

HOUSE BILL No. 4905

June 30, 1987, Introduced by Reps. Stacey, Randall, Middaugh, Giese, Wartner, Keith, Bennett, Pridnia, Bankes, Dunaskiss, Krause, Gnodtke, Griffin, Alley, Porreca, Murphy, Weeks and Clack and referred to the Committee on Corporations and Finance.

A bill to amend sections 441, 761, and 762 of Act No. 284 of the Public Acts of 1972, entitled

"Business corporation act,"

being sections 450.1441, 450.1761, and 450.1762 of the Michigan Compiled Laws; and to add chapter 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 441, 761, and 762 of Act No. 284 of the
2 Public Acts of 1972, being sections 450.1441, 450.1761, and
3 450.1762 of the Michigan Compiled Laws, are amended and chapter
4 7b is added to read as follows:

5 Sec. 441. (1) ~~Each~~ EXCEPT AS PROVIDED IN SECTIONS 794
6 AND 798, EACH outstanding share is entitled to 1 vote on each
7 matter submitted to a vote, unless otherwise provided in the
8 articles of incorporation. A vote may be cast either orally or
9 in writing, unless otherwise provided in the bylaws.

1 (2) When an action, other than the election of directors, is
2 to be taken by vote of the shareholders, it shall be authorized
3 by a majority of the votes cast by the holders of shares entitled
4 to vote thereon, unless a greater plurality is required by the
5 articles of incorporation or another section of this act. Except
6 as otherwise provided by the articles, directors shall be elected
7 by a plurality of the votes cast at an election.

8 Sec. 761. Except as provided in ~~subsection (1) of section~~
9 ~~762~~ SECTION 762(1) a shareholder of a corporation may dissent
10 from any of the following corporate actions:

11 (a) A plan of merger or consolidation to which the corpora-
12 tion is a party, other than a plan pursuant to which shareholders
13 receive cash, bonds, or shares, or any combination thereof, if
14 the shares satisfy the requirements of ~~subsection (1) of section~~
15 ~~762~~ SECTION 762(1).

16 (b) A sale, lease, exchange, or other disposition of all or
17 substantially all of the assets of a corporation not in the usual
18 or regular course of business as conducted by such corporation,
19 other than (i) a transaction pursuant to a plan of dissolution
20 which provides for distribution of substantially all of its net
21 assets to shareholders in accordance with their respective inter-
22 ests within 1 year after the date of the transaction, where such
23 transaction is for cash, bonds, or shares, or any combination
24 thereof, if the shares satisfy the requirements of ~~subsection~~
25 ~~(1) of section 762~~ SECTION 762(1); or (ii) a sale pursuant to an
26 order of a court having jurisdiction.

1 (c) An amendment of the articles of incorporation giving
2 rise to a right to dissent pursuant to section 621.

3 (D) THE APPROVAL OF A CONTROL SHARE ACQUISITION GIVING RISE
4 TO A RIGHT TO DISSENT PURSUANT TO SECTION 799.

5 Sec. 762. (1) Unless otherwise provided in the articles of
6 incorporation, a shareholder may not dissent as to any corporate
7 action set forth in ~~section 761 as to shares which~~ SECTION
8 761(A), (B), OR (C) IF THE BONDS OR SHARES CURRENTLY OWNED BY THE
9 SHAREHOLDER OR TO BE RECEIVED BY THE SHAREHOLDER are listed on a
10 national securities exchange or are held of record by not less
11 than 2,000 persons on the record date fixed to determine the
12 shareholders entitled to receive notice of and to vote at the
13 meeting of shareholders at which the corporate action is to be
14 acted upon.

15 (2) A shareholder may not dissent as to less than all of the
16 shares owned beneficially by him OR HER and as to which a right
17 of dissent exists. A nominee or fiduciary may not dissent on
18 behalf of a beneficial owner as to less than all of the shares of
19 the owner as to which a right of dissent exists.

20 (3) A shareholder of a surviving corporation to a merger may
21 not dissent from a plan of merger, if the merger did not require
22 for its approval the vote of the shareholder pursuant to section
23 704.

