
SENATE BILL 5005

State of Washington

67th Legislature

2021 Regular Session

By Senators Pedersen and Padden; by request of Washington State Bar Association

Prefiled 12/09/20.

1 AN ACT Relating to business corporations; amending RCW
2 23B.01.400, 23B.01.410, 23B.01.420, and 23B.08.210; and reenacting
3 and amending RCW 23B.07.040.

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

5 **Sec. 1.** RCW 23B.01.400 and 2020 c 57 s 39 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this title.

9 (1) "Articles of incorporation" include amended and restated
10 articles of incorporation and articles of merger.

11 (2) "Authorized shares" means the shares of all classes a
12 domestic or foreign corporation is authorized to issue.

13 (3) "Conspicuous" means so prepared that a reasonable person
14 against whom the writing is to operate should have noticed it. For
15 example, text in italics, boldface, contrasting color, capitals, or
16 underlined is conspicuous.

17 (4) "Controlling interest" means ownership of an entity's
18 outstanding shares or interests in such number as to entitle the
19 holder at the time to elect a majority of the entity's directors or
20 other governors without regard to voting power which may thereafter
21 exist upon a default, failure, or other contingency.

1 (5) "Corporate action" means any resolution, act, policy,
2 contract, transaction, plan, adoption or amendment of articles of
3 incorporation or bylaws, or other matter approved by or submitted for
4 approval to a corporation's incorporators, board of directors or a
5 committee thereof, or shareholders.

6 (6) "Corporation" or "domestic corporation" means a corporation
7 for profit, including a social purpose corporation, which is not a
8 foreign corporation, incorporated under or subject to the provisions
9 of this title.

10 (7) "Deliver" or "delivery" means any method of delivery used in
11 conventional commercial practice, including delivery by hand, mail,
12 commercial delivery, and, if authorized in accordance with RCW
13 23B.01.410, by electronic transmission.

14 (8) "Distribution" means a direct or indirect transfer of money
15 or other property, except its own shares, or incurrence of
16 indebtedness by a corporation to or for the benefit of its
17 shareholders in respect to any of its shares. A distribution may be
18 in the form of a declaration or payment of a dividend; a distribution
19 in partial or complete liquidation, or upon voluntary or involuntary
20 dissolution; a purchase, redemption, or other acquisition of shares;
21 a distribution of indebtedness; or otherwise.

22 (9) "Document" means:

23 (a) Any tangible medium on which information is inscribed, and
24 includes handwritten, typed, printed, or similar instruments or
25 copies of such instruments; and

26 (b) An electronic record.

27 (10) "Electronic" means relating to technology having electrical,
28 digital, magnetic, wireless, optical, electromagnetic, or similar
29 capabilities.

30 (11) "Electronic mail" means an electronic transmission directed
31 to a unique electronic mail address, which electronic mail will be
32 deemed to include any files attached thereto and any information
33 hyperlinked to a website if the electronic mail includes the contact
34 information of an officer or agent of the corporation who is
35 available to assist with accessing such files and information.

36 (12) "Electronic mail address" means a destination, commonly
37 expressed as a string of characters, consisting of a unique user name
38 or mailbox, commonly referred to as the "local part" of the address,
39 and a reference to an internet domain, commonly referred to as the

1 "domain part" of the address, whether or not displayed, to which
2 electronic mail can be sent or delivered.

3 (13) "Electronic record" means information that is stored in an
4 electronic or other nontangible medium and ~~((is))~~: (a) Is retrievable
5 in paper form by the recipient through an automated process used in
6 conventional commercial practice ~~((, unless))~~; or (b) if not
7 retrievable in paper form by the recipient through an automated
8 process used in conventional commercial practice, is otherwise
9 authorized in accordance with RCW 23B.01.410(10).

