

(6) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

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CHAPTER 290

[Substitute Senate Bill No. 3580]
BUSINESS CORPORATIONS

AN ACT Relating to business corporations; amending RCW 23A.08.120, 23A.08.190, 23A.08.390, 23A.08.450, 23A.12.020, 23A.16.010, 23A.16.030, 23A.16.040, 23A.24.040, 23A.28.135, 23A.32.050, 23A.32.073, 23A.32.075, 23A.32.140, 23A.40.032, 23A.40.040, 23A.40.060, 23A.40.070, and 23A.98.030; adding new sections to chapter 23A.08 RCW; repealing RCW 23A.08.160, 23A.08.210, 23A.08.440, 23A.32.077, 23A.32.079, 23A.40.037, 23A.40.050, and 23A.40.090; making an appropriation; and prescribing penalties.

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

Sec. 1. Section 15, chapter 53, Laws of 1965 as last amended by section 4, chapter 75, Laws of 1984 and RCW 23A.08.120 are each amended to read as follows:

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes(~~(, any or all of which classes may consist of shares with par value or shares without par value,)~~) with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this title.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(2) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior

rights and preferences as to dividends or distribution of assets upon liquidation.

NEW SECTION. Sec. 2. A new section is added to chapter 23A.08 RCW to read as follows:

(1) The powers granted in this section are subject to restriction by the articles of incorporation.

(2) Shares may be issued at a price determined by the board of directors, or the board may set a minimum price or establish a formula or method by which the price may be determined.

(3) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration.

(4) Shares issued when the corporation receives the consideration determined by the board are validly issued, fully paid, and nonassessable.

(5) A good faith judgment of the board of directors as to the value of the consideration received for shares is conclusive.

(6) The corporation may place shares issued for a contract for future services or a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Sec. 3. Section 22, chapter 53, Laws of 1965 as last amended by section 10, chapter 75, Laws of 1984 and RCW 23A.08.190 are each amended to read as follows:

The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to

issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

~~((Each certificate representing shares may state upon the face thereof the par value of each share, or a statement that the shares are without par value.))~~

No certificate shall be issued for any share until the consideration established for its issuance has been paid.

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

(1) A subscriber for or holder of shares of a corporation is not liable to the corporation or its creditors with respect to the shares except to pay the subscription price or to satisfy the obligation determined as the consideration for the shares under section 2 of this act.

(2) If shares are issued for promissory notes, for contracts for services to be performed, or before subscriptions are fully paid, a transferee of the shares is not liable to the corporation or its creditors for the unpaid balance but the transferor remains liable.

NEW SECTION. Sec. 5. A new section is added to chapter 23A.08 RCW to read as follows:

(1) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director or an officer had a direct or indirect interest in the transaction is not grounds for either invalidating the transaction or imposing liability on such director or officer.

(2) In any proceeding seeking to invalidate a transaction with the corporation in which a director or an officer had a direct or indirect interest, or to impose liability on a director or an officer who had a direct or indirect interest in a transaction with the corporation, the person asserting the validity of the transaction has the burden of proving fairness unless:

(a) The material facts of the transaction and the director's or officer's interest was disclosed or known to the board of directors, or a committee of the board, and the board or committee authorized, approved, or ratified the transaction; or

(b) The material facts of the transaction and the director's or officer's interest was disclosed or known to the shareholders entitled to vote, and they authorized, approved, or ratified the transaction.

(3) For purposes of this section, a director or an officer of a corporation has an indirect interest in a transaction with the corporation if:

(a) Another entity in which the director or officer has a material financial interest, or in which such person is a general partner, is a party to the transaction; or

(b) Another entity of which the director or officer is a director, officer, or trustee is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.