24 CHAPTER 7B CONTROL SHARE ACQUISITIONS

25 SEC. 790. AS USED IN THIS CHAPTER, "CONTROL SHARES" MEANS
26 SHARES THAT, EXCEPT FOR THIS CHAPTER, WOULD HAVE VOTING POWER
27 WITH RESPECT TO SHARES OF AN ISSUING PUBLIC CORPORATION THAT,

1 WHEN ADDED TO ALL OTHER SHARES OF THE ISSUING PUBLIC CORPORATION
2 OWNED BY A PERSON OR IN RESPECT TO WHICH THAT PERSON MAY EXERCISE
3 OR DIRECT THE EXERCISE OF VOTING POWER, WOULD ENTITLE THAT
4 PERSON, IMMEDIATELY AFTER ACQUISITION OF THE SHARES, DIRECTLY OR
5 INDIRECTLY, ALONE OR AS PART OF A GROUP, TO EXERCISE OR DIRECT
6 THE EXERCISE OF THE VOTING POWER OF THE ISSUING PUBLIC CORPORA-
7 TION IN THE ELECTION OF DIRECTORS WITHIN ANY OF THE FOLLOWING
8 RANGES OF VOTING POWER:

9 (A) $1/5$ OR MORE BUT LESS THAN $1/3$ OF ALL VOTING POWER.

10 (B) $1/3$ OR MORE BUT LESS THAN A MAJORITY OF ALL VOTING
11 POWER.

12 (C) A MAJORITY OR MORE OF ALL VOTING POWER.

13 SEC. 791. (1) AS USED IN THIS CHAPTER, "CONTROL SHARE
14 ACQUISITION" MEANS THE ACQUISITION, DIRECTLY OR INDIRECTLY, BY
15 ANY PERSON OF OWNERSHIP OF, OR THE POWER TO DIRECT THE EXERCISE
16 OF VOTING POWER WITH RESPECT TO, ISSUED AND OUTSTANDING CONTROL
17 SHARES.

18 (2) FOR PURPOSES OF THIS SECTION, SHARES OR THE POWER TO
19 DIRECT THE EXERCISE OF VOTING POWER ACQUIRED WITHIN A 90-DAY
20 PERIOD, OR SHARES OR THE POWER TO DIRECT THE EXERCISE OF VOTING
21 POWER ACQUIRED PURSUANT TO A PLAN TO MAKE A CONTROL SHARE ACQUI-
22 SITION, ARE CONSIDERED TO HAVE BEEN ACQUIRED IN THE SAME
23 ACQUISITION.

24 (3) FOR PURPOSES OF THIS SECTION, A PERSON WHO ACQUIRES
25 SHARES IN THE ORDINARY COURSE OF BUSINESS FOR THE BENEFIT OF
26 OTHERS IN GOOD FAITH AND NOT FOR THE PURPOSE OF CIRCUMVENTING
27 THIS CHAPTER HAS VOTING POWER ONLY OF SHARES IN RESPECT OF WHICH

1 THAT PERSON WOULD BE ABLE TO EXERCISE OR DIRECT THE EXERCISE OF
2 VOTES WITHOUT FURTHER INSTRUCTION FROM OTHERS.

3 (4) FOR PURPOSES OF THIS SECTION, THE ACQUISITION OF ANY
4 SHARES OF AN ISSUING PUBLIC CORPORATION DOES NOT CONSTITUTE A
5 CONTROL SHARE ACQUISITION IF THE ACQUISITION IS CONSUMMATED IN
6 ANY OF THE FOLLOWING CIRCUMSTANCES:

7 (A) BEFORE JULY 1, 1987.

8 (B) PURSUANT TO A CONTRACT EXISTING BEFORE JULY 1, 1987.

9 (C) PURSUANT TO THE LAWS OF DESCENT AND DISTRIBUTION.

10 (D) PURSUANT TO THE SATISFACTION OF A PLEDGE OR OTHER SECUR-
11 ITY INTEREST CREATED IN GOOD FAITH AND NOT FOR THE PURPOSE OF
12 CIRCUMVENTING THIS CHAPTER.

13 (E) PURSUANT TO A MERGER OR CONSOLIDATION EFFECTED IN COM-
14 PLIANCE WITH SECTIONS 701 TO 733 IF THE ISSUING PUBLIC CORPORA-
15 TION IS A PARTY TO THE AGREEMENT OF MERGER OR CONSOLIDATION.

