
HOUSE BILL 1052

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Pedersen, Rodne, Eddy, and Moeller; by request of Washington State Bar Association

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1 AN ACT Relating to the authority of shareholders and boards of
2 directors to take certain actions under the corporation act; amending
3 RCW 23B.02.060, 23B.08.010, 23B.10.200, 23B.10.030, 23B.11.030,
4 23B.12.020, and 23B.14.020; and adding new sections to chapter 23B.08
5 RCW.

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

7 **Sec. 1.** RCW 23B.02.060 and 2009 c 189 s 5 are each amended to read
8 as follows:

9 (1) The incorporators or board of directors of a corporation shall
10 adopt initial bylaws for the corporation.

11 (2) The articles of incorporation or bylaws must either specify the
12 number of directors or specify the process by which the number of
13 directors will be fixed, unless the articles of incorporation dispense
14 with a board of directors pursuant to RCW 23B.08.010.

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

17 (a) The board of directors may approve the issuance of some or all
18 of the shares of any or all of the corporation's classes or series
19 without certificates under RCW 23B.06.260;

1 (b) A corporation that is not a public company shall hold a special
2 meeting of shareholders if the holders of at least ten percent of the
3 votes entitled to be cast on any issue proposed to be considered at the
4 meeting demand a meeting under RCW 23B.07.020;

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

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

9 (e) Members of the board of directors may participate in a meeting
10 of the board by means of a conference telephone or similar
11 communication equipment under RCW 23B.08.200;

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

16 (g) Regular meetings of the board of directors may be held without
17 notice of the date, time, place, or purpose of the meeting under RCW
18 23B.08.220;

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

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

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

28 (k) A board of directors may create one or more committees and
29 appoint members of the board of directors to serve on them under RCW
30 23B.08.250; and

31 (l) Unless approved by shareholders, a corporation may indemnify,
32 or make advances to, a director only for reasonable expenses incurred
33 in the defense of any proceeding to which the director was a party
34 because of being a director to the extent such action is consistent
35 with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

36 (4) The bylaws of a corporation may contain any provision(~~(, not in~~
37 ~~conflict with law or the articles of incorporation,)) for managing the~~

1 business and regulating the affairs of the corporation(~~, including but~~
2 ~~not limited to the following:~~

3 ~~(a) A restriction on the transfer or registration of transfer of~~
4 ~~the corporation's shares under RCW 23B.06.270;~~

5 ~~(b) Shareholders may participate in a meeting of shareholders by~~
6 ~~any means of communication by which all persons participating in the~~
7 ~~meeting can hear each other under RCW 23B.07.080; and~~

8 ~~(c) A quorum of the board of directors may consist of as few as~~
9 ~~one-third of the number of directors under RCW 23B.08.240))~~ to the
10 extent the provision does not infringe upon or limit the exclusive
11 authority of the board of directors under RCW 23B.08.010(2)(b) or
12 otherwise conflict with this title or any other law, the articles of
13 incorporation, or a shareholders' agreement authorized by RCW
14 23B.07.320.

15 **Sec. 2.** RCW 23B.08.010 and 1989 c 165 s 80 are each amended to
16 read as follows:

17 (1) (~~Except as provided in subsection (3) of this section,~~) Each
18 corporation must have a board of directors(

19 ~~(2) All corporate powers shall be exercised by or under the~~
20 ~~authority of, and the business and affairs of the corporation managed~~
21 ~~under the direction of, its board of directors, subject to any~~
22 ~~limitation set forth in the articles of incorporation.~~

23 ~~(3))~~, except that a corporation may dispense with or limit the
24 authority of its board of directors by describing in its articles of
25 incorporation, or in a shareholders' agreement authorized by RCW
26 23B.07.320, who will perform some or all of the duties of the board of
27 directors.

28 (2) Subject to any limitation set forth in this title, the articles
29 of incorporation, or a shareholders' agreement authorized by RCW
30 23B.07.320:

31 (a) All corporate powers shall be exercised by or under the
32 authority of the corporation's board of directors; and

33 (b) The business and affairs of the corporation shall be managed
34 under the direction of its board of directors, which shall have
35 exclusive authority as to substantive decisions concerning management
36 of the corporation's business.