(4) For purposes of subsection (2)(a) of this section, a transaction is authorized, approved, or ratified only if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(5) For purposes of subsection (2)(b) of this section, a transaction is authorized, approved, or ratified only if it receives the vote of a majority of shares entitled to be counted under this subsection. All outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction. Shares owned by or voted under the control of an entity described in subsection (3)(a) of this section may not be counted to determine whether shareholders have authorized, approved, or ratified a transaction for purposes of subsection (2)(b) of this section. The vote of the shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction and shares owned by or voted under the control of an entity described in subsection (3)(a) of this section, however, shall be counted in determining whether the transaction is approved under other sections of this title and for purposes of determining a quorum.

NEW SECTION. Sec. 6. A new section is added to chapter 23A.08 RCW to read as follows:

(1) For purposes of this section:

(a) An interested shareholder transaction means any transaction between a corporation, or any subsidiary thereof, and an interested shareholder of such corporation or an affiliated person of an interested shareholder that must be authorized pursuant to the provisions of chapter 23A.20 or 23A.28 RCW, or RCW 23A.24.020.

(b) An interested shareholder:

(i) Includes any person or group of affiliated persons who beneficially own twenty percent or more of the outstanding voting shares of a corporation. An affiliated person is any person who either acts jointly or in concert with, or directly or indirectly controls, is controlled by, or is under common control with another person;

(ii) Excludes any person who, in good faith and not for the purpose of circumventing this section, is an agent, bank, broker, nominee, or trustee for another person, if such other person is not an interested shareholder under (b)(i) of this subsection.

(2) Except as provided in subsection (3) of this section, an interested shareholder transaction must be approved by the affirmative vote of the holders of two-thirds of the shares entitled to be counted under this subsection, or if any class of shares is entitled to vote thereon as a class, then by the affirmative vote of the holders of two-thirds of the shares of each class entitled to be counted under this subsection and of the total shares entitled to be counted under this subsection. All outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except shares owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The vote of the shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) This section shall not apply to a transaction:

(a) Unless the articles of incorporation provide otherwise, by a corporation with fewer than three hundred holders of record of its shares;

(b) Approved by a majority vote of the corporation's board of directors. For such purpose, the vote of directors whose votes are entitled to be counted under subsection (3)(b) of this section who are directors or officers of, or have a material financial interest in an interested shareholder, or who were nominated for election as a director as a result of an arrangement with an interested shareholder and first elected as a director within twenty-four months of the proposed transaction, shall not be counted in determining whether the transaction is approved by such directors;

(c) In which a majority of directors whose votes are entitled to be counted under subsection (3)(b) of this section determines that the fair market value of the consideration to be received by noninterested shareholders for shares of any class of which shares are owned by any interested shareholder is not less than the highest fair market value of the consideration paid by any interested shareholder in acquiring shares of the same class within twenty-four months of the proposed transaction; or

(d) By a corporation whose original articles of incorporation have a provision, or whose shareholders adopt an amendment to the articles of incorporation by the affirmative vote of the holders of two-thirds of the shares entitled to be counted under this subsection, expressly electing not to be covered by this section. All outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except shares owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have voted to approve the amendment. The vote of the shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining whether the amendment is approved under other sections of this title and for purposes of determining a quorum.

(4) The requirements imposed by this section are to be in addition to, and not in lieu of, requirements imposed on any transaction by any other provision in this title, the articles of incorporation, or the bylaws of the corporation, or otherwise.

Sec. 7. Section 42, chapter 53, Laws of 1965 as amended by section 21, chapter 16, Laws of 1979 and RCW 23A.08.390 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) A majority of the number of directors fixed by or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number fixed by or in the manner provided in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(2) If a transaction with a corporation in which a director or an officer has a direct or indirect interest is authorized, approved, or ratified by the vote of a majority of directors with no direct or indirect interest in the transaction:

(a) A quorum for purposes of taking such action is present; and

(b) The act of such majority of disinterested directors is the act of the board of directors.