10 (14) "Electronic transmission" or "electronically transmitted"
11 means internet transmission, telephonic transmission, electronic mail
12 transmission, transmission of a telegram, cablegram, or datagram, the
13 use of, or participation in, one or more electronic networks or
14 databases including one or more distributed electronic networks or
15 databases, or any other form or process of communication, not
16 directly involving the physical transfer of paper or another tangible
17 medium, which:

18 (a) Is suitable for the retention, retrieval, and reproduction of
19 information by the recipient; and

20 (b) Is retrievable in paper form by the recipient through an
21 automated process used in conventional commercial practice,
22 ~~((unless))~~ or, if not retrievable in paper form by the recipient
23 through an automated process used in conventional commercial
24 practice, is otherwise authorized in accordance with RCW
25 23B.01.410(10).

26 (15) "Employee" includes an officer but not a director. A
27 director may accept duties that make the director also an employee.

28 (16) "Entity" includes a corporation and foreign corporation,
29 not-for-profit corporation, business trust, estate, trust,
30 partnership, limited liability company, association, joint venture,
31 two or more persons having a joint or common economic interest, the
32 state, United States, and a foreign governmental subdivision, agency,
33 or instrumentality, or any other legal or commercial entity.

34 (17) "Execute," "executes," or "executed" means, with present
35 intent to authenticate or adopt a document:

36 (a) To sign or adopt a tangible symbol to the document, and
37 includes any manual, facsimile, or conformed signature;

38 (b) To attach or logically associate with an electronic
39 transmission an electronic sound, symbol, or process, and includes an
40 electronic signature; or

1 (c) With respect to a document to be filed with the secretary of
2 state, in compliance with the standards for filing with the office of
3 the secretary of state as prescribed by the secretary of state.

4 (18) "Foreign corporation" means a corporation for profit
5 incorporated under a law other than the law of this state.

6 (19) "Foreign limited partnership" means a partnership formed
7 under laws other than of this state and having as partners one or
8 more general partners and one or more limited partners.

9 (20) "General social purpose" means the general social purpose
10 for which a social purpose corporation is organized as set forth in
11 the articles of incorporation of the corporation in accordance with
12 RCW 23B.25.040(1)(c).

13 (21) "Governmental subdivision" includes authority, county,
14 district, and municipality.

15 (22) "Governor" has the meaning given that term in RCW 23.95.105.

16 (23) "Includes" denotes a partial definition.

17 (24) "Individual" includes the estate of an incompetent or
18 deceased individual.

19 (25) "Limited partnership" or "domestic limited partnership"
20 means a partnership formed by two or more persons under the laws of
21 this state and having one or more general partners and one or more
22 limited partners.

23 (26) "Means" denotes an exhaustive definition.

24 (27) "Notice" has the meaning provided in RCW 23B.01.410.

25 (28) "Person" means an individual, corporation, business trust,
26 estate, trust, partnership, limited liability company, association,
27 joint venture, government, governmental subdivision, agency, or
28 instrumentality, or any other legal or commercial entity.

29 (29) "Principal office" means the office, in or out of this
30 state, so designated in the annual report where the principal
31 executive offices of a domestic or foreign corporation are located.

32 (30) "Proceeding" includes civil suit and criminal,
33 administrative, and investigatory action.

34 (31) "Public company" means a corporation that has a class of
35 shares registered with the federal securities and exchange commission
36 pursuant to section 12 or 15 of the securities exchange act of 1934,
37 or section 8 of the investment company act of 1940, or any successor
38 statute.

39 (32) "Qualified director" means (a) with respect to a director's
40 conflicting interest transaction as defined in RCW 23B.08.700, any

1 director who does not have either (i) a conflicting interest
2 respecting the transaction, or (ii) a familial, financial,
3 professional, or employment relationship with a second director who
4 does have a conflicting interest respecting the transaction, which
5 relationship would, in the circumstances, reasonably be expected to
6 exert an influence on the first director's judgment when voting on
7 the transaction; (b) with respect to RCW 23B.08.735, a qualified
8 director under (a) of this subsection if the business opportunity
9 were a director's conflicting interest transaction; and (c) with
10 respect to RCW 23B.02.020(~~((5)-(k))~~) (2)(g), a director who is not a
11 director (i) to whom the limitation or elimination of the duty of an
12 officer to offer potential business opportunities to the corporation
13 would apply, or (ii) who has a familial, financial, professional, or
14 employment relationship with another officer to whom the limitation
15 or elimination would apply, which relationship would, in the
16 circumstances, reasonably be expected to exert an influence on the
17 director's judgment when voting on the limitation or elimination.

