

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5107

55th Legislature
1997 Regular Session

Passed by the Senate March 10, 1997
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 8, 1997
YEAS 95 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5107** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5107

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

**By Senate Committee on Law & Justice (originally sponsored by Senators
Roach and Johnson)**

Read first time 02/25/97.

1 AN ACT Relating to consent provisions under the Washington business
2 corporation act; and amending RCW 23B.02.020, 23B.07.040, and
3 23B.19.040.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 23B.02.020 and 1996 c 155 s 5 are each amended to read
6 as follows:

7 (1) The articles of incorporation must set forth:

8 (a) A corporate name for the corporation that satisfies the
9 requirements of RCW 23B.04.010;

10 (b) The number of shares the corporation is authorized to issue in
11 accordance with RCW 23B.06.010 and 23B.06.020;

12 (c) The street address of the corporation's initial registered
13 office and the name of its initial registered agent at that office in
14 accordance with RCW 23B.05.010; and

15 (d) The name and address of each incorporator in accordance with
16 RCW 23B.02.010.

17 (2) The articles of incorporation or bylaws must either specify the
18 number of directors or specify the process by which the number of

1 directors will be fixed, unless the articles of incorporation dispense
2 with a board of directors pursuant to RCW 23B.08.010.

3 (3) Unless its articles of incorporation provide otherwise, a
4 corporation is governed by the following provisions:

5 (a) The board of directors may adopt bylaws to be effective only in
6 an emergency as provided by RCW 23B.02.070;

7 (b) A corporation has the purpose of engaging in any lawful
8 business under RCW 23B.03.010;

9 (c) A corporation has perpetual existence and succession in its
10 corporate name under RCW 23B.03.020;

11 (d) A corporation has the same powers as an individual to do all
12 things necessary or convenient to carry out its business and affairs,
13 including itemized powers under RCW 23B.03.020;

14 (e) All shares are of one class and one series, have unlimited
15 voting rights, and are entitled to receive the net assets of the
16 corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

17 (f) If more than one class of shares is authorized, all shares of
18 a class must have preferences, limitations, and relative rights
19 identical to those of other shares of the same class under RCW
20 23B.06.010;

21 (g) If the board of directors is authorized to designate the number
22 of shares in a series, the board may, after the issuance of shares in
23 that series, reduce the number of authorized shares of that series
24 under RCW 23B.06.020;

25 (h) The board of directors must authorize any issuance of shares
26 under RCW 23B.06.210;

27 (i) Shares may be issued pro rata and without consideration to
28 shareholders under RCW 23B.06.230;

29 (j) Shares of one class or series may not be issued as a share
30 dividend with respect to another class or series, unless there are no
31 outstanding shares of the class or series to be issued, or a majority
32 of votes entitled to be cast by such class or series approve as
33 provided in RCW 23B.06.230;

34 (k) A corporation may issue rights, options, or warrants for the
35 purchase of shares of the corporation under RCW 23B.06.240;

36 (l) A shareholder has, and may waive, a preemptive right to acquire
37 the corporation's unissued shares as provided in RCW 23B.06.300;

38 (m) Shares of a corporation acquired by it may be reissued under
39 RCW 23B.06.310;

1 (n) The board may authorize and the corporation may make
2 distributions not prohibited by statute under RCW 23B.06.400;

3 (o) The preferential rights upon dissolution of certain
4 shareholders will be considered a liability for purposes of determining
5 the validity of a distribution under RCW 23B.06.400;

6 (p) Action may be taken by shareholders by unanimous written
7 consent of all shareholders entitled to vote on the action, unless the
8 approval of a lesser number of shareholders is permitted as provided in
9 RCW 23B.07.040;

10 (q) Unless this title requires otherwise, the corporation is
11 required to give notice only to shareholders entitled to vote at a
12 meeting and the notice for an annual meeting need not include the
13 purpose for which the meeting is called under RCW 23B.07.050;

14 (~~(q)~~) (r) A corporation that is a public company shall hold a
15 special meeting of shareholders if the holders of at least ten percent
16 of the votes entitled to be cast on any issue proposed to be considered
17 at the meeting demand a meeting under RCW 23B.07.020;

18 (~~(r)~~) (s) Subject to statutory exceptions, each outstanding
19 share, regardless of class, is entitled to one vote on each matter
20 voted on at a shareholders' meeting under RCW 23B.07.210;