NEW SECTION. Sec. 8. A new section is added to chapter 23A.08 RCW to read as follows:

(1) Except as provided in subsection (3) of this section, a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(a) The particular loan or guarantee is approved by vote of the holders of at least a majority of the votes represented by the outstanding voting shares of all classes, except the votes of the benefited director; or

(b) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(2) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's or guarantor's liability on the loan.

(3) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

Sec. 9. Section 48, chapter 53, Laws of 1965 as last amended by section 15, chapter 75, Laws of 1984 and RCW 23A.08.450 are each amended to read as follows:

In addition to any other liabilities, directors shall be liable in the following circumstances unless they comply with the standard provided in RCW 23A.08.343 for the performance of the duties of directors:

(1) Directors of a corporation who vote for or assent to any distribution contrary to the provisions of this title, or contrary to any restrictions contained in the articles of incorporation, shall be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of such distribution in excess of the amount of such distribution which could have been made without a violation of the provisions of this title or the restrictions in the articles of incorporation.

(2) The directors of a corporation who vote for or assent to the making of a loan to ~~((an officer or))~~ a director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof, unless approved ~~((by the shareholders))~~ as provided in ~~((RCW 23A.08.440))~~ section 8 of this 1985 act.

Any director against whom a claim shall be asserted under or pursuant to this section for the making of a distribution and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing such distribution to have been made in violation of this title, in proportion to the amounts received by them respectively.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other director who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this title for the performance of the duties of directors.

Sec. 10. Section 55, chapter 53, Laws of 1965 as last amended by section 17, chapter 75, Laws of 1984 and RCW 23A.12.020 are each amended to read as follows:

The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated term of years.
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this title.
- (4) The aggregate number of shares which the corporation shall have authority to issue(~~(; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value, or;)~~ and if such shares are to be divided into classes, the number of shares of each class(~~(; and a statement of the par value of the shares of each such class or that such shares are to be without par value)~~)).
- (5) (~~If all or any portion of the shares have no par value, the aggregate value of those shares, or, such aggregate value shall be stated in the statement filed pursuant to RCW 23A.40.050.~~

~~(6))~~ If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

~~((7))~~ (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

~~((8))~~ (7) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

~~((9))~~ (8) The address of its initial registered office and the name of its initial registered agent at such address.

~~((10))~~ (9) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

~~((11))~~ (10) The name and address of each incorporator.

In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) The direction of the management of the business and the regulation of the affairs of the corporation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares; (~~and~~)

(c) The par value of any authorized shares or class of shares; and

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

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

Sec. 11. Section 60, chapter 53, Laws of 1965 and RCW 23A.16.010 are each amended to read as follows:

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name.
- (2) To change its period of duration.
- (3) To change, enlarge or diminish its corporate purposes.
- (4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (5) ~~((To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued))~~ To provide, change, or eliminate any provision with respect to par value of any shares or class of shares.

(6) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.

~~(8) ((To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.~~

~~(9))~~ To change the shares of any class, whether issued or unissued, ~~((and whether with or without par value,))~~ into a different number of shares of the same class or into the same or a different number of shares ~~((either with or without par value,))~~ of other classes.

~~((+10))~~ (9) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

~~((11))~~ (10) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

~~((12))~~ (11) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

~~((13))~~ (12) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

~~((14))~~ (13) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

~~((15))~~ (14) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

~~((16))~~ (15) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

Sec. 12. Section 62, chapter 53, Laws of 1965 and RCW 23A.16.030 are each amended to read as follows:

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class.

~~(2) ((Increase or decrease the par value of the shares of such class.~~

~~(3))~~ Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

~~((4))~~ (3) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

~~((5))~~ (4) Change the designations, preferences, limitations or relative rights of the shares of such class.

~~((6))~~ (5) Change the shares of such class ~~((whether with or without par value,))~~ into the same or a different number of shares ~~((either with or without par value,))~~ of the same class or another class or classes.

~~((7))~~ (6) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and

preferences of any class having rights and preferences prior or superior to the shares of such class.

