

2 SHB 1545 - S COMM AMD  
3 By Committee on Judiciary

4  
5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 24.06.005 and 2000 c 167 s 1 are each amended to read  
8 as follows:

9 As used in this chapter, unless the context otherwise requires, the  
10 term:

11 (1) "Corporation" or "domestic corporation" means a mutual  
12 corporation or miscellaneous corporation subject to the provisions of  
13 this chapter, except a foreign corporation.

14 (2) "Foreign corporation" means a mutual or miscellaneous  
15 corporation or other corporation organized under laws other than the  
16 laws of this state which would be subject to the provisions of this  
17 chapter if organized under the laws of this state.

18 (3) "Mutual corporation" means a corporation organized to  
19 accomplish one or more of its purposes on a mutual basis for members  
20 and other persons.

21 (4) "Miscellaneous corporation" means any corporation which is  
22 organized for a purpose or in a manner not provided for by the  
23 Washington business corporation act or by the Washington nonprofit  
24 corporation act, and which is not required to be organized under other  
25 laws of this state.

26 (5) "Articles of incorporation" includes the original articles of  
27 incorporation and all amendments thereto, and includes articles of  
28 merger.

29 (6) "Bylaws" means the code or codes of rules adopted for the  
30 regulation or management of the affairs of the corporation irrespective  
31 of the name or names by which such rules are designated.

32 (7) "Member" means one having membership rights in a corporation in  
33 accordance with provisions of its articles of incorporation or bylaws.

34 (8) "Stock" or "share" means the units into which the proprietary  
35 interests of a corporation are divided in a corporation organized with  
36 stock.

1 (9) "Stockholder" or "shareholder" means one who is a holder of  
2 record of one or more shares in a corporation organized with stock.

3 (10) "Board of directors" means the group of persons vested with  
4 the management of the affairs of the corporation irrespective of the  
5 name by which such group is designated.

6 (11) "Insolvent" means inability of a corporation to pay debts as  
7 they become due in the usual course of its affairs.

8 (12) "Duplicate originals" means two copies, original or otherwise,  
9 each with original signatures, or one original with original signatures  
10 and one copy thereof.

11 (13) "Conforms to law" as used in connection with duties of the  
12 secretary of state in reviewing documents for filing under this  
13 chapter, means the secretary of state has determined the document  
14 complies as to form with the applicable requirements of this chapter.

15 (14) "Effective date" means, in connection with a document filing  
16 made by the secretary of state, the date which is shown by affixing a  
17 "filed" stamp on the documents. When a document is received for filing  
18 by the secretary of state in a form which complies with the  
19 requirements of this chapter and which would entitle the document to be  
20 filed immediately upon receipt, but the secretary of state's approval  
21 action occurs subsequent to the date of receipt, the secretary of  
22 state's filing date shall relate back to the date on which the  
23 secretary of state first received the document in acceptable form. An  
24 applicant may request a specific effective date no more than thirty  
25 days later than the receipt date which might otherwise be applied as  
26 the effective date.

27 (15) "Executed by an officer of the corporation," or words of  
28 similar import, means that any document signed by such person shall be  
29 and is signed by that person under penalties of perjury and in an  
30 official and authorized capacity on behalf of the corporation or person  
31 making the document submission with the secretary of state.

32 (16) "An officer of the corporation" means, in connection with the  
33 execution of documents submitted for filing with the secretary of  
34 state, the president, a vice president, the secretary, or the treasurer  
35 of the corporation.

36 (17) "Electronic transmission" or "electronically transmitted"  
37 means any process of electronic communication not directly involving  
38 the physical transfer of paper that is suitable for the retention,  
39 retrieval, and reproduction of the transmitted information by the

1 recipient. However, such an electronic transmission must either set  
2 forth or be submitted with information, including any security or  
3 validation controls used, from which it can reasonably be determined  
4 that the electronic transmission was authorized by, as applicable, the  
5 corporation or shareholder or member by or on behalf of which the  
6 electronic transmission was sent.

7 (18) "Consumer cooperative" means a corporation engaged in the  
8 retail sale, to its members and other consumers, of goods or services  
9 of a type that are generally for personal, living, or family use.

10 **Sec. 2.** RCW 24.06.025 and 1987 c 212 s 708 are each amended to  
11 read as follows:

12 The articles of incorporation shall set forth:

13 (1) The name of the corporation.

14 (2) The period of duration, which may be perpetual or for a stated  
15 number of years.

16 (3) The purpose or purposes for which the corporation is organized.

17 (4) The qualifications and the rights and responsibilities of the  
18 members and the manner of their election, appointment or admission to  
19 membership and termination of membership; and, if there is more than  
20 one class of members or if the members of any one class are not equal,  
21 the relative rights and responsibilities of each class or each member.

