

**NEW SECTION.** Sec. 5. The sum of one hundred one thousand, five hundred dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the general fund to the department of labor and industries for the purposes of section 1 of this act: **PROVIDED**, That the appropriation shall be limited to the amount generated during the biennium by the collection of fees under RCW 18.27.070.

Passed the House April 25, 1987.

Passed the Senate April 25, 1987.

Approved by the Governor May 18, 1987.

Filed in Office of Secretary of State May 18, 1987.

---

## CHAPTER 420

[Substitute House Bill No. 476]

### BANKS—MEETINGS ONCE EACH QUARTER—CAPITAL STOCK—LAND BANK OVERSIGHT PROCEDURES

AN ACT Relating to banks and banking; amending RCW 30.12.010 and 30.08.090; re-enacting and amending RCW 30.04.230; adding a new section to chapter 30.08 RCW; adding new sections to chapter 31.30 RCW; repealing RCW 30.23.010, 30.23.020, 30.23.030, 30.23.040, 30.23.050, 30.23.060, 30.23.070, 30.23.080, 30.23.900, and 30.23.901; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 30.12.010, chapter 33, Laws of 1955 as last amended by section 30, chapter 279, Laws of 1986 and RCW 30.12.010 are each amended to read as follows:

Every bank and trust company shall be managed by not less than five directors, who need not be residents of this state. Directors shall be elected by the stockholders and hold office for such term as is specified in the articles of incorporation, not exceeding three years, and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's or trust company's bylaws. Shareholders may not cumulate their votes unless the articles of incorporation specifically so provide. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each ((month)) quarter and whenever required by the supervisor. A majority of the then serving board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Immediately upon election, each director shall take, subscribe, swear to, and file with the supervisor an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation. Vacancies in the board of directors shall be filled by the board.

Sec. 2. Section 30.04.230, chapter 33, Laws of 1955 as last amended by section 4, chapter 305, Laws of 1985 and by section 2, chapter 310, Laws of 1985 and RCW 30.04.230 are each reenacted and amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state (~~(, other than a bank or trust company,)~~) may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the supervisor of banking. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the supervisor of banking. The supervisor shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the supervisor of banking may prescribe by rule as necessary or appropriate for the purpose of making

a determination under this section. The application and supporting information and all examination reports and information obtained by the supervisor and the supervisor's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the supervisor and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the supervisor as arbitrary and capricious or unlawful.

(b) The supervisor of banking shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the supervisor shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the supervisor in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The supervisor shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

Sec. 3. Section 30.08.090, chapter 33, Laws of 1955 as last amended by section 28, chapter 279, Laws of 1986 and RCW 30.08.090 are each amended to read as follows:

Any bank or trust company may (~~increase or decrease its capital stock or otherwise~~) amend its articles of incorporation, in any manner not inconsistent with the provisions of this title, by a vote of the stockholders representing two-thirds of each class of shares entitled to vote under the terms of the shares at any regular meeting, or special meeting duly called for that purpose in the manner prescribed by its bylaws. A certificate of the fact and the terms of the amendment shall be executed by a majority of the directors and filed as required herein for articles of incorporation. (~~No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in and a certificate of increase is received from the supervisor. No reduction of the capital stock shall be made to an amount less than is required for capital by the supervisor.~~) No amendment shall be made whereby a bank becomes a trust company unless such bank shall first receive permission from the supervisor.

(~~Banks having authorized but unissued stock shall disclose on all statements of condition the amount of authorized stock and the amount of issued and paid in stock, as certified by the supervisor. The supervisor shall certify to each bank having authorized but unissued stock the amount of its issued and paid in capital stock and this amount shall be used in all statements of condition and in computing the capital of the bank for purposes of determining loan or investment limits until a new certificate is issued by the supervisor. In cases where a bank issues authorized but unissued stock as permitted by this title, a new certificate need not be requested upon each stock issue. However, if the bank so requests and the supervisor approves, a certificate of issued and paid in capital stock shall be issued by the supervisor. A new certificate must be requested at such time as any increase of paid in capital stock represents five percent of the authorized capital stock and at such time as there is no remaining authorized but unissued stock.~~)

NEW SECTION. Sec. 4. A new section is added to chapter 30.08 RCW to read as follows:

A bank or trust company may increase or decrease its capital stock by amendment to its articles of incorporation. No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in and a certificate of increase is received from the supervisor. No reduction of the capital stock shall be made to an amount less than is required for capital by the supervisor.