~~((8))~~ (7) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

~~((9))~~ (8) Limit or deny the existing preemptive rights of the shares of such class.

~~((10))~~ (9) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

Sec. 13. Section 63, chapter 53, Laws of 1965 as last amended by section 19, chapter 75, Laws of 1984 and RCW 23A.16.040 are each amended to read as follows:

The articles of amendment shall be executed in duplicate by the corporation by one of its officers, and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where RCW 23A.16.020 authorizes amendment without shareholder approval.

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(6) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

~~((7) If such amendment effects a change in the amount of the corporation's authorized capital stock, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of the authorized capital stock as changed by such amendment.))~~

Sec. 14. Section 83, chapter 53, Laws of 1965 as amended by section 44, chapter 16, Laws of 1979 and RCW 23A.24.040 are each amended to read as follows:

Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof,

such shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation, any other shareholders may, within fifteen days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable ten day or fifteen day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

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

- (1) Such demand shall be withdrawn upon consent; or
- (2) The proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action; or
- (3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or
- (4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or
- (5) A court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer,

and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

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

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

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

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

~~((Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.))~~

Sec. 15. Section 3, chapter 32, Laws of 1983 and RCW 23A.28.135 are each amended to read as follows:

(1) A corporation which has been dissolved by reason of the expiration of its period of duration may ~~((at))~~ until the later of December 31, 1985, or any time during the period of two years following its dissolution amend its articles of incorporation so as to extend its period of duration.

(2) To achieve the extension authorized by subsection (1) of this section, the corporation shall file an application for extension. The application may be amended or supplemented and any such amendment or supplement shall be effective as of the date of the original application filing. The application to be filed under this section shall be authorized in the manner set

forth in subsection (6) of this section, and shall be presented to the shareholders for approval in the manner set forth in RCW 23A.16.020 and 23A.16.030. The application, when so approved, shall, in addition to the information required by RCW 23A.16.040:

(a) State the date of the expiration of the period of corporate duration;
(b) Identify the amended period of duration, which may be perpetual or for a stated period of years;

(c) State the name of the corporation (which may be reserved under RCW 23A.08.060);

(d) Appoint a registered agent and state the registered office address under RCW 23A.08.090; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law and that all applicable fees have been paid, the secretary of state shall file the application for extension, prepare and file a certificate of extension and amendment, and mail a copy of the certificate of extension and amendment to the corporation.

(4) Extension under this section relates back to and takes effect as of the date of expiration of the corporation's period of duration. The corporate existence shall be deemed to have continued without interruption from that date.

(5) In the event the application for extension states a corporate name which the secretary of state finds to be contrary to the requirements of RCW 23A.08.050, the application, amended application, or supplemental application shall be amended to adopt another corporate name which is in compliance with RCW 23A.08.050. In the event the extension application so adopts a new corporate name, the articles of incorporation shall be deemed to have been amended to change the corporation's name to the name so adopted, effective as of the effective date of the certificate of extension and amendment.

(6) The application shall be authorized by a majority of the persons who were directors at the time of expiration of the corporation's period of duration. If a sufficient number of the directors of any corporation desiring to apply for extension are not available by reason of death or unknown address, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such directors. In any case where there shall be no directors of the corporation available for the purposes aforesaid, the shareholders may elect a full board of directors, as provided by the by-laws of the corporation, and the board shall then elect such officers as are provided by law, by the articles of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director, or shareholder upon notice given in accordance with RCW 23A.08.260.

Sec. 16. Section 6, chapter 2, Laws of 1983 as amended by section 6, chapter 32, Laws of 1983 and RCW 23A.32.050 are each amended to read as follows:

A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

(6) The names and respective addresses of the directors and officers of the corporation.

(7) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes (~~(, par value of shares, shares without par value,)~~) and series, if any within a class.

(8) A statement that a registered agent has been appointed and the name and address of such agent, and that a registered office exists and the address of such registered office is identical to that of the registered agent.