22 (5) If the corporation is to have capital stock:

23 (a) The aggregate number of shares which the corporation shall have  
24 authority to issue; if such shares are to consist of one class only,  
25 the par value of each of such shares, or a statement that all of such  
26 shares are without par value; or, if such shares are to be divided into  
27 classes, the number of shares of each class, and a statement of the par  
28 value of the shares of each such class or that such shares are to be  
29 without par value;

30 (b) If the shares are to be divided into classes, the designation  
31 of each class and a statement of the preferences, limitations and  
32 relative rights in respect of the shares of each class;

33 (c) If the corporation is to issue the shares of any preferred or  
34 special class in series, then the designation of each series and a  
35 statement of the variations in the relative rights and preferences as  
36 between series insofar as the same are to be fixed in the articles of  
37 incorporation, and a statement of any authority to be vested in the

1 board of directors to establish series and fix and determine the  
2 variations in the relative rights and preferences as between series;

3 (d) Any provision limiting or denying to shareholders the  
4 preemptive right to acquire additional shares of the corporation.

5 (6) If the corporation is to distribute surplus funds to its  
6 members, stockholders or other persons, provisions for determining the  
7 amount and time of the distribution.

8 (7) Provisions for distribution of assets on dissolution or final  
9 liquidation.

10 (8) Whether a dissenting shareholder or member shall be limited to  
11 a return of less than the fair value of his shares or membership.

12 (9) (~~Any provisions, not inconsistent with law, which the~~  
13 ~~incorporators elect to set forth in the articles of incorporation for~~  
14 ~~the regulation of the internal affairs of the corporation.~~

15 ~~(10))~~ The address of its initial registered office, including  
16 street and number, and the name of its initial registered agent at such  
17 address.

18 (~~(11))~~ (10) The number of directors constituting the initial  
19 board of directors, and the names and addresses of the persons who are  
20 to serve as the initial directors.

21 (~~(12))~~ (11) The name and address of each incorporator.

22 (~~(13))~~ (12) Any provision, not inconsistent with law, (~~which the~~  
23 ~~incorporators elect to set forth in the articles of incorporation))~~ for  
24 the regulation of the internal affairs of the association, including  
25 (~~provisions regarding~~):

26 (a) (~~Eliminating or limiting the personal liability of a director~~  
27 ~~to the association or its members for monetary damages for conduct as~~  
28 ~~a director: PROVIDED, That such provision shall not eliminate or limit~~  
29 ~~the liability of a director for acts or omissions that involve~~  
30 ~~intentional misconduct by a director or a knowing violation of law by~~  
31 ~~a director, or for any transaction from which the director will~~  
32 ~~personally receive a benefit in money, property, or services to which~~  
33 ~~the director is not legally entitled. No such provision may eliminate~~  
34 ~~or limit the liability of a director for any act or omission occurring~~  
35 ~~before the date when such provision becomes effective)) Overriding the  
36 release from liability provided in RCW 24.06.035(2); and~~

37 (b) Any provision which under this title is required or permitted  
38 to be set forth in the bylaws.

1 It shall not be necessary to set forth in the articles of  
2 incorporation any of the corporate powers enumerated in this chapter.

3 Unless the articles of incorporation provide that a change in the  
4 number of directors shall be made only by amendment to the articles of  
5 incorporation, a change in the number of directors made by amendment to  
6 the bylaws shall be controlling. In all other cases, whenever a  
7 provision of the articles of incorporation is inconsistent with a  
8 bylaw, the provision of the articles of incorporation shall be  
9 controlling.

10 **Sec. 3.** RCW 24.06.030 and 1969 ex.s. c 120 s 6 are each amended to  
11 read as follows:

12 Each corporation shall have power:

13 (1) To have perpetual succession by its corporate name unless a  
14 limited period of duration is stated in its articles of incorporation.

15 (2) To sue and be sued, complain and defend, in its corporate name.

16 (3) To have a corporate seal which may be altered at pleasure, and  
17 to use the same by causing it, or a facsimile thereof, to be impressed  
18 or affixed or in any other manner reproduced.

19 (4) To purchase, take, receive, lease, take by gift, devise or  
20 bequest, or otherwise acquire, own, hold, be trustee of, improve, use  
21 and otherwise deal in and with real or personal property, or any  
22 interest therein, wherever situated.

23 (5) To sell, convey, mortgage, pledge, lease, exchange, transfer  
24 and otherwise dispose of all or any part of its property and assets.

25 (6) To lend money to its employees.

26 (7) To purchase, take, receive, subscribe for, or otherwise  
27 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or  
28 otherwise dispose of, and otherwise use and deal in and with, shares or  
29 other interests in, or obligations of, other domestic or foreign  
30 corporations, whether for profit or not for profit, associations,  
31 partnerships or individuals, or direct or indirect obligations of the  
32 United States, or of any other government, state, territory,  
33 governmental district or municipality or of any instrumentality  
34 thereof.