18 (33) "Record date" means the date established under chapter
19 23B.07 RCW on which a corporation determines the identity of its
20 shareholders and their shareholdings for purposes of this title. The
21 determinations shall be made as of the close of business on the
22 record date unless another time for doing so is specified when the
23 record date is fixed.

24 (34) "Registered office" means the address of the corporation's
25 registered agent.

26 (35) "Secretary" means the corporate officer to whom the board of
27 directors has delegated responsibility under RCW 23B.08.400(3) for
28 custody of the minutes of the meetings of the board of directors and
29 of the shareholders and for authenticating records of the
30 corporation.

31 (36) "Shareholder" means the person in whose name shares are
32 registered in the records of a corporation or the beneficial owner of
33 shares to the extent of the rights granted by a nominee certificate
34 on file with a corporation.

35 (37) "Shares" means the units into which the proprietary
36 interests in a corporation are divided.

37 (38) "Social purpose" includes any general social purpose and any
38 specific social purpose.

1 (39) "Social purpose corporation" means a corporation that has
2 elected to be governed as a social purpose corporation under chapter
3 23B.25 RCW.

4 (40) "Specific social purpose" means the specific social purpose
5 or purposes for which a social purpose corporation is organized as
6 set forth in the articles of incorporation of the corporation in
7 accordance with RCW 23B.25.040(2)(a).

8 (41) "State," when referring to a part of the United States,
9 includes a state and commonwealth, and their agencies and
10 governmental subdivisions, and a territory and insular possession,
11 and their agencies and governmental subdivisions, of the United
12 States.

13 (42) "Subscriber" means a person who subscribes for shares in a
14 corporation, whether before or after incorporation.

15 (43) "Subsidiary" means an entity in which the corporation has,
16 directly or indirectly, a controlling interest.

17 (44) "United States" includes a district, authority, bureau,
18 commission, department, and any other agency of the United States.

19 (45) "Voting group" means all shares of one or more classes or
20 series that under the articles of incorporation or this title are
21 entitled to vote and be counted together collectively on a matter at
22 a meeting of shareholders. All shares entitled by the articles of
23 incorporation or this title to vote generally on the matter are for
24 that purpose a single voting group.

25 (46) "Writing" or "written" means any information in the form of
26 a document.

27 **Sec. 2.** RCW 23B.01.410 and 2020 c 57 s 40 are each amended to
28 read as follows:

29 (1) A notice under this title must be in writing, except that
30 oral notice of any meeting of the board of directors may be given if
31 expressly authorized by the articles of incorporation or bylaws. A
32 notice includes material that this title or the corporation's
33 articles of incorporation or bylaws requires to accompany the notice.
34 Unless otherwise agreed between the sender and the recipient, words
35 in a notice or other communication under this title must be in
36 English.

37 (2) A notice or other communication may be given by any method of
38 delivery, except that electronic transmissions must be in accordance
39 with this section. If the methods of delivery are impracticable, a

1 notice or other communication may be given by means of a broad
2 nonexclusionary distribution to the public, which may include a
3 newspaper of general circulation in the area where published; radio,
4 television, or other form of public broadcast communication; or other
5 methods of distribution that the corporation has previously
6 identified to its shareholders.

7 (3) A notice or other communication to a domestic or foreign
8 corporation registered to do business in this state may be delivered
9 to the corporation's registered agent or to the secretary at its
10 principal office shown in its most recent annual report or, in the
11 case of a foreign corporation that has not yet delivered an annual
12 report, in its foreign registration statement.

