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**SUBSTITUTE SENATE BILL 5786**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen, Padden, Mullet, Nobles, and Salomon; by request of Washington State Bar Association)

AN ACT Relating to making updates to the Washington business corporation act; amending RCW 23B.07.250, 23B.07.270, 23B.08.080, 23B.08.240, 23B.09.030, 23B.10.030, 23B.12.020, 23B.13.020, 23B.13.200, 23B.13.210, 23B.13.220, 23B.17.015, 23B.25.100, and 23B.25.130; reenacting and amending RCW 23B.01.400; adding a new chapter to Title 23B RCW; and repealing RCW 23B.11.010, 23B.11.020, 23B.11.030, 23B.11.035, 23B.11.040, 23B.11.045, 23B.11.050, 23B.11.060, 23B.11.070, 23B.11.080, 23B.11.090, 23B.11.100, and 23B.11.110.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquired entity" means the domestic corporation that will have all of one or more classes or series of its shares acquired in a share exchange.

(2) "Acquiring entity" means the domestic corporation that will acquire all of one or more classes or series of shares of the acquired entity in a share exchange.

(3) "New owner liability" means owner liability of a person, resulting from a merger or share exchange, that is (a) in respect of an entity which is different from the entity in which the person held shares or interests immediately before the merger or share exchange became effective; or (b) in respect of the same entity as the one in which the person held shares or interests immediately before the merger or share exchange became effective if (i) the person did not have owner liability immediately before the merger or share exchange became effective, or (ii) the person had owner liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic corporation or other entity that will merge under a plan of merger.

(5) "Surviving entity" in a merger means the domestic corporation or other entity into which one or more other domestic corporations or other entities are merged.

NEW SECTION. **Sec.**  (1) By complying with this chapter, one or more domestic corporations may merge with one or more domestic corporations or other entities in accordance with a plan of merger, resulting in a surviving entity.

(2) By complying with the provisions of this chapter applicable to other entities, an other entity may be a party to a merger with a domestic corporation, but only if the merger is permitted by the organic law of the other entity.

(3) If the organic law or organic rules of a domestic other entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be approved by the unanimous consent of all of the interest holders of that other entity, and the merger may thereafter be effected as provided in the other provisions of this chapter. For the purposes of applying this chapter in such a case:

(a) The other entity, its interest holders, interests, and organic rules taken together will be deemed to be a domestic corporation, shareholders, shares, and articles of incorporation, respectively, and vice versa as the context may require; and

(b) If the business and affairs of the other entity are managed by a person or persons that are not identical to the interest holders, that group will be deemed to be the board of directors.

(4) The plan of merger must include:

(a) As to each party to the merger, its name, jurisdiction of organization, and type of entity;

(b) The surviving entity's name, jurisdiction of organization, and type of entity;

(c) The manner and basis of converting the shares of each merging domestic corporation and interests of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property, or of canceling some or all of such shares or interests, or any combination of the foregoing; and

(d) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic rules of any such party.

(5) In addition to the requirements of subsection (4) of this section, a plan of merger may contain amendments to the articles of incorporation or public organic record of any party to the merger that will be the surviving entity, a restatement that includes one or more amendments to the surviving entity's articles of incorporation or public organic record, and any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(7) A plan of merger may be amended only with the consent of each party to the merger, except as provided in the plan of merger. An amendment to a plan of merger that has previously been approved by a party's shareholders or interest holders must be approved:

(a) In the same manner as the plan was approved, if the plan of merger does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of merger, except that shareholders or interest holders that were entitled to vote on or consent to approval of the plan of merger are entitled to vote on or consent to any amendment of the plan of merger that will change:

(i) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan of merger by the shareholders or interest holders of any party to the merger;

(ii) The articles of incorporation of any domestic corporation, or the organic rules of any other entity, that will be the surviving entity of the merger, unless (A) the change constitutes an amendment to the articles of incorporation or organic rules of the surviving entity that would be permitted without approval of shareholders or interest holders by RCW 23B.10.020 or by comparable provisions of the organic law of any such other entity, or (B) the shareholders or interest holders that were entitled to vote on or consent to approval of the plan of merger will not continue as or become shareholders or interest holders of the surviving entity; or

(iii) Any of the other terms or conditions of the plan of merger if the change would adversely affect such shareholders or interest holders in any material respect.

NEW SECTION. **Sec.**  (1) By complying with this chapter:

(a) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic corporation in exchange for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(b) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic corporation in exchange for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(2) The plan of share exchange must include:

(a) The name of each domestic corporation the shares of which will be acquired and the name of the domestic corporation that will acquire those shares; and

(b) The manner and basis of exchanging shares of a domestic corporation that is the acquired entity for shares or other securities, obligations, rights to acquire shares, other securities, cash, other property, or any combination of the foregoing.

(3) In addition to the requirements of subsection (2) of this section, a plan of share exchange may contain any other provision not prohibited by law.

(4) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(5) A plan of share exchange may be amended only with the consent of each party to the share exchange, except as provided in the plan of share exchange. A domestic corporation may approve an amendment to a plan of share exchange:

(a) In the same manner as the plan of share exchange was approved, if the plan of share exchange does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of share exchange, except that shareholders that were entitled to vote on or consent to approval of the plan of share exchange are entitled to vote on or consent to any amendment of the plan of share exchange that will change:

(i) The amount or kind of shares or other securities, obligations, rights to acquire shares, other securities, cash, or other property to be received under the plan by the shareholders of the acquired entity; or

(ii) Any of the other terms or conditions of the plan of share exchange if the change would adversely affect such shareholders in any material respect.