1 **Sec. 3.** RCW 23B.10.200 and 2009 c 189 s 35 are each amended to
2 read as follows:

3 (1) A corporation's board of directors, subject to the limitations
4 set forth in RCW 23B.02.060(4), may amend or repeal the corporation's
5 bylaws, or adopt new bylaws, (~~((unless))~~) except to the extent that:

6 (a) This power is reserved exclusively to the shareholders pursuant
7 to the articles of incorporation(~~(7)~~) or a shareholders' agreement
8 authorized by RCW 23B.07.320, or pursuant to RCW 23B.10.205, (~~(or, if~~
9 applicable, RCW)) 23B.10.210, or any other provision of this title
10 (~~(reserve this power exclusively to the shareholders in whole or~~
11 part)); or

12 (b) The shareholders, in amending (~~(or)~~), repealing, or adopting a
13 particular bylaw under subsection (2) of this section, provide
14 expressly that the board of directors may not amend or repeal that
15 bylaw.

16 (2) A corporation's shareholders, subject to the limitations set
17 forth in RCW 23B.02.060(4), may amend or repeal the corporation's
18 bylaws, or adopt new bylaws, even though the bylaws may also be amended
19 or repealed, or new bylaws may also be adopted, by its board of
20 directors.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 23B.08 RCW
22 to read as follows:

23 A corporation may agree to submit a corporate action to a vote of
24 its shareholders whether or not the board of directors determines at
25 any time subsequent to approving such a corporate action that it no
26 longer recommends the corporate action.

27 **Sec. 5.** RCW 23B.10.030 and 2003 c 35 s 4 are each amended to read
28 as follows:

29 (1) A corporation's board of directors may propose one or more
30 amendments to the articles of incorporation for submission to the
31 shareholders.

32 (2) For the amendment to be adopted:

33 (a) The board of directors must recommend the amendment to the
34 shareholders unless (i) the board of directors determines that because
35 of conflict of interest or other special circumstances it should make
36 no recommendation (~~(and)) or (ii) section 4 of this act applies, and in~~

1 either case the board of directors communicates the basis for (~~its~~
2 ~~determination~~)) so proceeding to the shareholders (~~with the~~
3 ~~amendment~~)); and

4 (b) The shareholders entitled to vote on the amendment must approve
5 the amendment as provided in subsection (5) of this section.

6 (3) The board of directors may condition its submission of the
7 proposed amendment on any basis, including the affirmative vote of
8 holders of a specified percentage of shares held by any group of
9 shareholders not otherwise entitled under this title or the articles of
10 incorporation to vote as a separate voting group on the proposed
11 amendment.

12 (4) The corporation shall notify each shareholder, whether or not
13 entitled to vote, of the proposed shareholders' meeting in accordance
14 with RCW 23B.07.050. The notice of meeting must also state that the
15 purpose, or one of the purposes, of the meeting is to consider the
16 proposed amendment and contain or be accompanied by a copy of the
17 amendment.

18 (5) In addition to any other voting conditions imposed by the board
19 of directors under subsection (3) of this section, the amendment to be
20 adopted must be approved by two-thirds, or, in the case of a public
21 company, a majority, of the voting group comprising all the votes
22 entitled to be cast on the proposed amendment, and of each other voting
23 group entitled under RCW 23B.10.040 or the articles of incorporation to
24 vote separately on the proposed amendment. The articles of
25 incorporation may require a greater vote than that provided for in this
26 subsection. The articles of incorporation of a corporation other than
27 a public company may require a lesser vote than that provided for in
28 this subsection, or may require a lesser vote by separate voting
29 groups, so long as the required vote is not less than a majority of all
30 the votes entitled to be cast on the proposed amendment and of each
31 other voting group entitled to vote separately on the proposed
32 amendment. Separate voting by additional voting groups is required on
33 a proposed amendment under the circumstances described in RCW
34 23B.10.040.

35 **Sec. 6.** RCW 23B.11.030 and 2009 c 189 s 38 are each amended to
36 read as follows:

37 (1) After adopting a plan of merger or share exchange, the board of

1 directors of each corporation party to the merger, and the board of
2 directors of the corporation whose shares will be acquired in the share
3 exchange, shall submit the plan of merger, except as provided in
4 subsection (7) of this section, or share exchange for approval by its
5 shareholders.

6 (2) For a plan of merger or share exchange to be approved:

7 (a) The board of directors must recommend the plan of merger or
8 share exchange to the shareholders(~~(7)~~) unless (i) the board of
9 directors determines that because of conflict of interest or other
10 special circumstances it should make no recommendation (~~(and)~~) or (ii)
11 section 4 of this act applies, and in either case the board of
12 directors communicates the basis for (~~(its determination)~~) so
13 proceeding to the shareholders (~~(with the plan)~~); and

14 (b) The shareholders entitled to vote must approve the plan, except
15 as provided in subsection (7) of this section.