13 ~~(4) ((A notice or other communications may be delivered by~~
14 ~~electronic transmission if consented to by the recipient or if~~
15 ~~authorized by subsection (10) of this section; except that if the~~
16 ~~articles of incorporation or bylaws authorize or require delivery of~~
17 ~~notices of meetings of directors by electronic transmission, then no~~
18 ~~consent to delivery of such notices by electronic transmission is~~
19 ~~required.~~

20 ~~(5) Any consent under subsection (4) of this section may be~~
21 ~~revoked by the person who consented by written notice to the person~~
22 ~~to whom the consent was delivered. Any such consent is deemed revoked~~
23 ~~if:~~

24 ~~(a) The corporation is unable to deliver two consecutive~~
25 ~~electronic transmissions given by the corporation in accordance with~~
26 ~~such consent; and~~

27 ~~(b) Such)~~ Except to the extent otherwise provided in subsection
28 (5) of this section, a notice or other communication may be given by
29 electronic mail or other electronic transmission, subject to
30 subsection (10) of this section if applicable. If a corporation
31 previously gave notices under this title to a shareholder only by
32 mail or other methods of delivery not involving electronic
33 transmission, the corporation must notify the shareholder that it
34 intends to give notices under this title to the shareholder by
35 electronic transmission before the corporation first commences giving
36 notice under this title to the shareholder by electronic
37 transmission. The inadvertent failure to give this notice will not
38 invalidate any meeting or other corporate action.

39 (5) A notice may not be given by electronic mail or other
40 electronic transmission:

1 (a) To a shareholder after the shareholder notifies the
2 corporation in writing of an objection to receiving notice by
3 electronic mail or other electronic transmission; or

4 (b) To a shareholder or director after the corporation is unable
5 to deliver two consecutive notices by electronic mail or other
6 electronic transmission to the electronic mail address, network, or
7 processing system for the shareholder or director, and the inability
8 becomes known to the secretary or to the transfer agent, or other
9 person responsible for the giving of notice or other communications.
10 The inadvertent failure to (~~treat such~~) discover this inability
11 (~~as a revocation~~) will not invalidate any meeting or other
12 corporate action.

13 (6) Unless otherwise agreed between the sender and the recipient,
14 an electronic transmission is received when:

15 (a) If by electronic mail, it is directed to the recipient's
16 electronic mail address, including, in the case of a shareholder, to
17 the shareholder's electronic mail address as it appears in the
18 corporation's records;

19 (b) If by posting on an electronic network, upon the later of
20 (~~such posting and the~~):

21 (i) The posting; and

22 (ii) The delivery of separate notice to the recipient of such
23 specific posting together with comprehensible instructions regarding
24 how to obtain access to the posting on the electronic network; and

25 (c) If by any other electronic transmission, it enters an
26 information processing system that the recipient has designated or
27 uses for the purposes of receiving electronic transmissions or
28 information of the type sent, and from which the recipient is able to
29 retrieve the electronic transmission and it is in a form capable of
30 being processed by that system.

31 (7) Receipt of an electronic acknowledgment from an information
32 processing system described in subsection (6)(c) of this section
33 establishes that an electronic transmission was received but, by
34 itself, does not establish that the content sent corresponds to the
35 content received.

36 (8) An electronic transmission is received under this section
37 even if no person is aware of its receipt.

38 (9) A notice or other communication, if in a comprehensible form
39 or manner, is effective at the earliest of the following:

1 (a) If in a physical form, the earliest of when it is actually
2 received, or when it is left at:

3 (i) A shareholder's address as it appears in the corporation's
4 records;

5 (ii) A director's residence or usual place of business; or

6 (iii) The corporation's principal office;

7 (b) If mailed to a shareholder, upon deposit in the United States
8 mail with first-class postage prepaid and correctly addressed to the
9 shareholder's mailing address as it appears in the corporation's
10 records;

11 (c) If mailed to a recipient other than a shareholder, the
12 earliest of when it is actually received, or:

13 (i) If sent by registered or certified mail, return receipt
14 requested, the date shown on the return receipt signed by or on
15 behalf of the addressee; or

16 (ii) Five days after it is deposited in the United States mail
17 with first-class postage prepaid and correctly addressed to the
18 recipient;

19 (d) If sent by air courier, when dispatched and correctly
20 addressed to a shareholder's mailing address as it appears in the
21 corporation's records;

22 (e) If ~~((an))~~ sent by electronic mail or any other electronic
23 transmission, when it is received as provided in subsection (6) of
24 this section; and

25 (f) If oral, when communicated.