NEW SECTION. **Sec.**  In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be approved in the following manner:

(1) The plan of merger or share exchange must first be approved by the board of directors.

(2) Except as provided in subsection (6) of this section, and in sections 6, 7, and 11 of this act, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors must recommend that the shareholders approve the plan or, in the case of an offer referred to in section 6(1)(b) of this act, that the shareholders tender their shares to the offeror in response to the offer, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, or (b) RCW 23B.08.245 applies. If either (a) or (b) of this subsection applies, the board of directors must inform the shareholders of the basis for so proceeding.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or the effectiveness of the plan.

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders. If the corporation is to be merged into a domestic corporation or other entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws of that domestic corporation or the organic rules of that other entity.

(5)(a) With respect to a domestic corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a different vote, shareholder approval of the plan of merger or share exchange requires (A) the approval of two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and (B) the approval of two-thirds of the votes entitled to be cast on the plan by each other voting group entitled under section 5 of this act or the articles of incorporation to vote separately on the plan; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan and of each other voting group entitled to vote separately on the plan.

(b) With respect to a domestic corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a greater vote, shareholder approval of the plan of merger or share exchange requires (i) the approval of a majority of the voting group comprising all the votes entitled to be cast on the plan, and (ii) the approval of a majority of the votes entitled to be cast on the plan by each other voting group entitled under section 5 of this act or the articles of incorporation to vote separately on the plan.

(6) Unless the articles of incorporation provide otherwise, approval of a plan of merger by the shareholders of a domestic corporation that is a party to the merger is not required if:

(a) Such corporation will survive the merger;

(b) Except for amendments permitted by RCW 23B.10.020, its articles of incorporation will not be changed; and

(c) Each shareholder of such corporation whose shares were outstanding immediately before the merger becomes effective will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the merger becomes effective.

(7) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new owner liability, approval of the plan of merger or share exchange requires the express written consent of each such shareholder to become subject to that new owner liability in connection with the merger or share exchange, unless in the case of a shareholder that already has owner liability with respect to that domestic corporation, (a) the new owner liability is with respect to a domestic corporation (which may be a different or the same domestic corporation in which the person is a shareholder) or other entity, and (b) the terms and conditions of the new owner liability are substantially identical to those of the existing owner liability (other than for changes that eliminate or reduce that owner liability).

NEW SECTION. **Sec.**  (1) Subject to subsection (2) of this section, separate voting by voting groups is required:

(a) On a plan of merger, by each class or series of shares of a domestic corporation that is a party to the merger that:

(i) Is to be converted under the plan into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, or is to be canceled under the plan; or

(ii) Is entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of such corporation that requires action by separate voting groups under RCW 23B.10.040 if such corporation is the surviving entity in the merger and the holders of such class or series will continue as shareholders of the surviving entity;

(b) On a plan of share exchange, by each class or series of shares of a domestic corporation included in the exchange, with each class or series constituting a separate voting group; and

(c) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a separate voting group on the plan of merger or share exchange, respectively.

(2) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (1)(a)(i) and (b) of this section as to any class or series of shares. A provision in the articles of incorporation of a domestic corporation formed before August 1, 2024, limiting or eliminating the separate voting rights provided under RCW 23B.11.035 in effect prior to the effective date of this section will be deemed to limit or eliminate the separate voting rights provided in subsection (1)(a)(i) and (b) of this section to the same extent.

(3) If a proposed plan of merger or share exchange that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the holders of shares of the classes or series so affected are to vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or by the board of directors in accordance with section 4(3) of this act.

(4) Holders of shares of two or more classes or series of shares of a domestic corporation that is a party to the merger or the acquired entity in a share exchange who would, under a proposed plan, receive the same type of consideration in the form of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests of the surviving or acquiring entity or of any parent entity of the surviving entity, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are deemed to be affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation of such corporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

NEW SECTION. **Sec.**  (1) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders of a plan of merger or share exchange is not required if:

(a) The plan of merger or share exchange expressly (i) permits or requires the merger or share exchange to be effected under this section, and (ii) provides that, if the merger or share exchange is to be effected under this section, the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection;

(b) Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms stated in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this section, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in (h) of this subsection;

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The (i) shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this section, would be required by this chapter and the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the merger or share exchange were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in (f)(ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this subsection.

(2) As used in this section:

(a) "Offer" means the offer referred to in subsection (1)(b) of this section.

(b) "Offeror" means the person making the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earliest time as of which:

(i) The offeror has irrevocably accepted those shares for payment; and

(ii) Either: (A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or interests.

NEW SECTION. **Sec.**  (1) A domestic corporation or other entity that owns shares of a domestic corporation that are entitled to cast votes comprising at least 90 percent of the voting power of each class and series of the outstanding voting shares of that subsidiary corporation may: (a) Merge the subsidiary corporation into itself or into (i) another domestic corporation in which the parent entity owns shares that are entitled to cast votes comprising at least 90 percent of the voting power of each class and series of the outstanding voting shares of that other domestic corporation or (ii) an other entity in which the parent entity owns interests that are entitled to cast votes comprising at least 90 percent of the total number of votes entitled to be cast by all outstanding interests of that other entity, or (b) merge itself into that subsidiary corporation, in either case without the approval of the board of directors or shareholders of the subsidiary corporation, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. Section 4(7) of this act applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be executed by the subsidiary corporation.