21 (~~(s)~~) (t) A majority of the votes entitled to be cast on a matter
22 by a voting group constitutes a quorum, unless the title provides
23 otherwise under RCW 23B.07.250 and 23B.07.270;

24 (~~(t)~~) (u) Action on a matter, other than election of directors,
25 by a voting group is approved if the votes cast within the voting group
26 favoring the action exceed the votes cast opposing the action, unless
27 this title requires a greater number of affirmative votes under RCW
28 23B.07.250;

29 (~~(u)~~) (v) All shares of one or more classes or series that are
30 entitled to vote will be counted together collectively on any matter at
31 a meeting of shareholders under RCW 23B.07.260;

32 (~~(v)~~) (w) Directors are elected by cumulative voting under RCW
33 23B.07.280;

34 (~~(w)~~) (x) Directors are elected by a plurality of votes cast by
35 shares entitled to vote under RCW 23B.07.280;

36 (~~(x)~~) (y) A corporation must have a board of directors under RCW
37 23B.08.010;

1 (~~(y)~~) (z) All corporate powers must be exercised by or under the
2 authority of, and the business and affairs of the corporation managed
3 under the direction of, its board of directors under RCW 23B.08.010;

4 (~~(z)~~) (aa) The shareholders may remove one or more directors with
5 or without cause under RCW 23B.08.080;

6 (~~(aa)~~) (bb) A vacancy on the board of directors may be filled by
7 the shareholders or the board of directors under RCW 23B.08.100;

8 (~~(bb)~~) (cc) A corporation shall indemnify a director who was
9 wholly successful in the defense of any proceeding to which the
10 director was a party because the director is or was a director of the
11 corporation against reasonable expenses incurred by the director in
12 connection with the proceeding under RCW 23B.08.520;

13 (~~(cc)~~) (dd) A director of a corporation who is a party to a
14 proceeding may apply for indemnification of reasonable expenses
15 incurred by the director in connection with the proceeding to the court
16 conducting the proceeding or to another court of competent jurisdiction
17 under RCW 23B.08.540;

18 (~~(dd)~~) (ee) An officer of the corporation who is not a director
19 is entitled to mandatory indemnification under RCW 23B.08.520, and is
20 entitled to apply for court-ordered indemnification under RCW
21 23B.08.540, in each case to the same extent as a director under RCW
22 23B.08.570;

23 (~~(ee)~~) (ff) The corporation may indemnify and advance expenses to
24 an officer, employee, or agent of the corporation who is not a director
25 to the same extent as to a director under RCW 23B.08.570;

26 (~~(ff)~~) (gg) A corporation may indemnify and advance expenses to
27 an officer, employee, or agent who is not a director to the extent,
28 consistent with law, that may be provided by its articles of
29 incorporation, bylaws, general or specific action of its board of
30 directors, or contract under RCW 23B.08.570;

31 (~~(gg)~~) (hh) A corporation's board of directors may adopt certain
32 amendments to the corporation's articles of incorporation without
33 shareholder action under RCW 23B.10.020;

34 (~~(hh)~~) (ii) Unless (~~the~~) this title or the board of directors
35 requires a greater vote or a vote by voting groups, an amendment to the
36 corporation's articles of incorporation must be approved by each voting
37 group entitled to vote on the proposed amendment by two-thirds, or, in
38 the case of a public company, a majority, of all the votes entitled to
39 be cast by that voting group under RCW 23B.10.030;

1 ~~((ii))~~ (jj) A corporation's board of directors may amend or
2 repeal the corporation's bylaws unless this title reserves this power
3 exclusively to the shareholders in whole or in part, or unless the
4 shareholders in amending or repealing a bylaw provide expressly that
5 the board of directors may not amend or repeal that bylaw under RCW
6 23B.10.200;

7 ~~((jj))~~ (kk) Unless this title or the board of directors require
8 a greater vote or a vote by voting groups, a plan of merger or share
9 exchange must be approved by each voting group entitled to vote on the
10 merger or share exchange by two-thirds of all the votes entitled to be
11 cast by that voting group under RCW 23B.11.030;

12 ~~((kk))~~ (ll) Approval by the shareholders of the sale, lease,
13 exchange, or other disposition of all, or substantially all, the
14 corporation's property in the usual and regular course of business is
15 not required under RCW 23B.12.010;

