

SHB 1041 - S COMM AMD  
By Committee on Judiciary

ADOPTED 04/12/2007

1 Beginning on page 3, line 19, strike all of section 5 and insert  
2 the following:

3 "NEW SECTION. **Sec. 5.** A new section is added to chapter 23B.10  
4 RCW to read as follows:

5 (1) Unless the articles of incorporation (a) specifically prohibit  
6 the adoption of a bylaw pursuant to this section, (b) alter the vote  
7 specified in RCW 23B.07.280(2), or (c) allow for or do not exclude  
8 cumulative voting, a public company may elect in its bylaws to be  
9 governed in the election of directors as follows:

10 (i) Each vote entitled to be cast may be voted for, voted against,  
11 or withheld for one or more candidates up to that number of candidates  
12 that is equal to the number of directors to be elected but without  
13 cumulating the votes, or a shareholder may indicate an abstention for  
14 one or more candidates;

15 (ii) To be elected, a candidate must have received the number,  
16 percentage, or level of votes specified in the bylaws; provided that  
17 holders of shares entitled to vote in the election and constituting a  
18 quorum are present at the meeting. A candidate who does not receive  
19 the number, percentage, or level of votes specified in the bylaws but  
20 who was a director at the time of the election shall continue to serve  
21 as a director for a term that shall terminate on the date that is the  
22 earlier of (A) the date specified in the bylaw, but not longer than  
23 ninety days from the date on which the voting results are determined  
24 pursuant to RCW 23B.07.300(2), or (B) the date on which an individual  
25 is selected by the board of directors to fill the office held by such  
26 director, which selection shall be deemed to constitute the filling of  
27 a vacancy by the board to which RCW 23B.08.100 applies;

28 (iii) A bylaw adopted pursuant to this section may provide that  
29 votes cast against and/or withheld as to a candidate are to be taken  
30 into account in determining whether the number, percentage, or level of

1 votes required for election has been received. Unless the bylaw  
2 specifies otherwise, only votes cast are to be taken into account and  
3 a ballot marked "withheld" in respect to a share is deemed to be a vote  
4 cast. Unless the bylaws specify otherwise, shares otherwise present at  
5 the meeting but for which there is an abstention or as to which no  
6 authority or direction to vote in the election is given or specified,  
7 are not deemed to be votes cast in the election;

8 (iv) The board of directors may select any qualified individual to  
9 fill the office held by a director who did not receive the specified  
10 vote for election referenced in (c)(ii) of this subsection; and

11 (v) Unless the bylaw specifies otherwise, a bylaw adopted pursuant  
12 to this subsection (1) shall not apply to an election of directors by  
13 a voting group if (A) at the expiration of the time fixed under a  
14 provision requiring advance notification of director candidates, or (B)  
15 absent such a provision, at a time fixed by the board of directors  
16 which is not more than fourteen days before notice is given of the  
17 meeting at which the election is to occur, there are more candidates  
18 for election by the voting group than the number of directors to be  
19 elected, one or more of whom are properly proposed by shareholders. An  
20 individual shall not be considered a candidate for purposes of this  
21 subsection (1)(c)(v) if the board of directors determines before the  
22 notice of meeting is given that such individual's candidacy does not  
23 create a bona fide election contest.

24 (2) A bylaw containing an election to be governed by this section  
25 may be repealed or amended:

26 (a) If originally adopted by the shareholders, only by the  
27 shareholders, unless the bylaw otherwise provides; or

28 (b) If adopted by the board of directors, by the board of directors  
29 or the shareholders."

EFFECT: The bill limits bylaws governing the election of  
directors to what is referred to as "modified plurality" voting. The  
amendment would broaden the election standards and allow the board or  
shareholders latitude to set the standard for election in the bylaw.  
This standard could be a majority vote, i.e., the director candidate  
must receive a majority of votes cast in the election in favor of the

candidate election. The standard could also be a modified plurality. The amendment is enabling in nature, allowing the board or shareholders to prescribe the terms for election in the bylaw. The prescriptive terms in the existing H.B. 1041 have become default provisions in the amendment; if the adopted bylaw doesn't cover these points the default provisions would apply.

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