35 (8) To make contracts and incur liabilities, borrow money at such  
36 rates of interest as the corporation may determine, issue its notes,  
37 bonds, and other obligations, and secure any of its obligations by

1 mortgage or pledge of all or any of its property, franchises and  
2 income.

3 (9) To lend money for its corporate purposes, invest and reinvest  
4 its funds, and take and hold real and personal property as security for  
5 the payment of funds so loaned or invested.

6 (10) To conduct its affairs, carry on its operations, and have  
7 offices and exercise the powers granted by this chapter, in any state,  
8 territory, district, or possession of the United States, or in any  
9 foreign country.

10 (11) To elect or appoint officers and agents of the corporation,  
11 and define their duties and fix their compensation.

12 (12) To make and alter bylaws, not inconsistent with its articles  
13 of incorporation or with the laws of this state, for the administration  
14 and regulation of the affairs of the corporation.

15 (13) To establish and maintain reserve, equity, surplus or other  
16 funds, and to provide for the time, form and manner of distribution of  
17 such funds among members, shareholders or other persons with interests  
18 therein in accordance with the articles of incorporation.

19 (14) Unless otherwise provided in the articles of incorporation, to  
20 make donations for the public welfare or for charitable, scientific or  
21 educational purposes, and in time of war to make donations in aid of  
22 the United States and its war activities.

23 (15) To indemnify any director or officer or former director or  
24 officer of the corporation, or any person who may have served at its  
25 request as a director or officer of another corporation, against  
26 expenses actually and necessarily incurred by him or her in connection  
27 with the defense of any action, suit or proceeding in which he or she  
28 is made a party by reason of being or having been such director or  
29 officer, except ~~((in relation to matters as to which he shall be  
30 adjudged in such action, suit or proceeding to be liable for negligence  
31 or misconduct in the performance of duty))~~ for acts or omissions that  
32 involve intentional misconduct or a knowing violation of law by the  
33 director or officer, or that involve a transaction from which the  
34 director or officer will personally receive a benefit in money,  
35 property, or services to which the director or officer is not legally  
36 entitled: PROVIDED, That such indemnification shall not be deemed  
37 exclusive of any other rights to which such director or officer may be  
38 entitled, under any bylaw, agreement, vote of board of directors or  
39 members or shareholders, or otherwise.

1 (16) To cease its corporate activities and surrender its corporate  
2 franchise.

3 (17) To have and exercise all powers necessary or convenient to  
4 effect any or all of the purposes for which the corporation is  
5 organized and not inconsistent with the articles of incorporation or  
6 the provisions of this chapter.

7 **Sec. 4.** RCW 24.06.035 and 1987 c 212 s 709 are each amended to  
8 read as follows:

9 (1) A corporation subject to the provisions of this chapter shall  
10 not engage in any business, trade, a vocation or profession for profit:  
11 PROVIDED, That nothing contained herein shall be construed to forbid  
12 such a corporation from accumulating reserve, equity, surplus or other  
13 funds through subscriptions, fees, dues or assessments, or from charges  
14 made its members or other persons for services rendered or supplies or  
15 benefits furnished, or from distributing its surplus funds to its  
16 members, stockholders or other persons in accordance with the  
17 provisions of the articles of incorporation. A member of the board of  
18 directors or an officer of such a corporation shall have the same  
19 immunity from liability as is granted in RCW 4.24.264.

20 (2) Unless the articles of incorporation provide otherwise, a  
21 member of the board of directors or an officer of the corporation is  
22 not individually liable to the corporation or its shareholders or  
23 members in their capacity as shareholders or members for conduct within  
24 his or her official capacity as a director or officer after the  
25 effective date of this subsection except for acts or omissions that  
26 involve intentional misconduct or a knowing violation of the law, or  
27 that involve a transaction from which the director or officer will  
28 personally receive a benefit in money, property, or services to which  
29 the director or officer is not legally entitled. Nothing in this  
30 subsection may be construed to limit or modify in any manner the power  
31 of the attorney general to bring an action on behalf of the public to  
32 enjoin, correct, or otherwise remedy a breach of a charitable trust by  
33 a corporation or its directors or officers.

34 **Sec. 5.** RCW 24.06.100 and 1969 ex.s. c 120 s 20 are each amended  
35 to read as follows:

36 Meetings of members and/or shareholders may be held at such place,  
37 either within or without this state, as may be provided in the bylaws.

1 In the absence of any such provision, all meetings shall be held at the  
2 registered office of the corporation in this state.

3 An annual meeting of the members and shareholders shall be held at  
4 such time as may be provided in the bylaws. Failure to hold the annual  
5 meeting at the designated time shall not work a forfeiture or  
6 dissolution of the corporation.

