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ENGROSSED SUBSTITUTE HOUSE BILL 2660

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State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Anderson and Reams; by request of Secretary of State)

Read first time 02/04/94.

1 AN ACT Relating to corporations; and amending RCW 24.03.030,  
2 24.03.070, 24.03.265, 23B.08.080, 24.06.095, 24.06.110, 24.06.245, and  
3 24.06.300; and adding a new section to chapter 24.06 RCW.

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

5 **Sec. 1.** RCW 24.03.030 and 1986 c 240 s 4 are each amended to read  
6 as follows:

7 A corporation subject to this chapter:

8 (1) Shall not have or issue shares of stock;

9 (2) Shall not make any disbursement of income to its members,  
10 directors, or officers;

11 (3) Shall not loan money or credit to its officers or directors;

12 (4) May pay compensation in a reasonable amount to its members,  
13 directors, or officers for services rendered;

14 (5) May confer benefits upon its members in conformity with its  
15 purposes; (~~and~~)

16 (6) That has the authority through its articles of incorporation  
17 and bylaws to make and collect assessments on members where ownership  
18 of property is a condition of membership in the corporation or where  
19 the assessments are based on the value of all or part of the real

1 property owned by members of the corporation, shall not make the  
2 assessments except where the assessments are approved by a majority  
3 vote of the members, voting in person or by proxy, at an annual or  
4 special meeting held under RCW 24.03.075 and to which notice of the  
5 intent to adopt an assessment has been delivered to all of the members,  
6 who are entitled to vote, not less than ten days nor more than fifty  
7 days before the date of the meeting either personally or by mail; and

8 (7) Upon dissolution or final liquidation may make distributions to  
9 its members as permitted by this chapter, and no such payment, benefit,  
10 or distribution shall be deemed to be a dividend or a distribution of  
11 income.

12 **Sec. 2.** RCW 24.03.070 and 1991 c 72 s 43 are each amended to read  
13 as follows:

14 The initial bylaws of a corporation shall be adopted by its board  
15 of directors. The power to alter, amend, or repeal the bylaws or adopt  
16 new bylaws shall be vested in the board of directors unless otherwise  
17 provided in the articles of incorporation or the bylaws. The bylaws  
18 may contain any provisions for the regulation and management of the  
19 affairs of a corporation not inconsistent with law or the articles of  
20 incorporation. The bylaws of any corporation that has the authority  
21 through its articles of incorporation to make and collect assessments  
22 on members where ownership of property is a condition of membership in  
23 the corporation or where the assessments are based on the value of all  
24 or part of the real property owned by members of the corporation, shall  
25 include provisions, consistent with RCW 24.03.030(6), for voting on the  
26 assessments and notice of the annual or special meetings at which the  
27 assessments are to be considered and approved. The board may adopt  
28 emergency bylaws in the manner provided by RCW 23B.02.070.

29 **Sec. 3.** RCW 24.03.265 and 1986 c 240 s 39 are each amended to read  
30 as follows:

31 Superior courts shall have full power to liquidate the assets and  
32 affairs of a corporation:

33 (1) In an action by a member, director, or the attorney general  
34 when it is made to appear:

35 (a) That the directors are deadlocked in the management of the  
36 corporate affairs and that irreparable injury to the corporation is  
37 being suffered or is threatened by reason thereof, and either that the

1 members are unable to break the deadlock or there are no members having  
2 voting rights; or

3 (b) That the acts of the directors or those in control of the  
4 corporation are illegal, oppressive or fraudulent; or

5 (c) That the corporate assets are being misapplied or wasted; or

6 (d) A corporation has made, collected, or attempted to collect  
7 assessments on members where ownership of property is a condition of  
8 membership in the corporation or where the assessments are based on the  
9 value of all or part of the real property owned by members of the  
10 corporation without an express authority to make the assessments in its  
11 articles of incorporation or without proper notice or approval as  
12 required under RCW 24.03.030 and 24.03.080 or in violation of the  
13 provisions of its bylaws; or

14 (e) That the corporation is unable to carry out its purposes.

15 (2) In an action by a creditor:

16 (a) When the claim of the creditor has been reduced to judgment and  
17 an execution thereon has been returned unsatisfied and it is  
18 established that the corporation is insolvent; or

19 (b) When the corporation has admitted in writing that the claim of  
20 the creditor is due and owing and it is established that the  
21 corporation is insolvent.