16 (5) FOR PURPOSES OF THIS SECTION, THE ACQUISITION OF SHARES
17 OF AN ISSUING PUBLIC CORPORATION IN GOOD FAITH AND NOT FOR THE
18 PURPOSE OF CIRCUMVENTING THIS CHAPTER BY OR FROM ANY PERSON WHOSE
19 VOTING RIGHTS PREVIOUSLY HAD BEEN AUTHORIZED BY SHAREHOLDERS IN
20 COMPLIANCE WITH THIS CHAPTER, OR WHOSE PREVIOUS ACQUISITION OF
21 SHARES OF AN ISSUING PUBLIC CORPORATION WOULD HAVE CONSTITUTED A
22 CONTROL SHARE ACQUISITION BUT FOR SUBSECTION (4), DOES NOT CON-
23 STITUTE A CONTROL SHARE ACQUISITION, UNLESS THE ACQUISITION ENTI-
24 TLES A PERSON, DIRECTLY OR INDIRECTLY, ALONE OR AS PART OF A
25 GROUP, TO EXERCISE OR DIRECT THE EXERCISE OF VOTING POWER OF THE
26 CORPORATION IN THE ELECTION OF DIRECTORS IN EXCESS OF THE RANGE
27 OF THE VOTING POWER WHICH THE PERSON, OR THE PERSON FROM WHICH

1 THE SHARES WERE ACQUIRED, WAS ENTITLED TO EXERCISE OR DIRECT
2 PRIOR TO SUCH ACQUISITION.

3 SEC. 792. AS USED IN THIS CHAPTER, "INTERESTED SHARES"
4 MEANS THE SHARES OF AN ISSUING PUBLIC CORPORATION ENTITLED TO
5 VOTE PURSUANT TO SECTION 798(2) IN RESPECT OF WHICH ANY OF THE
6 FOLLOWING PERSONS MAY EXERCISE OR DIRECT THE EXERCISE OF THE
7 VOTING POWER OF THE CORPORATION:

8 (A) AN ACQUIRING PERSON OR MEMBER OF A GROUP WITH RESPECT TO
9 A CONTROL SHARE ACQUISITION.

10 (B) ANY OFFICER OF THE ISSUING PUBLIC CORPORATION.

11 (C) ANY EMPLOYEE OF THE ISSUING PUBLIC CORPORATION WHO IS
12 ALSO A DIRECTOR OF THE CORPORATION.

13 SEC. 793. (1) AS USED IN THIS CHAPTER, "ISSUING PUBLIC
14 CORPORATION" MEANS A CORPORATION THAT HAS ALL OF THE FOLLOWING:

15 (A) 100 OR MORE SHAREHOLDERS OF RECORD.

16 (B) ITS PRINCIPAL PLACE OF BUSINESS, ITS PRINCIPAL OFFICE,
17 OR SUBSTANTIAL ASSETS WITHIN MICHIGAN.

18 (C) 1 OR MORE OF THE FOLLOWING:

19 (i) MORE THAN 10% OF ITS SHAREHOLDERS OF RECORD RESIDENT IN
20 MICHIGAN.

21 (ii) MORE THAN 10% OF ITS SHARES OWNED OF RECORD BY MICHIGAN
22 RESIDENTS.

23 (iii) 10,000 SHAREHOLDERS OF RECORD RESIDENT IN MICHIGAN.

24 (2) THE RESIDENCE OF A SHAREHOLDER IS PRESUMED TO BE THE
25 ADDRESS APPEARING IN THE RECORDS OF THE CORPORATION.

26 (3) SHARES HELD BY BANKS, EXCEPT AS TRUSTEE, GUARDIAN,
27 CONSERVATOR, PERSONAL REPRESENTATIVE, EXECUTOR, OR OTHER

1 FIDUCIARY; BROKERS; OR NOMINEES SHALL BE DISREGARDED FOR PURPOSES
2 OF CALCULATING THE PERCENTAGES OR NUMBERS UNDER THIS SECTION.