26 (10) A notice or other communication may be in the form of an
27 electronic transmission that cannot be directly reproduced in paper
28 form by the recipient through an automated process used in
29 conventional commercial practice only if:

30 (a) The electronic transmission is otherwise retrievable in
31 perceivable form; and

32 (b) The sender and the recipient have consented in writing to the
33 use of such form of electronic transmission.

34 (11) Notwithstanding anything to the contrary in this section or
35 any other section of this title, ~~((if))~~ when this title requires that
36 a notice be given to shareholders ~~((be accompanied by certain~~
37 ~~material, a public company may satisfy such a requirement, whether or~~
38 ~~not a shareholder has consented to receive electronically transmitted~~
39 ~~notice, by (a) posting the material)), a public company may satisfy
40 this requirement, by: (a) Posting the notice, and any material that~~

1 this title or the corporation's articles of incorporation or bylaws
2 requires to accompany the notice, on an electronic network (either
3 separate from, or in combination with or as part of, any other
4 materials the public company has posted on the electronic network in
5 compliance with applicable federal law) at or prior to the time that
6 the notice under (b) of this subsection is delivered to the public
7 company's shareholders entitled to receive the notice, and (b)
8 (~~delivering~~) mailing to the public company's shareholders entitled
9 to receive the notice a separate (~~record~~) notice of the posting
10 (~~(which record may accompany, or be contained in, the notice)~~),
11 together with comprehensible instructions regarding how to obtain
12 access to the posting on the electronic network. In such a case, the
13 notice and any accompanying material posted on the electronic network
14 is deemed to have been delivered to the public company's shareholders
15 at the time the (~~notice to the shareholders is effective under~~)
16 separate notice required under (b) of this subsection is effective as
17 provided in subsection (9) of this section. A public company that
18 elects pursuant to this (~~section~~) subsection to post on an
19 electronic network any notice or any material (~~required by this~~
20 ~~title~~) that this title or the corporation's articles of
21 incorporation or bylaws requires to accompany a notice to
22 shareholders is required, at its expense, to provide a copy of the
23 notice and the material in a tangible medium (alone or in combination
24 or as part of any other materials the public company has posted on
25 the electronic network in compliance with federal law) to any
26 shareholder entitled to such a notice who so requests.

27 (12) If this title prescribes requirements for notices or other
28 communications in particular circumstances, those requirements
29 govern. If articles of incorporation or bylaws prescribe requirements
30 for notices or other communications, not inconsistent with this
31 section or other provisions of this title, those requirements govern.
32 The articles of incorporation or bylaws may (~~authorize or~~) require
33 delivery of notices of meetings of directors by electronic mail or
34 other electronic transmission.

35 (13) In the event that any provisions of this title are deemed to
36 modify, limit, or supersede the federal electronic signatures in
37 global and national commerce act, 15 U.S.C. Sec. 7001 et seq., the
38 provisions of this title will control to the maximum extent permitted
39 by section 102(a)(2) of that federal act.

1 **Sec. 3.** RCW 23B.01.420 and 2020 c 57 s 41 are each amended to
2 read as follows:

3 (1) A corporation has delivered written notice or any other
4 report or statement to all shareholders of record who share a common
5 address if all of the following requirements are met:

6 (a) The corporation delivers one copy of the notice, report, or
7 statement to the common address;

8 (b) The corporation addresses the notice, report, or statement to
9 the shareholders who share that address either as a group or to each
10 of the shareholders individually or in any other manner to which each
11 of those shareholders has consented; and

12 (c) Each of those shareholders consents to delivery of a single
13 copy of such notice, report, or statement to the shareholders' common
14 address (~~(, and the corporation notifies each shareholder of the~~
15 ~~duration of that shareholder's consent, and explains the manner by~~
16 ~~which the shareholder can revoke the consent)).~~

17 (2) For purposes of this section, "address" means a street
18 address, a post office box number, a facsimile telephone number, an
19 address, location, or system for electronic transmissions, an
20 (~~email~~) electronic mail address, or another similar destination to
21 which (~~records~~) documents are delivered.