22 (3) Upon application by a corporation to have its dissolution  
23 continued under the supervision of the court.

24 (4) When an action has been filed by the attorney general to  
25 dissolve a corporation under the provisions of this chapter and it is  
26 established that liquidation of its affairs should precede the entry of  
27 a decree of dissolution.

28 Proceedings under subsections (1), (2), or (3) of this section  
29 shall be brought in the county in which the registered office or the  
30 principal office of the corporation is situated.

31 It shall not be necessary to make directors or members parties to  
32 any ((such)) action or proceedings unless relief is sought against them  
33 personally.

34 NEW SECTION. Sec. 4. A new section is added to chapter 24.06 RCW  
35 to read as follows:

36 A corporation or association subject to this chapter that has the  
37 authority through its articles of incorporation and bylaws to make and  
38 collect assessments on members where ownership of property is a

1 condition of membership in the corporation or where the assessments are  
2 based on the value of all or part of the real property owned by  
3 members, shall not make the assessments except where the assessments  
4 are approved by a majority vote of the members, voting in person or by  
5 proxy, at an annual or special meeting held under RCW 24.06.100 and to  
6 which notice of the intent to adopt an assessment has been delivered to  
7 all of the members, who are entitled to vote, not less than ten days  
8 nor more than fifty days before the date of the meeting either  
9 personally or by mail.

10 **Sec. 5.** RCW 23B.08.080 and 1989 c 165 s 87 are each amended to  
11 read as follows:

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

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

18 (3) If cumulative voting is authorized, ~~((a))~~ and if less than the  
19 entire board is to be removed, no director may ~~((not))~~ be removed if  
20 the number of votes sufficient to elect the director under cumulative  
21 voting is voted against the director's removal. If cumulative voting  
22 is not authorized, a director may be removed only if the number of  
23 votes cast to remove the director exceeds the number of votes cast not  
24 to remove the director.

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

29 **Sec. 6.** RCW 24.06.095 and 1970 ex.s. c 78 s 1 are each amended to  
30 read as follows:

31 The initial bylaws of a corporation shall be adopted by its board  
32 of directors. The power to alter, amend or repeal the bylaws or adopt  
33 new bylaws shall be vested in the board of directors unless otherwise  
34 provided in the articles of incorporation or the bylaws. The bylaws  
35 may contain any provisions for the regulation and management of the  
36 affairs of a corporation not inconsistent with law or the articles of  
37 incorporation(~~(:—PROVIDED, That)~~). Where the bylaws of an existing

1 corporation prohibit voting by mail or by proxy or attorney-in-fact,  
2 and the quorum required by its bylaws for election of directors or  
3 transaction of other business has not been obtained at a shareholders'  
4 or members' meeting, for a period which includes at least two  
5 consecutive annual meeting dates, the board of directors shall have  
6 power to amend such bylaws to thereafter authorize voting by mail or by  
7 proxy or attorney-in-fact. The bylaws of any corporation that has the  
8 authority through its articles of incorporation to make and collect  
9 assessments on members where ownership of property is a condition of  
10 membership in the corporation or association or where the assessments  
11 are based on the value of all or part of the real property owned by  
12 members shall include provisions, consistent with section 4 of this  
13 act, for voting on the assessments and for providing notice of the  
14 annual or special meetings at which the members will consider or vote  
15 on the assessments.

16 **Sec. 7.** RCW 24.06.110 and 1969 ex.s. c 120 s 22 are each amended  
17 to read as follows:

18 The right of a class or classes of members or shareholders to vote  
19 may be limited, enlarged or denied to the extent specified in the  
20 articles of incorporation. Unless so limited, enlarged or denied, each  
21 member and each outstanding share of each class shall be entitled to  
22 one vote on each matter submitted to a vote of members or shareholders.  
23 No member of a class may acquire any interest which will entitle him to  
24 a greater vote than any other member of the same class.

25 A member or shareholder may vote in person or, unless the articles  
26 of incorporation or the bylaws otherwise provide, may vote by mail or  
27 by proxy executed in writing by the member or shareholder or by his  
28 duly authorized attorney-in-fact: PROVIDED, That no proxy shall be  
29 valid for more than eleven months from the date of its execution unless  
30 otherwise specified in the proxy.

31 The articles of incorporation may provide that whenever proposals  
32 or directors or officers are to be voted upon, such vote may be taken  
33 by mail if the name of each candidate and the text of each proposal to  
34 be so voted upon are set forth in a writing accompanying or contained  
35 in the notice of meeting. Persons voting by mail shall be deemed  
36 present for all purposes of quorum, count of votes and percentages of  
37 total voting power voting.

