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HOUSE BILL 2387

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State of Washington                      55th Legislature                      1998 Regular Session

By Representatives Sheahan, Constantine and Costa

Read first time 01/13/98. Referred to Committee on Law & Justice.

1            AN ACT Relating to shares and distributions under the Washington  
2 business corporation act; and amending RCW 23B.06.010, 23B.06.020, and  
3 23B.06.240.

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

5            **Sec. 1.** RCW 23B.06.010 and 1989 c 165 s 44 are each amended to  
6 read as follows:

7            (1) The articles of incorporation must prescribe the classes of  
8 shares and the number of shares of each class that the corporation is  
9 authorized to issue.

10           (a) If more than one class of shares is authorized, the articles  
11 of incorporation must prescribe a distinguishing designation for each  
12 class, and, prior to the issuance of shares of a class, the  
13 preferences, limitations, voting powers, and relative rights of that  
14 class must be described in the articles of incorporation.

15           (b) (~~Any of the designations,~~) Preferences, limitations, voting  
16 powers, or relative rights of or on any class or series of shares or  
17 the holders thereof may be made dependent upon facts ascertainable  
18 outside the articles of incorporation (~~or of any amendment thereto, or~~  
19 ~~outside the resolution or resolutions providing for the issuance of~~

1 ~~shares adopted by the board of directors pursuant to authority~~  
2 ~~expressly vested in it by the corporation's articles of~~  
3 ~~incorporation)), if the manner in which such facts shall operate on the~~  
4 ~~((designations,)) preferences, limitations, voting powers, or relative~~  
5 ~~rights of such class or series ((is clearly and expressly)) of shares~~  
6 ~~or the holders thereof is set forth in the articles of incorporation~~  
7 ~~((or in the resolution or resolutions providing for the issue of such~~  
8 ~~shares adopted by the board of directors)). "Facts ascertainable~~  
9 ~~outside the articles of incorporation" includes, but is not limited to,~~  
10 ~~the existence of any condition or the occurrence of any event,~~  
11 ~~including, without limitation, a determination or action by any person~~  
12 ~~or body, including the corporation, its board of directors, or an~~  
13 ~~officer, employee, or agent of the corporation.~~

14 (c) All shares of a class must have preferences, limitations,  
15 voting powers, and relative rights identical with those of other shares  
16 of the same class except to the extent otherwise permitted by (b) of  
17 this subsection or RCW 23B.06.020.

18 (2) The articles of incorporation must authorize (a) one or more  
19 classes of shares that together have unlimited voting rights, and (b)  
20 one or more classes of shares, which may be the same class or classes  
21 as those with voting rights, that together are entitled to receive the  
22 net assets of the corporation upon dissolution.

23 (3) The articles of incorporation may authorize one or more classes  
24 of shares that:

25 (a) Have special, conditional, or limited voting rights, or no  
26 right to vote, except to the extent prohibited by this title;

27 (b) Are redeemable or convertible as specified in the articles of  
28 incorporation (i) at the option of the corporation, the shareholder, or  
29 another person or upon the occurrence of a designated event, (ii) for  
30 cash, indebtedness, securities, or other property, (iii) in a  
31 designated amount or in an amount determined in accordance with a  
32 designated formula or by reference to extrinsic data or events;

33 (c) Entitle the holders to distributions calculated in any manner,  
34 including dividends that may be cumulative, noncumulative, or partially  
35 cumulative; or

36 (d) Have preference over any other class of shares with respect to  
37 distributions, including dividends and distributions upon the  
38 dissolution of the corporation.

1 (4) The description of the designations, preferences, limitations,  
2 and relative rights of share classes in subsection (3) of this section  
3 is not exhaustive.

4 **Sec. 2.** RCW 23B.06.020 and 1989 c 165 s 45 are each amended to  
5 read as follows:

6 (1) If the articles of incorporation so provide, the board of  
7 directors may determine, in whole or part, the preferences,  
8 limitations, voting powers, and relative rights, within the limits set  
9 forth in RCW 23B.06.010(1)(b) and this section of (a) any class of  
10 shares before the issuance of any shares of that class, or (b) one or  
11 more series within a class, and designate the number of shares within  
12 that series, before the issuance of any shares of that series.

13 (2) Each series of a class must be given a distinguishing  
14 designation.

15 (3) All shares of a series must have preferences, limitations,  
16 voting powers, and relative rights identical with those of other shares  
17 of the same series (~~(and)~~), except to the extent otherwise (~~provided~~  
18 ~~in the description of the series, with those~~) permitted by RCW  
19 23B.06.010(1)(b). All shares of a series must have preferences,  
20 limitations, voting powers, and relative rights identical with those of  
21 shares of other series of the same class, except to the extent  
22 otherwise provided in the description of the series.

23 (4) Before issuing any shares of a class or series created under  
24 this section, the corporation must deliver to the secretary of state  
25 for filing articles of amendment, which are effective without  
26 shareholder action, that set forth:

27 (a) The name of the corporation;

28 (b) The text of the amendment determining the terms of the class or  
29 series of shares;

30 (c) The date it was adopted; and

31 (d) The statement that the amendment was duly adopted by the board  
32 of directors.

33 (5) Unless the articles of incorporation provide otherwise, the  
34 board of directors may, after the issuance of shares of a series whose  
35 number it is authorized to designate, amend the resolution establishing  
36 the series to decrease, but not below the number of shares of such  
37 series then outstanding, the number of authorized shares of that  
38 series, by filing articles of amendment, which are effective without

1 shareholder action, in the manner provided in subsection (4) of this  
2 section.

3 **Sec. 3.** RCW 23B.06.240 and 1989 c 165 s 52 are each amended to  
4 read as follows:

5 (1) Unless the articles of incorporation provide otherwise, a  
6 corporation may issue rights, options, or warrants for the purchase of  
7 shares of the corporation. The board of directors shall determine the  
8 terms upon which the rights, options, or warrants are issued, their  
9 form and content, and the terms and conditions relating to their  
10 exercise, including the time or times, the conditions precedent, and  
11 the consideration for which ((the shares are to be issued)) and the  
12 holders by whom the rights, options, or warrants may be exercised.

13 (2) The terms of rights, options, or warrants, including the time  
14 or times, the conditions precedent, and the consideration for which and  
15 the holders by whom the rights, options, or warrants may be exercised,  
16 as well as their duration (a) may preclude or limit the exercise,  
17 transfer, or receipt of such rights, options, or warrants or invalidate  
18 or void any rights, options, or warrants and (b) may be made dependent  
19 upon facts ascertainable outside the documents evidencing them or  
20 outside the resolution or resolutions adopted by the board of directors  
21 creating such rights, options, or warrants if the manner in which those  
22 facts operate on the rights, options, or warrants or the holders  
23 thereof is clearly set forth in the documents or the resolutions.  
24 "Facts ascertainable outside the documents evidencing them or outside  
25 the resolution or resolutions adopted by the board of directors  
26 creating such rights, options, or warrants" includes, but is not  
27 limited to, the existence of any condition or the occurrence of any  
28 event, including, without limitation, a determination or action by any  
29 person or body, including the corporation, its board of directors, or  
30 an officer, employee, or agent of the corporation.

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