(2) A parent entity must, within 10 days after a merger under subsection (1) of this section becomes effective, notify each of the subsidiary corporation's other shareholders that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by shareholders.

(3) Except as provided in subsections (1) and (2) of this section, a merger under this section will be governed by the provisions of this chapter applicable to mergers generally.

NEW SECTION. **Sec.**  (1)(a) After a plan of merger has been approved (i) as required by this title, and (ii) in the case of each other entity, if any, that is party to the merger, as required by the organic law or organic rules governing such other entity or by section 2(3) of this act, as applicable, then articles of merger must be executed by each party to the merger except as provided in section 7(1) of this act.

(b) The articles of merger must state:

(i) The name, jurisdiction of organization, and type of entity of each party to the merger;

(ii) The name, jurisdiction of organization, and type of entity of the surviving entity;

(iii) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to or the amendment and restatement of the surviving entity's articles of incorporation;

(iv) If the surviving entity of the merger is a domestic other entity and its public organic record is amended or amended and restated, the amendments or the amendment and restatement of the surviving entity's public organic record;

(v) If the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this title and the articles of incorporation;

(vi) If the plan of merger did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect; and

(vii) As to each other entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or section 2(3) of this act.

(2) After a plan of share exchange has been approved as required by this title, then articles of share exchange must be executed by the acquired entity and the acquiring entity. The articles of share exchange must state:

(a) The name of the acquired entity;

(b) The name of the acquiring entity; and

(c) A statement that the plan of share exchange was duly approved by the acquired entity by:

(i) The required vote or consent of each class or series of shares included in the exchange; and

(ii) The required vote or consent of each other class or series of shares entitled to vote on approval of the exchange by the articles of incorporation of the acquired entity.

(3) In addition to the requirements of subsection (1) or (2) of this section, articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5) of this section, the merger or share exchange will become effective at the effective date and time of the articles of merger or share exchange as determined in accordance with RCW 23B.01.230.

(5) With respect to a merger in which one or more other entities is a party, the merger will become effective at the later of:

(a) The date and time when all documents required to be filed in foreign jurisdictions to effect the merger have become effective; and

(b) The effective date and time of the articles of merger as determined in accordance with RCW 23B.01.230.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any other entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

NEW SECTION. **Sec.**  (1) When a merger becomes effective:

(a) The domestic corporation or other entity that is designated in the plan of merger as the surviving entity continues;

(b) The separate existence of every domestic corporation or other entity that is merged into the surviving entity ceases;

(c) All property owned by, and every contract right possessed by, each domestic corporation or other entity that is merged into the surviving entity are the property and contract rights of the surviving entity without transfer, reversion, or impairment;

(d) All debts, obligations, and other liabilities of each domestic corporation or other entity that is merged into the surviving entity are debts, obligations, or liabilities of the surviving entity;

(e) The name of the surviving entity may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) If the surviving entity is a domestic entity, the articles of incorporation and bylaws or the organic rules of the surviving entity are amended, or amended and restated, to the extent provided in the plan of merger;

(g) The shares of or interests in each entity that is a party to the merger that are to be converted in accordance with the terms of the merger into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them by those terms or to any rights they may have under chapter 23B.13 RCW or the organic law governing the other entity;

(h) Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each entity that is merged into the surviving entity, are the rights, privileges, franchises, and immunities of the surviving entity;

(i) All the property and contract rights of the surviving entity remain its property and contract rights without transfer, reversion, or impairment;

(j) The surviving entity remains subject to all its debts, obligations, and other liabilities; and

(k) Except as provided by law or the plan of merger, the surviving entity continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares in the acquired entity that are to be exchanged for shares or other securities, obligations, rights to acquire shares, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under chapter 23B.13 RCW.

(3) Except as provided otherwise in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of an other entity, the effect of a merger or share exchange on owner liability is as follows:

(a) A person who becomes subject to new owner liability in respect of an entity as a result of a merger or share exchange will have that new owner liability only in respect of owner liabilities that arise after the merger or share exchange becomes effective;

(b) If a person had owner liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or interests of such party or acquired entity which were exchanged in the merger or share exchange, which were canceled in the merger, or the terms and conditions of which relating to owner liability were amended under the terms of the merger:

(i) The merger or share exchange does not discharge that prior owner liability with respect to any owner liabilities that arose before the merger or share exchange becomes effective;

(ii) The provisions of the organic law governing any entity for which the person had that prior owner liability will continue to apply to the collection or discharge of any owner liabilities preserved by (b)(i) of this subsection (3), as if the merger or share exchange had not occurred;

(iii) The person will have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior owner liability with respect to any owner liabilities preserved by (b)(i) of this subsection (3), as if the merger or share exchange had not occurred; and

(iv) The person will not, by reason of such prior owner liability, have owner liability with respect to any owner liabilities that arise after the merger or share exchange becomes effective;

(c) If a person has owner liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the surviving entity by reason of owning the same shares or interests before and after the merger becomes effective, the merger has no effect on such owner liability; and

(d) A share exchange has no effect on owner liability related to shares of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign other entity that is the surviving entity of the merger is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who are entitled to and exercise dissenters' rights under chapter 23B.13 RCW; and

(b) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23B.13 RCW.

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that a shareholder, interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

NEW SECTION. **Sec.**  (1) After a plan of merger or share exchange has been approved as required by this chapter, and before articles of merger or share exchange have become effective, the plan of merger or share exchange may be abandoned by a domestic corporation that is a party to the plan of merger or share exchange without action by its shareholders in accordance with any procedures provided in the plan of merger or share exchange or, if no such procedures are provided in the plan of merger or share exchange, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) of this section after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of withdrawal executed by all the parties that executed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective in accordance with RCW 23.95.215.