~~(9) ((The number of shares of capital stock which the company is authorized to issue and the par value of each share, and if such shares have no par value, then the value of the assets represented by nonpar shares.~~

~~(10) The portion of the capital stock of the company which is represented or to be represented, employed or to be employed in its business transacted or to be transacted in the state of Washington:~~

~~(11) The value of the property in or to be brought into, and the amount of capital to be used by the company in the state of Washington and the value of the property and capital owned or used by the company outside of the state of Washington.~~

~~(12))~~ The date of the beginning of its current annual accounting period.

~~((13))~~ (10) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in this title prescribed.

~~((14))~~ (11) For any foreign agricultural cooperative association, evidence that the association has complied with the provisions of RCW 24.32.210.

Such application shall be made in the form prescribed by the secretary of state and shall be executed in duplicate by the corporation by one of its officers.

Such application shall be accompanied by a certificate of good standing which has been issued no more than sixty days before the date of filing of the application for a certificate of authority to do business in this state and has been certified to by the proper officer of the state or country under the laws of which it is incorporated.

Sec. 17. Section 51, chapter 16, Laws of 1979 as last amended by section 45, chapter 35, Laws of 1982 and RCW 23A.32.073 are each amended to read as follows:

A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall qualify so to do in the manner prescribed in this title and shall pay for the privilege of so doing the filing and license fees prescribed in this title for domestic corporations, including the same fees as are prescribed in chapter 23A.40 RCW for the filing of articles of incorporation of a domestic corporation. ~~((The fee shall be computed under RCW 23A.32.077, except that the minimum filing fee shall be one hundred dollars, exclusive of any other fee. Any corporation that employs an increased amount of its capital stock within the state shall pay fees at the same rate upon such increase, and whenever such increase is made such corporation shall file with the secretary of state, in a form prescribed by the secretary of state, a statement showing the amount of such increase:))~~

Sec. 18. Section 52, chapter 16, Laws of 1979 as last amended by section 46, chapter 35, Laws of 1982 and RCW 23A.32.075 are each amended to read as follows:

All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed for domestic corporations for annual license fees ~~((, computed under RCW 23A.32.077. Any such corporation that shall employ an increased amount of its capital stock within this state shall pay license fees upon such increase in the same proportion as provided for payment of license fees by domestic corporations. Such corporations shall file with the secretary of state a statement showing the amount of such increase and shall forthwith pay to the secretary of state the license fee brought about by such increased use of capital represented by its property and business in this state, in addition to any filing or service fees which may apply))~~. All license fees shall be paid on or before the first day of July of each and every year or on the annual license expiration date as the secretary of state may establish under this title.

Sec. 19. Section 122, chapter 53, Laws of 1965 as last amended by section 50, chapter 35, Laws of 1982 and RCW 23A.32.140 are each amended to read as follows:

A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not transacting business in this state.

(3) That the corporation surrenders its authority to transact business in this state.

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary of state.

~~(6) ((A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of the application.~~

~~(7) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of the application.~~

~~(8) A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of the application.~~

~~(9))~~ Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation under this title.

~~((+0))~~ (7) If a copy of a revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the application for withdrawal.

The application for withdrawal shall be made in the form prescribed by the secretary of state and shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

Sec. 20. Section 51, chapter 53, Laws of 1965 as last amended by section 12, chapter 35, Laws of 1982 and RCW 23A.40.032 are each amended to read as follows:

(1) Every domestic corporation organized under this title on or after July 1, 1982, shall file an initial report with the secretary of state within thirty days of the date its officers are first elected, containing the information described in subsections (2)(a) through (2)(e) of this section.

(2) In addition, every corporation heretofore or hereafter organized under the laws of the territory or state of Washington and every foreign corporation authorized to do business in Washington shall at the time it is required to pay its annual license fee and at such additional times as it may elect, file with the secretary of state an annual report containing, as of the date of execution of the report:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief description of the business, if any, which the corporation is conducting, or, in the case of a foreign corporation, which the corporation is conducting in this state.