16 ~~((ll))~~ (mm) Approval by the shareholders of the mortgage, pledge,
17 dedication to the repayment of indebtedness, or other encumbrance of
18 any or all of the corporation's property, whether or not in the usual
19 and regular course of business, is not required under RCW 23B.12.010;

20 ~~((mm))~~ (nn) Unless the board of directors requires a greater vote
21 or a vote by voting groups, a sale, lease, exchange, or other
22 disposition of all or substantially all of the corporation's property,
23 other than in the usual and regular course of business, must be
24 approved by each voting group entitled to vote on such transaction by
25 two-thirds of all votes entitled to be cast by that voting group under
26 RCW 23B.12.020; and

27 ~~((nn))~~ (oo) Unless the board of directors requires a greater vote
28 or a vote by voting groups, a proposal to dissolve must be approved by
29 each voting group entitled to vote on the dissolution by two-thirds of
30 all votes entitled to be cast by that voting group under RCW
31 23B.14.020.

32 (4) Unless its articles of incorporation or its bylaws provide
33 otherwise, a corporation is governed by the following provisions:

34 (a) The board of directors may authorize the issuance of some or
35 all of the shares of any or all of the corporation's classes or series
36 without certificates under RCW 23B.06.260;

37 (b) A corporation that is not a public company shall hold a special
38 meeting of shareholders if the holders of at least ten percent of the

1 votes entitled to be cast on any issue proposed to be considered at the
2 meeting demand a meeting under RCW 23B.07.020;

3 (c) A director need not be a resident of this state or a
4 shareholder of the corporation under RCW 23B.08.020;

5 (d) The board of directors may fix the compensation of directors
6 under RCW 23B.08.110;

7 (e) Members of the board of directors may participate in a meeting
8 of the board by any means of similar communication by which all
9 directors participating can hear each other during the meeting under
10 RCW 23B.08.200;

11 (f) Action permitted or required by this title to be taken at a
12 board of directors' meeting may be taken without a meeting if action is
13 taken by all members of the board under RCW 23B.08.210;

14 (g) Regular meetings of the board of directors may be held without
15 notice of the date, time, place, or purpose of the meeting under RCW
16 23B.08.220;

17 (h) Special meetings of the board of directors must be preceded by
18 at least two days' notice of the date, time, and place of the meeting,
19 and the notice need not describe the purpose of the special meeting
20 under RCW 23B.08.220;

21 (i) A quorum of a board of directors consists of a majority of the
22 number of directors under RCW 23B.08.240;

23 (j) If a quorum is present when a vote is taken, the affirmative
24 vote of a majority of directors present is the act of the board of
25 directors under RCW 23B.08.240;

26 (k) A board of directors may create one or more committees and
27 appoint members of the board of directors to serve on them under RCW
28 23B.08.250; and

29 (l) Unless approved by the shareholders, a corporation may
30 indemnify, or make advances to, a director for reasonable expenses
31 incurred in the defense of any proceeding to which the director was a
32 party because of being a director only to the extent such action is
33 consistent with RCW 23B.08.500 through 23B.08.580.

34 (5) The articles of incorporation may contain the following
35 provisions:

36 (a) The names and addresses of the individuals who are to serve as
37 initial directors;

38 (b) The par value of any authorized shares or classes of shares;

1 (c) Provisions not inconsistent with law related to the management
2 of the business and the regulation of the affairs of the corporation;
3 (d) Any provision that under this title is required or permitted to
4 be set forth in the bylaws;
5 (e) Provisions not inconsistent with law defining, limiting, and
6 regulating the powers of the corporation, its board of directors, and
7 shareholders;
8 (f) Provisions authorizing shareholder action to be taken by
9 written consent of less than all of the shareholders entitled to vote
10 on the action, in accordance with RCW 23B.07.040;
11 (g) If the articles of incorporation authorize dividing shares into
12 classes, the election of all or a specified number of directors may be
13 effected by the holders of one or more authorized classes of shares
14 under RCW 23B.08.040;
15 (~~(g)~~) (h) The terms of directors may be staggered under RCW
16 23B.08.060;
17 (~~(h)~~) (i) Shares may be redeemable or convertible (i) at the
18 option of the corporation, the shareholder, or another person, or upon
19 the occurrence of a designated event; (ii) for cash, indebtedness,
20 securities, or other property; or (iii) in a designated amount or in an
21 amount determined in accordance with a designated formula or by
22 reference to extrinsic data or events under RCW 23B.06.010; and
23 (~~(i)~~) (j) A director's personal liability to the corporation or
24 its shareholders for monetary damages for conduct as a director may be
25 eliminated or limited under RCW 23B.08.320.
26 (6) The articles of incorporation or the bylaws may contain the
27 following provisions:
28 (a) A restriction on the transfer or registration of transfer of
29 the corporation's shares under RCW 23B.06.270;
30 (b) Shareholders may participate in a meeting of shareholders by
31 any means of communication by which all persons participating in the
32 meeting can hear each other under RCW 23B.07.080;
33 (c) A quorum of the board of directors may consist of as few as
34 one-third of the number of directors under RCW 23B.08.240;
35 (d) If the corporation is registered as an investment company under
36 the investment company act of 1940, a provision limiting the
37 requirement to hold an annual meeting of shareholders as provided in
38 RCW 23B.07.010(2); and