7 Special meetings of the members or shareholders may be called by  
8 the president or by the board of directors. Special meetings of the  
9 members or shareholders may also be called by such other officers or  
10 persons or number or proportion of members or shareholders as may be  
11 provided in the articles of incorporation or the bylaws. In the  
12 absence of a provision fixing the number or proportion of members or  
13 shareholders entitled to call a meeting, a special meeting of members  
14 or shareholders may be called by persons having one-twentieth of the  
15 votes entitled to be cast at such meeting. Only business within the  
16 purpose or purposes described in the meeting notice required by RCW  
17 24.06.105 may be conducted at a special meeting.

18 If the articles of incorporation or bylaws so provide, members or  
19 shareholders may participate in any meeting of members or shareholders  
20 by any means of communication by which all persons participating in the  
21 meeting can hear each other during the meeting. A member or  
22 shareholder participating in a meeting by this means is deemed to be  
23 present in person at the meeting.

24 **Sec. 6.** RCW 24.06.110 and 2000 c 167 s 4 are each amended to read  
25 as follows:

26 The right of a class or classes of members or shareholders to vote  
27 may be limited, enlarged or denied to the extent specified in the  
28 articles of incorporation. Unless so limited, enlarged or denied, each  
29 member and each outstanding share of each class shall be entitled to  
30 one vote on each matter submitted to a vote of members or shareholders.  
31 No member of a class may acquire any interest which will entitle him or  
32 her to a greater vote than any other member of the same class.

33 A member or shareholder may vote in person or, unless the articles  
34 of incorporation or the bylaws otherwise provide, may vote by mail, by  
35 electronic transmission, or by proxy executed in writing by the member  
36 or shareholder or by his or her duly authorized attorney-in-fact:  
37 PROVIDED, That no proxy shall be valid for more than eleven months from  
38 the date of its execution unless otherwise specified in the proxy.



1 If a member or shareholder may vote by proxy, the proxy may be  
2 given by:

3 (1) Executing a writing authorizing another person or persons to  
4 act for the member or shareholder as proxy. Execution may be  
5 accomplished by the member or shareholder or the member's or  
6 shareholder's authorized officer, director, employee, or agent signing  
7 the writing or causing his or her signature to be affixed to the  
8 writing by any reasonable means including, but not limited to,  
9 facsimile signature; or

10 (2) Authorizing another person or persons to act for the member or  
11 shareholder as proxy by transmitting or authorizing the transmission of  
12 an electronic transmission to the person who will be the holder of the  
13 proxy, or to a proxy solicitation firm, proxy support service  
14 organization, or like agent duly authorized by the person who will be  
15 the holder of the proxy to receive the transmission. If it is  
16 determined that the electronic transmissions are valid, the inspector  
17 of election or, if there are no inspectors, any other officer or agent  
18 of the corporation making that determination on behalf of the  
19 corporation shall specify the information upon which they relied. The  
20 corporation shall require the holders of proxies received by electronic  
21 transmission to provide to the corporation copies of the electronic  
22 transmission and the corporation shall retain copies of the electronic  
23 transmission for a reasonable period of time.

24 If specifically permitted by the articles of incorporation ((~~may~~  
25 provide that)) or bylaws, whenever proposals or directors or officers  
26 are to be voted upon, such vote may be taken by mail or by electronic  
27 transmission if the name of each candidate and the text of each  
28 proposal to be so voted upon are set forth in a writing accompanying or  
29 contained in the notice of meeting. Persons voting by mail or by  
30 electronic transmission shall be deemed present for all purposes of  
31 quorum, count of votes and percentages of total voting power voting.

32 The articles of incorporation or the bylaws may provide that in all  
33 elections for directors every person entitled to vote shall have the  
34 right to cumulate his or her vote and to give one candidate a number of  
35 votes equal to his or her vote multiplied by the number of directors to  
36 be elected, or by distributing such votes on the same principle among  
37 any number of such candidates.

1       **Sec. 7.** RCW 24.06.115 and 2000 c 167 s 5 are each amended to read  
2 as follows:

3       The articles of incorporation or the bylaws may provide the number  
4 or percentage of votes which members or shareholders are entitled to  
5 cast in person, by mail, by electronic transmission, or by proxy, which  
6 shall constitute a quorum at meetings of shareholders or members.  
7 However, in no event shall a quorum be less than one-fourth, or in the  
8 case of consumer cooperatives, five percent, of the votes which members  
9 or shareholders are entitled to cast in person, by mail, by electronic  
10 transmission, or by proxy, at a meeting considering the adoption of a  
11 proposal which is required by the provisions of this chapter to be  
12 adopted by at least two-thirds of the votes which members or  
13 shareholders present at the meeting in person or by mail, by electronic  
14 transmission, or represented by proxy are entitled to cast. In all  
15 other matters and in the absence of any provision in the articles of  
16 incorporation or bylaws, a quorum shall consist of one-fourth, or in  
17 the case of consumer cooperatives, five percent, of the votes which  
18 members or shareholders are entitled to cast in person, by mail, by  
19 electronic transmission, or by proxy at the meeting. On any proposal  
20 on which a class of shareholders or members is entitled to vote as a  
21 class, a quorum of the class entitled to vote as such class must also  
22 be present in person, by mail, by electronic transmission, or  
23 represented by proxy.