(3) The statement of withdrawal will become effective at the effective date and time as determined in accordance with RCW 23.95.210 and the merger or share exchange will be deemed abandoned and will not become effective.

NEW SECTION. **Sec.**  (1) As used in this section:

(a) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger;

(b) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation in the merger; and

(c) "Subsidiary constituent corporation" means the subsidiary corporation with or into which the parent constituent corporation merges in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;

(f) Immediately after the merger becomes effective, the surviving corporation of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights, and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in any amendment to the articles of incorporation of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the surviving corporation immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any corporate action by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, must be approved by the shareholders of the holding company (or any successor by merger) by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediately after the merger becomes effective; and

(k) The board of directors of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger.

(3) The holding company must, within 10 days after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation immediately before the merger became effective that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for the purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation under chapter 23B.19 RCW will, solely by reason of the merger, become an acquiring person of the holding company under chapter 23B.19 RCW.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4), and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation will be governed by the provisions of this chapter applicable to mergers generally.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 23B RCW.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 23B.11.010 (Merger) and 2022 c 42 s 107, 2020 c 194 s 11, & 1989 c 165 s 131;

(2) RCW 23B.11.020 (Share exchange) and 2020 c 194 s 12 & 1989 c 165 s 132;

(3) RCW 23B.11.030 (Approval of plan of merger or share exchange) and 2023 c 432 s 5, 2022 c 42 s 108, 2011 c 328 s 6, 2009 c 189 s 38, 2003 c 35 s 6, & 1989 c 165 s 133;

(4) RCW 23B.11.035 (Plan of merger or share exchange—Separate voting group) and 2003 c 35 s 7;

(5) RCW 23B.11.040 (Merger of or into subsidiary) and 2017 c 28 s 17, 2009 c 189 s 39, 2002 c 297 s 34, & 1989 c 165 s 134;

(6) RCW 23B.11.045 (Merger without approval of plan of merger—Definitions) and 2023 c 432 s 6;

(7) RCW 23B.11.050 (Articles of merger or share exchange) and 2022 c 42 s 109 & 1989 c 165 s 135;

(8) RCW 23B.11.060 (Effect of merger or share exchange) and 2022 c 42 s 110 & 1989 c 165 s 136;

(9) RCW 23B.11.070 (Merger or share exchange with foreign corporation) and 2015 c 176 s 2124 & 1989 c 165 s 137;

(10) RCW 23B.11.080 (Merger) and 2015 c 188 s 110, 2009 c 188 s 1401, 1998 c 103 s 1310, & 1991 c 269 s 38;

(11) RCW 23B.11.090 (Articles of merger) and 2022 c 42 s 111, 2015 c 188 s 111, 2009 c 188 s 1402, 1998 c 103 s 1311, & 1991 c 269 s 39;

(12) RCW 23B.11.100 (Merger—Corporation is surviving entity) and 2022 c 42 s 112, 1998 c 103 s 1312, & 1991 c 269 s 40; and

(13) RCW 23B.11.110 (Merger with foreign and domestic entities—Effect) and 2015 c 188 s 112, 2015 c 176 s 2125, 2009 c 188 s 1403, 1998 c 103 s 1313, & 1991 c 269 s 41.

**Sec.**  RCW 23B.01.400 and 2023 c 432 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so prepared that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined is conspicuous.

(4) "Controlling interest" means ownership of an entity's outstanding shares or interests in such number as to entitle the holder at the time to elect a majority of the entity's directors or other governors without regard to voting power which may thereafter exist upon a default, failure, or other contingency.

(5) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.

(6) "Corporation" or "domestic corporation" means a corporation for profit, including a social purpose corporation, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(7) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with RCW 23B.01.410, by electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(9) "Document" means:

(a) Any tangible medium on which information is inscribed, and includes handwritten, typed, printed, or similar instruments or copies of such instruments; and

(b) An electronic record.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) "Electronic mail" means an electronic transmission directed to a unique electronic mail address, which electronic mail will be deemed to include any files attached thereto and any information hyperlinked to a website if the electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information.

(12) "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox, commonly referred to as the "local part" of the address, and a reference to an internet domain, commonly referred to as the "domain part" of the address, whether or not displayed, to which electronic mail can be sent or delivered.

(13) "Electronic record" means information that is stored in an electronic or other nontangible medium and: (a) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice; or (b) if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

(14) "Electronic transmission" or "electronically transmitted" means internet transmission, telephonic transmission, electronic mail transmission, transmission of a telegram, cablegram, or datagram, the use of, or participation in, one or more electronic networks or databases including one or more distributed electronic networks or databases, or any other form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which:

(a) Is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, or, if not retrievable in paper form by the recipient through an automated process used in conventional commercial practice, is otherwise authorized in accordance with RCW 23B.01.410(10).

(15) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(16) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) "Execute," "executes," or "executed" means, with present intent to authenticate or adopt a document:

(a) To sign or adopt a tangible symbol to the document, and includes any manual, facsimile, or conformed signature;

(b) To attach or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature; or

(c) With respect to a document to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(18) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(19) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(20) "Forward stock split" means the pro rata division of all the outstanding shares of a class of stock into a greater number of shares of the same class, whether or not the authorized shares of such a class are increased in the same proportion, but does not include a share dividend under RCW 23B.06.230.