1 (e) If the corporation is registered as an investment company under
2 the investment company act of 1940, a provision establishing terms of
3 directors which terms may be longer than one year as provided in RCW
4 23B.05.050.

5 (7) The articles of incorporation need not set forth any of the
6 corporate powers enumerated in this title.

7 **Sec. 2.** RCW 23B.07.040 and 1991 c 72 s 33 are each amended to read
8 as follows:

9 (1)(a) Action required or permitted by this title to be taken at a
10 shareholders' meeting may be taken without a meeting or a vote if
11 either:

12 (i) The action is taken by all ((the)) shareholders entitled to
13 vote on the action; or

14 (ii) The action is taken by shareholders holding of record or
15 otherwise entitled to vote in the aggregate not less than the minimum
16 number of votes that would be necessary to authorize or take such
17 action at a meeting at which all shares entitled to vote on the action
18 were present and voted, and at the time the action is taken the
19 corporation is not a public company and is authorized to take such
20 action under this subsection (1)(a)(ii) by a general or limited
21 authorization contained in its articles of incorporation.

22 (b) The taking of action by shareholders without a meeting or vote
23 must be evidenced by one or more written consents describing the action
24 taken, signed by ((all—the)) shareholders holding of record or
25 otherwise entitled to vote ((on—the)) in the aggregate not less than
26 the minimum number of votes necessary in order to take such action by
27 written consent under (a)(i) or (ii) of this subsection, and delivered
28 to the corporation for inclusion in the minutes or filing with the
29 corporate records.

30 (2) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the
31 record date for determining shareholders entitled to take action
32 without a meeting is the date on which the first shareholder ((signs
33 the)) consent is signed under subsection (1) of this section. Every
34 written consent shall bear the date of signature of each shareholder
35 who signs the consent. A written consent is not effective to take the
36 action referred to in the consent unless, within sixty days of the
37 earliest dated consent delivered to the corporation, written consents

1 signed by a sufficient number of shareholders to take action are
2 delivered to the corporation.

3 (3) A shareholder may withdraw consent only by delivering a written
4 notice of withdrawal to the corporation prior to the time when ~~((all))~~
5 consents sufficient to authorize taking the action have been delivered
6 to the corporation.

7 (4) Unless the written shareholder consent specifies a later
8 effective date, action taken under this section is effective when
9 ~~((all))~~: (a) Consents sufficient to authorize taking the action have
10 been delivered to the corporation(~~(, unless the consent specifies a~~
11 ~~later effective date)~~); and (b) the period of advance notice required
12 by the corporation's articles of incorporation to be given to any
13 nonconsenting shareholders has been satisfied.

14 (5) A consent signed under this section has the effect of a meeting
15 vote and may be described as such in any document, except that, if the
16 action requires the filing of a certificate under any other section of
17 this title, the certificate so filed shall state, in lieu of any
18 statement required by that section concerning any vote of shareholders,
19 that written consent has been obtained in accordance with this section
20 and that written notice to any nonconsenting shareholders has been
21 given as provided in this section.

