unless otherwise provided in the charter or bylaws, the call of a special meeting by shareholders is not available to the shareholders of a corporation whose shares of any class or series, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders, are listed on a national securities exchange or are held of record by more than 2,000 shareholders."

Sec. 45. G.S. 55-67(c) is amended by inserting after the first sentence the following:

"Unless the charter provides otherwise, this right of cumulative voting shall not be available to shareholders of any corporation if, when the stock transfer books are closed or at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting called for the election of directors, the corporation has shares of any class or series entitled to be voted at such meeting listed on a national securities exchange or held of record by more than 2,000 shareholders."

Sec. 46. This act shall become effective October 1, 1986.

In the General Assembly read three times and ratified, this the 26th day of June, 1986.