24       **Sec. 8.** RCW 24.06.150 and 1969 ex.s. c 120 s 30 are each amended  
25 to read as follows:

26       Meetings of the board of directors, regular or special, may be held  
27 either within or without this state, and upon such notice as the bylaws  
28 may prescribe. Attendance of a director at any meeting shall  
29 constitute a waiver of notice of such meeting except where a director  
30 attends a meeting for the express purpose of objecting to the  
31 transaction of any business because the meeting is not lawfully called  
32 or convened. Neither the business to be transacted at, nor the purpose  
33 of, any regular or special meeting of the board of directors need be  
34 specified in the notice or waiver of notice of such meeting.

35       Unless the articles of incorporation or bylaws provide otherwise,  
36 any or all directors may participate in a regular or special meeting  
37 by, or conduct the meeting through the use of, any means of  
38 communication by which all directors participating can hear each other

1 during the meeting. A director participating in a meeting by this  
2 means is deemed to be present in person at the meeting.

3 **NEW SECTION. Sec. 9.** A new section is added to chapter 24.06 RCW  
4 to read as follows:

5 (1) A director shall discharge the duties of a director, including  
6 duties as a member of a committee, and an officer with discretionary  
7 authority shall discharge the officer's duties under that authority:

8 (a) In good faith;

9 (b) With the care an ordinarily prudent person in a like position  
10 would exercise under similar circumstances; and

11 (c) In a manner the director or officer reasonably believes to be  
12 in the best interests of the corporation.

13 (2) In discharging the duties of a director or an officer, a  
14 director or officer is entitled to rely on information, opinions,  
15 reports, or statements, including financial statements and other  
16 financial data, if prepared or presented by:

17 (a) One or more officers or employees of the corporation whom the  
18 director or officer reasonably believes to be reliable and competent in  
19 the matters presented; or

20 (b) Legal counsel, public accountants, or other persons as to  
21 matters the director or officer reasonably believes are within the  
22 person's professional or expert competence.

23 In addition, a director is entitled to rely on a committee of the  
24 board of directors of which the director is not a member if the  
25 director reasonably believes the committee merits confidence.

26 (3) A director or an officer is not acting in good faith if the  
27 director or officer has knowledge concerning the matter in question  
28 that makes reliance otherwise permitted by subsection (2) of this  
29 section unwarranted.

30 (4) A director or officer is not liable for any action taken as a  
31 director or as an officer, or any failure to take any action, if the  
32 director or officer performed the duties of the director's or officer's  
33 office in compliance with this section.

34 **Sec. 10.** RCW 24.06.185 and 1969 ex.s. c 120 s 37 are each amended  
35 to read as follows:

36 A corporation may amend its articles of incorporation from time to  
37 time in any and as many respects as may be desired, so long as its

1 articles of incorporation as amended contain only such provisions as  
2 are lawful under this chapter. A member or shareholder of a  
3 corporation does not have a vested property right resulting from any  
4 provision in the articles of incorporation.

5 **Sec. 11.** RCW 24.06.190 and 2000 c 167 s 6 are each amended to read  
6 as follows:

7 Amendments to the articles of incorporation shall be made in the  
8 following manner:

9 A corporation's board of directors may amend the articles of  
10 incorporation to change the name of the corporation, without seeking  
11 member or shareholder approval. With respect to amendments other than  
12 to change the name of the corporation, the board of directors shall  
13 adopt a resolution setting forth the proposed amendment and directing  
14 that it be submitted to a vote at a meeting of members and  
15 shareholders, which may be either an annual or a special meeting.  
16 Written or printed notice or, if specifically permitted by the articles  
17 of incorporation or bylaws of the corporation, notice by electronic  
18 transmission, setting forth the proposed amendment or a summary of the  
19 changes to be effected thereby shall be given to each member and  
20 shareholder entitled to vote at such meeting within the time and in the  
21 manner provided in this chapter for the giving of notice of meetings of  
22 members and shareholders. The proposed amendment shall be adopted upon  
23 receiving at least two-thirds of the votes which members or  
24 shareholders present in person or by mail or by electronic transmission  
25 at such meeting or represented by proxy are entitled to cast:  
26 PROVIDED, That when any class of shares or members is entitled to vote  
27 thereon by class, the proposed amendment must receive at least two-  
28 thirds of the votes of the members or shareholders of each class  
29 entitled to vote thereon as a class, who are present in person, by  
30 mail, by electronic transmission, or represented by proxy at such  
31 meeting.

