

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1052**

Chapter 328, Laws of 2011

62nd Legislature  
2011 Regular Session

CORPORATIONS--SHAREHOLDERS AND BOARDS OF DIRECTORS--AUTHORITY

EFFECTIVE DATE: 07/22/11

Passed by the House March 1, 2011  
Yeas 98 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate April 11, 2011  
Yeas 46 Nays 0

BRAD OWEN

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**President of the Senate**

Approved May 12, 2011, 2:02 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1052** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

May 13, 2011

**Secretary of State  
State of Washington**

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HOUSE BILL 1052

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Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

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

Prefiled 01/03/11. Read first time 01/10/11. Referred to Committee on Judiciary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32       (2) For the amendment to be adopted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

23 (2) For a transaction to be approved:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the House March 1, 2011.

Passed by the Senate April 11, 2011.

Approved by the Governor May 12, 2011.

Filed in Office of Secretary of State May 13, 2011.