

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 138

Short Title: Professional Corporations/Engineers. (Public)

Sponsors: Senators Tarte, Tucker, Cook (Primary Sponsors); and J. Jackson.

Referred to: Rules and Operations of the Senate.

March 3, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE FORMATION OF A PROFESSIONAL CORPORATION PROVIDING ENGINEERING SERVICES IN ACCORDANCE WITH CHAPTER 89C OF THE GENERAL STATUTES BY A NONLICENSED PERSON AND TO ALLOW A NONLICENSED INCORPORATOR, OFFICER, DIRECTOR, OR EMPLOYEE OF A PROFESSIONAL CORPORATION PROVIDING ENGINEERING SERVICES IN ACCORDANCE WITH CHAPTER 89C OF THE GENERAL STATUTES TO OWN SHARES OF THE STOCK OF THE CORPORATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55B-4 reads as rewritten:

"§ 55B-4. Formation of corporation.

(a) General. – A professional corporation under this Chapter may be formed pursuant to the provisions of Chapter 55, the North Carolina Business Corporation Act, with the following limitations: Act. In addition, and except as provided in subsection (b) of this section, the following requirements shall apply when forming a professional corporation:

- (1) At least one incorporator shall be a "licensee" as hereinabove defined in G.S. 55B-2(2).
- (2) All of the shares of stock of the corporation shall be owned and held by a licensee, or licensees, as hereinabove defined in G.S. 55B-2(2), except as otherwise permitted in G.S. 55B-6.
- (3) At least one director and one officer shall be a "licensee" as hereinabove defined in G.S. 55B-2(2).
- (4) The articles of incorporation, in addition to the requirements of Chapter 55, shall designate the personal services to be rendered by the professional corporation and shall be accompanied by a certification by the appropriate licensing board that the ownership of the shares of stock is in compliance with the requirements of G.S. 55B-4(2) and G.S. 55B-6.

(b) Professional Engineers. – Except for the requirement that the articles of incorporation designate the personal services to be rendered by the professional corporation, a professional corporation rendering engineering services in accordance with Chapter 89C of the General Statutes shall not be subject to the requirements listed in subdivisions (1) through (4) of subsection (a) of this section."

SECTION 2. G.S. 55B-6 reads as rewritten:

"§ 55B-6. Capital stock.

(a) Except as provided in subsections ~~(a1)~~ and ~~(b)(a1)~~, (b), and (c) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in



1 G.S. 55B-2, and a shareholder may voluntarily transfer shares of stock issued to the shareholder
2 only to another licensee. No share or shares of any stock of a professional corporation shall be
3 transferred upon the books of the corporation unless the corporation has received a certification
4 of the appropriate licensing board that the transferee is a licensee. Provided, it shall be lawful in
5 the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C,
6 89E, and 89F, for nonlicensed employees of the corporation to own not more than one-third of
7 the total issued and outstanding shares of the corporation; and provided further, with respect to
8 a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E
9 of the General Statutes, an employee retirement plan qualified under section 401 of the Internal
10 Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this
11 section to be a licensee if the trustee or trustees of the plan are licensees. Provided further,
12 subject to any additional conditions that the appropriate licensing board may by rule or order
13 impose in the public interest, it shall be lawful for individuals who are not licensees but who
14 perform professional services on behalf of a professional corporation in another jurisdiction in
15 which the corporation maintains an office, and who are duly licensed to perform professional
16 services under the laws of the other jurisdiction, to be shareholders of the corporation so long
17 as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the
18 corporation renders its professional services in the State only through those shareholders that
19 are licensed in North Carolina. Upon the transfer of any shares of such corporation to a
20 nonlicensed employee of such corporation, the corporation shall inform the appropriate
21 licensing board of the name and address of the transferee and the number of shares issued to the
22 nonprofessional transferee. The issuance or transfer of any share of stock in violation of this
23 section is void. No shareholder of a professional corporation shall enter into a voting trust
24 agreement or any other type of agreement vesting in another person the authority to exercise
25 the voting power of any of the stock of a professional corporation.

26 ...
27 (c) Notwithstanding subsection (a) of this section, a nonlicensed incorporator, director,
28 officer, agent, or employee may own the stock of a professional corporation rendering
29 engineering services in accordance with Chapter 89C of the General Statutes as long as all
30 licensees who perform professional services on behalf of the corporation comply with Chapter
31 89C and the rules adopted thereunder. Upon the transfer of any shares of such corporation to a
32 nonlicensed incorporator, director, officer, or employee, the corporation shall inform the
33 appropriate licensing board of the name and address of the transferee and the number of shares
34 issued to the nonprofessional transferee. No shareholder of a professional corporation subject to
35 this subsection shall enter into a voting trust agreement or any other type of agreement vesting
36 in another person the authority to exercise the voting power of any of the stock of the
37 professional corporation."

38 **SECTION 3.** G.S. 55B-14(a) reads as rewritten:

39 "(a) A professional corporation shall render only one specific type of professional
40 service, and such services as may be ancillary thereto, and shall not engage in any other
41 business or profession; provided, however, such corporation may own real and personal
42 property necessary or appropriate for rendering the type of professional services it was
43 organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other
44 type of investments."

45 **SECTION 4.** G.S. 55B-16(a) reads as rewritten:

46 "(a) A foreign professional corporation may apply for a certificate of authority to
47 transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the
48 General Statutes provided ~~that~~ that all of the following requirements are met:

49 (1) The corporation obtains a certificate of registration from the appropriate
50 licensing board or boards in this ~~State~~ State.

- 1 (2) With respect to each professional service practiced through the corporation
2 in this State, at least one director and one officer shall be a licensee of the
3 licensing board which regulates the profession in this ~~State~~;State. This
4 subdivision shall not apply to a corporation who will provide engineering
5 services in accordance with Chapter 89C of the General Statutes.
- 6 (3) Each officer, employee, and agent of the corporation who will provide
7 professional services to persons in this State shall be a licensee of the
8 appropriate licensing board in this ~~State~~;State.
- 9 (4) The corporation shall be subject to the applicable rules and regulations
10 adopted by, and all the disciplinary powers of, the appropriate licensing
11 board or boards in this ~~State~~;State.
- 12 (5) The corporation's activities in this State shall be limited as provided by
13 ~~G.S. 55B-14; and~~G.S. 55B-14.
- 14 (6) The application for certificate of authority, in addition to the requirements of
15 G.S. 55-15-03, shall set forth the personal services to be rendered by the
16 foreign professional corporation and the individual or individuals who will
17 satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a
18 certification by the appropriate licensing board that each individual is a
19 "licensee" as defined in G.S. 55B-2(2) and by additional certifications as
20 may be required to establish that the corporation is a "foreign professional
21 corporation" as defined in G.S. 55B-16(b)."
- 22 **SECTION 5.** This act becomes effective July 1, 2015.