(d) The address of the principal place of business of the corporation in the state.

(e) The names and respective addresses of the directors and officers of the corporation.

(3) Every report required by this section shall be executed by an officer or director on behalf of the corporation except that the initial report of a domestic corporation may be executed by an incorporator. If the secretary of state finds that the annual report substantially conforms to law, the secretary of state shall, when all the fees have been paid as in this title described, file the same.

(4) The secretary of state may prescribe, by rule adopted under chapter 34.04 RCW, the form to be used to make the annual report. The secretary of state may provide that correction or updating of information appearing on previous annual filings is sufficient to constitute the current annual filing.

~~((5) If any corporation shall fail to file or complete a report required by subsection (2) of this section there shall become due and owing to the state of Washington the sum of five dollars per month for each month or part of a month that the annual report is delinquent, to a maximum of fifty dollars, which sum shall be paid to the secretary of state.))~~

Sec. 21. Section 137, chapter 53, Laws of 1965 as last amended by section 61, chapter 35, Laws of 1982 and RCW 23A.40.040 are each amended to read as follows:

Every domestic corporation, except one for which existing law provides a different fee schedule, shall pay for filing of its articles of incorporation and its first year's license a fee of ((sixty=five)) one hundred seventy-five dollars ((for the first fifty thousand dollars or less, of its authorized capital stock; and an additional one dollar and twenty-five cents for each additional one thousand dollars or fraction thereof on all amounts in excess of fifty thousand dollars and not exceeding one million dollars; an additional fifty cents for each additional one thousand dollars or fraction thereof on all amounts in excess of one million dollars, and not exceeding four million dollars; and an additional twenty-five cents for each additional one thousand dollars or fraction thereof on all amounts in excess of four million dollars; but in no case shall the amount exceed seven thousand dollars.

Every domestic corporation, except one for which existing law provides a different fee schedule, desiring to file in the office of the secretary of state, articles amendatory or supplemental articles increasing its capital stock, or certificates of increase of capital stock, shall pay to the secretary of state the fees hereinabove in this section provided, in proportion to such increased capital stock upon the actual amount of such increase, in addition to such other fees as may be due for the filing made)).

Sec. 22. Section 139, chapter 53, Laws of 1965 as last amended by section 63, chapter 35, Laws of 1982 and RCW 23A.40.060 are each amended to read as follows:

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect, for the use of the state, an annual license fee of ((forty=five)) fifty dollars ((for the first fifty thousand dollars or less of the corporation's authorized capital stock; and an additional sixty-three cents for each additional one thousand dollars or fraction thereof on all amounts in excess of fifty thousand dollars; and not exceeding one million dollars; and an additional twenty-five cents for each additional thousand dollars or fraction thereof on all amounts in excess of one million dollars; and not exceeding four million dollars; and an additional thirteen cents for each additional one thousand dollars or fraction thereof on all amounts in excess of four million dollars; but in no case shall an annual license fee exceed the sum of three thousand five hundred dollars)).

Sec. 23. Section 140, chapter 53, Laws of 1965 as last amended by section 64, chapter 35, Laws of 1982 and RCW 23A.40.070 are each amended to read as follows:

In the event any corporation, foreign or domestic, shall do business in this state without having paid its annual license fee or substantially completed its annual report when due, there shall become due and owing the state of Washington a penalty of twenty-five dollars. ~~((For corporations with one hundred thousand dollars or less authorized capital, the penalty shall be five dollars per month for each month or part of a month that the license fee remains unpaid to a maximum of fifty dollars. For corporations with more than one hundred thousand dollars authorized capital, the penalty shall be fifteen percent per month of the license fee, computed from the date the license fee should have been paid:))~~

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23A.28.125, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23A.32.160, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty specified in this section.