16 (3) The board of directors may condition its submission of the
17 proposed plan of merger or share exchange on any basis, including the
18 affirmative vote of holders of a specified percentage of shares held by
19 any group of shareholders not otherwise entitled under this title or
20 the articles of incorporation to vote as a separate voting group on the
21 proposed plan of merger or share exchange.

22 (4) The corporation shall notify each shareholder, whether or not
23 entitled to vote, of the proposed shareholders' meeting in accordance
24 with RCW 23B.07.050. The notice must also state that the purpose, or
25 one of the purposes, of the meeting is to consider the plan of merger
26 or share exchange and must contain or be accompanied by a copy or
27 summary of the plan.

28 (5) In addition to any other voting conditions imposed by the board
29 of directors under subsection (3) of this section, the plan of merger
30 must be approved by two-thirds of the voting group comprising all the
31 votes entitled to be cast on the plan, and of each other voting group
32 entitled under RCW 23B.11.035 or the articles of incorporation to vote
33 separately on the plan, unless shareholder approval is not required
34 under subsection (7) of this section. The articles of incorporation
35 may require a greater or lesser vote than that provided in this
36 subsection, or a greater or lesser vote by separate voting groups, so
37 long as the required vote is not less than a majority of all the votes
38 entitled to be cast on the plan of merger and of each other voting

1 group entitled to vote separately on the plan. Separate voting by
2 additional voting groups is required on a plan of merger under the
3 circumstances described in RCW 23B.11.035.

4 (6) In addition to any other voting conditions imposed by the board
5 of directors under subsection (3) of this section, the plan of share
6 exchange must be approved by two-thirds of the voting group comprising
7 all the votes entitled to be cast on the plan, and of each other voting
8 group entitled under RCW 23B.11.035 or the articles of incorporation to
9 vote separately on the plan. The articles of incorporation may require
10 a greater or lesser vote than that provided in this subsection, or a
11 greater or lesser vote by separate voting groups, so long as the
12 required vote is not less than a majority of all the votes entitled to
13 be cast on the plan of share exchange and of each other voting group
14 entitled to vote separately on the plan. Separate voting by additional
15 voting groups is required on a plan of share exchange under the
16 circumstances described in RCW 23B.11.035.

17 (7) Approval by the shareholders of the surviving corporation on a
18 plan of merger is not required if:

19 (a) The articles of incorporation of the surviving corporation will
20 not differ, except for amendments enumerated in RCW 23B.10.020, from
21 its articles of incorporation before the merger;

22 (b) Each shareholder of the surviving corporation whose shares were
23 outstanding immediately before the effective date of the merger will
24 hold the same number of shares, with identical designations,
25 preferences, limitations, and relative rights, immediately after the
26 merger;

27 (c) The number of voting shares outstanding immediately after the
28 merger, plus the number of voting shares issuable as a result of the
29 merger, either by the conversion of securities issued pursuant to the
30 merger or the exercise of rights and warrants issued pursuant to the
31 merger, will not exceed the total number of voting shares of the
32 surviving corporation authorized by its articles of incorporation
33 immediately before the merger; and

34 (d) The number of participating shares outstanding immediately
35 after the merger, plus the number of participating shares issuable as
36 a result of the merger, either by the conversion of securities issued
37 pursuant to the merger or the exercise of rights and warrants issued

1 pursuant to the merger, will not exceed the total number of
2 participating shares authorized by its articles of incorporation
3 immediately before the merger.

4 (8) As used in subsection (7) of this section:

5 (a) "Participating shares" means shares that entitle their holders
6 to participate without limitation in distributions.

7 (b) "Voting shares" means shares that entitle their holders to vote
8 unconditionally in elections of directors.

9 (9) After a merger or share exchange is approved, and at any time
10 before articles of merger or share exchange are filed, the planned
11 merger or share exchange may be abandoned, subject to any contractual
12 rights, without further shareholder approval, in accordance with the
13 procedure set forth in the plan of merger or share exchange or, if none
14 is set forth, in the manner determined by the board of directors.

15 **Sec. 7.** RCW 23B.12.020 and 2009 c 189 s 40 are each amended to
16 read as follows:

17 (1) A corporation may sell, lease, exchange, or otherwise dispose
18 of all, or substantially all, of its property, otherwise than in the
19 usual and regular course of business, on the terms and conditions and
20 for the consideration determined by the corporation's board of
21 directors, if the board of directors proposes and its shareholders
22 approve the proposed transaction.