22 (3) (~~If a shareholder delivers written notice of revocation to~~
23 ~~consent to delivery of a single copy of any notice, report, or~~
24 ~~statement to a common address, or delivers written notice to the~~
25 ~~corporation that the shareholder wishes to receive an individual copy~~
26 ~~of any notice, report, or statement, the corporation shall begin~~
27 ~~sending individual copies to that)) Any consent described in
28 subsection (1) of this section is revocable by any shareholder who
29 delivers written notice of revocation to the corporation. If the
30 written notice of revocation is delivered, the corporation must begin
31 providing individual notices, reports, or statements to the revoking
32 shareholder within thirty days after delivery of the written notice
33 of revocation.~~

34 (4) (~~Prior to the delivery of notice by electronic transmission~~
35 ~~to a common address, each shareholder consenting to receive notice~~
36 ~~under this section must also have consented to the receipt of notices~~
37 ~~by electronic transmission as provided in RCW 23B.01.410.)) Any
38 shareholder who fails to object by written notice to the corporation,
39 within 60 days of written notice by the corporation of its intention
40 to deliver single copies of notices, reports, or statements to~~

1 shareholders who share a common address as permitted by subsection
2 (1) of this section, will be deemed to have consented to receiving
3 single copies at the common address, on condition that the notice of
4 intention explains that consent may be revoked and the method for
5 revoking consent.

6 **Sec. 4.** RCW 23B.07.040 and 2020 c 194 s 15 and 2020 c 57 s 50
7 are each reenacted and amended to read as follows:

8 (1) (a) Corporate action required or permitted by this title to be
9 approved by a shareholder vote at a meeting may be approved without a
10 meeting or a vote if either:

11 (i) The corporate action is approved by all shareholders entitled
12 to vote on the corporate action; or

13 (ii) The corporate action is approved by shareholders holding of
14 record or otherwise entitled to vote in the aggregate not less than
15 the minimum number of votes that would be necessary to approve such
16 corporate action at a meeting at which all shares entitled to vote on
17 the corporate action were present and voted, and at the time the
18 corporate action is approved the corporation is authorized to approve
19 such corporate action under this subsection (1) (a) (ii) by a general
20 or limited authorization contained in its articles of incorporation,
21 except that if a corporation's articles of incorporation authorize
22 shareholders to cumulate their votes when electing directors pursuant
23 to RCW 23B.07.280, shareholders may not elect directors by less than
24 unanimous written consent.

25 (b) Corporate action may be approved by shareholders without a
26 meeting or a vote if the approval is evidenced by one or more written
27 consents:

28 (i) Executed by shareholders holding of record or otherwise
29 entitled to vote in the aggregate not less than the minimum number of
30 votes necessary under (a) (i) or (ii) of this subsection;

31 (ii) Indicating the date of execution, which date must be on or
32 after the applicable record date determined in accordance with
33 subsection (2) of this section;

34 (iii) Describing the corporate action being approved; and

35 (iv) Delivered to the corporation for filing by the corporation
36 with the minutes or corporate records in accordance with subsection
37 (4) of this section. When delivered to each shareholder for
38 execution, the consent must include or be accompanied by the same
39 material that would have been required by this title to be delivered

1 to shareholders in or accompanying a notice of meeting at which the
2 proposed corporate action would have been submitted for shareholder
3 approval. A shareholder may withdraw an executed shareholder consent
4 by delivering a written notice of withdrawal to the corporation prior
5 to the time when shareholder consents sufficient to approve the
6 corporate action have been delivered to the corporation.

7 (c) A written consent in the form of an electronic transmission
8 (~~must contain or be~~) will be deemed to have been executed by a
9 shareholder if it indicates that shareholder's present intent to
10 approve the corporate action and contains or is accompanied by
11 information from which the corporation can determine that the
12 electronic transmission was transmitted by the shareholder and the
13 date on which the shareholder transmitted the electronic
14 transmission.

