

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 136
Judiciary I Committee Substitute Adopted 3/25/03**

Short Title: Dissenters' Rights Clarifications.

(Public)

Sponsors:

Referred to:

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~~votes,
6 other than an amendment of the articles of incorporation permitting
7 action without meeting to be taken by less than all shareholders
8 entitled to vote, without advance notice, or both, as provided in G.S.
9 55-7-04; (v) reduces the number of shares owned by the shareholder to
10 a fraction of a share if the fractional share so created is to be acquired
11 for cash under G.S. 55-6-04; or (vi) changes the corporation into a
12 nonprofit corporation or cooperative organization; or

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

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