1 The articles of incorporation or the bylaws may provide that in all  
2 elections for directors every person entitled to vote shall have the  
3 right to cumulate his vote and to give one candidate a number of votes  
4 equal to his vote multiplied by the number of directors to be elected,  
5 or by distributing such votes on the same principle among any number of  
6 such candidates.

7 The articles of incorporation or the bylaws shall provide that  
8 whenever proposals to make and collect assessments are to be voted  
9 upon, the assessments must be approved by a majority vote of the  
10 members voting in person or by proxy.

11 **Sec. 8.** RCW 24.06.245 and 1969 ex.s. c 120 s 49 are each amended  
12 to read as follows:

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

15 (1) Any plan of merger or consolidation to which the corporation is  
16 a party; or

17 (2) Any sale or exchange of all or substantially all of the  
18 property and assets of the corporation not made in the usual and  
19 regular course of its business, including a sale in dissolution, but  
20 not including a sale pursuant to an order of a court having  
21 jurisdiction in the premises or a sale for cash on terms requiring that  
22 all or substantially all of the net proceeds of sale be distributed to  
23 the shareholders in accordance with their respective interests within  
24 one year after the date of sale; or

25 (3) Any amendment to the articles of incorporation which changes  
26 voting or property rights of members or shareholders other than by  
27 changing the number of memberships or shares or classes of either  
28 thereof; or

29 (4) Any amendment to the articles of incorporation which  
30 reorganizes a corporation under the provisions of this chapter; or

31 (5) Any assessments on members where ownership of property is a  
32 condition of membership in the corporation or association or where the  
33 assessments are based on the value of all or part of the real property  
34 owned by members.

35 The provisions of this section shall not apply to the members or  
36 shareholders of the surviving corporation in a merger if such  
37 corporation is on the date of the filing of the articles of merger the  
38 owner of all the outstanding shares of the other corporations, domestic

1 or foreign, which are parties to the merger, or if a vote of the  
2 members and shareholders of such corporation is not necessary to  
3 authorize such merger.

4 **Sec. 9.** RCW 24.06.300 and 1969 ex.s. c 120 s 60 are each amended  
5 to read as follows:

6 The superior court shall have full power to liquidate the assets  
7 and to provide for the dissolution of a corporation when:

8 (1) In any action by a member, shareholder or director it is made  
9 to appear that:

10 (a) The directors are deadlocked in the management of the corporate  
11 affairs and that irreparable injury to the corporation is being  
12 suffered or is threatened by reason thereof, and that the members or  
13 shareholders are unable to break the deadlock; or

14 (b) The acts of the directors or those in control of the  
15 corporation are illegal, oppressive, or fraudulent; or

16 (c) The corporate assets are being misapplied or wasted; or

17 (d) The corporation is unable to carry out its purposes; or

18 (e) The shareholders have failed, for a period which includes at  
19 least two consecutive annual meeting dates, to elect successors to  
20 directors whose terms have expired or would have expired upon the  
21 election of their successors; or

22 (f) The corporation has made, collected, or attempted to collect  
23 assessments on members where ownership of property is a condition of  
24 membership in the corporation or association or where the assessments  
25 are based on the value of all or part of the real property owned by  
26 members, without express authority to make the assessments in its  
27 articles of incorporation or without proper notice or approval as  
28 required under section 4 of this act and RCW 24.06.105, or in violation  
29 of the provisions of its bylaws.

30 (2) In an action by a creditor:

31 (a) The claim of the creditor has been reduced to judgment and an  
32 execution thereon has been returned unsatisfied, and it is established  
33 that the corporation is insolvent; or

34 (b) The corporation has admitted in writing that the claim of the  
35 creditor is due and owing, and it is established that the corporation  
36 is insolvent.

37 (3) A corporation applies to have its dissolution continued under  
38 the supervision of the court.

1           (4) An action has been filed by the attorney general to dissolve  
2 the corporation and it is established that liquidation of its affairs  
3 should precede the entry of a decree of dissolution.

4           Proceedings under subsections (1), (2) or (3) of this section shall  
5 be brought in the county in which the registered office or the  
6 principal office of the corporation is situated.

7           It shall not be necessary to make directors, members or  
8 shareholders party to any such action or proceedings unless relief is  
9 sought against them personally.

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