Banks having authorized but unissued stock shall disclose on all statements of condition the amount of authorized stock, and the amount of issued and paid-in stock, as certified by the supervisor. The supervisor shall certify to each bank having authorized but unissued stock the amount of its issued and paid-in capital stock, and this amount shall be used in all statements of condition and in computing the capital of the bank for purposes of determining loan or investment limits until a new certificate is issued by the supervisor. In cases where a bank issued authorized but unissued stock as

permitted by this title, a new certificate need not be requested upon each stock issue. However, if the bank so requests and the supervisor approves, a certificate of issued and paid-in capital stock shall be issued by the supervisor. A new certificate must be requested at such time as any increase of paid-in capital stock represents five percent of the authorized capital stock and at such time as there is no remaining authorized but unissued stock.

**NEW SECTION.** Sec. 5. (1) The Washington land bank shall be examined by the department of general administration, division of banking, at such times as the supervisor may determine, but in no event less than once each year. Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and an appraisal of the effectiveness of the institution's management and application of policies for the carrying out the requirements of chapter 31-.30 RCW, and servicing all eligible borrowers. At the direction of the supervisor, the division of banking shall examine the condition of any organization with which the Washington land bank contemplates making a loan or discounting paper. For the purposes of this chapter, bank analysts shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under Title 30 RCW, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(2) The Washington land bank shall make and publish an annual report of condition. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as may be required by the board of directors. Such financial statements shall be audited by an independent certified public accountant.

**NEW SECTION.** Sec. 6. The Washington land bank shall make at least three regular reports each year to the supervisor, as of the dates designated, according to form prescribed, verified by the president, vice-president, or secretary and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of the bank. Each such report in condensed form, to be prescribed by the supervisor, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be no newspaper published in such place, then in some newspaper published in the same county. The Washington land bank shall also make such special reports as the supervisor shall call for.

**NEW SECTION.** Sec. 7. Every regular report shall be filed with the supervisor within thirty days from the date of issuance of the notice therefor and proof of publication of such report shall be filed with the supervisor within forty days from such date. Every special report shall be filed with the supervisor within such time as shall be specified in the notice therefor.

Failure of the Washington land bank to file any report, required to be filed as aforesaid within the time herein specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state.

**NEW SECTION.** Sec. 8. The supervisor shall collect from the Washington land bank for application and investigations and for each examination of its condition a fee as set by applicable regulation of the division of banking.

**NEW SECTION.** Sec. 9. (1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of the Washington land bank is confidential and privileged information and shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the Washington land bank and any customer of the Washington land bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(b) The Washington land bank;

(c) The attorney general in his or her role as legal advisor to the supervisor;

(d) A person or organization officially connected with the Washington land bank as officer, director, attorney, auditor, or independent attorney or independent auditor.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: **PROVIDED**, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the Washington land bank. The report shall remain the property of the supervisor and will be furnished to the Washington land bank for its confidential use. Under no circumstances shall the Washington land bank, or any of its directors, officers, or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the Washington land bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for establishment of the Washington land bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

**NEW SECTION.** Sec. 10. (1) The supervisor may issue and serve upon the Washington land bank a notice of charges if in the opinion of the supervisor, the Washington land bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting its business;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the bank or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the bank.

Unless the bank shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the bank an order to cease and desist from the violation or practice. The order may require the bank and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court.

NEW SECTION. Sec. 11. Whenever the supervisor determines that the acts specified in the foregoing section or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, the supervisor may also issue a temporary order requiring the bank to cease and desist from the violation or practice. The order shall become effective upon service on the bank and shall remain effective unless set aside, limited, or suspended by a court in proceedings under section 8 of this act pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank pursuant to section 8 of this act.