3 SEC. 794. UNLESS THE CORPORATION'S ARTICLES OF INCORPORA-
4 TION OR BYLAWS PROVIDE THAT THIS CHAPTER DOES NOT APPLY TO CON-
5 TROL SHARE ACQUISITIONS OF SHARES OF THE CORPORATION BEFORE THE
6 CONTROL SHARE ACQUISITION, CONTROL SHARES OF AN ISSUING PUBLIC
7 CORPORATION ACQUIRED IN A CONTROL SHARE ACQUISITION HAVE ONLY
8 SUCH VOTING RIGHTS AS ARE CONFERRED BY SECTION 798.

9 SEC. 795. ANY PERSON WHO PROPOSES TO MAKE OR HAS MADE A
10 CONTROL SHARE ACQUISITION MAY AT THE PERSON'S ELECTION DELIVER AN
11 ACQUIRING PERSON STATEMENT TO THE ISSUING PUBLIC CORPORATION AT
12 THE ISSUING PUBLIC CORPORATION'S PRINCIPAL OFFICE. THE ACQUIRING
13 PERSON STATEMENT SHALL SET FORTH ALL OF THE FOLLOWING:

14 (A) THE IDENTITY OF THE ACQUIRING PERSON AND EACH OTHER
15 MEMBER OF THE GROUP OF WHICH THE PERSON IS A PART FOR PURPOSES OF
16 DETERMINING CONTROL SHARES.

17 (B) A STATEMENT THAT THE ACQUIRING PERSON STATEMENT IS GIVEN
18 PURSUANT TO THIS CHAPTER.

19 (C) THE NUMBER OF SHARES OF THE ISSUING PUBLIC CORPORATION
20 OWNED, DIRECTLY OR INDIRECTLY, BY THE ACQUIRING PERSON AND EACH
21 OTHER MEMBER OF THE GROUP AND THE NUMBER OF SHARES NOT OWNED BY
22 SUCH PERSON, BUT WITH RESPECT TO WHICH EACH PERSON HAS THE POWER,
23 DIRECTLY OR INDIRECTLY, TO DIRECT THE EXERCISE OF VOTING POWER.

24 (D) THE RANGE OF VOTING POWER UNDER WHICH THE CONTROL SHARE
25 ACQUISITION FALLS OR, IF CONSUMMATED, WOULD FALL.

26 (E) IF THE CONTROL SHARE ACQUISITION HAS NOT TAKEN PLACE:

1 (i) A DESCRIPTION IN REASONABLE DETAIL OF THE TERMS OF THE
2 PROPOSED CONTROL SHARE ACQUISITION.

3 (ii) REPRESENTATIONS OF THE ACQUIRING PERSON, TOGETHER WITH
4 A STATEMENT IN REASONABLE DETAIL OF THE FACTS UPON WHICH THEY ARE
5 BASED, THAT THE PROPOSED CONTROL SHARE ACQUISITION, IF CONSUM-
6 MATED, WILL NOT BE CONTRARY TO LAW, AND THAT THE ACQUIRING PERSON
7 HAS THE FINANCIAL CAPACITY TO MAKE THE PROPOSED CONTROL SHARE
8 ACQUISITION.

9 SEC. 796. (1) IF THE ACQUIRING PERSON SO REQUESTS AT THE
10 TIME OF DELIVERY OF AN ACQUIRING PERSON STATEMENT AND GIVES AN
11 UNDERTAKING TO PAY THE CORPORATION'S EXPENSES OF A SPECIAL MEET-
12 ING, WITHIN 10 DAYS AFTER THE DELIVERY, THE DIRECTORS OF THE
13 ISSUING PUBLIC CORPORATION SHALL CALL A SPECIAL MEETING OF SHARE-
14 HOLDERS OF THE ISSUING PUBLIC CORPORATION FOR THE PURPOSE OF CON-
15 SIDERING THE VOTING RIGHTS TO BE ACCORDED THE SHARES ACQUIRED OR
16 TO BE ACQUIRED IN THE CONTROL SHARE ACQUISITION. THE CORPORATION
17 MAY REQUIRE THE ACQUIRING PERSON IN ADVANCE OF THE MEETING TO PAY
18 OR PROVIDE FOR PAYMENT OF THE AMOUNT REASONABLY ESTIMATED BY THE
19 CORPORATION AS ITS EXPENSES OF A SPECIAL MEETING.

