
SUBSTITUTE HOUSE BILL 1041

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Haler, Moeller and Lantz)

READ FIRST TIME 01/19/07.

1 AN ACT Relating to plurality voting for directors; amending RCW
2 23B.08.030, 23B.08.050, 23B.08.070, 23B.08.100, and 23B.10.200; adding
3 a new section to chapter 23B.10 RCW; and adding a new section to
4 chapter 23B.07 RCW.

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

6 **Sec. 1.** RCW 23B.08.030 and 2002 c 297 s 27 are each amended to
7 read as follows:

8 (1) A board of directors must consist of one or more individuals,
9 with the number specified in or fixed in accordance with the articles
10 of incorporation or bylaws.

11 (2) Directors are elected at the first annual shareholders' meeting
12 and at each annual meeting thereafter unless (a) their terms are
13 staggered under RCW 23B.08.060, or (b) their terms are otherwise
14 governed by RCW 23B.05.050. Directors also may be elected by consent
15 action under RCW (~~23.07.040~~) 23B.07.040.

16 **Sec. 2.** RCW 23B.08.050 and 1994 c 256 s 30 are each amended to
17 read as follows:

1 (1) The terms of the initial directors of a corporation expire at
2 the first shareholders' meeting at which directors are elected.

3 (2) The terms of all other directors expire at the next annual
4 shareholders' meeting following their election unless (a) their terms
5 are staggered under RCW 23B.08.060(~~(, or)~~) then at the applicable
6 second or third annual shareholders' meeting following their election;
7 or (b) their terms are otherwise governed by RCW 23B.05.050, except to
8 the extent (i) the terms are otherwise provided in a bylaw adopted
9 pursuant to section 5 of this act, or (ii) a shorter term is specified
10 in the articles of incorporation in the event of a director nominee
11 failing to receive a specified vote for election.

12 (3) A decrease in the number of directors does not shorten an
13 incumbent director's term.

14 (4) The term of a director elected to fill a vacancy expires at the
15 next shareholders' meeting at which directors are elected.

16 (5) Except to the extent otherwise provided in the articles of
17 incorporation or pursuant to section 5 of this act, if a bylaw electing
18 to be governed by that section is in effect, despite the expiration of
19 a director's term, the director continues to serve until the director's
20 successor is elected and qualified or (~~until~~) there is a decrease in
21 the number of directors.

22 **Sec. 3.** RCW 23B.08.070 and 2002 c 297 s 28 are each amended to
23 read as follows:

24 (1) A director may resign at any time by delivering notice in the
25 form of an executed (~~notice~~) resignation to the board of directors,
26 its chairperson, the president, or the secretary of the corporation.

27 (2) A notice of resignation is effective when the (~~notice~~)
28 resignation is delivered unless the (~~notice~~) resignation specifies a
29 later effective date, or an effective date determined upon the
30 happening of an event or events. A notice of resignation that is
31 conditioned upon failing to receive a specified vote for election as a
32 director may provide that it is irrevocable.

33 **Sec. 4.** RCW 23B.08.100 and 1989 c 165 s 89 are each amended to
34 read as follows:

35 (1) Unless the articles of incorporation provide otherwise, if a

1 vacancy occurs on a board of directors, including a vacancy resulting
2 from an increase in the number of directors:

3 (a) The shareholders may fill the vacancy;

4 (b) The board of directors may fill the vacancy; or

5 (c) If the directors in office constitute fewer than a quorum of
6 the board, they may fill the vacancy by the affirmative vote of a
7 majority of all the directors in office.

8 (2) If the vacant office was held by a director elected by
9 ~~((holders of one or more authorized classes or series of shares))~~ a
10 voting group of shareholders, only the holders of ~~((those classes or~~
11 ~~series of))~~ shares of that voting group are entitled to vote to fill
12 the vacancy, if it is filled by the shareholders, and only the
13 directors elected by that voting group are entitled to fill the vacancy
14 if it is filled by the directors.

15 (3) A vacancy that will occur at a specific later date, by reason
16 of a resignation effective at a later date under RCW 23B.08.070(2) or
17 otherwise, may be filled before the vacancy occurs but the new director
18 may not take office until the vacancy occurs.

19 NEW SECTION. Sec. 5. A new section is added to chapter 23B.10 RCW
20 to read as follows:

21 (1) Unless the articles of incorporation (a) specifically prohibit
22 the adoption of a bylaw pursuant to this section, (b) alter the vote
23 specified in RCW 23B.07.280(2), or (c) provide for cumulative voting,
24 a public company may elect in its bylaws to be governed in the election
25 of directors as follows:

26 (i) Each vote entitled to be cast may be voted for or against up to
27 that number of candidates that is equal to the number of directors to
28 be elected, or a shareholder may indicate an abstention, but without
29 cumulating the votes;

30 (ii) To be elected, a nominee must have received a plurality of the
31 votes cast by holders of shares entitled to vote in the election at a
32 meeting at which a quorum is present, provided that a nominee who is
33 elected but receives more votes against than for election shall serve
34 as a director for a term that shall terminate on the date that is the
35 earlier of (A) ninety days from the date on which the voting results
36 are determined pursuant to section 6(2) of this act, or (B) the date on
37 which an individual is selected by the board of directors to fill the

1 office held by such director, which selection shall be deemed to
2 constitute the filing of a vacancy by the board to which RCW 23B.08.100
3 applies;

4 (iii) A nominee who is elected but receives more votes against than
5 for election shall not serve as a director beyond the ninety-day period
6 referenced in this subsection, and the board of directors may select
7 any qualified individual to fill the office held by a director who
8 received more votes against than for election.

9 (2) A bylaw electing to be governed by this section may be repealed
10 or amended:

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

13 (b) If adopted by the board of directors, by the board of directors
14 or the shareholders.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 23B.07 RCW
16 to read as follows:

17 (1) A corporation having any shares listed on a national securities
18 exchange or regularly traded in a market maintained by one or more
19 members of a national or affiliated securities association shall, and
20 any other corporation may, appoint one or more inspectors to act at a
21 meeting of shareholders and make a written report of the inspectors'
22 determinations. Each inspector shall take and sign an oath faithfully
23 to execute the duties of inspector with strict impartiality and
24 according to the best of the inspector's ability.

25 (2) The inspectors shall:

26 (a) Ascertain the number of shares outstanding and the voting power
27 of each;

28 (b) Determine the shares represented at a meeting;

29 (c) Determine the validity of proxies and ballots;

30 (d) Count all votes; and

31 (e) Determine the result.

32 (3) An inspector may be an officer or employee of the corporation.

33 (4) If no challenge of a determination by the inspectors is timely
34 made, such determination is conclusive. Challenge of any determination
35 by the inspectors may be made in a court of competent jurisdiction.

1 **Sec. 7.** RCW 23B.10.200 and 1989 c 165 s 129 are each amended to
2 read as follows:

3 (1) A corporation's board of directors may amend or repeal the
4 corporation's bylaws, or adopt new bylaws, unless:

5 (a) The articles of incorporation, section 5 of this act, or, if
6 applicable, section 6 of this act, or any other provision of this title
7 reserve this power exclusively to the shareholders in whole or part; or

8 (b) The shareholders, in amending or repealing a particular bylaw,
9 provide expressly that the board of directors may not amend or repeal
10 that bylaw.

11 (2) A corporation's shareholders may amend or repeal the
12 corporation's bylaws, or adopt new bylaws, even though the bylaws may
13 also be amended or repealed, or new bylaws may also be adopted, by its
14 board of directors.

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