NEW SECTION. Sec. 12. Within ten days after the bank has been served with a temporary cease and desist order, the bank may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served. The superior court shall have jurisdiction to issue the injunction.

NEW SECTION. Sec. 13. In the case of a violation or threatened violation of a temporary cease and desist order issued, the supervisor may apply to the superior court of the county of the principal place of business of the bank for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation.

NEW SECTION. Sec. 14. (1) Any administrative hearing may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.04 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the

public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the supervisor shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceedings an order or orders.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the bank and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as deemed proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the bank within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

**NEW SECTION.** Sec. 15. The supervisor may serve upon a director, officer, or employee of the Washington land bank a written notice of the supervisor's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank whenever:

(1) In the opinion of the supervisor any director, officer, or employee of the bank has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank; or

(c) Any act, omission, or practice which constitutes a breach of his fiduciary duty as director, officer, or employee; and

(2) The supervisor determines that:

(a) The bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its investors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee.

NEW SECTION. Sec. 16. A notice of an intention to remove a director, officer, or employee from office or to prohibit participation in the conduct of the affairs of the bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the supervisor at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the supervisor finds that any of the grounds specified in the notice have been established, the supervisor may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank as the supervisor may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the supervisor or a reviewing court.

NEW SECTION. Sec. 17. If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of the bank less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of the bank are removed under this chapter, the supervisor shall appoint persons to serve temporarily as directors until such time as their respective successors take office.

NEW SECTION. Sec. 18. Sections 5 through 17 of this act are each added to chapter 31.30 RCW.

NEW SECTION. Sec. 19. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 82, Laws of 1981 and RCW 30.23.010;

- (2) Section 2, chapter 82, Laws of 1981 and RCW 30.23.020;
- (3) Section 3, chapter 82, Laws of 1981 and RCW 30.23.030;
- (4) Section 4, chapter 82, Laws of 1981 and RCW 30.23.040;
- (5) Section 5, chapter 82, Laws of 1981 and RCW 30.23.050;
- (6) Section 6, chapter 82, Laws of 1981 and RCW 30.23.060;
- (7) Section 7, chapter 82, Laws of 1981 and RCW 30.23.070;
- (8) Section 8, chapter 82, Laws of 1981 and RCW 30.23.080;
- (9) Section 9, chapter 82, Laws of 1981 and RCW 30.23.900; and
- (10) Section 11, chapter 82, Laws of 1981 and RCW 30.23.901.

Passed the House April 21, 1987.

Passed the Senate April 13, 1987.

Approved by the Governor May 18, 1987.

Filed in Office of Secretary of State May 18, 1987.

---

## CHAPTER 421

[Engrossed House Bill No. 713]

### DEBENTURE COMPANIES

AN ACT Relating to debt-related securities; amending RCW 21.20.705, 21.20.715, 21.20.720, and 21.20.320; adding new sections to chapter 21.20 RCW; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 6, chapter 171, Laws of 1973 1st ex. sess. as amended by section 1, chapter 140, Laws of 1979 and RCW 21.20.705 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires((;));

(1) "Debenture company" means an issuer of any note, debenture, or other debt obligation for money ((used or to be used as capital)) to be used as operating funds of the issuer, which is offered or sold in this state ~~((and is required to be registered under the provisions of this chapter;)),~~ and which issuer is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, ~~((leasing;)),~~ or trading in: (a) Notes, or other debt obligations, whether or not secured by real ((or chattel mortgages, deeds of trust, land, land)) or personal property ((contracts, or security agreements and financing statements under the uniform commercial code)); (b) vendors' interests in real estate contracts; (c) real or personal property to be leased to third parties; or (d) real or personal property. The term "debenture company" does not include an issuer by reason of any of its securities which are exempt from registration under RCW 21.20.310 or offered or sold in transactions exempt from registration under RCW 21.20.320 (1) or (8); and

(2) "Acquiring party" means the person acquiring control of a debenture company through the purchase of stock.