(21) "General social purpose" means the general social purpose for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(1)(c).

(22) "Governmental subdivision" includes authority, county, district, and municipality.

(23) "Governor" has the meaning given that term in RCW 23.95.105.

(24) "Includes" denotes a partial definition.

(25) "Individual" includes the estate of an incompetent or deceased individual.

(26) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(27) "Means" denotes an exhaustive definition.

(28) "Notice" has the meaning provided in RCW 23B.01.410.

(29) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(30) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(31) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(32) "Public company" means a corporation that either has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or which is subject to section 15(d) of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(33) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(2)(g), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(34) "Record date" means the date fixed for determining the identity of a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(35) "Registered office" means the address of the corporation's registered agent.

(36) "Reverse stock split" means the pro rata combination of all the outstanding shares of a class of stock into a smaller number of shares of the same class, whether or not the authorized shares of such a class are reduced in the same proportion.

(37) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(38) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(39) "Shares" means the units into which the proprietary interests in a corporation are divided.

(40) "Social purpose" includes any general social purpose and any specific social purpose.

(41) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.

(42) "Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).

(43) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(44) "Stock split" means a forward stock split or a reverse stock split.

(45) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(46) "Subsidiary" means an entity in which the corporation has, directly or indirectly, a controlling interest.

(47) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(48) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

(49) "Writing" or "written" means any information in the form of a document.

(50) "Interest" means either or both of the following rights under the organic law governing an other entity:

(a) A right to receive distributions from the other entity either in the ordinary course of business or upon liquidation; or

(b) The right to receive notice of or vote on issues involving the other entity's internal affairs, other than as an agent, assignee, proxy, or person responsible for managing the other entity's business affairs.

(51) "Interest holder" means a person who holds of record an interest.

(52) "Jurisdiction of organization" means the state or country the law of which includes the organic law governing a domestic corporation or other entity.

(53) "Organic law" means the statute governing the internal affairs of an entity.

(54) "Organic rules" means the public organic record and private organic rules of an entity.

(55) "Other entity" means any entity that is not any of the following: A domestic corporation, a domestic or foreign not-for-profit corporation, a series of a limited liability company or similar entity, an estate, a trust, a state, the United States, or a foreign governmental subdivision, agency, or instrumentality. The term includes, but is not limited to, a foreign corporation, a limited partnership, a general partnership, a limited liability company, a joint venture, a joint stock company, and a business trust.

(56) "Owner liability" means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder or interest holder;

(b) By the articles of incorporation or bylaws of a corporation authorizing the articles of incorporation or bylaws to make one or more specified shareholders liable in their capacity as shareholders for all or specified debts, obligations, or liabilities of the corporation; or

(c) By one or more organic rules of an other entity authorizing the organic rules to make one or more specified interest holders liable in their capacity as interest holders for all or specified debts, obligations, or liabilities of the other entity.

(57) "Private organic rules" means (a) the bylaws of a domestic corporation or (b) the rules, regardless of whether in writing, (i) that govern the internal affairs of an other entity, (ii) which are binding on all of the other entity's interest holders, and (iii) which are not part of the other entity's public organic record, if any. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(58) "Public organic record" means (a) the articles of incorporation of a domestic corporation or (b) the document, if any, the filing of which is required to create an other entity. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

(59) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation on the date in question.

(60) "Voting shares" means the shares of all classes of a corporation entitled to vote generally in the election of directors on the date in question.

**Sec.**  RCW 23B.07.250 and 2009 c 189 s 18 are each amended to read as follows:

(1) Shares entitled to vote as a separate voting group may approve a corporate action at a meeting only if a quorum of those shares exists with respect to that corporate action. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the corporate action by the voting group constitutes a quorum of that voting group for approval of that corporate action. Whenever this title requires a particular quorum for a specified corporate action, the articles of incorporation may not provide for a lower quorum.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, a corporate action, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the corporate action exceed the votes cast within the voting group opposing the corporate action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of the articles of incorporation adding, changing, or deleting ((~~either (i) [(a)]~~)) a quorum ((~~for a voting group greater or lesser than specified in subsection (1) of this section,~~)) or ((~~(ii) [(b)] a~~)) voting requirement for a voting group greater than specified in subsection (1) or (3) of this section((~~,~~)) is governed by RCW 23B.07.270.

(5) Whenever a provision of this title provides for voting of classes or series as separate voting groups, the rules provided in RCW 23B.10.040(3) for amendments of the articles of incorporation apply to that provision.

(6) The election of directors is governed by RCW 23B.07.280.

**Sec.**  RCW 23B.07.270 and 2009 c 189 s 20 are each amended to read as follows:

((~~(1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.~~

~~(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.~~

~~(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.~~

~~(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups as are required under the quorum and voting requirements then in effect for approval of the corporate action.~~

~~(5)~~)) An amendment to the articles of incorporation that adds, changes, or deletes a ((~~greater or lesser~~)) quorum or voting requirement ((~~for a merger, share exchange, sale of substantially all assets, or dissolution must be adopted~~)) must meet the same quorum requirement and be approved by the same vote and voting groups ((~~as are~~)) required ((~~under the quorum and voting requirements then in effect for approval of the particular corporate action, or~~)) to take action under the quorum and voting requirements then in effect ((~~for amendments to articles of incorporation~~)) or proposed to be approved, whichever is greater.