15 (2) The record date for determining shareholders entitled to
16 approve a corporate action without a meeting may be fixed under RCW
17 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of
18 execution indicated on the earliest dated shareholder consent
19 executed under subsection (1) of this section, even though such
20 shareholder consent may not have been delivered to the corporation on
21 that date.

22 (3)(a) Notice that shareholder consents are being sought under
23 subsection (1)(a) of this section must be given, by the corporation
24 or by another person soliciting such consents, on or promptly after
25 the record date, to all shareholders entitled to vote on the record
26 date who have not yet executed the shareholder consent and, if this
27 title would otherwise require that notice of a meeting of
28 shareholders to consider the proposed corporate action be given to
29 nonvoting shareholders, to all nonvoting shareholders as of the
30 record date. Notice given under this subsection (3)(a) must include
31 or be accompanied by the same information required to be included in
32 or to accompany the shareholder consent under subsection (1)(b)(iii)
33 and (iv) of this section.

34 (b) Notice that sufficient written consents have been executed to
35 approve the proposed corporate action under either of subsection
36 (1)(a)(i) or (ii) of this section must be given by the corporation,
37 promptly after delivery to the corporation of written consents
38 sufficient to approve the corporate action in accordance with
39 subsection (4) of this section, to all shareholders entitled to vote
40 on the record date and, if this title would otherwise require that

1 notice of a meeting of shareholders to consider the proposed
2 corporate action be given to nonvoting shareholders, to all nonvoting
3 shareholders as of the record date.

4 (4) Unless the consent executed by shareholders specifies a later
5 time as the time at which the approval of the corporate action is to
6 be effective, shareholder approval obtained under this section is
7 effective when:

8 (a) Executed shareholder consents sufficient to approve the
9 proposed corporate action have been delivered to the corporation in
10 any manner authorized by RCW 23B.01.410; and

11 (b) Any period of advance notice required by the corporation's
12 articles of incorporation to be given to any nonconsenting
13 shareholders has been satisfied. No written consent is effective to
14 approve a proposed corporate action unless, within sixty days after
15 the earliest date on which a consent delivered to the corporation as
16 required by this section was executed, written consents executed by a
17 sufficient number of shareholders to approve the corporate action are
18 delivered to the corporation.

19 (5) Approval of corporate action by written consents under this
20 section has the effect of a meeting vote and may be described as such
21 in any document, except that, if the corporate action requires the
22 filing of a certificate under any other section of this title, the
23 certificate so filed shall state, in lieu of any statement required
24 by that section concerning any vote of shareholders, that shareholder
25 approval has been obtained in accordance with this section and that
26 notice to any nonconsenting shareholders has been given to the extent
27 required by this section.

28 (6) The notice requirements in subsection (3)(a) and (b) of this
29 section will not delay the effectiveness of approval of corporate
30 action by written consents, and failure to comply with those notice
31 requirements will not invalidate approval of corporate action by
32 written consents; except that this subsection is not intended to
33 limit judicial power to fashion any appropriate remedy in favor of a
34 shareholder adversely affected by a failure to give such notice in
35 accordance with those subsections.

36 **Sec. 5.** RCW 23B.08.210 and 2020 c 57 s 59 are each amended to
37 read as follows:

38 (1) Unless the articles of incorporation or bylaws provide
39 otherwise, corporate action required or permitted by this title to be

1 approved at a board of directors' meeting may be approved without a
2 meeting if the corporate action is approved by all members of the
3 board. The approval of the corporate action must be evidenced by one
4 or more written consents describing the corporate action being
5 approved, executed by each director either before or after the
6 corporate action becomes effective, and delivered to the corporation
7 for inclusion in the minutes or filing with the corporate records.

8 (2) A written consent in the form of an electronic transmission
9 (~~must contain or be~~) will be deemed to have been executed by a
10 director if it indicates the director's present intent to approve the
11 corporate action and contains or is accompanied by information from
12 which the corporation can determine that the electronic transmission
13 was transmitted by the director and the date on which the director
14 transmitted the electronic transmission.

15 (3) Corporate action is approved under this section when the last
16 director executes the consent.

17 (4) A consent under this section has the effect of a meeting vote
18 and may be described as such in any document.

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