32 Any number of amendments may be submitted and voted upon at any one  
33 meeting.

34 **Sec. 12.** RCW 24.06.195 and 2000 c 167 s 7 are each amended to read  
35 as follows:

1 The articles of amendment shall be executed in duplicate originals  
2 by the corporation by an officer of the corporation, and shall set  
3 forth:

4 (1) The name of the corporation.

5 (2) Any amendment so adopted.

6 (3) If an amendment was adopted by the board of directors without  
7 being submitted for member or shareholder action, a statement to that  
8 effect and that member or shareholder action was not required; or a  
9 statement setting forth the date of the meeting of members and  
10 shareholders at which the amendment was adopted, that a quorum was  
11 present at such meeting, and that such amendment received at least two-  
12 thirds of the votes which members or shareholders of the corporation,  
13 and of each class entitled to vote thereon as a class, present at such  
14 meeting in person, by mail, by electronic transmission, or represented  
15 by proxy were entitled to cast, or a statement that such amendment was  
16 adopted by a consent in writing signed by all members and shareholders  
17 entitled to vote with respect thereto.

18 **Sec. 13.** RCW 24.06.245 and 1969 ex.s. c 120 s 49 are each amended  
19 to read as follows:

20 Any member or shareholder of a corporation shall have the right to  
21 dissent from any of the following corporate actions:

22 (1) Any plan of merger or consolidation to which the corporation is  
23 a party other than a merger or consolidation in which all members or  
24 shareholders of the corporation have the right to continue their  
25 membership or shareholder status in the surviving corporation on  
26 substantially similar terms; or

27 (2) Any sale or exchange of all or substantially all of the  
28 property and assets of the corporation not made in the usual and  
29 regular course of its business, including a sale in dissolution, but  
30 not including a sale pursuant to an order of a court having  
31 jurisdiction in the premises or a sale for cash on terms requiring that  
32 all or substantially all of the net proceeds of sale be distributed to  
33 the shareholders in accordance with their respective interests within  
34 one year after the date of sale; or

35 (3) Any amendment to the articles of incorporation (~~which changes~~  
36 ~~voting or property rights of members or shareholders other than by~~  
37 ~~changing the number of memberships or shares or classes of either~~  
38 ~~thereof)) that materially reduces the number of shares owned by a~~

1 shareholder to a fraction of a share if the fractional share is to be  
2 acquired by the corporation for cash; or

3 (4) (~~Any amendment to the articles of incorporation which~~  
4 ~~reorganizes a corporation under the provisions of this chapter~~) Any  
5 corporate action taken pursuant to a member or shareholder vote to the  
6 extent that the articles of incorporation, bylaws, or a resolution of  
7 the board of directors provides that voting or nonvoting members or  
8 shareholders are entitled to dissent and obtain payment for their  
9 membership or shares.

10 A member or shareholder entitled to dissent and obtain payment for  
11 the member's or shareholder's membership interest or shares under this  
12 chapter may not challenge the corporate action creating the member's or  
13 shareholder's entitlement unless the action fails to comply with the  
14 procedural requirements imposed by this title, the articles of  
15 incorporation, or the bylaws, or is fraudulent with respect to the  
16 member or shareholder or the corporation.

17 The provisions of this section shall not apply to the members or  
18 shareholders of the surviving corporation in a merger if such  
19 corporation is on the date of the filing of the articles of merger the  
20 owner of all the outstanding shares of the other corporations, domestic  
21 or foreign, which are parties to the merger(~~, or if a vote of the~~  
22 ~~members and shareholders of such corporation is not necessary to~~  
23 ~~authorize such merger~~)).

24 The meeting notice for any meeting at which a proposed corporate  
25 action creating dissenters' rights is submitted to a vote must state  
26 that members or shareholders are or may be entitled to assert  
27 dissenters' rights and be accompanied by a copy of RCW 24.06.250.

28 **Sec. 14.** RCW 24.06.250 and 2000 c 167 s 11 are each amended to  
29 read as follows:

30 Any member or shareholder electing to exercise such right of  
31 dissent shall file with the corporation, prior to or at the meeting of  
32 members and shareholders at which such proposed corporate action is  
33 submitted to a vote, a written objection to such proposed corporate  
34 action. If such proposed corporate action be approved by the required  
35 vote and such member or shareholder shall not have voted in favor  
36 thereof, such member or shareholder may, within ten days after the date  
37 on which the vote was taken, (~~or if a corporation is to be merged~~  
38 ~~without a vote of its members and shareholders into another~~

1 corporation, any other members or shareholders may, within fifteen days  
2 after the plan of such merger shall have been mailed or sent by  
3 electronic transmission to such members and shareholders,)) make  
4 written demand on the corporation, or, in the case of a merger or  
5 consolidation, on the surviving or new corporation, domestic or  
6 foreign, for payment of the fair value of such member's membership or  
7 of such shareholder's shares, and, if such proposed corporate action is  
8 effected, such corporation shall pay to such member, upon surrender of  
9 his or her membership certificate, if any, or to such shareholder, upon  
10 surrender of the certificate or certificates representing such shares,  
11 the fair value thereof as of the day prior to the date on which the  
12 vote was taken approving the proposed corporate action, excluding any  
13 appreciation or depreciation in anticipation of such corporate action.  
14 Any member or shareholder failing to make demand within the ten day  
15 period shall be bound by the terms of the proposed corporate action.  
16 Any member or shareholder making such demand shall thereafter be  
17 entitled only to payment as in this section provided and shall not be  
18 entitled to vote or to exercise any other rights of a member or  
19 shareholder.