**Sec.**  RCW 23B.08.080 and 1995 c 47 s 7 are each amended to read as follows:

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) ((~~If~~)) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; except that if cumulative voting is authorized, and if less than the entire board is to be removed, no director may be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal((~~. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director~~)) and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that ((~~the purpose, or one of the purposes, of the meeting is~~)) removal of the director is a purpose of the meeting.

**Sec.**  RCW 23B.08.240 and 2020 c 57 s 61 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws ((~~require~~)) provide for a greater or lesser number or unless otherwise expressly provided in this title, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of ((~~a~~)) the board of directors ((~~may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws~~)) specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of less than one-third of the specified or fixed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in this title.

(4) A director who is present at a meeting of the board of directors or a committee when corporate action is approved is deemed to have assented to the corporate action unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention as to the corporate action is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action.

**Sec.**  RCW 23B.09.030 and 2020 c 57 s 65 are each amended to read as follows:

In the case of an entity conversion of a domestic corporation to an other entity, the plan of conversion must be approved in the following manner:

(1) The plan of entity conversion must first be ((~~adopted~~)) approved by the board of directors of the converting entity ((~~and the shareholders entitled to vote must approve the plan~~)).

(2) ((~~After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.~~

~~(3)~~)) The plan of entity conversion must then be approved by the shareholders of the converting entity. In submitting the plan of entity conversion to the shareholders for approval, the board of directors must recommend that the shareholders approve the plan of entity conversion ((~~to the shareholders~~)), unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies((~~, and in either case the board of directors communicates the basis for so proceeding to the shareholders~~)). If either (a) or (b) of this subsection applies, the board of directors must inform the shareholders of the basis for its so proceeding.

((~~(4)~~)) (3) The board of directors may ((~~condition its submission~~)) set conditions for the approval of the plan of entity conversion ((~~on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on~~)) or the effectiveness of the plan of entity conversion.

((~~(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.~~

~~(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.~~

~~(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.~~

~~(8)~~)) (4) If the approval of the shareholders is to be given at a meeting, the ((~~domestic corporation~~)) converting entity must notify each shareholder, regardless of whether ((~~or not~~)) entitled to vote, of the ((~~proposed~~)) meeting of shareholders at which the plan of entity conversion is to be submitted for approval ((~~in accordance with RCW 23B.07.050~~)). The notice must state that ((~~the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion~~)) consideration of the plan of entity conversion is a purpose of the meeting and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice must include or be accompanied by a copy of the organic ((~~documents~~)) rules of the surviving entity as they will be in effect immediately after the conversion.

((~~(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before June 12, 2014, applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended.~~))

(5) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, requires a greater vote, shareholder approval of the plan of entity conversion requires (a) the affirmative vote of shareholders that would be required to approve a plan of merger under section 4 of this act, and (b) the approval of each other voting group that would be entitled under the circumstances described in section 5 of this act or the articles of incorporation to vote separately on a plan of merger.

(6) If as a result of the conversion one or more shareholders of the converting entity would become subject to owner liability, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.

**Sec.**  RCW 23B.10.030 and 2011 c 328 s 5 are each amended to read as follows:

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

~~(2) For the amendment to be adopted:~~

~~(a) The~~)) If a corporation has issued shares, an amendment to the articles of incorporation, other than an amendment pursuant to RCW 23B.10.020, must be approved in the following manner:

(1) The proposed amendment must first be approved by the board of directors;

(2) Except as provided in RCW 23B.10.070 and 23B.10.080, the amendment must then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval, the board of directors must recommend that the shareholders approve the amendment ((~~to the shareholders~~)) unless ((~~(i)~~)) (a) the board of directors ((~~determines~~)) makes a determination that because of conflicts of interest or other special circumstances it should not make ((~~no~~)) such a recommendation, or ((~~(ii)~~)) (b) RCW 23B.08.245 applies((~~, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and~~

~~(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section~~)). If either (a) or (b) of this subsection applies, the board of directors must inform the shareholders of the basis for its so proceeding.

(3) The board of directors may ((~~condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment~~)) set conditions for the approval of the amendment by the shareholders or the effectiveness of the amendment.

(4) ((~~The~~)) If the amendment is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation ((~~shall~~)) must notify each shareholder, regardless of whether ((~~or not~~)) entitled to vote, of the ((~~proposed shareholders' meeting in accordance with RCW 23B.07.050~~)) meeting of shareholders at which the amendment is to be submitted for approval. The notice of meeting must ((~~also~~)) state that the purpose, or one of the purposes, of the meeting is to consider the ((~~proposed~~)) amendment and contain or be accompanied by a copy of the amendment.

(5) ((~~In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the amendment to be adopted must be approved by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040~~)) (a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a different vote, shareholder approval of the amendment requires (A) the approval of two-thirds, or, in the case of a public company, a majority, of the votes entitled to be cast on the amendment, and (B) the approval of two-thirds, or, in the case of a public company, a majority, of the votes entitled to be cast on the amendment by each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the amendment; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the amendment and of each other voting group entitled to vote separately on the amendment.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a greater vote, shareholder approval of the amendment requires (i) the approval of a majority of the votes entitled to be cast on the amendment, and (ii) the approval of a majority of the votes entitled to be cast on the amendment by each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the amendment.

**Sec.**  RCW 23B.12.020 and 2019 c 141 s 7 are each amended to read as follows:

(1) Except as provided in subsection (11) of this section, a sale, lease, exchange, or other disposition of a corporation's property and assets, other than in the usual and regular course of its business, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity.