22 (6) ~~((If this title requires that))~~ Notice of ~~((proposed))~~ the
23 taking of action by shareholders without a meeting by less than
24 unanimous written consent of all shareholders entitled to vote on the
25 action shall be given, before the date on which the action becomes
26 effective, to those shareholders entitled to vote on the action who
27 have not consented in writing and, if this title would otherwise
28 require that notice of a meeting of shareholders to consider the action
29 be given to nonvoting shareholders ~~((and the action is to be taken by~~
30 ~~unanimous consent of the voting shareholders, the corporation must give~~
31 ~~its)), to all nonvoting shareholders ~~((written notice of the proposed~~~~
32 ~~action at least ten days before the action is taken)~~ of the
33 corporation. The general or limited authorization in the corporation's
34 articles of incorporation authorizing shareholder action by less than
35 unanimous written consent shall specify the amount and form of notice
36 required to be given to nonconsenting shareholders before the effective
37 date of the action. In the case of action of a type that would
38 constitute a significant business transaction under RCW 23B.19.020(15),
39 the notice shall be given no fewer than twenty days before the

1 effective date of the action. The notice ~~((must))~~ shall be in writing
2 and shall contain or be accompanied by the same material that, under
3 this title, would have been required to be sent to nonconsenting or
4 nonvoting shareholders in a notice of meeting at which the proposed
5 action would have been submitted ~~((to such shareholders))~~ for
6 shareholder action. If the action taken is of a type that would
7 entitle shareholders to exercise dissenters' rights under RCW
8 23B.13.020(1), then the notice must comply with RCW 23B.13.220(2), RCW
9 23B.13.210 shall not apply, and all shareholders who have not signed
10 the consent taking the action are entitled to receive the notice,
11 demand payment under RCW 23B.13.230, and assert other dissenters'
12 rights as prescribed in chapter 23B.13 RCW.

13 **Sec. 3.** RCW 23B.19.040 and 1996 c 155 s 3 are each amended to read
14 as follows:

15 (1)(a) Notwithstanding anything to the contrary contained in this
16 title, ~~((except under subsection (2) of this section and RCW~~
17 ~~23B.19.030,))~~ a target corporation shall not ~~((engage in any~~
18 ~~significant business transaction))~~ for a period of five years following
19 the acquiring person's share acquisition time engage in a significant
20 business transaction unless it is exempted by RCW 23B.19.030 or unless
21 the significant business transaction or the purchase of shares made by
22 the acquiring person is approved prior to the acquiring person's share
23 acquisition time by a majority of the members of the board of directors
24 of the target corporation.

25 (b) If a good faith proposal for a significant business transaction
26 is made in writing to the board of directors of the target corporation
27 prior to the significant business transaction or prior to the share
28 acquisition time, the board of directors shall respond in writing,
29 within thirty days or such shorter period, if any, as may be required
30 by the exchange act setting forth its reasons for its decision
31 regarding the proposal. If a good faith proposal to purchase shares is
32 made in writing to the board of directors of the target corporation,
33 the board of directors, unless it responds affirmatively in writing
34 within thirty days or a shorter period, if any, as may be required by
35 the exchange act shall be deemed to have disapproved such share
36 purchase.

37 (2) ~~((Notwithstanding anything to the contrary contained in this~~
38 ~~title, except under subsection (1) of this section and RCW 23B.19.030))~~

1 Except for a significant business transaction approved under subsection
2 (1) of this section or exempted by RCW 23B.19.030, in addition to any
3 other requirement, a target corporation shall not engage at any time in
4 any significant business transaction described in RCW 23B.19.020(15)
5 (a) or (e) with any acquiring person of such a corporation other than
6 a significant business transaction that either meets all of the
7 ((following)) conditions of (a), (b), and (c) of this subsection or
8 meets the conditions of (d) of this subsection:

9 (a) The aggregate amount of the cash and the market value as of the
10 consummation date of consideration other than cash to be received per
11 share by holders of outstanding common shares of such a target
12 corporation in a significant business transaction is at least equal to
13 the higher of the following:

14 (i) The highest per share price paid by such an acquiring person at
15 a time when the person was the beneficial owner, directly or
16 indirectly, of five percent or more of the outstanding voting shares of
17 a target corporation, for any shares of common shares of the same class
18 or series acquired by it: (A) Within the five-year period immediately
19 prior to the announcement date with respect to a significant business
20 transaction; or (B) within the five-year period immediately prior to,
21 or in, the transaction in which the acquiring person became an
22 acquiring person, whichever is higher plus, in either case, interest
23 compounded annually from the earliest date on which the highest per
24 share acquisition price was paid through the consummation date at the
25 rate for one-year United States treasury obligations from time to time
26 in effect; less the aggregate amount of any cash dividends paid, and
27 the market value of any dividends paid other than in cash, per share of
28 common shares since the earliest date, up to the amount of the
29 interest; and

