

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 136

Short Title: Dissenters' Rights Clarifications.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

February 24, 2003

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE LAW GOVERNING DISSENTERS' RIGHTS WITH
REGARD TO MAJORITY CONSENT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-13-02(a) reads as rewritten:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

- (1) Consummation of a plan of merger to which the corporation (other than a parent corporation in a merger whose shares are not affected under G.S. 55-11-04) is a party unless (i) approval by the shareholders of that corporation is not required under G.S. 55-11-03(g) or (ii) such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;
- (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, unless such shares are then redeemable by the corporation at a price not greater than the cash to be received in exchange for such shares;
- (2a) Consummation of a plan of conversion pursuant to Part 2 of Article 11A of this Chapter;
- (3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than as permitted by G.S. 55-12-01, including a sale in dissolution, but not including a sale pursuant to court order or a sale pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed in cash to the shareholders within one year after the date of sale;
- (4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it (i) alters or abolishes a preferential right of the shares; (ii) creates, alters,

1 or abolishes a right in respect of redemption, including a provision
2 respecting a sinking fund for the redemption or repurchase, of the
3 shares; (iii) alters or abolishes a preemptive right of the holder of the
4 shares to acquire shares or other securities; (iv) excludes or limits the
5 right of the shares to vote on any matter, or to cumulate votes; (v)
6 reduces the number of shares owned by the shareholder to a fraction of
7 a share if the fractional share so created is to be acquired for cash
8 under G.S. 55-6-04; or (vi) changes the corporation into a nonprofit
9 corporation or cooperative organization; or

- 10 (5) Any corporate action taken pursuant to a shareholder vote to the extent
11 the articles of incorporation, bylaws, or a resolution of the board of
12 directors provides that voting or nonvoting shareholders are entitled to
13 dissent and obtain payment for their shares.

14 For purposes of subdivision (4) of this subsection, an amendment of the articles of
15 incorporation to allow action to be taken on a matter without a meeting by less than all
16 shareholders entitled to vote on the matter pursuant to G.S. 55-7-04(a), or to provide
17 that advance notice of an action to be taken without meeting by shareholders is not
18 required pursuant to G.S. 55-7-04(d), or both, shall not constitute an amendment that
19 excludes or limits the right of shares to vote on any matter or to cumulate votes."

20 **SECTION 2.** This act becomes effective October 1, 2003.