(2) A continuing business activity will be conclusively presumed to represent a significant continuing business activity if, for the corporation and its subsidiaries on a consolidated basis, it represented at least:

(a) Twenty-five percent of total assets at the end of the most recently completed fiscal year; and

(b) Either: (i) Twenty-five percent of income from continuing operations before taxes, or (ii) twenty-five percent of revenues from continuing operations, in each case for the most recently completed fiscal year.

(3) No presumption that a disposition will leave the corporation without a significant continuing business activity will arise from the fact that the corporation's continuing business activity does not equal or exceed any of the percentages set forth in subsection (2) of this section.

(4) The determination of whether or not a continuing business activity constitutes a significant continuing business under subsection (2) of this section may be based either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or, in the case of subsection (2)(a) of this section, on a fair valuation or other method that is reasonable in the circumstances.

(5) For a disposition to be approved by a corporation's shareholders:

(a) The board of directors must approve the disposition and submit the proposed disposition for approval by the shareholders;

(b) The board of directors must recommend the proposed disposition to the shareholders unless (i) the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote on the proposed disposition must approve the proposed disposition as provided in subsection (8) of this section.

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

(7) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed disposition and contain or be accompanied by a description of the proposed disposition, including a summary of the material terms and conditions thereof and the consideration to be received by the corporation.

(8) ((~~In addition to any other voting conditions imposed by the board of directors under subsection (6) of this section~~)) (a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, require a different vote, shareholder approval of the proposed disposition requires (A) the approval of two-thirds of the votes entitled to be cast on the proposed disposition, and (B) the approval of two-thirds of the votes entitled to be cast on the proposed disposition by each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed disposition and of each other voting group entitled to vote separately on the proposed disposition.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, requires a greater vote, the proposed disposition must be approved by ((~~two-thirds~~)) a majority of the voting group comprising all the votes entitled to be cast on the proposed disposition, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section. ((~~The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed disposition and of each other voting group entitled to vote separately on the proposed disposition.~~))

(9) After a proposed disposition has been approved by the shareholders as required by this section, and at any time before the proposed disposition has been consummated, the board of directors may abandon the proposed disposition without further action by the shareholders, subject to any contractual rights of other parties relating thereto.

(10) A disposition that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

(11) Unless the articles of incorporation otherwise require, approval by the shareholders of a parent corporation is not required for the transfer of any or all of the parent corporation's property and assets to one or more subsidiaries all of the shares or interests of which are owned, directly or indirectly, by the parent corporation.

(12) The assets of a subsidiary are to be treated as the assets of its parent corporation for purposes of this section.

**Sec.**  RCW 23B.13.020 and 2022 c 42 s 113 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) ((~~A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040~~)) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 4 of this act or the articles of incorporation, or would be required but for the provisions of section 6 of this act, and the shareholder is, or but for the provisions of section 6 of this act would be, entitled to vote on the merger, except that the right to dissent will not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or (ii) if the corporation is a subsidiary and the merger is governed by section 7 of this act;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale, lease, exchange, or other disposition, which has become effective, of all, or substantially all, of the property and assets of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale, lease, exchange, or other disposition, including a disposition in dissolution, but not including a disposition pursuant to court order or a disposition for cash pursuant to a plan by which all or substantially all of the net proceeds of the disposition will be distributed to the shareholders within one year after the date of the disposition;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120;

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

**Sec.**  RCW 23B.13.200 and 2022 c 42 s 114 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval by a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of ((~~RCW 23B.11.030(9)~~)) section 4 of this act, the offer made pursuant to ((~~RCW 23B.11.030(9)~~)) section 4 of this act must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(3) If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

**Sec.**  RCW 23B.13.210 and 2022 c 42 s 115 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (b) not vote such shares in favor of the proposed corporate action.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to ((~~RCW 23B.11.030(9)~~)) section 4 of this act, a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares:

(a) Shall deliver to the corporation before the shares are purchased pursuant to the offer under ((~~RCW 23B.11.030(9)~~)) section 4 of this act written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected; and

(b) Shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

(4) A shareholder who does not satisfy the requirements of subsection (1), (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter.

**Sec.**  RCW 23B.13.220 and 2022 c 42 s 116 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (6) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with ((~~RCW 23B.11.030(9)~~)) section 4 of this act, the corporation shall within 10 days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(3) shall comply with subsection (6) of this section.

(4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (6) of this section.

(5) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (6) of this section.

(6) Any notice under subsection (1), (2), (3), (4), or (5) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), (4), or (5) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

**Sec.**  RCW 23B.17.015 and 2011 c 42 s 1 are each amended to read as follows:

(1) A corporation that meets the following requirements is subject to the alternative quorum and voting requirements set forth in subsection (2) of this section:

(a) As of the record date of the annual or special meeting of shareholders:

(i) The corporation is a public company;

(ii) Shares of its common stock are admitted to trading on a regulated market listed on the list of the regulated markets notified to the European commission by the member states under Article 16 of the investment services directive (93/22/EEC), as such list is amended from time to time; and

(iii) At least twenty percent of the shares of the corporation's common stock are held of record by the depository trust company and are deposited securities, as defined in the rules, bylaws, and organization certificate of the depository trust company, credited to the account or accounts of one or more stock depositories located in a member state of the European Union;

(b) At the time that such shares were initially listed on the regulated market, shares of the corporation's common stock were listed on the New York stock exchange or the ((~~nasdaq~~)) NASDAQ stock market;

(c) At the time that such shares were initially listed on the regulated market, such listing was a condition to the acquisition of one hundred percent of the equity interests of a foreign corporation or similar entity where:

(i) The securities of the foreign corporation or similar entity were admitted to trading on the regulated market immediately prior to the acquisition;

(ii) The consideration for the acquisition was newly issued shares of common stock of the corporation; and

(iii) The shares issued in connection with the acquisition equaled before the issuance more than forty percent of the outstanding common stock of the corporation; and

(d) At the corporation's most recent annual or special meeting of shareholders less than sixty-five percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

(2) At any annual or special meeting actually held, other than by written consent under RCW 23B.07.040, by a corporation meeting the requirements of subsection (1) of this section:

(a) The required quorum of the voting group consisting of all votes entitled to be cast, and of each other voting group that includes common shares of the corporation which is entitled to vote separately with respect to a proposed corporate action, shall be the lesser of:

(i) A majority of the shares of such voting group other than shares credited to the account of stock depositories located in a member state of the European Union as described in subsection (1)(a)(iii) of this section, provided the number of votes comprising such majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or

(ii) One-third of the total votes entitled to be cast by the voting group.

(b) The vote required for approval by any voting group entitled to vote with respect to any amendment of the corporation's articles of incorporation or bylaws, or any plan of merger or share exchange to which the corporation is a party, or any sale, lease, exchange, or other disposition of all or substantially all of the corporation's property otherwise than in the usual and regular course of business, or dissolution, shall be a majority of the votes actually cast by such voting group with respect to the proposed corporate action, provided that the votes approving the proposed corporate action equal or exceed fifteen percent of the votes within the voting group.

(3) The alternative quorum and voting requirements specified in subsection (2) of this section shall, with respect to any corporation meeting the requirements of subsection (1) of this section, control over and supersede any greater quorum or voting requirements that may be specified in the corporation's articles of incorporation or bylaws or in RCW 23B.02.020, 23B.07.250, 23B.07.270, 23B.10.030, ((~~23B.11.030~~)) section 4 of this act, 23B.12.020, or 23B.14.020.

**Sec.**  RCW 23B.25.100 and 2012 c 215 s 11 are each amended to read as follows:

(1) In addition to approval in accordance with ((~~RCW 23B.11.030~~)) section 4 of this act, a plan of merger or share exchange pursuant to which a social purpose corporation would not be the surviving corporation must be approved by two‑thirds of the voting group comprising all the votes of the corporation entitled to be cast on the plan, and by two‑thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed plan. The articles of incorporation may require a greater vote than that provided for in this subsection.

(2) The additional approval described in subsection (1) of this section is not required if the surviving corporation of the plan of merger or share exchange is a social purpose corporation governed by this chapter and includes a specific social purpose or purposes that do not materially differ from the disappearing corporation's specific social purpose or purposes, if any.

**Sec.**  RCW 23B.25.130 and 2012 c 215 s 14 are each amended to read as follows:

(1) ((~~Any~~)) By complying with this chapter, any corporation that is not a social purpose corporation may ((~~elect to~~)) become a social purpose corporation ((~~if, pursuant to the proposed election, each of the following conditions are met:~~

~~(a) Each~~)) in accordance with a plan of election.

(2) The plan of election must provide that each share of the same class or series of the electing corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share((~~;~~)).

(3) The plan of election must include an amendment to the articles of incorporation to include the matters required to be included in the articles of incorporation in accordance with RCW 23B.25.040(1).

(4) The plan of election must be approved in the following manner:

(a) The plan of election must first be approved by the board of directors.

(b) The plan of election must then be approved by the shareholders. In submitting the plan of election to the shareholders for approval, the board of directors ((~~of the electing corporation~~)) must recommend ((~~the election to~~)) that the shareholders approve the plan of election, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation ((~~and communicates the basis for its determination to the shareholders with the proposed election; and~~

~~(c) In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the~~)), in which case the board of directors must inform the shareholders of the basis for so proceeding.

(c) The board of directors may set conditions for the approval of the plan of election by the shareholders or the effectiveness of the plan.

(d) Unless the articles of incorporation, or the board of directors acting in accordance with (c) of this subsection, requires a greater vote, the plan of election must be approved by an affirmative vote of at least two‑thirds of the voting group comprising all the votes of the electing corporation's shareholders entitled to be cast on the ((~~corporate action~~)) plan, and by two‑thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the ((~~corporate action~~)) plan.

((~~(2) The board of directors of a corporation electing to become a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.~~

~~(3) To elect to become a social purpose corporation, an electing corporation must amend its articles of incorporation to include the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1).~~

~~(4)~~)) (5) After an election to become a social purpose corporation is approved, and at any time prior to filing the articles of amendment to amend the electing corporation's articles of incorporation ((~~in compliance with subsection (3) of this section~~)), the planned election may be abandoned by the electing corporation, subject to any contractual rights, without further shareholder approval, in the manner determined by the board of directors.

((~~(5)~~)) (6) The election to become a social purpose corporation shall be effective upon the later of the filing of the articles of amendment with the secretary of state or the effective date or time set forth in the articles of amendment.

((~~(6)~~)) (7) Upon the effective time of the election to become a social purpose corporation, the electing corporation shall thereafter be a social purpose corporation and shall be subject to all of the provisions of this chapter and the existence of the social purpose corporation shall be deemed to have commenced on the date the electing corporation was incorporated.

((~~(7)~~)) (8) The election to become a social purpose corporation shall not be deemed to affect any obligations or liabilities of the electing corporation incurred prior to its election to become a social purpose corporation or the personal liability of any person incurred prior to such election.

**--- END ---**