20 (2) UNLESS THE ACQUIRING PERSON AGREES IN WRITING TO ANOTHER
21 DATE, THE SPECIAL MEETING OF SHAREHOLDERS SHALL BE HELD WITHIN 50
22 DAYS AFTER RECEIPT BY THE ISSUING PUBLIC CORPORATION OF THE
23 REQUEST.

24 (3) IF NO REQUEST IS MADE, THE VOTING RIGHTS TO BE ACCORDED
25 THE SHARES ACQUIRED IN THE CONTROL SHARE ACQUISITION SHALL BE
26 PRESENTED TO THE NEXT SPECIAL OR ANNUAL MEETING OF SHAREHOLDERS.

1 (4) IF THE ACQUIRING PERSON SO REQUESTS IN WRITING AT THE
2 TIME OF DELIVERY OF THE ACQUIRING PERSON STATEMENT, THE SPECIAL
3 MEETING SHALL NOT BE HELD SOONER THAN 30 DAYS AFTER RECEIPT BY
4 THE ISSUING PUBLIC CORPORATION OF THE ACQUIRING PERSON
5 STATEMENT.

6 SEC. 797. (1) IF A SPECIAL MEETING IS REQUESTED, NOTICE OF
7 THE SPECIAL MEETING OF SHAREHOLDERS SHALL BE GIVEN AS PROMPTLY AS
8 REASONABLY PRACTICABLE BY THE ISSUING PUBLIC CORPORATION TO ALL
9 SHAREHOLDERS OF RECORD AS OF THE RECORD DATE SET FOR THE MEETING,
10 WHETHER OR NOT ENTITLED TO VOTE AT THE MEETING.

11 (2) NOTICE OF THE SPECIAL OR ANNUAL SHAREHOLDER MEETING AT
12 WHICH THE VOTING RIGHTS ARE TO BE CONSIDERED SHALL INCLUDE OR BE
13 ACCOMPANIED BY BOTH OF THE FOLLOWING:

14 (A) A COPY OF THE ACQUIRING PERSON STATEMENT DELIVERED TO
15 THE ISSUING PUBLIC CORPORATION PURSUANT TO THIS CHAPTER.

16 (B) A STATEMENT BY THE BOARD OF DIRECTORS OF THE CORPORA-
17 TION, AUTHORIZED BY ITS DIRECTORS, OF ITS POSITION OR RECOMMENDA-
18 TION, OR THAT IT IS TAKING NO POSITION OR MAKING NO RECOMMENDA-
19 TION, WITH RESPECT TO THE CONTROL SHARE ACQUISITION.

20 SEC. 798. (1) CONTROL SHARES ACQUIRED IN A CONTROL SHARE
21 ACQUISITION HAVE THE SAME VOTING RIGHTS AS WERE ACCORDED THE
22 SHARES BEFORE THE CONTROL SHARE ACQUISITION ONLY TO THE EXTENT
23 GRANTED BY RESOLUTION APPROVED BY THE SHAREHOLDERS OF THE ISSUING
24 PUBLIC CORPORATION.

25 (2) TO BE APPROVED UNDER THIS SECTION, THE RESOLUTION SHALL
26 BE APPROVED BY BOTH OF THE FOLLOWING:

1 (A) A MAJORITY OF THE VOTES CAST BY THE HOLDERS OF SHARES
2 ENTITLED TO VOTE, AND IF THE PROPOSED CONTROL SHARE ACQUISITION
3 WOULD, IF FULLY CARRIED OUT, RESULT IN ANY ACTION WHICH WOULD
4 REQUIRE A VOTE AS CLASS OR SERIES, BY A MAJORITY OF THE VOTES
5 CAST BY THE HOLDERS OF SHARES OF EACH SUCH CLASS OR SERIES ENTI-
6 TLED TO VOTE.

7 (B) A MAJORITY OF THE VOTES CAST BY THE HOLDERS OF SHARES
8 ENTITLED TO VOTE AND A MAJORITY OF THE VOTES CAST BY THE HOLDERS
9 OF SHARES OF EACH CLASS OR SERIES ENTITLED TO VOTE AS A CLASS OR
10 SERIES, EXCLUDING ALL INTERESTED SHARES.

