

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1041

60th Legislature
2007 Regular Session

Passed by the House April 19, 2007
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 18, 2007
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1041** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1041

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

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) allow for or do not exclude
24 cumulative voting, a public company may elect in its bylaws to be
25 governed in the election of directors as follows:

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

31 (ii) To be elected, a candidate must have received the number,
32 percentage, or level of votes specified in the bylaws; provided that
33 holders of shares entitled to vote in the election and constituting a
34 quorum are present at the meeting. Except in a contested election as
35 provided in (c)(v) of this subsection, a candidate who does not receive
36 the number, percentage, or level of votes specified in the bylaws but
37 who was a director at the time of the election shall continue to serve

1 as a director for a term that shall terminate on the date that is the
2 earlier of (A) the date specified in the bylaw, but not longer than
3 ninety days from the date on which the voting results are determined
4 pursuant to section 6(2) of this act, or (B) the date on which an
5 individual is selected by the board of directors to fill the office
6 held by such director, which selection shall be deemed to constitute
7 the filling of a vacancy by the board to which RCW 23B.08.100 applies;

8 (iii) A bylaw adopted pursuant to this section may provide that
9 votes cast against and/or withheld as to a candidate are to be taken
10 into account in determining whether the number, percentage, or level of
11 votes required for election has been received. Unless the bylaw
12 specifies otherwise, only votes cast are to be taken into account and
13 a ballot marked "withheld" in respect to a share is deemed to be a vote
14 cast. Unless the bylaws specify otherwise, shares otherwise present at
15 the meeting but for which there is an abstention or as to which no
16 authority or direction to vote in the election is given or specified,
17 are not deemed to be votes cast in the election;

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

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

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

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

1 (b) If adopted by the board of directors, by the board of directors
2 or the shareholders.

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

5 (1) A corporation having any shares listed on a national securities
6 exchange or regularly traded in a market maintained by one or more
7 members of a national or affiliated securities association shall, and
8 any other corporation may, appoint one or more inspectors to act at a
9 meeting of shareholders and make a written report of the inspectors'
10 determinations. Each inspector shall take and sign an oath faithfully
11 to execute the duties of inspector with strict impartiality and
12 according to the best of the inspector's ability.

13 (2) The inspectors shall:

14 (a) Ascertain the number of shares outstanding and the voting power
15 of each;

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

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

18 (d) Count all votes; and

19 (e) Determine the result.

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

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

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

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

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

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

34 (2) A corporation's shareholders may amend or repeal the
35 corporation's bylaws, or adopt new bylaws, even though the bylaws may

1 also be amended or repealed, or new bylaws may also be adopted, by its
2 board of directors.

--- END ---