20 No such demand shall be withdrawn unless the corporation shall  
21 consent thereto. The right of such member or shareholder to be paid  
22 the fair value of his or her membership or shares shall cease and his  
23 or her status as a member or shareholder shall be restored, without  
24 prejudice to any corporate proceedings which may have been taken during  
25 the interim, if:

26 (1) Such demand shall be withdrawn upon consent; or

27 (2) The proposed corporate action shall be abandoned or rescinded  
28 or the members or shareholders shall revoke the authority to effect  
29 such action; or

30 (3) In the case of a merger, on the date of the filing of the  
31 articles of merger the surviving corporation is the owner of all the  
32 outstanding shares of the other corporations, domestic and foreign,  
33 that are parties to the merger; or

34 (4) (~~No demand or petition for the determination of fair value by~~  
35 ~~a court shall have been made or filed within the time provided by this~~  
36 ~~section; or~~

37 ~~(5))~~) A court of competent jurisdiction shall determine that such  
38 member or shareholder is not entitled to the relief provided by this  
39 section.

1        Within ten days after such corporate action is effected, the  
2 corporation, or, in the case of a merger or consolidation, the  
3 surviving or new corporation, domestic or foreign, shall give written  
4 notice thereof to each dissenting member or shareholder who has made  
5 demand as herein provided, and shall make a written offer to each such  
6 member or shareholder to pay for such shares or membership at a  
7 specified price deemed by such corporation to be the fair value  
8 thereof. Except in cases where the fair value payable to dissenters is  
9 fixed in the articles of incorporation or pursuant to RCW 24.06.255,  
10 such notice and offer shall be accompanied by a balance sheet of the  
11 corporation in which the member ((has)) holds his or her membership or  
12 ((the shares of which)) the dissenting shareholder holds shares, as of  
13 the latest available date and not more than twelve months prior to the  
14 making of such offer, and a profit and loss statement of such  
15 corporation for the twelve months' period ended on the date of such  
16 balance sheet.

17        If the fair value payable to dissenting members or shareholders is  
18 fixed in the articles of incorporation or pursuant to RCW 24.06.255, or  
19 if within thirty days after the date on which such corporate action was  
20 effected the fair value of such shares or membership is agreed upon  
21 between any such dissenting member or shareholder and the corporation,  
22 payment therefor shall be made within ninety days after the date on  
23 which such corporate action was effected, upon surrender of the  
24 membership certificate, if any, or upon surrender of the certificate or  
25 certificates representing such shares. Upon payment of the agreed  
26 value the dissenting member or shareholder shall cease to have any  
27 interest in such membership or shares.

28        If the fair value payable to dissenting members or shareholders is  
29 not fixed in the articles of incorporation or pursuant to RCW  
30 24.06.025, and within such period of thirty days a dissenting member or  
31 shareholder and the corporation do not so agree, then the dissenting  
32 member or shareholder shall be entitled to make written demand to the  
33 corporation, ((within thirty days after receipt of written demand from  
34 any dissenting member or shareholder given)) within sixty days after  
35 the date on which such corporate action was effected, requesting that  
36 the corporation petition for a determination of the fair value by a  
37 court. If such a demand is not timely made on the corporation, the  
38 right of such member or shareholder to demand to be paid the fair value  
39 of his or her membership or shares shall be forfeited. Within thirty



1 days after receipt of such a written demand from any dissenting member  
2 or shareholder, the corporation shall, or at its election at any time  
3 within ((such period of sixty)) ninety days after the date on which  
4 such corporate action was effected may, file a petition in any court of  
5 competent jurisdiction in the county in this state where the registered  
6 office of the corporation is located praying that the fair value of  
7 such membership or shares be found and determined. If, in the case of  
8 a merger or consolidation, the surviving or new corporation is a  
9 foreign corporation without a registered office in this state, such  
10 petition shall be filed in the county where the registered office of  
11 the domestic corporation was last located. If the corporation shall  
12 fail to institute the proceeding as herein provided, any dissenting  
13 member or shareholder may do so in the name of the corporation. All  
14 dissenting members and shareholders, wherever residing, shall be made  
15 parties to the proceeding as an action against their memberships or  
16 shares quasi in rem. A copy of the petition shall be served on each  
17 dissenting member and shareholder who is a resident of this state and  
18 shall be served by registered or certified mail on each dissenting  
19 member or shareholder who is a nonresident. Service on nonresidents  
20 shall also be made by publication as provided by law. The jurisdiction  
21 of the court shall be plenary and exclusive. All members and  
22 shareholders who are parties to the proceeding shall be entitled to  
23 judgment against the corporation for the amount of the fair value of  
24 their shares. The court may, if it so elects, appoint one or more  
25 persons as appraisers to receive evidence and recommend a decision on  
26 the question of fair value. The appraisers shall have such power and  
27 authority as shall be specified in the order of their appointment or an  
28 amendment thereof. The judgment shall be payable only upon and  
29 concurrently with the surrender to the corporation of the membership  
30 certificate, if any, or of the certificate or certificates representing  
31 such shares. Upon payment of the judgment, the dissenting shareholder  
32 or member shall cease to have any interest in such shares or  
33 membership.