23 (2) For a transaction to be approved:

24 (a) The board of directors must recommend the proposed transaction
25 to the shareholders unless (i) the board of directors determines that
26 because of conflict of interest or other special circumstances it
27 should make no recommendation ((and)) or (ii) section 4 of this act
28 applies, and in either case the board of directors communicates the
29 basis for ((its determination)) so proceeding to the shareholders
30 ((with the submission of the proposed transaction)); and

31 (b) The shareholders entitled to vote must approve the transaction.

32 (3) The board of directors may condition its submission of the
33 proposed transaction on any basis, including the affirmative vote of
34 holders of a specified percentage of shares held by any group of
35 shareholders not otherwise entitled under this title or the articles of
36 incorporation to vote as a separate voting group on the proposed
37 transaction.

1 (4) The corporation shall notify each shareholder, whether or not
2 entitled to vote, of the proposed shareholders' meeting in accordance
3 with RCW 23B.07.050. The notice must also state that the purpose, or
4 one of the purposes, of the meeting is to consider the sale, lease,
5 exchange, or other disposition of all, or substantially all, the
6 property of the corporation and contain or be accompanied by a
7 description of the transaction.

8 (5) In addition to any other voting conditions imposed by the board
9 of directors under subsection (3) of this section, the transaction must
10 be approved by two-thirds of the voting group comprising all the votes
11 entitled to be cast on the transaction, and of each other voting group
12 entitled under the articles of incorporation to vote separately on the
13 transaction. The articles of incorporation may require a greater or
14 lesser vote than provided in this subsection, or a greater or lesser
15 vote by any separate voting groups provided for in the articles of
16 incorporation, so long as the required vote is not less than a majority
17 of all the votes entitled to be cast on the transaction and of each
18 other voting group entitled to vote separately on the transaction.

19 (6) After a sale, lease, exchange, or other disposition of property
20 is approved, the transaction may be abandoned, subject to any
21 contractual rights, without further shareholder approval, in a manner
22 determined by the board of directors.

23 (7) A transaction that constitutes a distribution is governed by
24 RCW 23B.06.400 and not by this section.

25 **Sec. 8.** RCW 23B.14.020 and 2009 c 189 s 50 are each amended to
26 read as follows:

27 (1) A corporation's board of directors may propose dissolution for
28 submission to the shareholders.

29 (2) For a proposal to dissolve to be approved:

30 (a) The board of directors must recommend dissolution to the
31 shareholders unless (i) the board of directors determines that because
32 of conflict of interest or other special circumstances it should make
33 no recommendation (~~and~~) or (ii) section 4 of this act applies, and in
34 either case the board of directors communicates the basis for (~~its~~
35 determination)) so proceeding to the shareholders; and

36 (b) The shareholders entitled to vote must approve the proposal to
37 dissolve as provided in subsection (5) of this section.

1 (3) The board of directors may condition its submission of the
2 proposal for dissolution on any basis, including the affirmative vote
3 of holders of a specified percentage of shares held by any group of
4 shareholders not otherwise entitled under this title or the articles of
5 incorporation to vote as a separate voting group on the proposed
6 dissolution.

7 (4) The corporation shall notify each shareholder, whether or not
8 entitled to vote, of the proposed dissolution either (a) by giving
9 notice of a shareholders' meeting in accordance with RCW 23B.07.050 and
10 stating that the purpose or one of the purposes of the meeting is to
11 consider dissolving the corporation, or (b) in accordance with the
12 requirements of RCW 23B.07.040 for approving the proposed dissolution
13 without a meeting.

14 (5) In addition to any other voting conditions imposed by the board
15 of directors under subsection (3) of this section, the proposed
16 dissolution must be approved by two-thirds of the voting group
17 comprising all the votes entitled to be cast on the proposed
18 dissolution, and of each other voting group entitled under the articles
19 of incorporation to vote separately on the proposed dissolution. The
20 articles of incorporation may require a greater or lesser vote than
21 provided in this subsection, or a greater or lesser vote by any
22 separate voting groups provided for in the articles of incorporation,
23 so long as the required vote is not less than a majority of all the
24 votes entitled to be cast on the proposed dissolution and of each other
25 voting group entitled to vote separately on the proposed dissolution.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 23B.08 RCW
27 to read as follows:

28 The right of a director, officer, employee, or agent to
29 indemnification or to advancement of expenses arising under a provision
30 in the articles of incorporation or a bylaw shall not be eliminated or
31 impaired by an amendment to or repeal of that provision after the
32 occurrence of the act or omission that is the subject of the proceeding
33 for which indemnification or advancement of expenses under that
34 provision is sought, unless the provision in effect at the time of such
35 an act or omission explicitly authorizes the elimination or impairment

1 of the right after such an action or omission has occurred.

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