Sec. 24. Section 165, chapter 53, Laws of 1965 as last amended by section 24, chapter 75, Laws of 1984 and RCW 23A.98.030 are each amended to read as follows:

Nothing contained in this title as now or hereafter amended shall be construed as an impairment of any obligation of the state as evidenced by bonds held for any purpose, and subsections (2) and (12) of RCW 23A.40.020, subsections (1) and (2) of RCW 23A.40.030, and RCW 23A.40.040, ~~((23A.40.050;))~~ 23A.40.060, 23A.40.070, 23A.40.080, ~~((23A.40.090;))~~ 23A.32.073 and 23A.32.075 shall be deemed to be a continuation of chapter 70, Laws of 1937, as amended, for the purpose of payment of:

(1) World's fair bonds authorized by chapter 174, Laws of 1957 as amended by chapter 152, Laws of 1961; and

(2) Outdoor recreation bonds authorized by referendum bill number 11 (chapter 12, Laws of 1963 extraordinary session), approved by the people on November 3, 1964.

NEW SECTION. Sec. 25. The following acts or parts of acts are each repealed:

(1) Section 19, chapter 53, Laws of 1965, section 8, chapter 75, Laws of 1984 and RCW 23A.08.160;

(2) Section 24, chapter 53, Laws of 1965 and RCW 23A.08.210;

(3) Section 47, chapter 53, Laws of 1965 and RCW 23A.08.440;

(4) Section 55, chapter 35, Laws of 1982 and RCW 23A.32.077;

(5) Section 20, chapter 75, Laws of 1984 and RCW 23A.32.079;

(6) Section 22, chapter 75, Laws of 1984 and RCW 23A.40.037;

(7) Section 138, chapter 53, Laws of 1965, section 62, chapter 35, Laws of 1982 and RCW 23A.40.050; and

(8) Section 142, chapter 53, Laws of 1965 and RCW 23A.40.090.

NEW SECTION. Sec. 26. The sum of two thousand five hundred dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1987, from the general fund to the secretary of state to notify corporations formed before 1933 of the provisions of RCW 23A.28.135.

Passed the Senate March 8, 1985.

Passed the House April 16, 1985.

Approved by the Governor May 13, 1985.

Filed in Office of Secretary of State May 13, 1985.

CHAPTER 291

[Substitute Senate Bill No. 4361]

CENTENNIAL COMMISSION—MEMBERSHIP INCREASED—PROGRAM ELEMENTS MODIFIED

AN ACT Relating to the centennial commission; amending RCW 27.60.020, 27.60.040, and 27.60.060; and adding a new section to chapter 27.60 RCW.

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

Sec. 1. Section 2, chapter 90, Laws of 1982 as amended by section 1, chapter 120, Laws of 1984 and RCW 27.60.020 are each amended to read as follows:

(1) There is established the 1989 Washington centennial commission composed of (~~fifteen~~) twenty-five members selected as follows:

(a) (~~Two~~) Four members of the house of representatives appointed by the speaker of the house, (~~one~~) two from each political party;

(b) (~~Two~~) Four members of the senate appointed by the president of the senate, (~~one~~) two from each political party;

(c) (~~Eleven~~) Seventeen citizens of the state, appointed by and serving at the pleasure of the governor, including a person from a minority culture to represent the state's minority communities, at least one person to represent small towns and rural areas, at least one person representing a state-wide historic preservation organization, and at least one person representing a state historical society.

(2) The chairperson of the commission shall be appointed by the governor from among the citizen members.

(3) The commission shall meet at such times as it is called by the governor or by the chairperson of the commission.

Sec. 2. Section 4, chapter 90, Laws of 1982 and RCW 27.60.040 are each amended to read as follows:

The 1989 Washington centennial commission shall develop a comprehensive program for celebrating the centennial of Washington's admission to the union in 1889. The program shall be developed to represent the contributions of all peoples and cultures to Washington state history and to the