34 The judgment shall include an allowance for interest at such rate  
35 as the court may find to be fair and equitable in all the  
36 circumstances, from the date on which the vote was taken on the  
37 proposed corporate action to the date of payment.

38 The costs and expenses of any such proceeding shall be determined  
39 by the court and shall be assessed against the corporation, but all or

1 any part of such costs and expenses may be apportioned and assessed as  
2 the court may deem equitable against any or all of the dissenting  
3 members and shareholders who are parties to the proceeding to whom the  
4 corporation shall have made an offer to pay for membership or shares if  
5 the court shall find that the action of such members or shareholders in  
6 failing to accept such offer was arbitrary or vexatious or not in good  
7 faith. Such expenses shall include reasonable compensation for and  
8 reasonable expenses of the appraisers, but shall exclude the fees and  
9 expenses of counsel for and experts employed by any party; but if the  
10 fair value of the memberships or shares as determined materially  
11 exceeds the amount which the corporation offered to pay therefor, or if  
12 no offer was made, the court in its discretion may award to any member  
13 or shareholder who is a party to the proceeding such sum as the court  
14 may determine to be reasonable compensation to any expert or experts  
15 employed by the member or shareholder in the proceeding.

16 Within twenty days after demanding payment for his or her shares or  
17 membership, each member and shareholder demanding payment shall submit  
18 the certificate or certificates representing his or her membership or  
19 shares to the corporation for notation thereon that such demand has  
20 been made. His or her failure to do so shall, at the option of the  
21 corporation, terminate his or her rights under this section unless a  
22 court of competent jurisdiction, for good and sufficient cause shown,  
23 shall otherwise direct. If membership or shares represented by a  
24 certificate on which notation has been so made shall be transferred,  
25 each new certificate issued therefor shall bear a similar notation,  
26 together with the name of the original dissenting holder of such  
27 membership or shares, and a transferee of such membership or shares  
28 shall acquire by such transfer no rights in the corporation other than  
29 those which the original dissenting member or shareholder had after  
30 making demand for payment of the fair value thereof.

31 **Sec. 15.** RCW 24.06.255 and 1969 ex.s. c 120 s 51 are each amended  
32 to read as follows:

33 Notwithstanding any provision in this chapter for the payment of  
34 fair value to a dissenting member or shareholder, (1) the articles of  
35 incorporation may provide that a dissenting member or shareholder shall  
36 be limited to a return of a lesser amount, but in no event shall a  
37 dissenting member or shareholder be limited to a return of less than  
38 the consideration paid to the corporation for the membership or shares

1 which he or she holds unless the fair value of the membership or shares  
2 is less than the consideration paid to the corporation, and (2) the  
3 fair value payable to a dissenting member of a consumer cooperative  
4 shall be a fixed amount equal to the consideration paid to the  
5 corporation for the member's current membership unless the articles of  
6 incorporation expressly provide for a greater or lesser amount."

7 **SHB 1545** - S COMM AMD  
8 By Committee on Judiciary

9

10 On page 1, line 1 of the title, after "organizations;" strike the  
11 remainder of the title and insert "amending RCW 24.06.005, 24.06.025,  
12 24.06.030, 24.06.035, 24.06.100, 24.06.110, 24.06.115, 24.06.150,  
13 24.06.185, 24.06.190, 24.06.195, 24.06.245, 24.06.250, and 24.06.255;  
14 and adding a new section to chapter 24.06 RCW."

EFFECT: Clarifies that the release of liability only applies to  
conduct occurring after the effective date of the proposed amendment.

Retains minimum quorum of 25% of total votes entitled to be cast  
for all nonprofit miscellaneous and mutual corporations except consumer  
cooperatives. For consumer cooperatives, the minimum quorum will be 5%  
of total votes entitled to be cast.

Clarifies that officers as well as directors are entitled to rely  
on officers and employees of the corporation, or legal counsel, public  
accountants, and other persons, in discharging their duties.

Removes the ability of corporations to impose additional privacy  
restrictions on members and shareholders access to records.

--- END ---