11 SEC. 799. (1) IF AUTHORIZED IN A CORPORATION'S ARTICLES OF
12 INCORPORATION OR BYLAWS BEFORE A CONTROL SHARE ACQUISITION HAS
13 OCCURRED, CONTROL SHARES ACQUIRED IN A CONTROL SHARE ACQUISITION,
14 WITH RESPECT TO WHICH NO ACQUIRING PERSON STATEMENT HAS BEEN
15 FILED WITH THE ISSUING PUBLIC CORPORATION, MAY, AT ANY TIME
16 DURING THE PERIOD ENDING 60 DAYS AFTER THE LAST ACQUISITION OF
17 CONTROL SHARES OR THE POWER TO DIRECT THE EXERCISE OF VOTING
18 POWER OF CONTROL SHARES BY THE ACQUIRING PERSON, BE SUBJECT TO
19 REDEMPTION BY THE CORPORATION AT THE FAIR VALUE OF THE SHARES
20 PURSUANT TO THE PROCEDURES ADOPTED BY THE CORPORATION.

21 (2) IF AUTHORIZED IN A CORPORATION'S ARTICLES OF INCORPORA-
22 TION OR BYLAWS BEFORE A CONTROL SHARE ACQUISITION HAS OCCURRED,
23 AFTER AN ACQUIRING PERSON STATEMENT HAS BEEN FILED AND AFTER THE
24 MEETING AT WHICH THE VOTING RIGHTS OF THE CONTROL SHARES ACQUIRED
25 IN A CONTROL SHARE ACQUISITION ARE SUBMITTED TO THE SHAREHOLDERS,
26 THE SHARES ARE SUBJECT TO REDEMPTION BY THE CORPORATION AT THE
27 FAIR VALUE OF THE SHARES PURSUANT TO THE PROCEDURES ADOPTED BY

1 THE CORPORATION UNLESS THE SHARES ARE ACCORDED FULL VOTING RIGHTS
2 BY THE SHAREHOLDERS AS PROVIDED IN SECTION 798.

3 (3) UNLESS OTHERWISE PROVIDED IN A CORPORATION'S ARTICLES OF
4 INCORPORATION OR BYLAWS BEFORE A CONTROL SHARE ACQUISITION HAS
5 OCCURRED, IN THE EVENT CONTROL SHARES ACQUIRED IN A CONTROL SHARE
6 ACQUISITION ARE ACCORDED FULL VOTING RIGHTS AND THE ACQUIRING
7 PERSON HAS ACQUIRED CONTROL SHARES WITH A MAJORITY OF ALL VOTING
8 POWER, SHAREHOLDERS OF THE ISSUING PUBLIC CORPORATION HAVE
9 DISSENTERS' RIGHTS, EXCEPT WITH RESPECT TO SUCH CONTROL SHARES,
10 AS PROVIDED IN THIS SECTION.

11 (4) AS SOON AS PRACTICABLE AFTER SUCH EVENTS HAVE OCCURRED,
12 THE BOARD OF DIRECTORS SHALL CAUSE A NOTICE TO BE SENT TO ALL
13 SHAREHOLDERS OF THE CORPORATION ADVISING THEM THAT THEY HAVE
14 DISSENTERS' RIGHTS TO RECEIVE THE FAIR VALUE OF THEIR SHARES AND
15 MAKING AN OFFER TO PAY FOR THE SHARES AT A SPECIFIED PRICE DEEMED
16 BY THE CORPORATION TO BE THE FAIR VALUE. THE ISSUING PUBLIC COR-
17 PORATION AND THE SHAREHOLDERS SHALL HAVE SUCH FURTHER RIGHTS AS
18 ARE PROVIDED IN SECTIONS 766 THROUGH 768A.

19 (5) AS USED IN THIS SECTION, "FAIR VALUE" MEANS A VALUE NOT
20 LESS THAN THE HIGHEST PRICE PAID PER SHARE BY THE ACQUIRING
21 PERSON IN THE CONTROL SHARE ACQUISITION.

22 Section 2. This amendatory act shall not apply to any
23 domestic corporation before January 1, 1989, unless the
24 corporation's board of directors adopts a resolution, pursuant to
25 this section, electing to have this act apply to the
26 corporation. The resolution shall specify the date after June
27 30, 1987 and before January 1, 1989 on which this act will apply

1 to the corporation. The resolution shall be filed in the office
2 of the department of commerce, corporation and securities bureau,
3 corporation division on or before the date that the act will
4 apply to the corporation.