30 (ii) The market value per share of common shares on the
31 announcement date with respect to a significant business transaction or
32 on the date of the acquiring person's share acquisition time, whichever
33 is higher; plus interest compounded annually from such a date through
34 the consummation date at the rate for one-year United States treasury
35 obligations from time to time in effect; less the aggregate amount of
36 any cash dividends paid, and the market value of any dividends paid
37 other than in cash, per share of common shares since the date, up to
38 the amount of the interest.

1 (b) The aggregate amount of the cash and the market value as of the
2 consummation date of consideration other than cash to be received per
3 share by holders of outstanding shares of any class or series of
4 shares, other than common shares, of the target corporation is at least
5 equal to the highest of the following, whether or not the acquiring
6 person has previously acquired any shares of such a class or series of
7 shares:

8 (i) The highest per share price paid by an acquiring person at a
9 time when the person was the beneficial owner, directly or indirectly,
10 of five percent or more of the outstanding voting shares of a resident
11 domestic corporation, for any shares of the same class or series of
12 shares acquired by it: (A) Within the five-year period immediately
13 prior to the announcement date with respect to a significant business
14 transaction; or (B) within the five-year period immediately prior to,
15 or in, the transaction in which the acquiring person became an
16 acquiring person, whichever is higher; plus, in either case, interest
17 compounded annually from the earliest date on which the highest per
18 share acquisition price was paid through the consummation date at the
19 rate for one-year United States treasury obligations from time to time
20 in effect; less the aggregate amount of any cash dividends paid, and
21 the market value of any dividends paid other than in cash, per share of
22 the same class or series of shares since the earliest date, up to the
23 amount of the interest;

24 (ii) The highest preferential amount per share to which the holders
25 of shares of the same class or series of shares are entitled in the
26 event of any voluntary liquidation, dissolution, or winding up of the
27 target corporation, plus the aggregate amount of any dividends declared
28 or due as to which the holders are entitled prior to payment of
29 dividends on some other class or series of shares, unless the aggregate
30 amount of the dividends is included in the preferential amount; and

31 (iii) The market value per share of the same class or series of
32 shares on the announcement date with respect to a significant business
33 transaction or on the date of the acquiring person's share acquisition
34 time, whichever is higher; plus interest compounded annually from such
35 a date through the consummation date at the rate for one-year United
36 States treasury obligations from time to time in effect; less the
37 aggregate amount of any cash dividends paid and the market value of any
38 dividends paid other than in cash, per share of the same class or
39 series of shares since the date, up to the amount of the interest.

1 (c) The consideration to be received by holders of a particular
2 class or series of outstanding shares, including common shares, of the
3 target corporation in a significant business (~~(combination)~~)
4 transaction is in cash or in the same form as the acquiring person has
5 used to acquire the largest number of shares of the same class or
6 series of shares previously acquired by the person, and the
7 consideration shall be distributed promptly.

8 (d) The significant business transaction is approved at an annual
9 meeting of shareholders, or special meeting of shareholders called for
10 such a purpose, no earlier than five years after the acquiring person's
11 share acquisition time, by a majority of the votes entitled to be
12 counted within each voting group entitled to vote separately on the
13 transaction. The votes of all outstanding shares entitled to vote
14 under this title or the articles of incorporation shall be entitled to
15 be counted under this subsection except that the votes of shares as to
16 which an acquiring person has beneficial ownership or voting control
17 may not be counted to determine whether shareholders have approved a
18 transaction for purposes of this subsection. The votes of shares as to
19 which an acquiring person has beneficial ownership or voting control
20 shall, however, be counted in determining whether a transaction is
21 approved under other sections of this title and for purposes of
22 determining a quorum.

23 (3) Subsection (2) of this section does not apply to a target
24 corporation that on June 6, 1996, had a provision in its articles of
25 incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing
26 not to be covered under RCW 23B.17.020, which is repealed by section 6,
27 chapter 155, Laws of 1996.

28 (4) A significant business transaction that is made in violation of
29 subsection (1) or (2) of this section and that is not exempt under RCW
30 23B.19.030 is void.

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